

LOCAL GOVERNMENT ACT 1995

SHIRE OF KOJONUP

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

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PRESCRIBED OFFENCES

LOCAL GOVERNMENT ACT 1995

SHIRE OF KOJONUP

ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND TRADING LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Kojonup resolved on 18 February 2020 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

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

1.2 Definitions

In this local law unless the context otherwise requires—

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

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

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

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

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

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

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

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

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

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

- (a) private land; or
- (b) a private thoroughfare serving private land;

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

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

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

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

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

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

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

“**local government**” means the Shire of Kojonup;

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

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

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

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

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

- “**permit**” means a permit issued under this local law;
- “**permit holder**” means a person who holds a valid permit;
- “**person**” does not include the local government;
- “**premises**” for the purpose of the definition of public place in both this clause and clause 6.1, means a building or similar structure, but does not include a carpark or a similar place;
- “**public place**” includes any thoroughfare or place which the public are allowed to use, whether or not the thoroughfare or place is on private property, but does not include—
- (a) premises on private property from which trading is lawfully conducted under a written law; and
 - (b) local government property;
- “**Regulations**” means the *Local Government (Functions and General) Regulations 1996*;
- “**sign**” includes a notice, flag, mark, structure or device on which may be shown words, numbers, expressions or symbols;
- “**thoroughfare**” has the meaning given to it in the Act, but does not include a private thoroughfare which is not under the management control of the local government;
- “**town planning scheme**” means a town planning scheme of the local government made under the Planning and Development Act 2005;
- “**townsite**” means the townsites of Kojonup and Muradup which are—
- (a) constituted under section 26(2) of the *Land Administration Act 1997*; or
 - (b) referred to in clause 37 of Schedule 9.3 of the Act;
- “**vehicle**” includes—
- (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and
 - (b) an animal being ridden or driven,
- but excludes—
- (a) a wheel-chair or any device designed for use by a physically impaired person on a footpath; and
 - (b) a pram, a stroller or a similar device; and
- “**verge**” means that part of a thoroughfare between the carriageway and the land which abuts the thoroughfare, but does not include any footpath.

1.3 Application

This local law applies throughout the district.

1.4 Repeal

(1) The *Shire of Kojonup Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law* published in the *Government Gazette* on 16 May 2000 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 Commencement

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

PART 2—ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES

Division 1—General

2.1 General prohibitions

A person shall not—

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

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

2.2 Activities allowed with a permit—general

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

2.3 No possession and consumption of liquor on thoroughfare

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

Division 2—Vehicle crossing

Subdivision 1—Temporary crossings

2.4 Permit 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 sub-clause (1) is to be taken to be—
- (a) The person named on the building permit issued under the *Building Act 2011*, if one has been issued in relation to the works; or
 - (b) the registered proprietor of the lot, if no building permit has been issued under the *Building Act 2011* in relation to the works.
- (3) If the local government approves an application for a permit for the purpose of sub-clause (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 and stable surface, and which appears on a list of acceptable materials maintained by the local government.

2.7 Application

This Division only applies to the townsite.

Subdivision 2—Permissible verge treatments

2.8 Permissible verge treatments

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

2.9 Only permissible verge treatments to be installed

- (1) A person shall not install or maintain a verge treatment which is not a permissible verge treatment.
- (2) The owner and occupier of the lot abutting a verge treatment referred to in sub-clause (1) are each to be taken to have installed and maintained that verge treatment for the purposes of this clause and clause 2.10.

2.10 Obligations of owner or occupier

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

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

2.11 Notice to owner or occupier

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

Subdivision 3—Existing verge treatments

2.12 Transitional provision

- (1) In this clause—

“former provisions” means the local law of the local government which permitted certain types of verge treatments, whether with or without the consent of the local government, and which was repealed by this local law.
- (2) A verge treatment which—
 - (a) was installed prior to the commencement day; and
 - (b) on the commencement day is a type of verge treatment which was permitted under and complied with the former provisions,

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

Subdivision 4—Public works

2.13 Power to carry out public works on verge

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

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

Division 4—Property numbers

Subdivision 1—Preliminary

2.14 Interpretation

In this Division, unless the context requires otherwise—

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

Subdivision 2—Assignment and marking of numbers

2.15 Assignment of numbers

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

Division 5—Fencing

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

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

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

Division 6—Signs erected by the local government

2.17 Signs

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

2.18 Transitional

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

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

Division 7—Driving on a closed thoroughfare

2.19 No driving on closed thoroughfare

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

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

PART 3—ADVERTISING SIGNS ON THOROUGHFARES

Division 1—Preliminary

3.1 Interpretation

In this Part, unless the context otherwise requires—

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

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

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

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

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

Division 2—Permit

3.2 Advertising signs and portable direction signs

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

(a) erect or place an advertising sign on a thoroughfare; or

(b) post any bill or paint, place or affix any advertisement on a thoroughfare.

(2) Notwithstanding subclause (1), a permit is not required in respect of a portable direction sign which neither exceeds 500mm in height nor 0.5m² in area, provided that the sign is placed or erected on a thoroughfare on an infrequent or occasional basis only to direct attention to a place, activity or event during the hours of that activity or event.

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

(a) on a footpath;

(b) over any footpath where the resulting vertical clearance between the sign and the footpath is less than 2.5m;

(c) on or within 3m of a carriageway;

(d) in any other location where, in the opinion of the local government, the sign is likely to obstruct lines of sight along a thoroughfare or cause danger to any person using the thoroughfare; or

(e) on any natural feature, including a rock or tree, on a thoroughfare, or on any bridge or the structural approaches to a bridge.

3.3 Matters to be considered in determining application for permit

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

(a) any other written law regulating the erection or placement of signs within the district;

(b) the dimensions of the sign;

(c) other advertising signs already approved or erected in the vicinity of the proposed location of the sign;

(d) whether or not the sign will create a hazard to persons using a thoroughfare; and

(e) the amount of the public liability insurance cover, if any, to be obtained by the applicant.

Division 3—Conditions on permit

3.4 Conditions on portable sign

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

(a) the portable sign shall—

(i) not exceed 1m in height;

(ii) not exceed an area of 1m² on any side;

(iii) relate only to the business activity described on the permit;

(iv) contain letters not less than 200mm in height;

(v) not be erected in any position other than immediately adjacent to the building or the business to which the sign relates;

(vi) be removed each day at the close of the business to which it relates and not be erected again until the business next opens for trading;

(vii) be secured in position in accordance with any requirements of the local government;

(viii) be placed so as not to obstruct or impede the reasonable use of a thoroughfare or access to a place by any person; and

(ix) be maintained in good condition; and

(b) no more than one portable sign shall be erected in relation to the one building or business.

3.5 Conditions on election sign

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

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

PART 4—OBSTRUCTING ANIMALS, VEHICLES OR SHOPPING TROLLEYS

Division 1—Animals and vehicles

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

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

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

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

4.2 Prohibitions relating to animals

(1) In sub-clause (2), owner in relation to an animal includes—

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

(2) An owner of an animal shall not—

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

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

Division 2—Shopping trolleys

4.3 Interpretation

In this Division—

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

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

4.4 Shopping trolley to be marked

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

4.5 Person not to leave trolley in public place

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

4.6 Retailer to remove abandoned trolley

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

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

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

4.7 Retailer taken to own trolley

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

PART 5—ROADSIDE CONSERVATION

Division 1—Preliminary

5.1 Interpretation

In this Part—

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

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

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

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

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

5.2 Application

This Part does not apply to the townsites.

Division 2—Flora roads

5.3 Declaration of flora road

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

5.4 Construction works on flora roads

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

5.5 Signposting of flora roads

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

5.6 Driving only on carriageway of flora roads

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

(2) Sub-clause (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 sub-clause (1) has been obtained from the local government.

Division 3—Special environmental areas

5.7 Designation of special environmental areas

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

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

5.8 Marking of special environmental areas

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

Division 4—Planting in thoroughfares

5.9 Permit to plant

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

5.10 Relevant considerations in determining application

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

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

Division 5—Clearance of vegetation

5.11 Permit to clear

A person shall not clear and maintain in a cleared state, the surface of a thoroughfare within 1m of that person's land without first obtaining a permit and any other approvals which may be required under any written law.

5.12 Application for permit

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

Division 6—Fire management

5.13 Permit to burn thoroughfare

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

5.14 Application for permit

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

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

5.15 When application for permit can be approved

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

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

5.16 Prohibitions on burning

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

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

Division 7—Firebreaks

5.17 Permit for firebreaks on thoroughfares

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

5.18 When application for permit cannot be approved

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

Division 8—Commercial wildflower harvesting on thoroughfares

5.19 General prohibition on commercial wildflower harvesting

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

5.20 Permit for revegetation projects

- (1) A person shall not collect seed from native flora on a thoroughfare without first obtaining a permit.
- (2) The local government may approve an application for a permit under subclause (1) only where—
 - (a) the seed is required for a revegetation project in any part of the district; and

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

PART 6—TRADING IN THOROUGHFARES AND PUBLIC PLACES

Division 1—Stallholders and traders

Subdivision 1—Preliminary

6.1 Interpretation

In this Division, unless the context otherwise requires—

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

public place includes—

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

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

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

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

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

“trader” means a person who carries on trading;

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

“trading” includes—

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

but does not include—

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

Subdivision 2—Permits

6.2 Stallholder's permit

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

6.3 Trader's permit

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

6.4 No permit required to sell newspaper

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

6.5 Relevant considerations in determining application for permit

- (1) In determining an application for a permit for the purposes of this Division, the local government is to have regard to—
 - (a) any relevant policies of the local government;
 - (b) the desirability of the proposed activity;
 - (c) the location of the proposed activity;
 - (d) the principles set out in the Competition Principles Agreement; and
 - (e) such other matters as the local government may consider to be relevant in the circumstances of the case.
- (2) The local government may refuse to approve an application for a permit under this Division on any one or more of the following grounds—
 - (a) that the applicant has committed a breach of any provision of this local law or of any written law relevant to the activity in respect of which the permit is sought; or
 - (b) that—
 - (i) the applicant is an undischarged bankrupt or is in liquidation;
 - (ii) the applicant has entered into any composition or arrangement with creditors; or
 - (iii) a manager, an administrator, a trustee, a receiver, or a receiver and manager has been appointed in relation to any part of the applicant's undertakings or property.

6.6 Conditions of permit

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

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

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

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

Subdivision 3—Conduct of stallholders and traders

6.8 Conduct of stallholders and traders

- (1) A stallholder while conducting a stall or a trader while trading shall—
- (a) display her or his permit to do so in a conspicuous place on the stall, vehicle or temporary structure or if there is no stall, vehicle or temporary structure, carry the permit with her or him while conducting a stall or trading;
 - (b) not display a permit unless it is a valid permit; and
 - (c) when selling goods by weight, carry and use for that purpose, scales tested and certified in accordance with the provisions of the *National Measurement Act 1960 (Cth)*.
- (2) A stallholder or trader shall not—
- (a) deposit or store any box or basket containing goods on any part of a thoroughfare so as to obstruct the movement of pedestrians or vehicles;
 - (b) act in an offensive manner;
 - (c) use or cause to be used any apparatus or device including any flap or shelf, whereby the dimensions of a stall, vehicle or structure are increased beyond those specified in the permit; or

- (d) in the case of a trader, carry on trading from a public place, unless there is adequate parking for customers' vehicles reasonably close to the place of trading.

Division 2—Street entertainers

Subdivision 1—Preliminary

6.9 Interpretation

In this Division, unless the context otherwise requires—

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

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

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

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

Subdivision 2—Permits

6.10 Permit required to perform

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

6.11 Variation of permitted area and permitted time

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

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

shown on a permit.

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

6.12 Duration of permit

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

6.13 Cancellation of permit

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

6.14 Obligations of permit holder

A permit holder shall not in a public place—

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

Division 3—Outdoor eating facilities on public places

6.15 Interpretation

In this Division—

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

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

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

6.16 Permit required to conduct Facility

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

6.17 Matters to be considered in determining application

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

- (a) the Facility is conducted in conjunction with and as an extension of a food business which abut on the Facility, and whether the applicant is the person conducting such food business;

- (b) any abutting food business is registered in accordance with the *Food Act 2008* and whether the use of the business is permitted under the town planning scheme;
- (c) users of the Facility will have access to proper and sufficient sanitary and ablutionary conveniences;
- (d) the Facility would—
 - (i) obstruct the visibility or clear sight lines at an intersection of thoroughfares of any person; or
 - (ii) impede pedestrian access; and
- (e) the tables, chairs and other equipment to be used may obstruct or impede the use of the public place for the purpose for which it was designed.

6.18 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; and
 - (d) be solely responsible for all and any costs associated with the removal, alteration, repair, reinstatement or reconstruction of any part of the public place arising from the conduct of the Facility.
- (2) Whenever, in the opinion of the local government, any work is required to be carried out to a Facility, the local government may give a notice to the permit holder for the Facility to carry out that work within the time limited by the notice.
- (3) In subclause (2), “work” includes the removal, alteration, repair, reinstatement or reconstruction of any part of a public place arising from or in connection with the setting up or conduct of a Facility.

6.19 Removal of Facility unlawfully conducted

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

6.20 Use of Facility by public

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

6.21 Temporary removal of Facility may be requested

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

PART 7—PERMITS

Division 1—Applying for a permit

7.1 Application for permit

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

7.2 Decision on application for permit

- (1) The local government may—
 - (a) approve an application for a permit unconditionally or subject to any conditions; or
 - (b) refuse to approve an application for a permit.

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

Division 2—Conditions

7.3 Conditions which may be imposed on a permit

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

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

7.4 Imposing conditions under a policy

(1) In this clause—

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

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

7.5 Compliance with and variation of conditions

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

Division 3—General

7.6 Duration of permit

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

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

7.7 Renewal of permit

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

7.8 Transfer of permit

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

7.9 Production of permit

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

7.10 Cancellation of permit

- (1) Subject to clause 8.1, a permit may be cancelled by the local government if the permit holder has not complied with a—
 - (a) condition of the permit; or
 - (b) provision of any written law which may relate to the activity regulated by the permit.
- (2) On the cancellation of a permit the permit holder—
 - (a) shall return the permit as soon as practicable to the local government; and
 - (b) is to be taken to have forfeited any fees paid in respect of the permit.

PART 8—OBJECTIONS AND APPEALS

8.1 Application of Part 9 Division 1 of Act

When the local government makes a decision—

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

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

PART 9—MISCELLANEOUS NOTICES

9.1 Notice to redirect or repair sprinkler

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

9.2 Hazardous plants

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

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

9.3 Notice to repair damage to thoroughfare

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

9.4 Notice to remove thing unlawfully placed on thoroughfare

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

PART 10—ENFORCEMENT

Division 1—Notices given under this local law

10.1 Offence to fail to comply with notice

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

10.2 Local government may undertake requirements of notice

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

Division 2—Offences and penalties

Subdivision 1—General

10.3 Offences

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

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

Subdivision 2—Infringement notices and modified penalties

10.4 Prescribed offences

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

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

10.5 Forms

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

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

Schedule 1

PRESCRIBED OFFENCES

Clause	Nature of Offence	Modified Penalty \$
2.1(a)	Plant of 0.75m in height on thoroughfare within 10m of intersection	125
2.1(b)	Damaging lawn or garden	125
2.1(c)	Plant (except grass) on thoroughfare within 2m of carriageway	125
2.1(d)	Placing hazardous substance on footpath	125
2.1(e)	Damaging or interfering with signpost or structure on thoroughfare	350
2.1(f)	Playing games so as to impede vehicles or persons on thoroughfare	125
2.1(g)	Riding of skateboard or similar device on mall or verandah of shopping centre	125
2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	125
2.2(1)(b)	Throwing or placing anything on a verge without a permit	125
2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	125
2.2(1)(d)	Causing obstruction to water channel on thoroughfare without a permit	250
2.2(1)(e)	Placing or draining offensive fluid on thoroughfare without a permit	250
2.2(1)(g)	Lighting a fire on a thoroughfare without a permit	350
2.2(1)(h)	Felling tree onto thoroughfare without a permit	125
2.2(1)(i)	Installing pipes or stone on thoroughfare without a permit	125
2.2(1)(j)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	350
2.2(1)(k)	Creating a nuisance on a thoroughfare without a permit	125
2.2(1)(l)	Placing a bulk rubbish container on a thoroughfare without a permit	125
2.2(1)(m)	Interfering with anything on a thoroughfare without a permit	125
2.3(1)	Consumption or possession of liquor on thoroughfare	125

Clause	Nature of Offence	Modified Penalty \$
2.4(1)	Failure to obtain permit for temporary crossing	250
2.5(2)	Failure to comply with notice to remove crossing and reinstate kerb	350
2.9(1)	Installation of verge treatment other than permissible verge treatment	250
2.10	Failure to maintain permissible verge treatment or placement of obstruction on verge	125
2.11	Failure to comply with notice to rectify a verge treatment	125
2.17(2)	Failure to comply with sign on public place	125
2.19(1)	Driving or taking a vehicle on a closed thoroughfare	350
3.2(1)	Placing advertising sign or affixing any advertisement on a thoroughfare without a permit	125
3.2(3)	Erecting or placing of advertising sign in a prohibited area	125
4.1(1)	Animal or vehicle obstructing a public place or local government property	125
4.2(2)(a)	Animal on thoroughfare when not led, ridden or driven	125
4.2(2)(b)	Animal on public place with infectious disease	125
4.2(2)(c)	Training or racing animal on thoroughfare in built-up area	125
4.2(3)	Horse led, ridden or driven on thoroughfare in built-up area	125
4.5	Person leaving shopping trolley in public place other than trolley bay	125
4.6(2)	Failure to remove shopping trolley upon being advised of location	125
5.6(1)	Driving a vehicle on other than the carriageway of a flora road	250
5.9	Planting in thoroughfare without a permit	250
5.11	Failure to obtain permit to clear a thoroughfare	500
5.13	Burning of thoroughfare without a permit	500
5.17(1)	Construction of firebreak on thoroughfare without a permit	500
5.19	Commercial harvesting of native flora on thoroughfare	500
5.20(1)	Collecting seed from native flora on thoroughfare without a permit	350
6.2(1)	Conducting of stall in public place without a permit	350
6.3(1)	Trading without a permit	350
6.8(1)(a)	Failure of stallholder or trader to display or carry permit	125
6.8(1)(b)	Stallholder or trader not displaying valid permit	125
6.8(1)(c)	Stallholder or trader not carrying certified scales when selling goods by weight	125
6.8(2)	Stallholder or trader engaged in prohibited conduct	125
6.10	Performing in a public place without a permit	125
6.11(2)	Failure of performer to move onto another area when directed	125
6.14	Failure of performer to comply with obligations	125
6.16	Establishment or conduct of outdoor eating facility without a permit	350
6.18	Failure of permit holder of outdoor eating facility to comply with obligations	125
6.20(1)	Use of equipment of outdoor eating facility without purchase of food or drink from facility	60
6.20(2)	Failure to leave outdoor eating facility when requested to do so by permit holder	60
7.5	Failure to comply with a condition of a permit	125
7.9	Failure to produce permit on request of authorized person	125
10.1	Failure to comply with notice given under local law	125

Dated 3 March, 2020.

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

J. BENN, President.

R. MITCHELL-COLLINS, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF KOJONUP

FENCING LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and all other powers enabling it, the Shire of Kojonup resolved on 18 February 2020 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law is the Shire of Kojonup Fencing Local Law 2020.

1.2 Commencement

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

1.3 Purpose and effect

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

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

1.4 Application

This local law applies throughout the district.

1.5 Repeal

Nil

1.6 Definitions

In this local law—

Act means the *Dividing Fences Act 1961*;

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

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

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

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

Building Surveyor means a Building Surveyor of the local government;

CEO means the Chief Executive Officer of the local government;

Commercial Lot means a lot where a commercial use—

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

dangerous in relation to any fence means—

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

district means the district of the local government;

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

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

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

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

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

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

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

height in relation to a fence means the vertical distance between—

- (a) the top of the fence at any point; and
- (b) the ground level or, where the ground levels on each side of the fence are not the same, the higher ground level, immediately below that point;

Industrial Lot means a lot where an industrial use—

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

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

local government means the Shire of Kojonup;

local government property means anything except a thoroughfare—

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

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

notice of breach means a notice referred to in clause 5.1;

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

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

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

Residential Lot means a lot where a residential use—

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

retaining wall means any structure which prevents the movement of soil or retains soil or structures in order to allow ground levels of different elevations to exist adjacent to one another;

Rural Lot means a lot where a rural use—

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

Schedule means a Schedule to this local law;

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

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

sufficient fence means a fence described in clause 2.1;

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

1.7 Licence fees and charges

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

PART 2—FENCES

Division 1—Sufficient fences

2.1 Sufficient fences

- (1) A person shall not erect a dividing fence or a boundary fence that is not a sufficient fence.
- (2) Subject to subclauses (3) and (4), a sufficient fence—
 - (a) on a Residential Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 2;
 - (b) on a Commercial Lot and on an Industrial Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 3; and

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

Division 2—General

2.2 Fences within front setback areas

- (1) A person shall not, without the written consent of the Building Surveyor, erect a free-standing fence greater than 1 200 millimetres in height, within the front set-back area of a Residential Lot within the district.
- (2) The Building Surveyor may approve the erection of a fence of a height greater than 1 200 millimetres in the front setback area of a Residential Lot only if the fence on each side of the driveway into the lot across the front boundary is to be angled into the lot for a distance of not less than 1 500 millimetres along the frontage to a distance of not less than 1 500 millimetres from the frontage in order to provide appropriate splayed lines of vision for a motorist using the driveway for access to a thoroughfare.
- (3) The provision of subclause (2) shall not apply to a fence—
 - (a) of open construction that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare; or
 - (b) that does not adjoin a footpath.

2.3 Gates in fences

- (1) A person shall not erect a gate in a fence which does not—
 - (a) open into the lot; or
 - (b) open by sliding parallel and on the inside of the fence, which it forms part of, when closed.

2.4 Depositing fencing material on public place

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

2.5 Fences on a Rural Lot

A person shall not, without the written consent of the Building Surveyor, erect a fence on a Rural Lot of a height exceeding 1 500 millimetres.

2.6 Fences within the gazetted townsite

Fences within the gazetted townsite are to be constructed of a type that prevents large animals escaping and dogs entering.

2.7 Maintenance of fences

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

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

A person must not, without the approval of the local government, erect or maintain a fence or obstruction of a temporary or permanent nature across any right-of-way, public access way or

thoroughfare so as to impede or prevent use of those facilities in the manner for which they are intended and constructed.

2.9 General discretion of the local government

- (1) Notwithstanding the provisions of clause 2.1, the local government may approve the erection or repair of a dividing fence which is not a sufficient fence where all of the owners of the lots to be separated by the dividing fence make an application for approval for that purpose.
- (2) In determining whether to grant its approval under subclause (1), the local government may consider whether the erection or retention of the fence would have an adverse effect on—
 - (a) the safe or convenient use of any land;
 - (b) the safety or convenience of any person; or
 - (c) the visual amenity of the locality.

Division 3—Fencing materials

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

2.10 Pre-used fencing materials

- (1) Notwithstanding clause 2.1, a person shall not construct a fence on a Residential Lot, a Commercial Lot or an Industrial Lot from pre-used materials without the approval of the local government.
- (2) Where the local government approves the use of pre-used materials in the construction of a fence under subclause (1), that approval shall be conditional on the applicant painting or treating the pre-used material as directed by the Building Surveyor.

2.11 Barbed wire fences and spiked or jagged materials

- (1) This clause does not apply to a fence constructed wholly or partly of razor wire.
- (2) An owner or occupier of a Residential Lot or a Commercial Lot shall not erect, affix or allow to remain on any fence on such a lot any barbed wire or other material with spiked or jagged projections, unless the prior written approval of the local government has been obtained.
- (3) An owner or occupier of an Industrial Lot shall not erect, affix or allow to remain on any fence bounding that lot any barbed wire or other materials with spiked or jagged projections unless the wire or other materials are carried on posts at an angle of 45 degrees, and unless the bottom row of wire or other materials is setback 150mm from the face of the fence and is not nearer than 2000mm from the ground level.
- (4) If the posts which carry the barbed wire or other materials referred to in subclause (3) are angled towards the outside of the lot bounded by the fence, the face of the fence must be set back from the lot boundary a sufficient distance to ensure that the angled posts, barbed wire or other materials do not encroach on adjoining land.
- (5) An owner or occupier of a lot shall not erect, affix or allow to remain as part of any fence or wall, whether internal or external, on that lot any broken glass.
- (6) An owner or occupier of a Rural Lot shall not erect, affix or allow to remain any barbed wire upon a fence on that lot where the fence is adjacent to a thoroughfare or other public place unless the barbed wire is fixed to the side of the fence posts furthest from the thoroughfare or other public place.

2.12 Electrified and razor wire fences

- (1) An owner or occupier of a lot shall not—
 - (a) construct or use an electrified fence on that lot without obtaining the approval of the local government in the form prescribed in Schedule 5; or
 - (b) construct a fence wholly or partly of razor wire on that lot without obtaining the approval of the local government in the form prescribed in Schedule 6.
- (2) The local government shall not approve an application for the purpose of subclause (1)(a)—
 - (a) in respect of a lot which is or which abuts a Residential Lot;
 - (b) unless the prohibited fence complies with “AS/NZS 3016:2002 Electrical installations—Electricity security fences”; and
 - (c) unless provision is made so as to enable the fence to be rendered inoperable during the hours of business operations, if any, on the lot where it is erected.
- (3) The local government shall not approve an application for the purpose of subclause (1)(b)—
 - (a) if the fence is within 3 000 millimetres of the boundary of the lot; or
 - (b) where any razor wire used in the construction of the fence is less than 2 000 millimetres or more than 2 400 millimetres above the ground level.
- (4) An application for approval for the purpose of subclauses (1)(a) or (1)(b) shall be made by the owner of the lot on which the fence is or is to be erected, or by the occupier of the lot with the written consent of the owner.

2.13 Prohibited fencing materials

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

PART 3—APPROVALS

3.1 Application for approval

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

3.2 Decision on application for approval

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

3.3 Compliance with approval

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

3.4 Duration of approval

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

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

PART 4—MISCELLANEOUS

4.1 False or misleading statement

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

PART 5—NOTICES OF BREACH

5.1 Notices of breach

- (1) Where a breach of any provision of this local law has occurred in relation to a fence on a lot, the local government may give a notice in writing to the owner of that lot.
- (2) A notice of breach shall—
 - (a) specify the provision of this local law which has been breached;
 - (b) specify the particulars of the breach; and
 - (c) state that the owner is required to remedy the breach within the time specified in the notice.
- (3) Should an owner fail to comply with a notice of breach, the local government may, by its employees, agents or contractors enter upon the lot to which the notice relates and remedy the breach, and may recover the expenses of so doing from the owner of the lot in a court of competent jurisdiction.
- (4) The provisions of this clause are subject to section 3.25 and item 12 of Division 1 of Schedule 3.1 of the *Local Government Act 1995* and any entry on to land will be in accordance with Part 3, Division 3 of that *Act*.

PART 6—OFFENCES

6.1 Offences and penalties

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

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

6.2 Modified penalties

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

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

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

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

6.3 Form of notices

For the purposes of this local law—

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

PART 7—OBJECTIONS AND REVIEW

7.1 Objections and review

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

Schedule 1

OFFENCES AND MODIFIED PENALTIES

[clause 6.2(2)]

Item No	Clause No.	Nature of offence	Modified penalties \$
1	2.1(1)	Erect a fence which is not a sufficient fence	250
2	2.2	Erect a fence greater than 1 200mm in height within a front setback area without the written consent of the Building Surveyor	250
3	2.3(a)	Erect a gate in a fence not opening into the lot	200
4	2.3(b)	Erect a gate in a fence not sliding parallel and inside a fence	200
5	2.6	Failure to maintain a fence in good condition to prevent the fence becoming dangerous, dilapidated or unsightly	250
6	2.7	Erect or maintain a fence or obstruction of temporary or permanent nature across a right-of-way, public access way or thoroughfare without approval	250
7	2.9(1)	Construct a dividing fence on a Residential, Commercial or Industrial Lot from pre-used materials without written approval	250
8	2.10(2)	Erect a fence using barbed wire or material with spiked or jagged projections in the fence construction without approval	250
9	2.11(1)	Construct, erect or use razor wire in a fence or electrify a fence without approval	250
10	2.12	Affix, or use, any broken glass in a fence	250

Item No	Clause No.	Nature of offence	Modified penalties \$
11	3.3	Failure to comply with terms or conditions of approval	250
12	6.1	Failure to comply with notice of breach	250

Schedule 2

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RESIDENTIAL LOT

[clause 2.1(2)(a)]

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

Timber fence

- (a) corner posts to be 125mm x 125mm x 2 400mm and intermediate posts to be 125mm x 75mm x 2 400mm spaced at 2 400mm centres;
- (b) corner posts to be strutted two ways with 100mm x 50mm x 450mm sole plates and 75mm x 50mm struts;
- (c) intermediate posts to be doubled yankee strutted with 150mm x 25mm x 450mm struts;
- (d) all posts to have tops with a 60mm weather cut and to be sunk at least 600mm into the ground;
- (e) rails to be 75mm x 50mm with each rail spanning 2 bays of fencing double railed or bolted to each post with joints staggered;
- (f) the fence to be covered with 75mm x 20mm sawn pickets, 1 800mm in height placed 75mm apart and affixed securely to each rail; and
- (g) the height of the fence to be 1 800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 7.

Corrugated fence

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

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

Brick, stone or concrete fence

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

- (a) a site classification is to be provided by a professional engineer in accordance with AS 2870-2011 Residential slabs and footings as amended;
- (b) the footing is to be designed in accordance with AS 2870-2011 Residential slabs and footings as amended;
- (c) footings of minimum 225mm x 150mm concrete 15MPa or 300mm x 175mm brick laid in cement mortar;
- (d) fences to be offset a minimum of 200mm at maximum 3 000mm centres or 225mm x 100mm engaged piers to be provided at maximum 3 000mm centres;
- (e) expansion joints in accordance with the manufacturer's written instructions; and
- (f) the height of the fence to be 1 800mm except with respect to the front set back area for which there is no minimum height but which is subject to clause 2.2.

Composite fence

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

- (1) (a) brick piers of minimum 345mm x 345mm at 1 800mm centres bonded to a minimum height base wall of 514mm;
- (b) each pier shall be reinforced with one R10 galvanised starting rod 1 500mm high with a 250mm horizontal leg bedded into a 500mm x 200mm concrete footing and set 65mm above the base of the footing. The top of the footing shall be 1 course (85mm) below ground level;
- (c) the minimum ultimate strength of brickwork shall be 20MPa. Mortar shall be a mix of 1 part cement, 1 part lime and 6 parts sand;

- (d) the ground under the footings is to be compacted to 6 blows per 300mm and checked with a standard falling weight penetrometer; and
- (e) control joints in brickwork shall be provided with double piers at a maximum of 6-metre centres;

or

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

Schedule 3

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

[clause 2.1(2)(b)]

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

Galvanised or PVC fence and gate

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

- (a) corner posts to be minimum 50mm nominal bore x 3.5mm and with footings of a 225mm diameter x 900mm;
- (b) intermediate posts to be minimum 37mm nominal bore x 3.15mm at maximum 3.5m centres and with footings of a 225mm diameter x 600mm;
- (c) struts to be minimum 30mm nominal bore x 3.15mm fitted at each gate and 2 at each corner post and with footings 225mm x 600mm;
- (d) cables to be affixed to the top, centre and bottom of all posts and to consist of 2 or more 3.15mm wires twisted together or single 4mm wire;
- (e) non-rail link, chain or steel mesh is to be to a height of 2 000mm on top of which are to be 3 strands of barbed wire carrying the fence to a height of 2 400mm in accordance with the requirements and standards of the local planning schemes; and
- (f) galvanised link mesh wire to be 2 000mm in height and constructed of 50mm mesh 2.5mm galvanised iron wire and to be strained, neatly secured and laced to the posts and affixed to cables. Vehicle entry gates shall provide an opening of not less than 3.6m and shall be constructed of 25mm tubular framework with 1 horizontal and 1 vertical stay constructed of 20mm piping and shall be covered with 50mm x 2.5mm galvanised link mesh strained to framework. Gates shall be fixed with a drop bolt and locking attachment.

Other fences

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

Schedule 4

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

[clause 2.1(2)(c)]

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

Non-electrified fence

- (a) wire shall be high tensile wire and not less than 2.5mm. A minimum of 5 wires shall be used, generally with the lower wires spaced closer together than the higher wires so as to prevent smaller stock passing through, and connected to posts in all cases.

- (b) posts shall be of indigenous timber or other suitable material including—
 - (i) timber impregnated with a termite and fungicidal preservative;
 - (ii) standard iron star pickets; or
 - (iii) concrete;
- (c) cut not less than 1 800mm long x 50mm diameter at small end if round or 125mm x 60mm if split or sawn.
- (d) posts to be set minimum 600mm in the ground and 1 200mm above the ground; and
- (e) strainer posts shall be not less than 2 250mm long and 150mm diameter at the small end (tubular steel to be 50mm in diameter) and shall be cut from indigenous timber or other suitable material. These shall be placed a minimum of 1 000mm in the ground.

Electrified fence

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

Schedule 5

LICENCE FOR APPROVED ELECTRIFIED FENCE

[clause 2.11(1)(a)]

This is to certify that

(1)
 of (2)

is licensed, subject to the conditions set out below, to have and use an electrified fence on

(address)

from 20 and until this licence is transferred or cancelled.

Dated this day of 20

.....
 Chief Executive Officer
 Shire of Kojonup.

Conditions of Licence

The holder of the licence must—

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

Transfer by Endorsement

This licence is transferred to (3)
 of (4)

from and including the date of this endorsement.

Dated this day of 20

.....
 Chief Executive Officer
 Shire of Kojonup.

- (1) Name
- (2) Address
- (3) Name
- (4) Address

Schedule 6
LICENCE FOR APPROVED RAZOR WIRE FENCE

[clause 2.11(1)(b)]

This is to certify that ⁽¹⁾
of ⁽²⁾
is licensed, subject to the conditions set out below, to have a fence constructed wholly or partially of
razor wire at
.....
(address)
From 20 and until this licence is transferred or cancelled.
Dated this day of 20

.....
Chief Executive Officer
Shire of Kojonup.

Conditions of licence—

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

Transfer by Endorsement

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

.....
Chief Executive Officer
Shire of Kojonup.

- ⁽¹⁾ Name
- ⁽²⁾ Address
- ⁽³⁾ Name
- ⁽⁴⁾ Address

Dated 26 March, 2020.

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

J. BENN, President.
A. MIDDLETON, Acting Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF KOJONUP

LOCAL GOVERNMENT (COUNCIL MEETINGS)
LOCAL LAW 2020

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LOCAL GOVERNMENT ACT 1995

SHIRE OF KOJONUP

LOCAL GOVERNMENT (COUNCIL MEETINGS) LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and under all other relevant powers, the Shire of Kojonup resolved on 18 February 2020 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

(1) This local law may be cited as the Shire of Kojonup Local Government (Council Meetings) Local Law 2020.

1.2 Commencement

By virtue of section 3.14 of the Act, these Local Laws come into operation 14 days after the date of their publication in the *Government Gazette*.

1.3 Application and intent

(1) These Local Laws provide rules and guidelines which apply to the conduct of meetings of the Council and its committees and to meetings of electors.

(2) All meetings are to be conducted in accordance with the Act, the Regulations and these Local Laws.

(3) These Local Laws are intended to result in—

- (a) better decision-making by the Council and committees;
- (b) the orderly conduct of meetings dealing with Council business;
- (c) better understanding of the process of conducting meetings; and
- (d) the more efficient and effective use of time at meetings.

1.4 Interpretation

(1) In these Local Laws unless the context otherwise requires—

absolute majority has the meaning given to it in the Act;

75% majority has the meaning given to it in the Act;

Act means the *Local Government Act 1995*;

CEO means the Chief Executive Officer of the Local Government;

committee means a committee of the Council established under section 5.8 of the Act;

committee meeting means a meeting of a committee;

Council means the Council of the Shire of Kojonup;

Local Government means the Shire of Kojonup;

President means the President of the Local Government or other Presiding Member at a Council meeting under section 5.6 of the Act;

meeting means a meeting of the Council or a committee, as the context requires;

Member has the meaning given to it in the Act;

Presiding Member means—

- (a) in respect of the Council, the person presiding under section 5.6 of the Act; and
- (b) in respect of a committee, the person presiding under sections 5.12, 5.13, and 5.14 of the Act;

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

simple majority means more than 50% of the members present and voting; and,

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

(2) Unless otherwise defined in these Local Laws, the terms and expressions used in these Local Laws are to have the meaning given to them in the Act and Regulations.

1.5 Repeal

(1) The Shire of Kojonup Local Laws Relating to Standing Orders published in the *Government Gazette* on 01 August 1997 is repealed.

1.6 Provisions of the Act, Regulations and other legislation

(1) Throughout these Local Laws, provisions of the Act and Regulations, and provisions of other legislation, are reproduced in a boxed format.

(2) The purpose of reproducing these provisions is to assist the reader by giving a fuller picture of related legislative provisions that also apply to meetings of the Council, committees and electors.

(3) The reproduced provisions of the Act and Regulations and other legislation—

- (a) are to be treated as footnotes and are not part of these Local Laws (see section 32(2) of the *Interpretation Act 1984*); and
- (b) reproduce only the provisions that were in force at the time that the Council resolved to adopt these Local Laws and therefore may not necessarily be correct at a future date.

PART 2—ESTABLISHMENT AND MEMBERSHIP OF COMMITTEES

2.1 Establishment of committees

(1) The establishment of committees is dealt with in the Act.

(2) A Council resolution to establish a committee under section 5.8 of the Act is to include—

- (a) the terms of reference of the committee;
- (b) the number of council members, officers and other persons to be appointed to the committee;
- (c) the names or titles of the council members and officers to be appointed to the committee;
- (d) the names of other persons to be appointed to the committee or an explanation of the procedure to be followed to determine the appointments; and
- (e) details of the delegation of any powers or duties to the committee under section 5.16 of the Act.

(3) These Local Laws are to apply to the conduct of committee meetings.

2.2 Types of committees

The types of committees are dealt with in the Act.

2.3 Delegation of some powers and duties to certain committees

The delegation of some powers and duties to certain committees is dealt with in the Act.

2.4 Limits on delegation of powers and duties to certain committees

The limits on the delegation of powers and duties to certain committees are dealt with in the Act.

2.5 Appointment of committee members

The appointment of committee members is dealt with in the Act.

2.6 Tenure of committee membership

Tenure of committee membership is dealt with in the Act.

2.7 Resignation of committee members

The resignation of committee members is dealt with in the Regulations.

2.8 Register of delegations to committees

The register of delegations to committees is dealt with in the Act.

2.9 Committees to report

A committee—

- (a) is answerable to the Council; and
- (b) is to report on its activities when, and to the extent, required by the Council.

PART 3—CALLING AND CONVENING MEETINGS

3.1 Ordinary and special Council meetings

(1) Ordinary and special Council meetings are dealt with in the Act.

(2) An ordinary meeting of the Council, held on a monthly basis or otherwise as determined by the Council, is for the purpose of considering and dealing with the ordinary business of the Council.

(3) A special meeting of the Council is held for the purpose of considering and dealing with Council business that is urgent, complex in nature, for a particular purpose or confidential.

3.2 Calling Council meetings

The calling of Council meetings is dealt with in the Act.

3.3 Convening Council meetings

(1) The convening of a Council meeting is dealt with in the Act.

(2) Subject to subclause (3), the CEO is to give at least 72 hours' notice, for the purposes of section 5.5, in convening a special meeting of the Council.

(3) Where, in the opinion of the President or at least one-third of the Members, there is a need to meet urgently, the CEO may give a lesser period of notice of a special Council meeting.

3.4 Calling committee meetings

The CEO is to call a meeting of any committee when requested by the President, the Presiding Member of a committee or any two members of that committee.

3.5 Public notice of meetings

Public notice of meetings is dealt with in the Regulations.

PART 4—PRESIDING MEMBER AND QUORUM

Division 1—Who presides

4.1 Who presides

Who presides at a Council meeting is dealt with in the Act.

4.2 When the Deputy President can act

When the Deputy President can act is dealt with in the Act.

4.3 Who acts if no President

Who acts if there is no President is dealt with in the Act.

4.4 Election of Presiding Members of committees

The election of Presiding Members of committees and their deputies is dealt with in the Act.

4.5 Election of Deputy Presiding Members of committees

The election of Deputy Presiding Members of committees is dealt with in the Act.

4.6 Functions of Deputy Presiding Members

The functions of Deputy Presiding Members are dealt with in the Act.

4.7 Who acts if no Presiding Member

Who acts if no Presiding Member is dealt with in the Act.

Division 2—Quorum

4.8 Quorum for meetings

The quorum for meetings is dealt with in the Act.

4.9 Reduction of quorum for Council meetings

The power of the Minister to reduce the number for a quorum and certain majorities is dealt with in the Act.

4.10 Reduction of quorum for committee meetings

The reduction of a quorum for committee meetings is dealt with in the Act.

4.11 Procedure where no quorum to begin a meeting

The procedure where there is no quorum to begin a meeting is dealt with in the Regulations.

4.12 Procedure where quorum not present during a meeting

If at any time during a meeting a quorum is not present, the Presiding Member is—

- (a) immediately to suspend the proceedings of the meeting for a period of up to 15 minutes; and
- (b) if a quorum is not present at the expiry of that period, the Presiding Member is to adjourn the meeting to some future time or date.

4.13 Names to be recorded

At any meeting—

- (a) at which there is not a quorum present; or
 - (b) which is adjourned for want of a quorum,
- the names of the Members then present are to be recorded in the minutes.

PART 5—BUSINESS OF A MEETING

5.1 Business to be specified

(1) No business is to be transacted at any ordinary meeting of the Council other than that specified in the agenda, without the approval of the Presiding Member or the Council.

(2) No business is to be transacted at a special meeting of the Council other than that given in the notice as the purpose of the meeting.

(3) Subject to subclause (4), no business is to be transacted at an adjourned meeting of the Council other than that—

- (a) specified in the notice of the meeting which had been adjourned; and
- (b) which remains unresolved.

(4) Where a meeting is adjourned to the next ordinary meeting of the Council then, unless the Council resolves otherwise, the business unresolved at the adjourned meeting is to be dealt with before considering Reports (Item 10) at that ordinary meeting.

5.2 Order of business

(1) Unless otherwise decided by the Council the order of business at any ordinary meeting of the Council is to be as follows—

1. Declaration of Opening/Announcement of Visitors
2. Announcements from the Presiding Member
3. Attendance
 - 3.1 Apologies
 - 3.2 Approved leave of absence
4. Declaration of interest
5. Public Question Time
 - 5.1 Response to previous public questions taken on notice
 - 5.2 Public question time
6. Confirmation of minutes
7. Presentations
 - 7.1 Petitions
 - 7.2 Presentations
 - 7.3 Deputations
 - 7.4 Delegates' reports
8. Method of dealing with agenda business
9. Reports
10. Applications for leave of absence
11. Motions of which previous notice has been given
12. Questions from Members without notice
13. New business of an urgent nature introduced by decision of the meeting
14. Meeting closed to public
 - 14.1 Matters for which the meeting may be closed
 - 14.2 Public reading of resolutions that may be made public
15. Closure

(2) Unless otherwise decided by the Council, the order of business at any special meeting of the Council is to be the order in which that business stands in the agenda of the meeting.

(3) In determining the order of business for any meeting of the Council, the provisions of the Act and Regulations relating to the time at which public question time is to be held are to be observed. [See section 5.24 of the Act; and regulations 6 and 7 of the Regulations]

5.3 Motions of which previous notice has been given

(1) Unless the Act, Regulations or these Local Laws otherwise provide, a Member may raise at a meeting such business as he or she considers appropriate, in the form of a motion, of which notice has been given in writing to the CEO and which has been included on the agenda.

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

(3) A notice of motion is to relate to the good governance of the district.

(4) The CEO—

- (a) may, with the concurrence of the President, may exclude from the notice paper any notice of motion deemed to be, or likely to involve, a breach of any of these Local Laws or any other written law;
- (b) will inform Members on each occasion that a notice has been excluded and the reasons for that exclusion;
- (c) may, after consultation with the Member where this is practicable, make such amendments to the form but not the substance as will bring the notice of motion into due form; and
- (d) may provide to the Council relevant and material facts and circumstances pertaining to the notice of motion on such matters as policy, budget and law.

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

- (a) the Member who gave notice of it, or some other Member authorised by the originating Member in writing, moves the motion when called on; or
- (b) the Council on a motion agrees to defer consideration of the motion to a later stage or date.

(6) If a notice of motion is given and lapses under subclause (5), notice of a motion in the same terms or to the same effect is not to be given again for at least 3 months from the date of such lapse.

5.4 New business of an urgent nature

(1) In cases of extreme urgency or other special circumstances, matters may, on a motion by the Presiding Member that is carried by the meeting, be raised without notice and decided by the meeting.

(2) In subclause (1), 'cases of extreme urgency or other special circumstances' means matters that have arisen after the preparation of the agenda that are considered by the Presiding Member to be of such importance and urgency that they are unable to be dealt with administratively by the Local Government and must be considered and dealt with by the Council before the next meeting.

5.5 Adoption by exception resolution

(1) In this clause 'adoption by exception resolution' means a resolution of the Council that has the effect of adopting, for a number of specifically identified reports, the officer recommendation as the Council resolution.

(2) Subject to subclause (3), the Local Government may pass an adoption by exception resolution.

(3) An adoption by exception resolution may not be used for a matter—

- (a) that requires a 75% majority or a special majority;
- (b) in which an interest has been disclosed;
- (c) that has been the subject of a petition or deputation;
- (d) that is a matter on which a Member wishes to make a statement; or
- (e) that is a matter on which a Member wishes to move a motion that is different to the recommendation.

PART 6—PUBLIC PARTICIPATION

6.1 Meetings generally open to the public

Meetings being generally open to the public is dealt with in the Act.

6.2 Meetings not open to the public

(1) The CEO may, at any time, recommend that a meeting or part of a meeting be closed to members of the public.

(2) The Council or a committee, in one or more of the circumstances dealt with in the Act, may at any time, by resolution, decide to close a meeting or part of a meeting.

(3) If a resolution under subclause (2) is carried—

- (a) the Presiding Member is to direct everyone to leave the meeting except—
 - (i) the Members;
 - (ii) the CEO; and
 - (iii) any Officer specified by the Presiding Member; and
- (b) the meeting is to be closed to the public until, at the conclusion of the matter justifying the closure of the meeting to the public, the Council or the committee, by resolution, decides otherwise.

(4) A person who fails to comply with a direction under subclause (3)(a) may, by order of the Presiding Member, be removed from the meeting.

(5) While the resolution under subclause (2) remains in force, the operation of clause 8.9 is to be suspended until the Council or the committee, by resolution, decides otherwise.

(6) A resolution under this clause may be made without notice.

(7) Unless the Council resolves otherwise, once the meeting is reopened to members of the public, the Presiding Member is to ensure that any resolution of the Council made while the meeting was closed is to be read out including a vote of a Member to be included in the minutes.

6.3 Question time for the public

Question time for the public is dealt with in the Act.

6.4 Question time for the public at certain meetings

Question time for the public at certain meetings is dealt with in the Regulations.

6.5 Minimum question time for the public

Minimum question time for the public is dealt with in the Regulations.

6.6 Procedures for question time for the public

Procedures for question time for the public are dealt with in the Regulations.

6.7 Other procedures for question time for the public

(1) A member of the public who raises a question during question time, is to state his or her name and address.

(2) A question may be taken on notice by the Council for later response.

(3) When a question is taken on notice the CEO is to ensure that—

- (a) a response is given to the member of the public in writing; and
- (b) a summary of the response is included in the agenda of the next meeting of the Council.

- (4) Where a question relating to a matter in which a relevant person has an interest is directed to the relevant person, the relevant person is to—
 - (a) declare that he or she has an interest in the matter; and
 - (b) allow another person to respond to the question.
- (5) Each member of the public with a question is entitled to ask up to 2 questions before other members of the public will be invited to ask their questions.
- (6) Where a member of the public provides written questions then the Presiding Member may elect for the questions to be responded to as normal business correspondence.
- (7) The Presiding Member may decide that a public question shall not be responded to where—
 - (a) the same or similar question was asked at a previous meeting, a response was provided and the member of the public is directed to the minutes of the meeting at which the response was provided;
 - (b) the member of the public uses public question time to make a statement, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the statement as a question; or
 - (c) the member of the public asks a question that is offensive or defamatory in nature, provided that the Presiding Member has taken all reasonable steps to assist the member of the public to phrase the question in a manner that is not offensive or defamatory.
- (8) A member of the public shall have two minutes to submit a question.
- (9) The Council, by resolution, may agree to extend public question time.
- (10) Where an answer to a question is given at a meeting, a summary of the question and the answer is to be included in the minutes.

6.8 Distinguished visitors

If a distinguished visitor is present at a meeting of the Council, the Presiding Member may acknowledge the presence of the distinguished visitor at an appropriate time during the meeting, and the presence of that visitor shall be recorded in the minutes.

6.9 Deputations

- (1) Any person or group wishing to be received as a deputation by the Council is to either—
 - (a) apply, before the meeting, to the CEO for approval; or
 - (b) with the approval of the Presiding Member, at the meeting, address the Council.
- (2) The CEO may either—
 - (a) approve the request and invite the deputation to attend a meeting of the Council; or
 - (b) refer the request to the Council to decide by simple majority whether or not to receive the deputation.
- (3) Unless the council resolves otherwise, a deputation invited to attend a Council meeting—
 - (a) is not to exceed 5 persons, only 2 of whom may address the Council, although others may respond to specific questions from Members;
 - (b) is not to address the Council for a period exceeding 10 minutes without the agreement of the Council; and,
 - (c) additional members of the deputation may be allowed to speak with the leave of the Presiding Member.
- (4) Any matter which is the subject of a deputation to the Council is not to be decided by the Council until the deputation has completed its presentation.

6.10 Petitions

- (1) A petition is to—
 - (a) be addressed to the President;
 - (b) be made by electors of the district;
 - (c) state the request on each page of the petition;
 - (d) contain the name, address and signature of each elector making the request, and the date each elector signed;
 - (e) contain a summary of the reasons for the request; and
 - (f) state the name of the person to whom, and an address at which, notice to the petitioners can be given.
- (2) Upon receiving a petition, the Local Government is to submit the petition to the relevant officer to be included in his or her deliberations and report on the matter that is the subject of the petition, subject to subclause(3).
- (3) At any meeting, the Council is not to vote on any matter that is the subject of a petition presented to that meeting, unless—
 - (a) the matter is the subject of a report included in the agenda; and
 - (b) the Council has considered the issues raised in the petition.

6.11 Presentations

- (1) In this clause, a “presentation” means the acceptance of a gift or an award by the Council on behalf of the Local Government or the community.
- (2) A presentation may be made to the Council at a meeting only with the prior approval of the CEO.

6.12 Participation at committee meetings

- (1) In this clause a reference to a person is to a person who—
 - (a) is entitled to attend a committee meeting;
 - (b) attends a committee meeting; and
 - (c) is not a member of that committee.

A member of the public is entitled to attend a committee meeting only where a local government power or duty has been delegated to that committee: see section 5.23(1)(b) of the Act.

- (2) Without the consent of the Presiding Member, no person is to address a committee meeting.
- (3) The Presiding Member of a committee may allow a person to make an oral submission to the committee for up to 3 minutes.
- (4) A person addressing the committee with the consent of the Presiding Member is to cease that address immediately after being directed to do so by the Presiding Member.
- (5) A person who fails to comply with a direction of the Presiding Member under subclause (4) may, by order of the Presiding Member, be removed from the committee room.
- (6) The Council may make a policy dealing with the circumstances in which a person may be given consent to address a committee meeting.

6.13 Council may meet to hear public submissions

- (1) Where an item on the agenda at a Council meeting is contentious and is likely to be the subject of a number of deputations, the Council may resolve to meet at another time to provide a greater opportunity to be heard.
- (2) The CEO and the President shall set the time and date of the meeting to provide the opportunity to be heard.
- (3) Where the Council resolves to meet to provide the opportunity to be heard under subclause (1), the Presiding Member shall—
 - (a) instruct the CEO to provide local public notice of the time and date when the Council will meet to provide an opportunity to be heard;
 - (b) provide a written invitation to attend the meeting to provide the opportunity to be heard to all members of the public who have applied under clause 6.9 to make a deputation on the issue; and
 - (c) cause minutes to be kept of the meeting to provide the opportunity to be heard.
- (4) A meeting held under subclause (1) shall be conducted only to hear submissions. The council shall not make resolutions at a meeting to provide the opportunity to be heard.
- (5) At a meeting held under subclause (1), each person making a submission shall be provided with the opportunity to fully state his or her case.
- (6) A member of the public shall be limited to 10 minutes in making an oral submission, but this period may be extended at the discretion of the Presiding Member.
- (7) Once every member of the public has had the opportunity to make a submission the Presiding Member is to close the meeting.
- (8) The CEO is to ensure that a report is included on the agenda of the next Council meeting summarising each submission made at the meeting.
- (9) The Council must not resolve on the matter that is the subject of a meeting to provide the opportunity to be heard until it has received the CEO’s report under subclause (8).

6.14 Public Inspection of agenda materials

The right of the public to inspect the documents referred to, and in accordance with, regulation 14 of the Regulations may be exercised at the Shire of Kojonup, 93-95 Albany Highway, Kojonup and on the Local Government’s website.

6.15 Confidentiality of information withheld

- (1) Information withheld by the CEO from the public under regulation 14(2) of the Regulations is to be—
 - (a) identified in the agenda of a Council meeting under the item “Matters for which meeting may be closed”;
 - (b) marked “Confidential” in the agenda; and
 - (c) kept confidential by Officers and Members until the Council resolves otherwise.
- (2) A member or an officer in receipt of confidential information under subclause (1) or information that is provided or disclosed during a meeting or part of a meeting that is closed to the public is not to disclose any of that information to any person other than another member or an officer to the extent necessary for the purpose of carrying out his or her duties.

(3) Subclause (2) does not apply where a member or officer discloses the information to his or her lawyer or government officer for the purpose of seeking advice in order to lawfully fulfil his or her role and responsibilities.

6.16 Recording of proceedings

A person is not to use any electronic, visual or vocal recording device or instrument to record the proceedings of the Council without the permission of the Presiding Member.

6.17 Prevention of disturbance

- (1) A reference in this clause to a person is to a person other than a member.
- (2) A person addressing the Council shall extend due courtesy and respect to the Council and the processes under which it operates and shall comply with any direction by the Presiding Member.
- (3) A person observing a meeting shall not create a disturbance at a meeting, by interrupting or interfering with the proceedings, whether by expressing approval or dissent, by conversing or by any other means.
- (4) A person shall ensure that his or her mobile telephone or audible pager is not switched on or used during any meeting of the Council.
- (5) A person shall not behave in a manner that is contrary to section 75 of the Criminal Code.

PART 7—QUESTIONS BY MEMBERS

- (1) Members may ask questions relating to an item on the notice paper or on matters related to the good government of persons in the district.
- (2) A Member requesting general information from an Officer at a Council meeting may ask a question without notice and with the consent of the Presiding Member, may ask one or more further questions of that Officer or another Officer present at the meeting.
- (3) Where possible the Officer shall endeavour to answer the question to the best of his or her knowledge and ability, however, if the information is unavailable or the answer requires research or investigation, the Officer may ask that—
 - (a) the question be placed on notice for the next meeting of Council; and
 - (b) the answer to the question be given to the Member who asked it within 14 days.
- (4) Every question and answer—
 - (a) is to be brief and concise; and
 - (b) is not to be accompanied by argument, expression of opinion or statement of facts, except to the extent necessary to explain the question or answer.
- (5) In answering any question, an Officer may qualify his or her answer and may at a later time in the meeting or at a subsequent meeting alter, correct, add to or otherwise amend the original answer.

PART 8—CONDUCT OF MEMBERS

8.1 Members to be in their proper places

- (1) At the first meeting held after each election day, the CEO is to allot, alphabetically by ward, a position at the Council table to each Member.
- (2) Each Member is to occupy his or her allotted position at each Council meeting.

8.2 Respect to the Presiding Member

After the business of a Council has been commenced, a Member is not to enter or leave the meeting without first paying due respect to the Presiding Member.

8.3 Titles to be used

A speaker, when referring to the President, Deputy President or Presiding Member, or a Member or Officer, is to use the title of that person's office.

8.4 Advice of entry or departure

During the course of a meeting of the Council, a Member is not to enter or leave the meeting without first advising the Presiding Member, in order to facilitate the recording in the minutes of the time or entry or departure.

8.5 Members to indicate their intention to speak

A Member of the Council who wishes to speak is to indicate his or her intention to speak by raising his or her hand or by another method agreed by the Council.

8.6 Priority of speaking

- (1) Where two or more Members indicate, at the same time, their intention to speak, the Presiding Member is to decide which Member is entitled to be heard first.
- (2) A decision of the Presiding Member under subclause (1) is not open to discussion or dissent.
- (3) A Member is to cease speaking immediately after being asked to do so by the Presiding Member.

8.7 Presiding Member may take part in debates

The Presiding Member may take part in a discussion of any matter before the Council, subject to compliance with these Local Laws.

8.8 Relevance

- (1) A Member is to restrict his or her remarks to the motion or amendment under discussion, or to a personal explanation or point of order.
- (2) The Presiding Member, at any time, may—
 - (a) call the attention of the meeting to—
 - (i) any irrelevant, repetitious, offensive or insulting language by a Member; or
 - (ii) any breach of order or decorum by a Member; and
 - (b) direct that Member, if speaking, to discontinue his or her speech.
- (3) A Member is to comply with the direction of the Presiding Member under subclause (2) by immediately ceasing to speak.

8.9 Speaking twice

A Member is not to address the Council more than once on any motion or amendment except—

- (a) as the mover of a substantive motion, to exercise a right of reply;
- (b) to raise a point of order; or
- (c) to make a personal explanation.

8.10 Duration of speeches

- (1) A Member is not to speak on any matter for more than 5 minutes without the consent of the Council which, if given, is to be given without debate.
- (2) An extension under this clause cannot be given to allow a Member's total speaking time to exceed 10 minutes.

8.11 No speaking after conclusion of debate

A Member is not to speak on any motion or amendment—

- (a) after the mover has replied; or
- (b) after the question has been put.

8.12 No interruption

A Member is not to interrupt another Member who is speaking unless—

- (a) to raise a point of order;
- (b) to call attention to the absence of a quorum;
- (c) to make a personal explanation under clause 8.13; or
- (d) to move a procedural motion that the Member be no longer heard (see clause 11(1)(e)).

8.13 Personal explanations

- (1) A Member who wishes to make a personal explanation relating to a matter referred to by another Member who is then speaking is to indicate to the Presiding Member his or her intention to make a personal explanation.
- (2) The Presiding Member is to determine whether the personal explanation is to be heard immediately or at the conclusion of the speech by the other Member.
- (3) A Member making a personal explanation is to confine his or her observations to a succinct statement relating to a specific part of the speech at which he or she may have been misunderstood.

8.14 No reopening of discussion

A Member is not to reopen discussion on any Council decision, except to move that the decision be revoked or changed (see Part 16).

8.15 Adverse reflection

- (1) A Member is not to reflect adversely on a decision of the Council except on a motion that the decision be revoked or changed (see Part 16).

(2) A Member is not—

- (a) to reflect adversely on the character or actions of another Member or Officer; or
- (b) to impute any motive to a Member or Officer,

unless the meeting resolves, without debate, that the question then before the meeting cannot otherwise be adequately considered.

(3) A Member is not to use offensive or objectionable expressions in reference to any Member, Officer or other person.

(4) If a Member specifically requests, immediately after their use, that any particular words used by a Member be recorded in the minutes—

- (a) the Presiding Member is to cause the words used to be taken down and read to the meeting for verification; and
- (b) the Council may, by resolution, decide to record those words in the minutes.

8.16 Withdrawal of offensive language

- (1) A Member who, in the opinion of the Presiding Member, uses an expression which—
 - (a) in the absence of a resolution under clause 8.15—
 - (i) reflects adversely on the character or actions of another Member or Officer; or
 - (ii) imputes any motive to a Member or Officer; or
 - (b) is offensive or insulting,

must, when directed by the Presiding Member, withdraw the expression and make a satisfactory apology.

- (2) If a Member fails to comply with a direction of the Presiding Member under subclause (1), the Presiding Member may refuse to hear the Member further on the matter then under discussion and call on the next speaker.

PART 9—PRESERVING ORDER

9.1 Presiding Member to preserve order

- (1) The Presiding Member is to preserve order, and, whenever he or she considers necessary, may call any Member to order.
- (2) When the Presiding Member speaks during a debate, any Member then speaking, or indicating that he or she wishes to speak, is immediately to sit down and every Member present is to preserve strict silence so that the Presiding Member may be heard without interruption.
- (3) Subclause (2) is not to be used by the Presiding Member to exercise the right provided in clause 8.7, but to preserve order.

9.2 Point of order

- (1) A Member may object, by way of a point of order, only to a breach of—
 - (a) any of these Local Laws; or
 - (b) any other written law.
- (2) Despite anything in these Local Laws to the contrary, a point of order—
 - (a) takes precedence over any discussion; and
 - (b) until determined, suspends the consideration or discussion of any other matter.

9.3 Procedures on a point of order

- (1) A Member who is addressing the Presiding Member is not to be interrupted except on a point of order.
- (2) A Member interrupted on a point of order is to resume his or her seat until—
 - (a) the Member raising the point of order has been heard; and
 - (b) the Presiding Member has ruled on the point of order,and, if permitted, the Member who has been interrupted may then proceed.

9.4 Calling attention to breach

A Member may, at any time, draw the attention of the Presiding Member to any breach of these Local Laws.

9.5 Ruling by the Presiding Member

- (1) The Presiding Member is to rule on any point of order which is raised by either upholding or rejecting the point of order.
- (2) A ruling by the Presiding Member on a point of order—
 - (a) is not to be the subject of debate or comment; and
 - (b) is to be final unless the majority of Members then present and voting, on a motion moved immediately after the ruling, dissent from the ruling.
- (3) Subject to a motion of dissent being carried under subclause (2), if the Presiding Member rules that—
 - (a) any motion, amendment or other matter before the meeting is out of order, it is not to be considered further; and
 - (b) a statement made or act done by a Member is out of order, the Presiding Member may require the Member to make an explanation, retraction or apology.

9.6 Continued breach of order

If a Member—

- (a) persists in any conduct that the Presiding Member had ruled is out of order; or
- (b) refuses to make an explanation, retraction or apology required by the Presiding Member under clause 9.5(3),

the Presiding Member may direct the Member to refrain from taking any further part in the matter under discussion, other than by voting, and the Member is to comply with that direction.

9.7 Right of Presiding Member to adjourn

- (1) For the purpose of preserving or regaining order, the Presiding Member may adjourn the meeting for a period of up to 15 minutes.
- (2) On resumption, the debate is to continue at the point at which the meeting was adjourned.
- (3) If, at any one meeting, the Presiding Member adjourns the meeting more than once for the purpose of preserving or regaining order, the second or subsequent adjournment may be to a later time on the same day or to another day.

PART 10—DEBATE OF SUBSTANTIVE MOTIONS

10.1 Motions to be stated and in writing

Any Member who wishes to move a substantive motion or an amendment to a substantive motion—

- (a) is to state the substance of the motion before speaking to it; and
- (b) if required by the Presiding Member, is to put the motion or amendment in writing.

10.2 Motions to be supported

- (1) A substantive motion or an amendment to a substantive motion is not open to debate until it has been seconded.
- (2) A motion to revoke or change a decision made at a Council meeting is not open to debate unless the motion has the support required under regulation 10 of the Regulations.

10.3 Unopposed business

- (1) Immediately after a substantive motion has been moved and seconded, the Presiding Member may ask the meeting if any Member opposes it.
- (2) If no Member opposes the motion, the Presiding Member may declare it carried without debate and without taking a vote.
- (3) A motion declared carried under this clause is to be recorded in the minutes as a unanimous decision of the Council.
- (4) If a Member opposes a motion, the motion is to be dealt with under this Part.
- (5) This clause does not apply to a motion to revoke or change a decision which has been made at a Council meeting (see Part 16).

10.4 Only one substantive motion at a time

When a substantive motion is under debate at a meeting of the Council, no further substantive motion is to be accepted. The Council is not to consider more than one substantive motion at any time.

10.5 Order of call in debate

The Presiding Member is to call speakers to a substantive motion in the following order—

- (a) the mover to state the motion;
- (b) a seconder to the motion;
- (c) the mover to speak to the motion;
- (d) the seconder to speak to the motion;
- (e) a speaker against the motion;
- (f) a speaker for the motion;
- (g) other speakers against and for the motion, alternating where possible; and
- (h) mover takes right of reply which closes debate.

10.6 Limit of debate

The Presiding Member may offer the right of reply and put a substantive motion to the vote if he or she believes that sufficient discussion has taken place even though all Members may not have spoken.

10.7 Member may require question to be read

A Member may require the question or matter under discussion to be read at any time during a debate, but not so as to interrupt any other Member who is speaking.

10.8 Consent of seconder required for alteration

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

10.9 Order of amendments

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

10.10 Form of an amendment

An amendment must add, delete, or substitute words to the substantive motion.

10.11 Amendment must not negate original motion

An amendment to a substantive motion cannot negate the original motion or the intent of the original motion.

10.12 Relevance of amendments

Each amendment is to be relevant to the motion in respect of which it is moved.

10.13 Mover of motion may speak on amendment

Any Member may speak during debate on an amendment.

10.14 Effect of an amendment

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

10.15 Withdrawal of motion or amendment

(1) Subject to subclause (2), the Council may, without debate, grant leave to withdraw a motion or amendment on the request of the mover of the motion or amendment and with the approval of the seconder.

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

10.16 Right of reply

(1) The mover of a substantive motion has the right of reply.

(2) The mover of any amendment to a substantive motion has a right of reply.

(3) The right of the reply may only be exercised—

(a) where no amendment is moved to the substantive motion—at the conclusion of the discussion on the motion; or

(b) where one or more amendments have been moved to the substantive motion—at the conclusion of the discussion on the substantive motion and any amendments.

(4) After the mover of the substantive motion has commenced the reply—

(a) no other Member is to speak on the question;

(b) there is to be no further discussion on, or any further amendment to, the motion.

(5) The right of the reply is to be confined to rebutting arguments raised by previous speakers and no new matter is to be introduced.

(6) At the conclusion of the right of reply, the substantive motion, or the substantive motion as amended, is immediately to be put to the vote.

PART 11—PROCEDURAL MOTIONS

11.1 Permissible procedural motions

In addition to the right to move an amendment to a substantive motion (under Part 10), a Member may move the following procedural motions—

(a) that the meeting proceed to the next item of business;

(b) that the debate be adjourned;

(c) that the meeting now adjourn;

(d) that the question be now put;

(e) that the Member be no longer heard;

(f) that the ruling of the Presiding Member be disagreed with;

(g) that the meeting be closed to the public (see clause 6.2).

11.2 No debate

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

(2) The mover of a motion specified in paragraph (d) or (e) of clause 11.1 may not speak to the motion, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.

11.3 Who may move

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

11.4 Procedural motions—right of reply on substantive motion

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

11.5 Meeting to proceed to the next business

The motion “that the meeting proceed to the next business”, if carried, has the effect that—

(a) the debate on the substantive motion or amendment ceases immediately;

(b) no decision is made on the substantive motion;

- (c) the Council moves to the next item of business; and
- (d) there is no requirement for the matter to be raised again for consideration.

11.6 Debate to be adjourned

A motion “that the debate be adjourned”—

- (a) is to state the time to which the debate is to be adjourned; and
- (b) if carried, has the effect that all debate on the substantive motion or amendment ceases immediately, but continues at the time stated in the motion.

11.7 Meeting now adjourn

(1) A Member is not to move or second more than one motion of adjournment during the same sitting of the Council.

(2) Before putting the motion for the adjournment of the Council, the Presiding Member may seek leave of the Council to deal first with matters that may be the subject of an adoption by exception resolution (see clause 5.5).

(3) A motion “that the meeting now adjourn”—

- (a) is to state the time and date to which the meeting is to be adjourned; and
- (b) if carried, has the effect that the meeting is adjourned to the time and date specified in the motion.

(4) A meeting adjourned under subclause (3) is to continue from the point at which it was adjourned, unless the Presiding Member or the Council determines otherwise.

11.8 Question to be put

(1) If the motion “that the question be now put”, is carried during debate on a substantive motion without amendment, the Presiding Member is to offer the right of reply and then put the motion to the vote without further debate.

(2) If the motion “that the question be now put” is carried during discussion of an amendment, the Presiding Member is to put the amendment to the vote without further debate.

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

11.9 Member to be no longer heard

If the motion “that the member be no longer heard”, is carried, the speaker against whom the motion has been moved cannot speak further on the current substantive motion, or any amendment relating to it, except to exercise the right of reply if he or she is the mover of the substantive motion.

11.10 Ruling of the Presiding Member to be disagreed with

If the motion “that the ruling of the Presiding Member be disagreed with”, is carried, that ruling is to have no effect and the meeting is to proceed accordingly.

PART 12—DISCLOSURE OF INTERESTS

12.1 Disclosure of interests

Disclosure of interests is dealt with in the Act.

PART 13—VOTING

13.1 Question—when put

(1) Immediately after the debate on any question is concluded and the right of reply has been exercised, the Presiding Member—

- (a) is to put the question to the Council; and
- (b) if requested by any Member, is to again state the terms of the question.

(2) A Member is not to leave the meeting when the Presiding Member is putting any question.

13.2 Voting

Voting is dealt with in the Act and the Regulations.

13.3 Majorities required for decisions

The majorities required for decisions of the Council and committees are dealt with in the Act.

13.4 Method of taking vote

(1) In taking the vote on any motion or amendment the Presiding Member—

- (a) is to put the question, first in the affirmative, and then in the negative;
- (b) may put the question in this way as often as may be necessary to enable him or her to determine whether the affirmative or the negative has the majority of votes;
- (c) may accept a vote on the voices or may require a show of hands; and,
- (d) is, subject to this clause, to declare the result.

(2) If a Member calls for a show of hands, the result of the vote is to be determined on the count of raised hands.

- (3) If a member of council or a committee specifically requests that there be recorded—
- (a) his or her vote; or,
 - (b) the vote of all members present,

on a matter voted on at a meeting of the council or committee, the person presiding is to cause the vote or votes, as the case may be, to be recorded in the minutes.

- (4) If a Member calls for a division—
- (a) those voting in the affirmative are to pass to the right of the Chair; and
 - (b) those voting in the negative are to pass to the left of the Chair.
- (5) For every division, the CEO is to record—
- (a) the name of each member who voted; and
 - (b) whether he or she voted in the affirmative or negative.

PART 14—MINUTES OF MEETINGS

14.1 Keeping of minutes

The keeping and confirmation of minutes are dealt with in the Act.

14.2 Content of minutes

- (1) The content of minutes is dealt with in the Regulations.
- (2) In addition to the matters required by regulation 11, the minutes of a Council meeting is to include, where an application for approval is refused or the authorisation of a licence, permit or certificate is withheld or cancelled, the reasons for the decision.

14.3 Public inspection of unconfirmed minutes

The public inspection of unconfirmed minutes is dealt with in the Regulations.

14.4 Confirmation of minutes

- (1) When minutes of an ordinary meeting of the Council are distributed for consideration prior to their confirmation at the next meeting, if a Member is dissatisfied with the accuracy of the minutes, the Member may provide the Local Government with a written copy of the alternative wording to amend the minutes no later than 7 clear working days before the next ordinary meeting of the Council.
- (2) At the next ordinary meeting of the Council, the Member who provided the alternative wording shall, at the time for confirmation of minutes—
- (a) state the item or items with which he or she is dissatisfied; and
 - (b) propose a motion clearly outlining the alternative wording to amend the minutes.
- (3) Members must not discuss items of business contained in the minutes, other than discussion as to their accuracy as a record of the proceedings.

PART 15—ADJOURNMENT OF MEETING

15.1 Meeting may be adjourned

The Council may adjourn any meeting—

- (a) to a later time on the same day; or
- (b) to any other time on any other day, including a time which coincides with the conclusion of another meeting or event.

15.2 Effect of adjournment

Where any matter, motion, debate or meeting is adjourned under these Local Laws—

- (a) the names of Members who have spoken on the matter prior to the adjournment are to be recorded in the minutes;
- (b) debate is to be resumed at the next meeting at the point where it was interrupted; and
- (c) the provisions of clause 8.9 [speaking twice] apply when the debate is resumed.

PART 16—REVOKING OR CHANGING DECISIONS

16.1 Requirements to revoke or change decisions

The requirements to revoke or change a decision made at a meeting are dealt with in regulation 10 of the Regulations.

16.2 Limitations on powers to revoke or change decisions

- (1) Subject to subclause (2), the Council or a committee is not to consider a motion to revoke or change a decision—
- (a) where, at the time the motion is moved or notice is given, any action has been taken under clause 16.3 to implement the decision; or
 - (b) where the decision is procedural in its form or effect.
- (2) The Council or a committee may consider a motion to revoke or change a decision of the kind described in subclause (1)(a) if the motion is accompanied by a written statement of the legal and financial consequences of carrying the motion.

16.3 Implementing a decision

- (1) In this clause—
- (a) “authorisation” means a licence, permit, approval or other means of authorising a person to do anything;
 - (b) “implement”, in relation to a decision, includes—
 - (i) communicate notice of the decision to a person affected by, or with an interest in, the decision; and
 - (ii) take any other action to give effect to the decision; and
 - (c) “valid notice of revocation motion” means a notice of motion to revoke or change a decision that complies with the requirements of the Act, Regulations and the Local Laws and may be considered, but has not yet been considered, by the Council or a committee as the case may be.
- (2) Subject to subclause (4), and unless a resolution is made under subclause (3), a decision made at a meeting is not to be implemented by the CEO or any other person until the afternoon of the first business day after the commencement of the meeting at which the decision was made.
- (3) The Council or a committee may, by resolution carried at the same meeting at which a decision was made, direct the CEO or another person to take immediate action to implement the decision.
- (4) A decision made at a meeting is not to be implemented by the CEO or any other person—
- (a) if, before commencing any implementation action, the CEO or that person is given a valid notice of revocation motion; and
 - (b) unless and until the valid notice of revocation motion has been determined by the Council or the committee as the case may be.
- (5) The CEO is to ensure that members of the public attending the meeting are informed by an appropriate notice that a decision to grant an authorisation—
- (a) is to take effect only in accordance with this clause; and
 - (b) cannot be acted upon by the person who has been granted the authorisation unless and until the decision has been implemented in accordance with this clause.

PART 17—SUSPENSION OF LOCAL LAWS

17.1 Suspension of Local Laws

- (1) A Member may at any time move that the operation of one or more of the provisions of these Local Laws be suspended.
- (2) A Member moving a motion under subclause (1) is to state the reasons for the motion but no other discussion is to take place.
- (3) A motion under subclause (1) which is—
- (a) seconded; and
 - (b) carried by an absolute majority,

is to suspend the operation of the clause or clauses to which the motion relates for the duration of the meeting, unless the meeting earlier resolves otherwise.

17.2 Where Local Laws do not apply

- (1) In situations where—
- (a) one or more provisions of these Local Laws have been suspended; or
 - (b) a matter is not regulated by the Act, the Regulations or these Standing Orders,
- the Presiding Member is to decide questions relating to the conduct of the meeting.
- (2) The decision of the Presiding Member under subclause (1) is final, except where a motion is moved and carried under clause 11.10.

17.3 Cases not provided for in Local Laws

The Presiding Member is to decide questions of order, procedure, debate, or otherwise in cases where these Local Laws, the Act or the Regulations are silent. The decision of the Presiding Member in these cases is final, except where a motion is moved and carried under clause 11.10.

PART 18—MEETINGS OF ELECTORS

18.1 Electors’ general meetings

Electors’ general meetings are dealt with in the Act.

18.2 Matters for discussion at electors’ general meetings

The matters to be discussed at electors’ general meetings are dealt with in the Regulations.

18.3 Electors’ special meetings

Electors’ special meetings are dealt with in the Act.

18.4 Requests for electors’ special meetings

Requests for electors’ special meetings are dealt with in the Regulations.

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Convening electors' meetings is dealt with in the Act.

18.6 Who presides at electors' meetings

Who presides at electors' meetings is dealt with in the Act.

18.7 Procedure for electors' meetings

(1) The procedure for electors' meetings is dealt with in the Act and the Regulations.

(2) In exercising his or her discretion to determine the procedure to be followed at an electors' meeting, the Presiding Member is to have regard to these Local Laws.

18.8 Participation of non-electors

A person who is not an elector of the Local Government shall not take part in any discussion at an electors' meeting unless the meeting, by resolution, permits the person do so.

18.9 Voting at electors' meetings

Voting at electors' meetings is dealt with in the Regulations.

18.10 Minutes of electors' meetings

Minutes of electors' meetings are dealt with in the Act.

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Decisions made at electors' meetings are dealt with in the Act.

PART 19—ENFORCEMENT

19.1 Penalty for breach

A person who breaches a provision of these Local Laws commits an offence.

Penalty: \$5,000.00 and a daily penalty of \$500.00.

19.2 Who can prosecute

Who can prosecute is dealt with in the Act.

Dated 26 March, 2020.

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

J. BENN, President.

A. MIDDLETON, Acting Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF KOJONUP

LOCAL GOVERNMENT PROPERTY LOCAL LAW 2020

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LOCAL GOVERNMENT ACT 1995

SHIRE OF KOJONUP

LOCAL GOVERNMENT PROPERTY LOCAL LAW 2020

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Kojonup resolved on 18 February 2020 to make the following local law.

PART 1—PRELIMINARY

Citation

1.1 This local law may be cited as the Shire of Kojonup Local Government Property Local Law 2020.

Definitions

1.2 In this local law unless the context otherwise requires—

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

“**aircraft**” has the meaning given to it in the *Civil Aviation Act 1988* (Cth);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**local government**” means the Shire of Kojonup;

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

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

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

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

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

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

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

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

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

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

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

“**vehicle**” includes—

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

but excludes—

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

Interpretation

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

Application

1.4 (1) This local law applies throughout the district and in the sea adjoining the district for a distance of 200 metres seawards from the low water mark at ordinary spring tides.

(2) This local law is subject to any written law and law of the Commonwealth about assistance animals as defined in the *Disability Discrimination Act 1992* (Commonwealth) section 9(2).

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

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

Repeal

1.5 (1) The *Shire of Kojonup Local Government Property Local Law* published in the *Government Gazette* on 16 May 2000 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.

PART 2—DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY

Division 1—Determinations

Determinations as to use of local government property

2.1 (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.

Procedure for making a determination

- 2.2 (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.

Discretion to erect sign

2.3 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.

Determination to be complied with

2.4 A person shall comply with a determination.

Register of determinations

- 2.5 (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*.

Amendment or revocation of a determination

- 2.6 (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

Activities which may be pursued on specified local government property

- 2.7 (1) A determination may provide that specified local government property is set aside as an area on which a person may—
- (a) bring, ride or drive an animal;
 - (b) take, ride or drive a vehicle, or a particular class of vehicle;
 - (c) fly or use a motorised model aircraft;
 - (d) use a children's playground provided that the person is under an age specified in the determination, but the determination is not to apply to a person having the charge of a person under the specified age;
 - (e) launch, beach or leave a boat;
 - (f) take or use a boat, or a particular class of boat;
 - (g) deposit refuse, rubbish or liquid waste, whether or not of particular classes, and whether or not in specified areas of that local government property;

- (h) play or practice—
 - (i) golf or archery;
 - (ii) pistol or rifle shooting, but subject to the compliance of that person with the *Firearms Act 1973* or
 - (iii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
 - (i) ride a bicycle, a skateboard, rollerblades, a sandboard or a similar device; and
 - (j) wear no clothing.
- (2) A determination may specify the extent to which and the manner in which an activity referred to in subclause (1) may be pursued and in particular—
- (a) the days and times during which the activity may be pursued;
 - (b) that an activity may be pursued on a class of local government property, specified local government property or all local government property;
 - (c) that an activity is to be taken to be prohibited on all local government property other than that specified in the determination;
 - (d) may limit the activity to a class of vehicles, boats, equipment or things, or may extend it to all vehicles, boats, equipment or things;
 - (e) may specify that the activity can be pursued by a class of persons or all persons; and
 - (f) may distinguish between different classes of the activity.

Activities which may be prohibited on specified local government property

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

- (a) smoking on premises;
 - (b) riding a bicycle, a skateboard, rollerblades, a sandboard or a similar device;
 - (c) taking, riding or driving a vehicle or a particular class of vehicle on the property;
 - (d) riding or driving a vehicle of a particular class or any vehicle above a specified speed;
 - (e) taking or using a boat, or a particular class of boat;
 - (f) the playing or practice of—
 - (i) golf, archery, pistol shooting or rifle shooting; or
 - (ii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
 - (g) the playing or practice of any ball game which may cause detriment to the property or any fauna on the property; and
 - (h) the traversing of sand dunes or land which in the opinion of the local government has environmental value warranting such protection, either absolutely or except by paths provided for that purpose.
- (2) A determination may specify the extent to which and the manner in which a person is prohibited from pursuing an activity referred to in subclause (1) and, in particular—
- (a) the days and times during which the activity is prohibited;
 - (b) that an activity is prohibited on a class of local government property, specified local government property or all local government property;
 - (c) that an activity is prohibited in respect of a class of vehicles, boats, equipment or things, or all vehicles, boats, equipment or things;
 - (d) that an activity is prohibited in respect of a class of persons or all persons; and
 - (e) may distinguish between different classes of the activity.

(3) In this clause—

“**premises**” means a building, stadium or similar structure which is local government property, but not an open space such as a park or a playing field.

Division 3—Transitional

Signs taken to be determinations

2.9 (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

Application of Part

3.1 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

Application for permit

3.2 (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).

Decision on application for permit

3.3 (1) The local government may—

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

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

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

Division 3—Conditions

Conditions which may be imposed on a permit

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

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

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

- (a) when fees and charges are to be paid;
- (b) payment of a bond against possible damage or cleaning expenses or both;
- (c) restrictions on the erection of material or external decorations;
- (d) rules about the use of furniture, plant and effects;
- (e) limitations on the number of persons who may attend any function in or on local government property;
- (f) the duration of the hire;
- (g) the right of the local government to cancel a booking during the course of an annual or seasonal booking, if the local government sees fit;
- (h) a prohibition on the sale, supply or consumption of liquor unless a liquor licence is first obtained for that purpose under the *Liquor Control Act 1988*.

- (i) whether or not the hire is for the exclusive use of the local government property;
- (j) the obtaining of a policy of insurance in the names of both the local government and the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer; and
- (k) the provision of an indemnity from the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer.

Imposing conditions under a policy

3.5 (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*.

Compliance with and variation of conditions

3.6 (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

Agreement for building

3.7 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.

Duration of permit

3.8 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.

Renewal of permit

3.9 (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.

Transfer of permit

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

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

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

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

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

Production of permit

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

Cancellation of permit

3.12 (1) Subject to clause 9.1, 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

Activities needing a permit

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

- (a) subject to subclause 3, hire local government property;
 - (b) advertise anything by any means on local government property;
 - (c) erect a structure for public amusement or for any performance, whether for gain or otherwise, on local government property;
 - (d) teach, coach or train, for profit, any person in a pool area or an indoor recreation facility which is local government property;
 - (e) plant any plant or sow any seeds on local government property;
 - (f) carry on any trading on local government property unless the trading is conducted—
 - (i) with the consent of a person who holds a permit to conduct a function, and where the trading is carried on under and in accordance with the permit; or
 - (ii) by a person who has a licence or permit to carry on trading on local government property under any written law;
 - (g) unless an employee of the local government in the course of her or his duties or on an area set aside for that purpose—
 - (i) drive or ride or take any vehicle on to local government property; or
 - (ii) park or stop any vehicle on local government property;
 - (h) conduct a function on local government property;
 - (i) charge any person for entry to local government property, unless the charge is for entry to land or a building hired by a voluntary non-profit organisation;
 - (j) light a fire on local government property except in a facility provided for that purpose;
 - (k) parachute, hang glide, abseil or base jump from or on to local government property;
 - (l) erect a building or a refuelling site on local government property;
 - (m) make any excavation on or erect or remove any fence on local government property;
 - (n) erect or install any structure above or below ground, which is local government property, for the purpose of supplying any water, power, sewer, communication, television or similar service to a person;
 - (o) depasture any horse, sheep, cattle, goat, camel, ass or mule on local government property; or
 - (p) conduct or take part in any gambling game or contest or bet, or offer to bet, publicly.
- (2) The local government may exempt a person from compliance with subclause (1) on the application of that person.
- (3) The local government may exempt specified local government property or a class of local government property from the application of subclause (1)(a).

Permit required to camp outside a facility

3.14 (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*.

Permit required for possession and consumption of liquor

3.15 (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

Responsibilities of permit holder

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

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

PART 4—BEHAVIOUR ON ALL LOCAL GOVERNMENT PROPERTY

Division 1—Behaviour on and interference with local government property

Behaviour which interferes with others

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

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

Behaviour detrimental to property

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

(2) In subclause (1)—

‘detrimental to the property’ includes—

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

Taking or injuring any fauna

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

(2) In this clause—

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

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

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

Intoxicated persons not to enter local government property

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

No prohibited drugs

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

Division 2—Signs

Signs

4.6 (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

When entry must be refused

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

- (a) 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 gastrointestinal disease, skin infection or other disease that is communicable in an aquatic environment; or
 - (iii) in an unclean condition; or
 - (iv) wearing unclean clothes; or
 - (v) under the apparent influence of alcohol, drugs or alcohol and drugs.
- (b) is to be refused admission under and in accordance with a decision of the local government for breaching any clause of this local law.

Consumption of food or drink may be prohibited

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

Division 2—Fenced or closed property

No entry to fenced or closed local government property

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

Division 3—Toilet blocks and change rooms

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

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

- (a) females, then a person of the male gender shall not use that entry of the toilet block or change room; or
 - (b) males, then a person of the female gender shall not use that entry of the toilet block or change room.
- (2) Paragraphs (a) and (b) of subclause (1) do not apply to a child, when accompanied by a parent, guardian or caregiver, where the child is—
- (a) under the age of 8 years; or
 - (b) otherwise permitted by an authorised person to use the relevant entry.

Division 4—Aerodrome (airport)

Access of animals restricted

5.5 (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 authorized 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).

Division 5—Golf course

Interpretation

5.6 In this Division—

- “**controller**” means the person appointed by the local government to direct, control and manage a golf course;
- “**golf course**” means that portion of a golf course reserve which is laid out as a golf course and includes all tees, fairways, greens, practice tees, practice fairways, practice greens and any driving range; and
- “**golf course reserve**” means the local government property described in Schedule 3 and includes all buildings, structures, fittings, fixtures and equipment on that land.

Observance of special conditions of play

- 5.7 While on a golf course, every player shall observe and comply with a—
- (a) direction of a controller in respect of any special conditions of play; and
 - (b) requirement of any notice erected to direct or control play.

PART 6—FEES FOR ENTRY ON TO LOCAL GOVERNMENT PROPERTY

No unauthorized entry to function

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

PART 7—SALEYARDS

Division 1—Preliminary

Interpretation

7.1 In this Part—

- “**auction**” has the meaning given to it in the *Auction Sales Act 1973*;
- “**sale**” means a sale by way of auction;
- “**saleyard**” means local government property which is used for the sale of stock;
- “**stock**” has the meaning given to “livestock” in the *Auction Sales Act 1973*; and
- “**stock agent**” means any person appointed by the owner of stock to sell that stock at a saleyard.

Division 2—Sale of stock

Requirements of auctioneer’s licence

7.2 A person shall not sell by way of auction any stock at a saleyard unless that person is the holder of an auctioneer’s licence to sell stock under the *Auction Sales Act 1973*.

Sale times to be approved

7.3 Sales are to be conducted at a saleyard only on such days and at such times as may be appointed by a stock agent with the prior approval of the CEO.

Order of sales

7.4 The order in which stock agents conduct sales on any day under clause 8.3 is to be the order agreed to by those stock agents, and in default of agreement, as directed by the CEO or an authorized person.

Division 3—Care of and responsibility for stock

Diseased and injured stock

- 7.5 (1) A person shall not—
- (a) offer for sale any stock which is diseased, emaciated, injured or suffering from ill health for sale at a saleyard; or
 - (b) deliver to any saleyard any stock which is diseased, emaciated, injured or suffering from ill health.
- (2) Where in the opinion of an authorized person stock at a sale yard is diseased, emaciated, injured or suffering from ill health, the authorized person may direct the stock agent of the stock, or if there is no stock agent, the owner or the person apparently in control of that stock, to remove that stock immediately from the saleyard.

Care of stock

7.6 Where the stock is yarded in any saleyard the stock agent (or if there is no stock agent, the owner) shall—

- (a) ensure that the stock is properly cared for; and
- (b) if the stock is kept yarded for more than 24 hours, provide the stock with adequate food and water.

When purchaser becomes responsible for stock

7.7 The purchaser of any stock yarded in a saleyard is responsible for such stock from the time the contract of sale is entered into.

Time limit for removal of stock

7.8 The purchaser of any stock at a saleyard is to remove such stock from the saleyard by 5.00pm on the day after the day of sale, or by such later time as may be allowed by an authorized person.

Removal of unsold stock

7.9 Where stock yarded in a saleyard remain unsold, the stock agent or, if there is no stock agent, the owner of the stock is responsible for the care and removal of such stock from the saleyard.

Removal of dead or maimed stock

7.10 Stock which have died or which have been maimed shall be immediately removed from the saleyard where the stock—

- (a) are unsold, by the stock agent, or if there is no stock agent, the owner; or
- (b) have been sold, by the purchaser.

Division 4—Payment of fees

Payment of yard fees

7.11 Where stock is brought into a saleyard for a sale or any other purpose by a stock agent or owner, that stock agent or owner shall—

- (a) within 7 days of bringing the stock into a saleyard, give the local government a written statement signed by the stock agent or owner advising—
 - (i) the total number of stock by class brought into the saleyard; and
 - (ii) the date on which the stock was brought into the saleyard; and
- (b) within 28 days of bringing the stock into a saleyard, pay the local government the applicable yard fees set by the local government.

Documents may be inspected

7.12 The stock agent or owner shall, on demand by the CEO, make available to the CEO for inspection such documents as may be necessary to enable the CEO to verify a statement given under clause 8.11.

Division 5—Control of dogs

Only working dogs allowed

7.13 A person shall not bring into a saleyard any dog which will not be used for working with stock in that saleyard on the day which it is brought in.

Diseased dogs prohibited

7.14 A person shall not bring or permit to be brought into a saleyard a dog which is diseased.

PART 8—OBJECTIONS AND APPEALS

Application of Division 1, Part 9 of the Act

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

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

the provisions of Division 1 of Part 9 of the Act and regulations 32A and 33 of the Regulations apply to that decision.

PART 9—MISCELLANEOUS

Authorized person to be obeyed

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

Persons may be directed to leave local government property

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

Disposal of lost property

9.3 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.

Liability for damage to local government property

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

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

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

PART 10—ENFORCEMENT

Division 1—Notices given under this local law

Offence to fail to comply with notice

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

Local government may undertake requirements of notice

10.2 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

Offences and general penalty

10.3 (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

Prescribed offences

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

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

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

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

Form of notices

10.5 (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 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

Evidence of a determination

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

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

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

Schedule 1

PRESCRIBED OFFENCES

Clause	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

Clause	Description	Modified Penalty \$
3.15(1)	Failure to obtain permit for liquor	125
3.16	Failure of permit holder to comply with responsibilities	125
4.2(1)	Behaviour detrimental to property	125
4.4	Under influence of liquor or prohibited drug	125
4.6(2)	Failure to comply with sign on local government property	125
5.2	Consuming food or drink in prohibited area	125
5.6	Unauthorized entry to fenced or closed local government property	125
5.7	Gender not specified using entry of toilet block or change room	125
5.8(1)	Unauthorized presence of animal on aerodrome	350
5.8(2)	Animal wandering at large on aerodrome—person in charge	350
5.8(3)	Animal wandering at large on aerodrome—owner	350
5.10	Failure to comply with direction of controller or notice on golf course	125
6.1(1)	Unauthorized entry to function on local government property	125
7.2	Selling by way of auction without licence	125
7.8	Failure to remove stock	250
7.10	Failure to immediately remove dead or maimed stock	250
7.11	Failure to give statement or pay fees to local government	250
7.12	Failure to produce documents for inspection by local government	250
7.13	Unauthorized entry of dog into saleyard	125
10.1	Failure to comply with notice	250

Schedule 2

DETERMINATIONS

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

PART 1—PRELIMINARY

Definitions

1.1 In these determinations unless the context otherwise requires—

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

Interpretation

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

Schedule 3

GOLF COURSE

RESERVE 16076

WESTCOURT ROAD, KOJONUP

Dated 3 March, 2020.

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

J. BENN, President.
R. MITCHELL-COLLINS, Chief Executive Officer.
