

**LOCAL GOVERNMENT ACT 1995**

**SHIRE OF TRAYNING**

**CEMETERIES LOCAL LAW**

**CEMETERIES LOCAL LAW 2001**

**SHIRE OF TRAYNING**

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**CEMETERIES ACT 1986**

**SHIRE OF TRAYNING**

**Local Law Relating to the Trayning, Kununoppin and Yelbeni Public Cemeteries  
Under the powers conferred by the Cemeteries Act 1986, the Council of the Shire of  
Trayning resolved on the 21<sup>st</sup> day of March 2001, to make the following local law.**

**PART 1 - PRELIMINARY**

**1.1 Citation**

This Local Law may be cited as the Shire of Trayning Cemeteries Local Law 2001.

**1.2 Interpretation**

In this Local Law unless the context otherwise requires:

“ashes” means so much of the remains of a dead body after the due processes of cremation as may be contained in a standard sized cremation urn;

“authorised officer” means an employee of the Board authorised by the Board for the purposes of performing any function or exercising any power conferred upon an authorised officer by this Local Law;

“CEO” means the chief executive officer for the time being, of the Board;

“Funeral Director” means a person holding a current funeral director’s licence;

“Board” means the Shire of Trayning;

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

“monumental mason” means a person holding a current monumental mason’s licence;

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

“set fee” refers to fees and charges set by a resolution of the Board and published in the Government Gazette, under section 53 of the Act;

“single funeral permit” means a permit issued by the Board under section 20 or 21 of the Act which entitles the holder to conduct at the cemetery a funeral of a person named in the permit.

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

### 1.3 Repeal

The following Local Law is repealed:-

The Shire of Trayning Cemetery By-laws, published in the Government Gazette of 22 May, 1972, as amended..

#### Provisions of the Cemeteries Act

Provisions of the Cemeteries Act have been included in this document in appropriate places, boxed and hachured . These insertions are not an official part of these local laws but are included to give a fuller picture of the written law governing proceedings, or as an aid to interpretation.

In the hachured boxes, “S” denotes a section of the *Cemeteries Act 1986*.

## PART 2 - ADMINISTRATION

### 2.1 Powers and Functions of CEO

Subject to any directions given by the Board, the CEO shall exercise all the powers and functions of the Board in respect of the cemetery.

#### Board to maintain registers and plans

- S40 (1) A Board shall establish and maintain -
- (a) a register containing details of all burials in the cemetery, including details of the names and descriptions of the deceased persons and details of the location of the burial in every case;
  - and
  - (b) a register of all grants of rights of burial in the cemetery, including details of the assignments or bequests of grants.
- (2) A Board shall keep and maintain plans showing the location of all burials registered under subsection (1).
- (3) A register maintained under this Act may be kept or prepared -
- (a) by making entries in or on a bound or loose-leaf book; or
  - (b) by recording or storing the particulars required by this Act to be entered in the register by means of a mechanical, electronic or other device, but so

that the particulars so recorded or stored will remain in the form in which they were originally recorded or stored and will be capable of being reproduced in written form in the English language.

### **Registers available for inspection**

- S41 (1) A Board shall make all registers kept under this Act available for inspection by members of the public at times and places set by the Board and shall on request make available copies of extracts from any register.
- (2) A Board may charge a fee for the inspection of a register or for providing an extract from or certified copy of an extract from a register.

### **Rights of Burial**

#### **Grant of Right of Burial**

- S25 (1) A Board may grant to a person for a term of 25 years the right of burial in a specified area of a cemetery and the right to place a memorial on that area.
- (2) Where the holder for the time being of a grant of a right of burial applies to the Board for the renewal of the grant the Board shall renew the grant for a further term of 25 years.
- (3) A right of burial granted under this section shall be subject to such conditions as may be prescribed by local law.
- (4) A right of burial granted under the *Cemeteries Act 1897* or renewed under subsection (2) may, if the Board and the holder for the time being of the grant agree, be renewed from time to time for a further term not exceeding 25 years in the case of any one renewal.

#### **Transfer of right of burial**

- S26 (1) A right of burial granted to a person under this Act may be assigned by the holder in his lifetime or bequeathed by will.
- (2) An assignment of a right of burial shall have no effect until it is produced to the Board for registration and when so registered shall have priority over any other assignment that may subsequently be produced to the Board.
- (3) The bequest of a right of burial shall have no effect until the probate of the will by which the right of burial passes is produced to the Board and the Board shall make an appropriate entry in the register upon which the bequest shall have priority over any assignment that may subsequently be produced to the Board.

#### **Protection of right of burial**

- S27 Before any burial is permitted to take place in a specified area which is the subject of a grant of right of burial, the Board must be satisfied that the holder of the right has consented or would not object to the burial taking place.

**Surrender of right of burial**

S28 The holder of a right of burial granted under this Act may surrender the right to the Board upon which all rights and obligations under the right shall terminate.

### PART 3 - APPLICATION FOR FUNERALS

**3.1 Application for Burial**

- (1) A person may apply for approval to bury a dead body in the cemetery in the form determined by the Board from time to time.
- (2) An application under subclause (1) is to be accompanied by the set fee.

**3.2 Deleted****3.3 Applications to be Accompanied by Certificates etc**

All applications referred to in clauses 3.1 and 3.2 shall be accompanied by either a medical certificate of death or a Coroner's order of burial, and a certificate issued under clause 3.4, in respect of the body.

**3.4 Certificate of Identification**

- (1) After a dead body is placed in a coffin and prior to a dead body being removed to the cemetery, a person who personally knew the deceased shall identify the dead body and shall complete a certificate of identification in the form determined by the Board from time to time, unless:
  - (a) in the opinion of the Funeral Director, the dead body is not in a fit state to be viewed;
  - or
  - (b) after reasonable effort the Funeral Director is unable to arrange for a person to identify the dead body.
- (2) Where:
  - (a) in the opinion of the Funeral Director, the dead body is not in a fit state to be viewed;
  - or
  - (b) after reasonable effort the Funeral Director is unable to arrange for a person to identify the dead body,then the Funeral Director shall complete a certificate in the form determined by the Board from time to time.



### 3.5 Minimum Notice Required

All bookings to hold a funeral shall be made with the Board at least twenty four hours prior to the time proposed for burial on the application, otherwise an extra charge may be made.

## PART 4 - FUNERAL DIRECTORS

### Division 3 - Licensing of funeral directors

#### **Licences**

S16 A funeral director's licence -

- (a) is valid for the conduct of funerals at the cemetery or cemeteries specified in the licence;
- (b) is valid for such period not exceeding one year from the day on which the licence is issued as the Board determines, unless the licence is sooner suspended or cancelled; and
- (c) is not transferable.

#### **Applications for licences**

S17 (1) An application for a funeral director's licence in respect of a cemetery shall be made to the Board responsible for the care, control and management of the cemetery in the manner required by the Board and shall be lodged with the Board together with the appropriate fee.

(2) An applicant who satisfies the Board that the applicant -

- (a) is of good repute and is fit to hold a funeral director's licence;

and

- (b) has suitable facilities and equipment for handling and storing dead bodies and conducting funerals,

shall be entitled to be issued with a funeral director's licence.

- (3) The Board, or a person authorized by resolution of the Board for the purpose, may at any reasonable time inspect the facilities and equipment of an applicant for or the holder of a funeral director's licence and the applicant or holder shall take all reasonable steps to facilitate an inspection authorized by this subsection.

Penalty: \$500

### **Suspension and cancellation of licences**

- S18 (1) A Board may, by notice in writing delivered to the holder of a licence, cancel or suspend the licence if -
- (a) the licence was issued erroneously or in consequence of a false or fraudulent document, statement or representation;
  - (b) the fee for the licence is due and unpaid;
  - (c) the holder of the licence is convicted of an offence against this Act or local laws made under this Act; or
  - (d) the Board is no longer satisfied in relation to the holder of the licence with respect to the matters referred to in section 17 (2).
- (2) If a licence is cancelled or suspended under this section, the person to whom the licence was issued shall deliver the licence to the Board within such period as may be specified in the notice referred to in subsection (1).

Penalty: \$500

### **Appeals against decisions of Board**

- S19 (1) Where a Board -
- (a) refuses an application for a licence; or
  - (b) cancels or suspends a licence,
- the Board shall notify in writing the applicant or the person to whom the licence was issued of its decision and of the reasons for that decision.
- (2) An aggrieved applicant or person whose licence has been cancelled or suspended may appeal to a Local Court against the decision of the Board.
- (3) An appeal under this section may be instituted by the appellant lodging a notice of appeal specifying the grounds of appeal with the clerk of the Local Court to which the appeal is to be made and the Board within 1 month after the appellant received the notice referred to in subsection (1).
- (4) An appeal under this section shall be in the nature of a rehearing de novo and shall be heard before a Local Court conducted by a stipendiary magistrate.
- (5) On hearing an appeal under this section, the Local Court may -
- (a) confirm, quash or vary the decision of the Board or substitute its own decision for that of the Board; and
  - (b) make any other order as to costs or otherwise.
- (6) The decision of a Local Court in an appeal under this section is final and conclusive and the Board shall give effect to it.

### **4.1 Funeral Director's Licence Expiry**

A funeral director's licence shall expire on the 30th day of June in each year.

### 4.2 Single Funeral Permits

#### Single funeral permits issued to persons other than funeral directors

- S20 (1) Subject to this section, a Board may issue a permit to any person, other than the holder of a funeral director's licence, for the conduct at a cemetery of a funeral of a person named in the permit.
- (2) An application for a permit under this section shall be made in the manner required by the Board and lodged with the Board together with the appropriate fee.
- (3) A permit issued under this section shall have effect subject to any conditions prescribed by local law and to any further conditions that may be attached by the Board in the particular case and set out in the permit.

#### Single funeral permits issued to funeral directors

- S21 (1) Subject to this section, a Board may issue a permit to a person who is the holder of a funeral director's licence issued by another Board for the conduct at a cemetery under the care, control and management of the first mentioned Board of a funeral of a person named in the permit.
- (2) An application for a permit under this section shall be made in the manner required by the Board and lodged with the Board together with the appropriate fee.
- (3) In determining an application made by a funeral director under this section, a Board is not required to inquire into the matters referred to in section 17 (2).

Every application for a single funeral permit made under section 20 or 21 of the Act shall include coffin specifications and details of the vehicle transporting the dead body to the gravesite.

### 4.3 Application Refusal

The Board may refuse an application for a single funeral permit if, in the opinion of the Board, either the coffin specifications or the details of the vehicle transporting the dead body to the gravesite, are not structurally sound or are otherwise inadequate or inappropriate, or on any other grounds.

### PART 5 - FUNERALS

#### *Division 1 - General*

##### **5.1 Requirements for Funerals and Coffins**

A person shall not bring a dead body into the cemetery unless:

- (a) the Board has approved an application for the burial of that dead body in accordance with Part 3 of this Local Law;
  - (b) it is enclosed in a coffin which in the opinion of the Board is structurally sound and bears the name of the deceased person indelibly inscribed in legible characters on a plate on the coffin's lid;
- and
- (c) under the plate referred to in paragraph (b) there is a substantive lead strip bearing the surname of the deceased person stamped in legible characters, each character being not less than 10 mm in height.

##### **5.2 Funeral Processions**

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

##### **5.3 Vehicle Entry Restricted**

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

##### **5.4 Vehicle Access and Speed Limitations**

Vehicles shall proceed within the cemetery by the constructed roadway or other areas designated for the use of vehicles and shall not exceed the speed of 25km per hour.

##### **5.5 Offenders may be Expelled**

A person committing an offence under clause 5.4 may be expelled from the cemetery by the CEO or an authorised officer.

##### **Board may conduct funeral**

S22 A Board may conduct a funeral at a cemetery for the care, control and management of which it is responsible.

### 5.6 Conduct of Funeral by Board

When conducting a funeral under section 22 of the Act the Board may:

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

### *Division 2 - Cremation*

### 5.7 to 5.11 Deleted

### *Division 3 - Placement of Ashes*

### 5.12 Disposal of Ashes

- (1) The personal representative of a deceased person whose body has been cremated may apply, in an application under clause 3.1 or otherwise, for permission to dispose of the ashes in the cemetery and upon payment of the set fee the Board may grant permission for the ashes to be disposed of by one of the following methods:
  - Niche Wall
  - Family Grave
  - Scattering to the Winds
  - Other memorials approved by the Board
- (2) Subject to sub-clauses (3) and (4), a person shall not place the ashes of a deceased person in the cemetery.
- (3) An authorised officer may place the ashes of a deceased person in a cemetery in accordance with the Board approval provided:
  - (a) the person requesting the placement of the ashes has the permission of the Board; and
  - (b) the ashes are placed within an area set aside for that purpose by the Board.
- (4) An authorised officer may place the ashes of a deceased person within a grave in accordance with the Board approval, provided the person requesting the placement of the ashes has the written permission of the Board and the approval of the holder of the right of burial of the grave.

**5.13 Deleted**

**5.14 Deleted**

**PART 6 - BURIALS**

**6.1 Depth of Graves**

- (1) A person shall not bury a coffin within the cemetery so that the distance from the top of the coffin to the original surface of the ground is -
  - (a) subject to paragraph (b), less than 750mm, unless that person has the permission of an authorised officer; or
  - (b) in any circumstances less than 600mm.
- (2) The permission of the authorised officer in sub-clause (1) (a) will only be granted where in the opinion of the authorised officer exceptional circumstances require granting of that permission.

**6.2 Mausoleum, etc**

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

**Minister may order exhumation**

S58 The Minister may in writing order the exhumation of a body and the re-burial or disposal of the ashes after cremation of the body in accordance with this Act and may further order how and by whom the costs of the exhumation, re-burial or disposal shall be met.

**Board may authorize exhumation and re-burial**

S59 A Board may in writing authorize the exhumation of a body buried in the cemetery and the re-burial or disposal of the ashes after cremation of the body in that cemetery.

**PART 7 - MEMORIALS AND OTHER WORK**

*Division 1 - General*

**Control of memorials**

S29 A Board shall control the kinds of memorial permitted in a cemetery and may impose different requirements for different areas of a cemetery.

**Permission for memorials**

S30 (1) A person who wishes to place or erect a memorial in a cemetery shall apply to the Board specifying the proposed location, design and materials of which the memorial is to be composed and the Board may approve or, if the Board considers the location to be incorrect or the proposed memorial to be inappropriate or indecorous or contrary to a local law, refuse the application.

(2) A person shall not place or assist in placing or erecting a memorial in a cemetery without the permission of the Board.

Penalty: \$500

(3) A person shall not alter or add to, or assist in the alteration of or addition to or removal of, a memorial in a cemetery without the permission of the board.

Penalty: \$500

**Removal or alteration of unauthorized memorial**

S31 (1) If a memorial in a cemetery is placed or erected or altered without the permission of the Board or, although placed, erected or altered with such permission, is placed, erected or altered contrary to the local laws or other requirements or conditions of the permission of the Board, the Board may give a written notice to the holder of the right of burial or other person who has caused the memorial to be so placed, erected or altered requiring that holder or other person within 28 days from receiving the notice to remove the memorial from the cemetery or to alter it in the manner specified in the notice to the satisfaction of the Board.

(2) If the holder of a right of burial or other person to whom a notice is given under subsection (1) refuses to or otherwise fails to comply with the terms of the notice, the Board may remove or alter the memorial and may recover from that holder of a right of burial or other person the costs of the removal or alteration as a debt in a court of competent jurisdiction.

### **Removal or alteration of memorial in disrepair**

- S32 (1) If a memorial in a cemetery is, in the opinion of the Board, in need of repair or is in such a state of disrepair that repairs are not feasible, the Board may give a written notice to the holder of the relevant right of burial requiring that person within 28 days from receiving the notice to repair the memorial to the satisfaction of the Board or to remove the memorial from the cemetery, as the case may require and as specified in the notice.
- (2) If the holder of a right of burial to whom a notice is given under subsection (1) refuses to or otherwise fails to comply with the terms of the notice, the Board may cause the memorial to be repaired or removed from the cemetery and may recover from that holder of a right of burial the costs of the removal or repair as a debt in a court of competent jurisdiction.

### **7.1 Application for Monumental Work**

A Board may require the written consent of the holder of the right of burial of the grave to accompany an application under section 30 of the Act.

### **7.2 Placement of Monumental Work**

Every memorial shall be placed on proper and substantial foundations.

### **7.3 Removal of Rubbish**

All refuse, rubbish or surplus material remaining after memorial works are completed under a permit issued under section 30 of the Act shall be immediately removed from the cemetery by the person carrying out the same.

### **7.4 Operation of Work**

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

### **7.5 Removal of Sand, Soil or Loam**

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

### **7.6 Hours of Work**

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



### **7.7 Unfinished Work**

Should any work by masons or others be not completed before 6pm on weekdays and noon on Saturdays, they shall be required to leave the work in a neat and safe condition to the satisfaction of the CEO or an authorised officer.

### **7.8 Use of Wood**

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

### **7.9 Plants and Trees**

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

### **7.10 Supervision**

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

### **7.11 Australian War Graves**

Notwithstanding anything in this Local Law to the contrary, the Office of Australian War Graves:

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

### **7.12 Placing of Glass Domes and Vases**

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

### **7.13 Deleted**

### **7.14 Deleted**

### **7.15 Deleted**

### *Division 4 - Licensing of Monumental Masons*

#### **7.16 Monumental Mason's Licence**

- (1) The Board may upon receipt of an application in writing by any person and upon payment of the set fee issue to the applicant a monumental mason's licence.
- (2) A licence issued under sub-clause (1) authorises the holder to carry out monumental works within the cemetery subject to the provisions of this Local Law and such conditions as the Board shall specify upon the issue of that licence.

#### **7.17 Expiry Date, Non-Transferability**

A monumental mason's licence:

- (a) shall, subject to clause 7.22, be valid from the date specified therein until the 30th day of June next following; and
- (b) is not transferable.

#### **7.18 Carrying out Monumental Work**

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

- (a) is the holder of a current monumental mason's licence issued pursuant to clause 7.18 or does so as the employee of a person who holds such a licence; or
- (b) is authorised by the Board to do so.

#### **7.19 Responsibilities of the Holder of a Monumental Mason's Licence**

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

#### **7.20 Cancellation of a Monumental Mason's Licence**

- (1) The Board may by notice in writing to the holder of a monumental mason's licence terminate the licence on any of the following grounds:
  - (a) that the holder of the licence has committed a breach of the requirements and conditions of the licence, this Local Law, the Act or any other written law which may affect the carrying out of monumental works;
  - (b) that, in the opinion of the Board, the conduct of the holder of the licence or any person in the employ of that holder in carrying out or attempting to carry out any works within the cemetery, is inappropriate or unbecoming; or
  - (c) that the holder of the licence has purported to transfer the licence issued to that holder.

- (2) Upon the termination of a monumental mason's licence under this clause no part of any fee paid for the issue of that licence is refundable by the Board.
- ~~(3) An aggrieved person whose licence has been terminated under subclause (1) may appeal to a Local Court against a decision of the Board under this clause in the manner stated in section 19 (3) of the Act.~~

### **PART 8 - GENERAL**

#### **8.1 Animals**

Subject to clause 8.2, a person shall not bring an animal into or permit an animal to enter or remain in the cemetery, other than with the approval of the CEO or an authorised officer.

#### **8.2 Guide Dogs**

Clause 8.1 shall not apply to a hearing impaired person or a person who is blind or partially blind and is accompanied by a hearing or guide dog.

#### **8.3 Damaging and Removing of Objects**

Subject to clause 8.4, a person shall not damage, remove or pick any tree, plant, shrub or flower in the cemetery or any other object or thing on any grave or memorial or which is the property of the Board without the permission of the Board.

#### **8.4 Withered Flowers**

A person may remove withered flowers from a grave or memorial and these are to be placed in a receptacle provided by the Board for that purpose.

#### **8.5 Littering and Vandalism**

A person shall not:

- (a) break or cause to be broken any glass, ceramic or other material in or upon the cemetery;
- (b) discard, deposit, leave or cause to be discarded, deposited or left any refuse or litter in or upon the cemetery other than in a receptacle provided for that purpose.

#### **8.6 Advertising**

A person shall not carry on or advertise any trade, business or profession within the cemetery without the prior written approval of the Board which consent may be granted subject to such conditions as the Board thinks fit.

#### **8.7 Obeying Signs and Directions**

A person shall obey all signs displayed, marked, placed or erected by the Board within the cemetery and any other lawful direction by the CEO or an authorised officer.

### **8.8 Removal from the Cemetery**

Any person failing to comply with any provisions of this Local Law or behaving in a manner that in the opinion of the Board, the CEO or an authorised officer is inappropriate in the cemetery may in addition to any penalty provided by this Local Law be ordered to leave the cemetery by the Board, the CEO or an authorised officer.

## **PART 9 - OFFENCES AND MODIFIED PENALTIES**

### **9.1 General**

A person who commits a breach of any provisions of this Local Law commits an offence and shall on conviction be liable to a penalty not exceeding \$500.00 and if the offence is a continuing one to a further penalty not exceeding \$20.00 for every day or part of a day during which the offence has continued.

### **9.2 Modified Penalties**

- (1) The offences specified in the First Schedule are offences which may be dealt with under section 63 of the Act.
- (2) The modified penalty payable in respect of an offence specified in the First Schedule is set out in the fourth column of the First Schedule.
- (3) The prescribed form of the infringement notice referred to in section 63(1) of the Act is set out in the Second Schedule.
- (4) The prescribed form of the notice withdrawing an infringement notice referred to in section 63(3) of the Act is set out in the Third Schedule.

## First Schedule

### CEMETERIES ACT, 1986

#### **SHIRE OF TRAYNING** **Cemeteries Local Law 2001**

#### Modified Penalties

<b>Item No.</b>	<b>Clause</b>	<b>Nature of Offence</b>	<b>Modified Penalty</b>
1	5.4	Excessive speed	\$50.00
2	5.4	Unauthorised use - driving of vehicles	\$50.00
3	7.3	Placing and removal of rubbish and surplus materials	\$50.00
4	7.7	Leaving uncompleted works in an untidy or unsafe condition	\$50.00
5	8.1	Animal at large	\$50.00
6	8.5	Dumping of Rubbish	\$50.00
7	8.6	Unauthorised advertising, and/or trading	\$50.00
8	8.7	Disobeying sign or lawful direction	\$50.00

**Second Schedule**

**CEMETERIES ACT, 1986**

**SHIRE OF TRAYNING  
Cemeteries Local Law 2001**

**Infringement Notice**

TO: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

It is alleged that at \_\_\_\_\_ : \_\_\_\_\_ hours on \_\_\_\_\_ day  
of \_\_\_\_\_ 19 \_\_\_\_\_ at \_\_\_\_\_

\_\_\_\_\_

you committed the offence indicated below by an (x) in breach of clause ..... of the Shire  
of Trayning Cemeteries Local Law 2001.

\_\_\_\_\_  
(Authorised Person)

**Offence**

Animal at large  
Dumping rubbish  
Excessive speed in vehicle  
Leaving uncompleted works in an untidy or unsafe condition  
Non removal of rubbish  
Unauthorised advertising or trading  
Unauthorised vehicle use  
Disobeying sign or lawful direction

Other Offence \_\_\_\_\_  
\$ \_\_\_\_\_

## **Agenda Attachment 9.3.1**

You may dispose of this matter:

By payment of the penalty as shown within 21 days of the date of this notice (or the date of the giving of this notice if that is a different date) to the Chief Executive Officer of the Shire of Trayning at Railway Street, Trayning between the hours of 9am to 4.30pm Monday to Friday.

Please make cheques payable to Shire of Trayning. Payments by mail should be addressed to:

The Chief Executive Officer  
Shire of Trayning  
PO Box 95  
TRAYNING WA 6488

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

**Third Schedule**

**CEMETERIES ACT, 1986**

**SHIRE OF TRAYNING  
Cemeteries Local Law 2001**

**Withdrawal of Infringement Notice**

No. \_\_\_\_\_

\_\_\_\_\_ Date \_\_\_\_ / \_\_\_\_ / \_\_\_\_

To (1) \_\_\_\_\_

Infringement Notice No \_\_\_\_\_ dated \_\_\_\_ / \_\_\_\_ / \_\_\_\_ for the alleged offence of (2)

Penalty (3)     \$ \_\_\_\_\_ is withdrawn.

(Delete whichever does not apply)

\*        No further action will be taken.

\*        It is proposed to institute court proceedings for the alleged offence.

-----

(1)     Insert name and address of alleged offender.

(2)     Insert short particulars of offence alleged.

(3)     Insert amount of penalty prescribed.

\_\_\_\_\_  
(Authorised Person)

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**DOGS LOCAL LAW**

***DOG ACT 1976***

**SHIRE OF TRAYNING  
DOGS LOCAL LAW  
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### **SCHEDULE 1**

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## *DOG ACT 1976*

### SHIRE OF TRAYNING

#### DOGS LOCAL LAW

Under the powers conferred by the *Dog Act 1976* and under all other powers enabling it, the Council of the Shire of Trayning resolved on 21<sup>st</sup> March 2001 to make the following local law.

#### PART 1 - PRELIMINARY

##### 1.1 Citation

This local law may be cited as the Shire of Trayning Dogs Local Law.

##### **Provisions of the Dog Act**

Selected provisions of the Dog Act have been included in this document, boxed and hachured, where it is believed these might assist in the interpretation or administration of this Local Law. These insertions are not an official part of the Local Law and should not therefore be included in the gazettal of the Local Law.

In the hachured boxes, “s” denotes a section of the *Dog Act 1976*.

##### 1.2 Repeal

The Local Laws relating to Keeping of Dogs, and Dogs, published in the Government Gazettes of 27 March 1981 and 22 July 1988 respectively, are repealed.

##### 1.3 Definitions

In this local law unless the context otherwise requires -

“Act” means the *Dog Act 1976*;

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

“CEO” means the Chief Executive Officer of the local government;

“district” means the district of the local government;

“local government” means the Shire of Trayning;

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

“owner” in relation to a dog means –

- (a) the person by whom the dog is ordinarily kept; or
- (b) a person who is deemed by subsection (2) to be the owner of the dog;

“person liable for the control of the dog” means each of the following –

- (a) the registered owner of the dog;
- (b) the owner of the dog;
- (c) the occupier of any premises where the dog is ordinarily kept or ordinarily permitted to live; or
- (d) a person who has the dog in his possession or under his control, but does not include –
- (e) a registered veterinary surgeon, or a person acting on his behalf, in the course of his professional practice; or
- (f) a police officer or other person acting under statutory duty or in the administration of this Act;

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

“premises” shall, for the purpose of determining who is the occupier, be taken to refer to any land or building, or part of any land or building, that is or is intended to be occupied as a separate residence from any adjacent tenement;

“Regulations” means the *Dog Regulations 2013*;

“Schedule” means a Schedule to the local law;

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

“townsite” means –

- (a) land constituted, defined, or reserved as the site of a town or village under the *Land Administration Act 1997*.
- (b) land subdivided or laid out as the site for a townsite, township, or village, in accordance with the subdivisional plan, registered in the Office of Titles or the Department of Land Administration; and
- (c) land within a town or city under the *Local Government Act 1960* that is outside the metropolitan region.

### 1.4 Application

This local law applies throughout the district.

### PART 2 - IMPOUNDING OF DOGS

**Part 2** Should be read in conjunction with section 29 of the Act, which is headed “Power to seize strays, etc”

#### 2.1 Charges and costs

The following are to be imposed and determined by the local government under sections 6.16 - 6.19 of the *Local Government Act 1995* -

- (a) the charges to be levied under section 29(4) of the Act relating to the seizure and impounding of a dog;
- (b) the additional fee payable under section 29(4) of the Act where a dog is released at a time or on a day other than those determined under clause 2.2; and
- (c) the costs of the destruction and the disposal of a dog referred to in section 29(15) of the Act.

#### 2.2 Attendance of pound keeper at pound

The pound keeper is to be in attendance at the pound for the release of dogs at the times and on the days of the week as are determined by the CEO.

#### 2.3 Release of impounded dog

- (1) A claim for the release of a dog seized and impounded is to be made to the pound keeper or in the absence of the pound keeper, to the CEO.
- (2) The pound keeper is not to release a dog seized and impounded to any person unless that person has produced, to the satisfaction of the pound keeper, satisfactory evidence -
  - (a) of her or his ownership of the dog or of her or his authority to take delivery of it; or
  - (b) that he or she is the person identified as the owner on a microchip implanted in the dog.

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

#### 3.1 Dogs to be confined

- (1) An occupier of premises on which a dog is kept must -
  - (a) cause a portion of the premises on which the dog is kept to be fenced in a manner capable of confining the dog;
  - (b) ensure the fence used to confine the dog and every gate or door in the fence is of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through it;

- (c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises (unless the gate is temporarily opened in a manner that ensures that the dog remains confined) and is fitted with a proper latch or other means of fastening it;
- (d) maintain the fence and all gates and doors in the fence in good order and condition; and
- (e) where no part of the premises consists of open space, yard or garden or there is no open space or garden or yard of which the occupier has exclusive use or occupation, ensure that other means exist on the premises (other than the tethering of the dog) for effectively confining the dog within the premises.

(2) Where an occupier fails to comply with subclause (1), he or she commits an offence.

**Penalty:** Where the dog kept is a dangerous dog, \$2,000; otherwise \$1,000.

### **Limitations as to numbers**

S26 (1) The provisions of this Part shall not operate to prevent the keeping on any premises of 2 dogs over the age of 3 months and the young of those dogs under that age.

(2) Subject to subsection (1), a local government, pursuant to local laws, may limit the number to dogs over the age of 3 months, or the number of such dogs of any specified breed or kind, that may be kept on any premises situate in a specified area to which those local laws apply unless those premises are licensed as an approved kennel establishment or are exempt.

(3) Where a local law under this Act a local government has placed a limit on the keeping of dogs in any specified area but the local government is satisfied in relation to any particular premises that the provisions of the Act relating to approved kennel establishments need not be applied in the circumstances, the local government may grant an exemption in respect of those premises by any such exemptions –

- (a) May be subject to conditions, including a condition that it applies only to the dogs specified therein;
- (b) Shall not operate to authorise the keeping of more than 6 dogs on those premises; and
- (c) May be revoked or varied at any time.

(4) Subject to provisions of subsection (3), a person who keeps on any premises, not being premises licenced as an approved kennel establishment, dogs over the age of 3 months in numbers exceeding any limit imposed in relation to hose dogs by a local law made under subsection (2) commits an offence.

Penalty: \$1 000 and a daily penalty of \$100.

(5) Any person who is aggrieved –

- (a) by the conditions imposed in relation to any exemption from the provisions of a local law placing a limitation on the number of dogs that may be kept on any premises; or
- (b) by the refusal of a local government to grant such an exemption, or by the revocation of an exemption,

may appeal in writing to the Minister who may, after such inquiry as he thinks fit,

give directions to the local government concerned and effect shall be given to any such direction

- (6) An appeal under subsection (5) shall be lodged with the Minister not later than 28 days after the day on which a notice of the decision that is appealable is served on the person affected by that decision.

*[section 26 amended by No. 23 of 1987 s.22.]*

Note:

Regulation 13(1) prescribes a modified penalty of \$100 under section 26(4) for “Keeping more than prescribed number of dogs.”

If this modification penalty is to be imposed under the Regulations, the procedures contained within regulation 13 of the Regulation must be complied with.

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

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



### **PART 4 - APPROVED KENNEL ESTABLISHMENTS**

#### **4.1 Interpretation**

In this Part and in Schedule 2 -

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

“licensee” means the holder of a licence;

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

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

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

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

- (a) plans and specifications of the kennel establishment, including a site plan;
- (b) copies of the notices to be given under clause 4.3;
- (c) written evidence that either the applicant or another person who will have the charge of the dogs, will reside on the premises or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare;
- (d) a written acknowledgement that the applicant has read and agrees to comply with any code of practice relating to the keeping of dogs nominated by the local government; and
- (e) the fee for the application for a licence referred to in clause 4.10(1).

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

- (1) An applicant for a licence must give notice of the proposed use of the premises as an approved kennel establishment after the application for a licence has been lodged –
  - (a) once in a newspaper circulating in the district; and
  - (b) to the owners and occupiers of any premises adjoining the premises.
- (2) The notices in subclause (1) must specify that -
  - (a) any written submissions as to the proposed use are to be lodged with the CEO within 14 days of the date the notice is given; and
  - (b) the application and plans and specifications may be inspected at the offices of the local government.

(3) Where –

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

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

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

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

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

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

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

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

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

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

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

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

### 4.7 Where application cannot be approved

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

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

### 4.8 Conditions of approval

- (1) The local government may approve an application for a licence subject to the conditions contained in Schedule 2 and to such other conditions as the local government considers appropriate.
- (2) In respect of a particular application for a licence, the local government may vary any of the conditions contained in Schedule 2.

### 4.9 Compliance with conditions of approval

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

**Penalty:** Where a dog involved in the contravention is a dangerous dog, \$2,000 and a daily penalty of \$200; otherwise \$1,000 and a daily penalty of \$100.

### 4.10 Fees

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

### 4.11 Form of licence

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

### 4.12 Period of licence

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

s.27(5) A licence under this section has effect for a period of 12 months, and is renewable upon payment of the prescribed fee, but may be cancelled at any time by the local government if the local government is dissatisfied with the conduct of the establishment.

### 4.13 Variation or cancellation of licence

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

### 4.14 Transfer

- (1) An application for the transfer of a valid licence from the licensee to another person must be –
  - (a) made in the form determined by the local government;
  - (b) made by the transferee;
  - (c) made with the written consent of the licensee; and
  - (d) lodged with the local government together with –
    - (i) written evidence that a person will reside at or within reasonably close proximity to the premises the subject of the licence; and
    - (ii) the fee for the application for the transfer of a licence referred to in clause 4.10(3).
- (2) The local government is not to determine an application for the transfer of a valid licence until the transferee has complied with subclause (1).
- (3) The local government may approve, whether or not subject to such conditions as it considers appropriate, or refuse to approve an application for the transfer of a valid licence.

- (4) Where the local government approves an application for the transfer of a valid licence, then on the date of approval, unless otherwise specified in the notice issued under clause 4.15(b), the transferee becomes the licensee of the licence for the purposes of this local law.

### 4.15 Notification

The local government is to give written notice to -

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

### 4.16 Inspection of kennel

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

#### Entry of premises

- 12A. (1) With the authority of a warrant, an authorised person, and any other person named in the warrant, may enter and inspect any premises for any purpose relating to the enforcement of this Act.
- (2) If he is satisfied that there are reasonable grounds for doing so, a Justice of the Peace may issue a warrant for the purpose of subsection (2).

**PART 5 - DOGS IN PUBLIC PLACES**

**Control of dogs in certain public places**

- s.31 (1) A dog shall not be in a public place unless it is –
- (a) held by a person who is capable of controlling the dog; or
  - (b) securely tethered for a temporary purpose,  
by means of a chain, cord, leash or harness of a sufficient strength and not exceeding the prescribed length.
- (2) A dog is exempt from the requirements of subsection (1) if –
- (a) It is an area specified by a local government under section 51 as a dog exercise area;
  - (b) It is in a public place in an area of the State that is outside the metropolitan region or a townsite;
  - (c) It is in or on a vehicle or boat;
  - (d) It is being exhibited for show purposes;
  - (e) It is participating in an obedience trial or classes conducted under the auspices of the body known as the Canine Association of Western Australia (Inc.) or a body approved by the local government in whose district the obedience trial or classes are conducted;
  - (f) It is registered as being bona fide used in the droving or tendering of stock and is being so used or is going to or returning from a place where it will be, or has been, so used;
  - (g) It is a foxhound in a registered pack bona fide engaged in hunting or hound exercise or in going to or returning from a place where it will be, or has been, so used;
  - (h) It is being used for retrieving, duck hunting or other customary sporting purposes.
- (3) If a dog is at any time in any public place in contravention of subsection (1) every person liable for the control of the dog at that time commits an offence against that subsection unless he establishes a defence under section 33B.

Penalty: where the dog is a dangerous dog, \$4 000;  
Otherwise, \$1 000

**Control of dogs in exercise areas and rural areas**

- S32. (1) A dog, not being a greyhound, shall not be in –
- (a) An area specified by a local government under section 51 as a dog exercise area; or
  - (b) A public place in an area of the State that is outside the metropolitan region or outside a townsite,
- unless section 31(1) is complied with or a competent person is in reasonable proximity to the dog.
- (2) A person is a competent person for the purposes of subsection (1) only if –
- (a) He is a person who is liable for the control of the dog;
  - (b) He is capable of controlling it; and
  - (c) He is carrying and capable of attaching to the dog for the purpose of controlling it, a chain, cord, leash or harness of sufficient strength and not exceeding the prescribed length.
- (3) The exemptions in section 31(2) (other than paragraphs (a) and (b)) also apply for the purposes of subsection (1).
- (4) If a dog is at any time in any place in contravention of subsection (1) every person liable for the control of the dog at that time commits an offence against that subsection unless he establishes a defence under section 33B.
- Penalty:** where the dog is a dangerous dog, \$4 000  
Otherwise, \$1 000
- (5) A local government must specify under section 51 (bb) such dog exercise areas as are, in the opinion of the local government, sufficient in number, and suitable, for the exercising of dogs in the district.

**5.1 Places where dogs are prohibited absolutely**

Designation of places where dogs are prohibited absolutely is dealt with in the Act.

**Special provisions for guide dogs**

- S8. (1) Notwithstanding anything contained elsewhere in this Act or in any other Act, regulation, local law or by-law a person who is blind or partially blind –
- (a) is entitled to be accompanied by a dog *bona fide* used by him as a guide dog, in any building or place open to or used by the public, for any purpose, or in any public transport; and
  - (b) is not guilty of an offence by reason only that he takes that dog into or permits that dog to enter any building or place open to or used by the public or on any public transport.
- (1) The provisions of subsection (1) shall also apply to any person who is *bona fide* engaged in the training of a guide dog.
- (2) The Minister may in writing authorize a named person accompanied by a specified dog to enter and be in any building or place open to or used by the public for any purpose, or in any public transport, and, notwithstanding anything in this Act or any other written law, a person acting in accordance with that authority is not guilty of an offence by reason only that he takes that dog into or permits that dog to enter any such building, place or transport.
- (3) An authority under subsection (3) may be given subject to such conditions and limitations as the Minister thinks fit, and may at any time be amended or revoked by him.

**5.2 Places which are dog exercise areas**

Designation of places which are dog exercise areas is dealt with in the Act.



**PART 6 - MISCELLANEOUS**

**6.1 Offence to excrete**

- (1) A dog must not excrete on –
  - (a) any thoroughfare or other public place; or
  - (b) any land which is not a public place without the consent of the occupier.
- (2) Subject to subclause (3), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.

**Penalty:** \$400.

- (3) The person liable for the control of the dog does not commit an offence against subclause (2) if any excreta is removed immediately by that person.

### PART 7 - ENFORCEMENT

#### 7.1 Interpretation

In this Part -

“infringement notice” means the notice referred to in clause 7.3; and

“notice of withdrawal” means the notice referred to in clause 7.6(1).

#### 7.2 Modified penalties

- (1) The offences contained in Schedule 3 are offences in relation to which a modified penalty may be imposed.
- (2) The amount appearing in the third column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if -
  - (a) the dog is not a dangerous dog; or
  - (b) the dog is a dangerous dog, but an amount does not appear in the fourth column directly opposite that offence.
- (3) The amount appearing in the fourth column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is a dangerous dog.

#### 7.3 Issue of infringement notice

Where an authorized person has reason to believe that a person has committed an offence in respect of which a modified penalty may be imposed, he or she may issue to that person a notice in the form of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

#### 7.4 Failure to pay modified penalty

Where a person who has received an infringement notice fails to pay the modified penalty within the time specified in the notice, or within such further time as may in any particular case be allowed by the CEO, he or she is deemed to have declined to have the offence dealt with by way of a modified penalty.

#### 7.5 Payment of modified penalty

A person who has received an infringement notice may, within the time specified in that notice or within such further time as may in any particular case be allowed by the CEO, send or deliver to the local government the amount of the penalty, with or without a reply as to the circumstances giving rise to the offence, and the local government may appropriate that amount in satisfaction of the penalty and issue an acknowledgment.

### **7.6 Withdrawal of infringement notice**

- (1) Whether or not the modified penalty has been paid, an authorised person may withdraw an infringement notice by sending a notice in the form of Form 8 of the First Schedule of the Regulations.
- (2) A person authorised to issue an infringement notice under clause 7.3 cannot sign or send a notice of withdrawal.

### **7.7 Service**

An infringement notice or a notice of withdrawal may be served on a person personally, or by leaving it at or posting it to her or his address as ascertained from her or him, or as recorded by the local government under the Act, or as ascertained from inquiries made by the local government.

**SCHEDULE 1**

(clause 4.2)

**Local laws relating to dogs**

**Application for a licence for an approved kennel establishment**

I/we (full name) .....

of (postal address) .....

(telephone number) .....

(facsimile number) .....

(E-mail address) .....

Apply for a licence for an approved kennel establishment at (address of premises) .....

.....

For (number and breed of dogs) .....

\* (insert name of person) ..... will be residing at the premises on and from (insert date) .....

\* (insert name of person) ..... will be residing (sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare) at ..... (insert address of residence) on and from ..... (insert date).

Attached are -

- (a) a site plan of the premises showing the location of the kennels and yards and all other buildings and structures and fences;
- (b) plans and specifications of the kennel establishment;
- (c) copy of notice of proposed use to appear in newspaper;
- (d) copy of notice of proposed use to be given to adjoining premises;
- (e) written evidence that a person will reside -
  - (i) at the premises; or
  - (ii) sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare; and
- (f) if the person in item (e) is not the applicant, written evidence that the person is a person in charge of the dogs.

I confirm that I have read and agree to comply with the Code of Practice known as ....., in the keeping of dogs at the proposed kennel establishment.

Signature of applicant .....

Date .....

\* delete where inapplicable.

Note: a licence if issued will have effect for a period of 12 months – section 27.5 of the Dog Act.

---

OFFICE USE ONLY

Application fee paid on [insert date].

### **SCHEDULE 2** (clause 4.8(1))

#### **Conditions of a licence for an approved kennel establishment**

An application for a licence for an approved kennel establishment may be approved subject to the following conditions -

- (a) each kennel, unless it is fully enclosed, must have a yard attached to it;
- (b) each kennel and each yard must be at a distance of not less than -
  - (i) 25m from the front boundary of the premises and 5m from any other boundary of the premises;
  - (ii) 10m from any dwelling; and
  - (iii) 25m from any church, school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;
- (c) each yard for a kennel must be kept securely fenced with a fence constructed of link mesh or netting or other materials approved by the local government;
- (d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;
- (e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the floor area of the kennel or group of kennels to which it is attached;
- (f) the upper surface of the kennel floor must be –
  - (i) at least 100mm above the surface of the surrounding ground;
  - (ii) smooth so as to facilitate cleaning;
  - (iii) rigid;
  - (iv) durable;
  - (v) slip resistant;
  - (vi) resistant to corrosion;
  - (vii) non-toxic;
  - (viii) impervious;
  - (ix) free from cracks, crevices and other defects; and
  - (x) finished to a surface having a fall of not less than 1 in 100 to a spoon drain which in turn must lead to a suitably sized diameter sewerage pipe which must be properly laid, ventilated and trapped in accordance with the health requirements of the local government;
- (g) all kennel floor washings must pass through the drain in item (f)(x) and must be piped to approved apparatus for the treatment of sewage in accordance with the health requirements of the local government;

## Agenda Attachment 9.3.1

- (h) the kennel floor must have a durable upstand rising 75mm above the floor level from the junction of the floor and external and internal walls, or internal walls must be so constructed as to have a minimum clearance of 50mm from the underside of the bottom plate to the floor;
- (i) where a yard is to be floored, the floor must be constructed in the same manner as the floor of any kennel;
- (j) from the floor, the lowest internal height of a kennel must be, whichever is the lesser of -
  - (i) 2m; or
  - (ii) 4 times the height of the breed of dog in the kennel, when it is fully grown, measured from the floor to the uppermost tip of its shoulders while in a stationary upright position;
- (k) the walls of each kennel must be constructed of concrete, brick, stone or framing sheeted internally and externally with good quality new zincalume or new pre-finished colour coated steel sheeting or new fibrous cement sheeting or other durable material approved by the local government;
- (l) all external surfaces of each kennel must be kept in good condition;
- (m) the roof of each kennel must be constructed of impervious material;
- (n) all kennels and yards and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorised person;
- (o) all refuse, faeces and food waste must be disposed of daily into the approved apparatus for the treatment of sewage;
- (p) noise, odours, fleas, flies and other vectors of disease must be effectively controlled;
- (q) suitable water must be available at the kennel via a properly supported standpipe and tap; and
- (r) the licensee or the person nominated in the application for a licence, must, in accordance with the application for the licence, continue to reside -
  - (i) at the premises; or
  - (ii) in the opinion of the local government, sufficiently close to the premises so as to control the dogs, and to ensure their health and welfare.

### SCHEDULE 3 (clause 7.2)

#### Offences in respect of which modified penalty applies

Offence	Nature of offence	Modified penalty \$	Dangerous Dog Modified Penalty \$
3.1	Failing to provide means for effectively confining a dog	50	200
4.9	Failing to comply with the conditions of a licence	100	200
6.1(2)	Dog excreting in prohibited place	40	

The Common Seal of the }  
Shire of Trayning }  
was affixed by authority of a }  
resolution of the Council in the }  
presence of: }

---

CR F TARR, PRESIDENT

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T MCLENNAN, CHIEF EXECUTIVE OFFICER

**SHIRE OF TRAYNING**  
**EXTRACTIVE INDUSTRIES LOCAL LAW**

**Local Government Act 1995**

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**SHIRE OF TRAYNING  
EXTRACTIVE INDUSTRIES LOCAL LAW**

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***LOCAL GOVERNMENT ACT 1995***

**SHIRE OF TRAYNING**

**EXTRACTIVE INDUSTRIES LOCAL LAW**

Under the powers conferred by the Local Government Act 1995 and by all other powers, the local government of the Shire of Trayning resolved to make the following local laws on the twenty-first day of March 2001.

**PART 1 - PRELIMINARY**

**Definitions**

- 1.1 In this local law, unless the context otherwise requires –
- “Act” means the *Local Government Act 1995*;
  - “carry on an extractive industry” means quarrying and excavating for stone, gravel, sand and other material;
  - “CEO” means the Chief Executive Officer of the local government;
  - “district” means the district of the local government;
  - “excavation” includes quarry;
  - “licence” means a licence issued under this local law;
  - “licensee” means the person named in the licence as the licensee;
  - “local government” means the Shire of Trayning;
  - “person” does not include the local government;
  - “secured sum” means the sum required to be paid or the amount of a bond, guarantee or other security under clause 5.1;
  - “site” means the land specified by the local government in a licence.

**Application**

- 1.2 (1) The provisions of this local law –
- (a) subject to paragraphs (b), (c), (d) and (e);
    - (i) apply and have force and effect throughout the whole of the district; and
    - (ii) apply to every excavation whether commenced prior to or following the coming into operation of this local law;
  - (b) do not apply to the extraction of minerals under the *Mining Act 1978*;
  - (c) do not apply to the carrying on of an extractive industry on Crown land;
  - (d) do not apply to the carrying on of an extractive industry on land by the owner or occupier of that land for use on that land; and
  - (e) do not affect the validity of any licence issued under the local law repealed by clause 1.3 of this local law if that licence is currently in force at the date of gazettal of this local law.
- (2) In subclause (1)(d) land includes adjoining lots or locations in the same occupation or ownership of the owner or occupier referred to in subclause (1)(d).

**Repeal**

- 1.3 The local laws of the Shire of Trayning Relating to Extractive Industries published in the Government Gazette of 4 October 1972 are repealed.

### **PART 2 – LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY**

#### **Extractive Industries Prohibited Without Licence**

2.1.1 A person must not carry on an extractive industry –

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

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

#### **Applicant To Advertise Proposal**

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

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

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

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

#### **Application For Licence**

2.3 (1) Subject to subclause (3), a person seeking the issue of a licence in respect of any land shall apply in the form determined by the local government from time to time and shall forward the application duly completed and signed by both the applicant and the owner of the land to the CEO together with –

- (a) 3 copies of a plan of the excavation site to a scale of between 1:500 and 1:2000 showing –
  - (i) the existing and proposed land contours based on the Australian Height Datum and plotted at 1 metre contour intervals;
  - (ii) the land on which the excavation site is to be located;
  - (iii) the external surface dimensions of the land;
  - (iv) the location and depth of the existing and proposed excavation of the land;

- (v) the location of existing and proposed thoroughfares or other means of vehicle access to and egress from the land and to public thoroughfares in the vicinity of the land;
  - (vi) the location of buildings, treatment plant, tanks and other improvements and developments existing on, approved for or proposed in respect of the land;
  - (vii) the location of existing power lines, telephone cables and any associated poles or pylons, sewers, pipelines, reserves, bridges, railway lines and registered grants of easement or other encumbrances over, on, under or adjacent to or in the vicinity of the land;
  - (viii) the location of all existing dams, watercourses, drains or sumps on or adjacent to the land;
  - (ix) the location and description of existing and proposed fences, gates and warning signs around the land; and
  - (x) the location of the areas proposed to be used for stockpiling excavated material, treated material, overburden and soil storage on the land and elsewhere;
- (b) 3 copies of a works and excavation programme containing -
- (i) the nature and estimated duration of the proposed excavation for which the licence is applied;
  - (ii) the stages and the timing of the stages in which it is proposed to carry out the excavation;
  - (iii) details of the methods to be employed in the proposed excavation and a description of any on-site processing works;
  - (iv) details of the depth and extent of the existing and proposed excavation of the site;
  - (v) an estimate of the depth of and description of the nature and quantity of the overburden to be removed;
  - (vi) a description of the methods by which existing vegetation is to be cleared and topsoil and overburden removed or stockpiled;
  - (vii) a description of the means of access to the excavation site and the types of thoroughfares to be constructed;
  - (viii) details of the proposed number and size of trucks entering and leaving the site each day and the route or routes to be taken by those vehicles;
  - (ix) a description of any proposed buildings, water supply, treatment plant, tanks and other improvements;
  - (x) details of drainage conditions applicable to the land and methods by which the excavation site is to be kept drained;
  - (xi) a description of the measures to be taken to minimise sand drift, dust nuisance, erosion, watercourse siltation and dangers to the general public;
  - (xii) a description of the measures to be taken to comply with the Environmental Protection (Noise) Regulations 1997;
  - (xiii) a description of the existing site environment and a report on the anticipated effect that the proposed excavation will have on the environment in the vicinity of the land;
  - (xiv) details of the nature of existing vegetation, shrubs and trees and a description of measures to be taken to minimise the destruction of existing vegetation; and
  - (xv) a description of the measures to be taken in screening the excavation site, or otherwise minimising adverse visual impacts, from nearby thoroughfares or other areas;
- (c) 3 copies of a rehabilitation and decommissioning programme indicating -
- (i) the objectives of the programme, having due regard to the nature of the surrounding area and the proposed end-use of the excavation site;

- (ii) whether restoration and reinstatement of the excavation site is to be undertaken progressively or upon completion of excavation operations;
  - (iii) how any face is to be made safe and batters sloped;
  - (iv) the method by which topsoil is to be replaced and revegetated;
  - (v) the numbers and types of trees and shrubs to be planted and other landscaping features to be developed;
  - (vi) how rehabilitated areas are to be maintained; and
  - (vii) the programme for the removal of buildings, plant, waste and final site clean up;
  - (d) evidence that a datum peg has been established on the land related to a point approved by the local government on the surface of a constructed public thoroughfare or such other land in the vicinity;
  - (e) a certificate from a licensed surveyor certifying the correctness of -
    - (i) the plan referred to in paragraph (a); and
    - (ii) the datum peg and related point referred to in paragraph (d);
  - (f) evidence that the requirements of clause 2.2(1) and (2) have been carried out;
  - (g) copies of all land use planning approvals required under any planning legislation;
  - (h) copies of any environmental approval required under any environmental legislation;
  - (i) copies of any geotechnical information relating to the excavation site;
  - (j) the consent in writing to the application from the owner of the excavation site;
  - (k) evidence that a notice of clearing has been given to the Commissioner of Soil and Land Conservation if that is required under regulation 4 of the *Soil and Land Conservation Regulations 1992*;
  - (l) any other information that the local government may reasonably require; and
  - (m) the licence application fee specified by the local government from time to time.
- (2) All survey data supplied by an applicant for the purpose of sub clause (1) shall comply with Australian Height Datum and Australian Map Grid standards.
- (3) The local government may exempt a person making application for a licence under subclause (1) from providing any of the data otherwise required under subclause (1), if, in the opinion of the local government, the location and size of the proposed excavation are such that no significant adverse environmental affects will result therefrom.

### PART 3 - DETERMINATION OF APPLICATION

#### Determination Of Application

- 3.1 (1) The local government may refuse to consider an application for a licence that does not comply with the requirements of clause 2.3, and in any event shall refuse an application for a licence where planning approval for an extractive industry use of the land has not first been obtained.
- (2) The local government may, in respect of an application for a licence -
- (a) refuse the application; or
  - (b) approve the application -
    - (i) over the whole or part of the land in respect of which the application is made; and
    - (ii) on such terms and conditions, if any, as it sees fit.
- (3) Where the local government approves an application for a licence, it shall -
- (a) determine the licence period, not exceeding 21 years from the date of issue; and
  - (b) approve the issue of a licence in the form determined by the local government from time to time.
- (4) Where the local government approves the issue of a licence, the CEO upon receipt by the local government of -

- (a) payment of the annual licence fee, or the relevant proportion of the annual licence fee to 31st December next, determined by the local government from time to time;
- (b) payment of the secured sum if any, imposed under clause 5.1;
- (c) the documents, if any, executed to the satisfaction of the CEO, under clause 5.1; and
- (d) a copy of the public liability insurance policy required under clause 7.1(1) shall issue the licence to the applicant.

(5) Without limiting subclause (2), the local government may impose conditions in respect of the following matters -

- a) the orientation of the excavation to reduce visibility from other land;
- b) the appropriate siting of access thoroughfares, buildings and plant;
- c) the stockpiling of material;
- d) the hours during which any excavation work may be carried out;
- e) the hours during which any processing plant associated with, or located on, the site may be operated;
- f) requiring all crushing and treatment plant to be enclosed within suitable buildings to minimise the emission of noise, dust, vapour and general nuisance to the satisfaction of the local government;
- g) the depths below which a person shall not excavate;
- h) distances from adjoining land or roads within which a person must not excavate;
- i) the safety of persons employed at or visiting the excavation site;
- j) the control of dust and wind-blown material;
- k) the planting, care and maintenance of trees, shrubs and other landscaping features during the time in which the extractive industry is carried out in order to effectively screen the area to be excavated and to provide for progressive rehabilitation;
- l) the prevention of the spread of dieback or other disease;
- m) the drainage of the excavation site and the disposal of water;
- n) the restoration and reinstatement of the excavation site, the staging of such works, and the minimising of the destruction of vegetation;
- o) the provision of retaining walls to prevent subsidence of any portion of the excavation or of land abutting the excavation;
- p) requiring the licensee to furnish to the local government a surveyor's certificate each year, prior to the renewal fee being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved excavation programme;
- q) requiring the licensee to enter into an agreement with the local government by which it agrees to pay any extraordinary expenses incurred by the local government in repairing damage caused to thoroughfares in the district by heavy or extraordinary traffic conducted by or on behalf of the licensee under the licence;
- r) requiring the licensee to enter into an agreement with the local government in respect of any condition or conditions imposed under this local law; and
- s) any other matter for properly regulating the carrying on of an extractive industry.

### **Payment Of Annual Licence Fee**

3.2 On or before 31 December in each year, a licensee shall pay to the local government the annual licence fee determined by the local government from time to time.

### PART 4 - TRANSFER, CANCELLATION AND RENEWAL OF LICENCE

#### Transfer Of Licence

- 4.1 (1) An application for the transfer of a licence shall –
- be made in writing;
  - be signed by the licensee and the proposed transferee of the licence;
  - be accompanied by the current licence;
  - be accompanied by the consent in writing to the transfer from the owner of the excavation site;
  - include any information that the local government may reasonably require; and
  - be forwarded to the CEO together with the fee determined by the local government from time to time.
- (2) Upon receipt of any application for the transfer of a licence, the local government may –
- refuse the application; or
  - approve the application on such terms and conditions, if any, as it sees fit.
- (3) Where the local government approves an application for the transfer of a licence, the local government shall transfer the licence by an endorsement on the licence in the form determined by the local government from time to time, signed by the CEO.
- (4) Where the local government approves the transfer of a licence it shall not be required to refund any part of the fees paid by the former licensee in respect of the transferred licence.

#### Cancellation Of Licence

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

#### Renewal Of Licence

- 4.3 (1) A licensee who wishes to renew a licence must apply in writing to the local government at least 45 days before the date of expiry of the licence and shall submit with the application for renewal –
- the fee determined by the local government from time to time;
  - a copy of the current licence;
  - a plan showing the contours of the excavation carried out to the date of that application;
  - details of the works, excavation and rehabilitation stages reached and of any changes or proposed changes with respect to any of the things referred to in clauses 2.3(1) (b) and (c); and



- (e) any other things referred to in clauses 2.3 and 3.1.
- (2) The local government may waive any of the requirements specified in clause 4.3 (1) (d) or (e).
- (3) If –
  - (a) an application to renew a licence is in relation to land in respect of which the current licence was issued less than 12 months prior to the date from which the new licence if granted would apply; and
  - (b) the methods to be employed in the proposed land excavation are identical to those being employed at the date of the application,

then the applicant shall not be obliged, unless otherwise required by the local government to submit details of any of the things referred to in clauses 2.3 and 3.1.

- (4) Upon receipt of an application for the renewal of a licence, the local government may –
  - (a) refuse the application; or
  - (b) approve the application on such terms and conditions, if any, as it sees fit.

### **PART 5 - SECURED SUM AND APPLICATION THEREOF**

#### **Security For Restoration And Reinstatement**

5.1 (1) For the purpose of ensuring that an excavation site is properly restored or reinstated, the local government may require that –

- (a) as a condition of a licence; or
- (b) before the issue of a licence,  
the licensee shall give to the local government a bond, bank guarantee or other security, of a kind and in a form acceptable to the local government, in or for a sum determined by the local government from time to time.

(2) A bond required under subclause (1) is to be paid into a fund established by the local government for the purposes of this clause.

#### **Use By The Local Government Of Secured Sum**

5.2 (1) If a licensee fails to carry out or complete the restoration and reinstatement works required by the licence conditions either –

- (a) within the time specified in those conditions; or
- (b) where no such time has been specified, within 60 days of the completion of the excavation or portion of the excavation specified in the licence conditions, then; subject to the local government giving the licensee 14 days notice of its intention to do so –
- (c) the local government may carry out or cause to be carried out the required restoration and reinstatement work or so much of that work as remains undone; and
- (d) the licensee shall pay to the local government on demand all costs incurred by the local government or which the local government may be required to pay under this clause.

(2) The local government may apply the proceeds of any bond, bank guarantee or other security provided by the licensee under clause 5.1 towards its costs under this clause.

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

### PART 6 – LIMITATIONS, OBLIGATIONS OF THE LICENSEE AND PROHIBITIONS

#### Limits On Excavation Near Boundary

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

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

Penalty \$2,000

#### Obligations Of The Licensee

6.2 A licensee shall -

- (a) where the local government so requires, securely fence the excavation to a standard determined by the local government and keep the gateways locked when not actually in use in order to prevent unauthorised entry;
- (b) erect and maintain warning signs along each of the boundaries of the area excavated under the licence so that each sign -
  - (i) is not more than 200 metres apart;
  - (ii) is not less than 1.8 metres high and not less than 1 metre wide; and
  - (iii) bears the words “DANGER EXCAVATIONS KEEP OUT”;
- (c) except where the local government approves otherwise, drain and keep drained to the local government’s satisfaction any excavation to which the licence applies so as to prevent the accumulation of water;
- (d) restore and reinstate the excavation site in accordance with the terms and conditions of the licence, the site plans and the works and excavation programme approved by the local government;
- (e) take all reasonable steps to prevent the emission of dust, noise, vibration and other forms of nuisance from the excavation site; and
- (f) otherwise comply with the conditions imposed by the local government in accordance with clause 3.1.

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

#### Prohibitions

6.3 A licence shall not -

- (a) remove any trees or shrubs within 40 metres (or such lesser distance as may be allowed, in writing, by the local government) of the boundary of any thoroughfare on land in respect of which a licence has been granted, except for the purpose of constructing access thoroughfares, erecting buildings or installing plant for use in connection with the excavation and then only with the express approval of the local government and subject to any conditions which the local government may impose in accordance with clause 3.1;
- (b) store, or permit to be stored, any explosives or explosive devices on the site to which the licence applies other than with the approval of the local government and the Department of Minerals and Energy; or
- (c) fill or excavate, other than in accordance with the terms and conditions of the licence, the site plans and the works and excavation programme approved by the local government.

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

### **Blasting**

6.4 (1) A person shall not carry out or permit to be carried out any blasting in the course of excavating unless –

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

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

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

Penalty \$2,000

## **PART 7 - MISCELLANEOUS PROVISIONS**

### **Public Liability**

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

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

### **Mines Safety and Inspection Act and Environmental Protection Act**

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

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

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

### Notice Of Cessation Of Operations

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

(a) temporarily for a period in excess of 12 months; or

(b) permanently,

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

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

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

### Works To Be Carried Out On Cessation Of Operations

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

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

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

**PART 8 - OBJECTIONS & APPEALS**

- 8.1 When the local government makes a decision as to whether it will -
- a) grant a person a licence under this local law; or
  - b) renew, vary, or cancel a licence that a person has under this local law,
- the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Local Government (Functions and General) Regulations 1996 shall apply to that decision.

**PART 9 – MODIFIED PENALTIES**

- 9.1 An offence against a clause specified in the Schedule is a prescribed offence for the purposes of section 9.16(1) of the Act.
- 9.2 The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in the Schedule.

**Forms**

- 9.3 For the purposes of this local law –
- (a) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
  - (b) the form of the notice sent under section 9.20 of the Act withdrawing an infringement notice is that of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

## SCHEDULE

## PREScribed OFFENCES

CLAUSe	DESCRIPTION	MODIFIED PENALTY \$
2.1	Carry on extractive Industry without licence or in breach of terms and conditions	300
6.1	Excavate near boundary	200
6.2(a)	Gateways not kept locked where required	300
6.2(b)	Warning signs not erected or maintained as required	300
6.2(c)	Excavation not drained as required	300
6.3(a)	Remove trees or shrubs near boundary without approval	250
6.3(b)	Store without required approval explosives or explosive devices	300
6.3(c)	Fill or excavate in breach of licence	300
6.4(1)(a)	Blasting without approval of the local government	200
6.4(1)(b)	Blasting outside times authorised	300
6.4(1)(d)	Blasting in breach of conditions imposed by the local government	300
6.4(2)	Blasting without approval on Saturday, Sunday or public holiday	200

Dated this ..... day of ..... 2000.

The Common Seal of )  
The Shire of Trayning )  
was affixed in the presence of: )

.....  
T R Lamond, President

.....  
G M Peddie, CEO

LOCAL GOVERNMENT ACT 1995

**PARKING AND PARKING FACILITIES LOCAL LAW**

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## LOCAL GOVERNMENT ACT 1995

### SHIRE OF TRAYNING

#### Parking And Parking Facilities Local Law

Under the powers conferred by the *Local Government Act 1995* and under all other powers, the Council of the Shire of Trayning resolved to make the following Local Law on the twenty-first day of March 2001.

### PART 1 - DEFINITION AND OPERATION

#### 1.1 Commencement

This Local Law will come into operation on the fourteenth day after the day on which it is published in the Government Gazette.

#### 1.2 Repeal

The Shire of Trayning local laws relating to Parking Facilities published in the Government Gazette on 13<sup>th</sup> November 1992, are repealed.

#### 1.3 Interpretation

(1) In this Local Law unless the context otherwise requires:

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

“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;

“authorized vehicle” means a vehicle authorized by the local government, Chief Executive Officer, Authorized Person or by any written law to park on a thoroughfare or parking facility;

“bicycle” means any wheeled vehicle that is designed to be propelled solely by human power;

“bus” means an omnibus as defined by the Road Traffic Act;

“bus embayment” has the meaning given to it in the Code;

“caravan” means a vehicle that is fitted or designed to allow human habitation and which is drawn by another vehicle, or which is capable of self-propulsion;

“carriageway” means a portion of thoroughfare that is improved, designed or ordinarily used for vehicles and includes the shoulders and areas including embayments at the side or centre of the carriageway, used for the parking of vehicles; and where a thoroughfare has two or more of those portions divided by a median strip, the expression means each of those portions, separately;

“centre” in relation to a carriageway, means a line or a series of lines, marks or other indications placed at, or near, the middle of the carriageway or, in the absence of any such lines, marks or other indications, the middle of the main travelled portion of the carriageway;

“children’s crossing” has the meaning given to it in the Code;

“CEO” means the Chief Executive Officer of the local government;

## Agenda Attachment 9.3.1

“Code” means the *Road Traffic Code 1975*;

“commercial vehicle” means a motor vehicle constructed for the conveyance of goods or merchandise, or for the conveyance of materials used in any trade, business, industry or work whatsoever, other than a motor vehicle for the conveyance of passengers, and includes any motor vehicle that is designed primarily for the carriage of persons, but which has been fitted or adapted for the conveyance of the goods, merchandise or materials referred to, and is in fact used for that purpose;

“district” means the district of the local government;

“driver” means any person driving or in control of a vehicle;

“emergency vehicle” has the meaning given to it in the Code;

“footpath” includes every footpath, pedestrian access way or other place -

- (a) intended for the use of pedestrians only, or in the case of a dual use path, for the use of pedestrians and bicyclists only; or
- (b) habitually used by pedestrians and not by vehicles or, in the case of a dual use path, by pedestrians and bicyclists and not by vehicles other than bicycles;

“Loading Zone” means a parking stall which is set aside for use by commercial vehicles if there is a sign referable to that stall marked ‘Loading Zone’;

“local government” means the Shire of Trayning;

“median strip” has the meaning given to it in the Code;

“motorcycle” means a motor vehicle that has two wheels or, where a sidecar is attached, three wheels;

“motor vehicle” means a self-propelled vehicle that is not operated on rails; and the expression includes a trailer, semi-trailer or caravan while attached to a motor vehicle, but does not include a power assisted pedal cycle;

“no parking area” means a portion of a carriageway that lie -

- (a) between two consecutive signs inscribed with the words “No Parking” or with an equivalent symbol depicting this purpose and each with an arrow pointing generally towards the other of them; or
- (b) between a sign inscribed with the words “No Parking” or with an equivalent symbol depicting this purpose, and the end of the carriageway or an area in which parking is prohibited and that lies in the general direction indicated by an arrow inscribed on the sign;

“occupier” has the meaning given to it in the Act;

“owner” where used in relation to a vehicle, means a person who is the registered holder of the requisite vehicle licence under the Road Traffic Act in respect of that vehicle, or if the vehicle is not licensed under that Act, the person who owns the vehicle or is entitled to its possession; and where used in relation to land has the meaning given to it by the Act;

“park”, in relation to a vehicle, means to permit a vehicle, whether occupied or not by any person, to remain stationary for any period of time except for the purpose of –

- (a) avoiding conflict with other traffic; or
- (b) complying with the provisions of any law when the vehicle is being driven;

“parking area” means a portion of a carriageway -

## Agenda Attachment 9.3.1

- (a) between two consecutive signs inscribed with the word “Parking” or with an equivalent symbol depicting this purpose and each with an arrow pointing generally towards the other of them; or
- (b) extending from a sign inscribed with the word “Parking” or with an equivalent symbol depicting this purpose in the general direction indicated by the arrow inscribed on the sign, to any other sign inscribed with the words “No Parking” or with an equivalent symbol depicting this purpose, or to the end of the carriageway or an area in which the parking of vehicles is prohibited,

and is on that side of the carriageway of the thoroughfare nearest the sign;

“parking facilities” includes land, buildings, shelters, parking stalls and other facilities open to the public generally for the parking of vehicles, and signs, notices and facilities used in connection with the parking of vehicles;

“parking region” means the area described in the First Schedule;

“parking stall” means a section or part of a thoroughfare or of a parking station which is marked or defined by painted lines, metallic studs, coloured bricks or pavers or similar devices for the purpose of indicating where a vehicle may be parked;

“parking station” means any land, or structure provided for the purpose of accommodating vehicles;

“pedestrian crossing” has the meaning given to it in the Code;

“public place” means any place to which the public has access whether or not that place is on private property;

“reserve” means any land –

- (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;

“Road Traffic Act” means the *Road Traffic Act 1974*;

“Schedule” means a Schedule to this Local Law;

“sign” includes a traffic sign, inscription, mark, structure or device approved by the local government on which may be shown words, numbers, expressions or symbols, and which is placed on or near a thoroughfare or within a parking station or reserve for the purpose of prohibiting, regulating, guiding, directing or restricting the parking of vehicles;

“special purpose vehicle” means a public utility service truck, a tow truck, a vehicle being used for official duties by a member of the Police Service, a motor breakdown service vehicle or a vehicle being used by a government authority or a local government in connection with its functions, but does not include an emergency vehicle;

“symbol” includes any symbol specified by Australian Standard 1742.11-1989 and any symbol specified from time to time by Standards Australia for use in the regulation of parking and any reference to the wording of any sign in this Local Law shall be also deemed to include a reference to the corresponding symbol;

“taxi” has the same meaning as “taxi-car” in section 47Z of the *Transport Co-ordination Act 1966*;

“thoroughfare” has the meaning given to it in the Act;

“trailer” means any vehicle without motive power of its own, designed for attachment to a motor vehicle for the purpose of being towed, but does not include the rear portion of an articulated vehicle, or a side car;

“vehicle” includes every conveyance not being a train, vessel or aircraft, and every object capable of being propelled or drawn on wheels by any means; and

“verge” means the portion of a thoroughfare which lies between the boundary of a carriageway and the adjacent property line but does not include a footpath.

- (2) For the purposes of the application of the definitions “no parking area” and “parking area” an arrow inscribed on a traffic sign erected at an angle to the boundary of the carriageway is deemed to be pointing in the direction in which it would point, if the signs were turned at an angle of less than 90 degrees until parallel with the boundary.
- (3) Unless the context otherwise requires, where a term is used, but not defined, in this Local Law, and that term is defined in the Road Traffic Act or in the Code, then the term shall have the meaning given to it in that Act or the Code.

### 1.4 Application and pre-existing signs

- (1) Subject to subclause (2), this Local Law applies to the parking region.
- (2) This Local Law does not apply to a parking facility or a parking station that is not occupied by the local government, unless the local government and the owner or occupier of that facility or station have agreed in writing that this Local Law will apply to that facility or station.
- (3) The agreement referred to in subclause (2) may be made on such terms and conditions as the parties may agree.
- (4) Where a parking facility or a parking station is identified in the Fourth Schedule, then the facility or station shall be deemed to be a parking station to which this Local law applies and it shall not be necessary to prove that it is the subject of an agreement referred to in subclause (2).
- (5) A sign that -
  - (a) was erected by the local government or the Commissioner of Main Roads prior to the coming into operation of this Local Law; and
  - (b) relates to the parking of vehicles within the parking region,shall be deemed for the purposes of this Local Law to have been erected by the local government under the authority of this Local Law.
- (6) An inscription or symbol on a sign referred to in subclause (5) operates and has effect according to its tenor, and where the inscription or symbol relates to the standing of vehicles, it shall be deemed for the purposes of this Local Law to operate and have effect as if it related to the parking of vehicles.

### 1.5 Classes of vehicles

For the purpose of this Local Law, vehicles are divided into classes as follows -

- (a) buses;
- (b) commercial vehicles;
- (c) motorcycles and bicycles;
- (d) taxis; and
- (e) all other vehicles.

### 1.6 Part of thoroughfare to which sign applies

Where under this Local Law the parking of vehicles in a thoroughfare is controlled by a sign, the sign shall be read as applying to that part of the thoroughfare which -

- (a) lies beyond the sign;
- (b) lies between the sign and the next sign beyond that sign; and
- (c) is on that side of the thoroughfare nearest to the sign.

## PART 2 - PARKING STALLS AND PARKING STATIONS

### 2.1 Determination of parking stalls and parking stations

The local government may by resolution constitute, determine and vary and also indicate by signs -

- (a) parking stalls;
- (b) parking stations;
- (c) permitted time and conditions of parking in parking stalls and parking stations which may vary with the locality;
- (d) permitted classes of vehicles which may park in parking stalls and parking stations;
- (e) permitted classes of persons who may park in specified parking stalls or parking stations; and
- (f) the manner of parking in parking stalls and parking stations.

### 2.2 Vehicles to be within parking stall on thoroughfare

- (1) Subject to subclause (2), a person shall not park a vehicle in a parking stall in a thoroughfare otherwise than -
  - (a) parallel to and as close to the kerb as is practicable;
  - (b) wholly within the stall; and
  - (c) headed in the direction of the movement of traffic on the side of the thoroughfare in which the stall is situated.
- (2) Where a parking stall in a thoroughfare is set out otherwise than parallel to the kerb, then a person must park a vehicle in that stall wholly within it.

### 2.3 Vehicles to be within parking stall in parking station

Unless otherwise directed by an Authorized Person, a person shall not park a vehicle in a parking station otherwise than wholly within a parking stall.

### 2.4 Parking prohibitions and restrictions

- (1) A person shall not -
  - (a) park a vehicle so as to obstruct an entrance to, or an exit from a parking station, or an access way within a parking station;
  - (b) except with the permission of the local government or an Authorized Person park a vehicle on any part of a parking station contrary to a sign referable to that part;
  - (c) permit a vehicle to park on any part of a parking station, if an Authorized Person directs the driver of such vehicle to move the vehicle; or
  - (d) park or attempt to park a vehicle in a parking stall in which another vehicle is parked but this paragraph does not prevent the parking of a motorcycle and a bicycle together in a stall marked "M/C", if the bicycle is parked in accordance with subclause (2).
- (2) No person shall park any bicycle -
  - (a) in a parking stall other than in a stall marked "M/C"; and
  - (b) in such stall other than against the kerb.

### PART 3 - PARKING GENERALLY

#### 3.1 Prohibition and regulation of parking by signs

The local government may by resolution prohibit or regulate by signs or otherwise the parking of any vehicle or class of vehicles in any part of the parking region but must do so consistently with the provisions of this Local Law.

#### 3.2 Restrictions on parking in particular areas

- (1) A person shall not park a vehicle in a thoroughfare or part of a thoroughfare, or part of a parking station -
  - (a) if by a sign it is set apart for the parking of vehicles of a different class;
  - (b) if by a sign it is set apart for the parking of vehicles by persons of a different class; or
  - (c) during any period when the parking of vehicles is prohibited by a sign.
- (2) A person shall not park a vehicle -
  - (a) in a no parking area;
  - (b) in a parking area, except in accordance with both the signs associated with the parking area and with this Local Law;
  - (c) in a stall marked "M/C" unless it is a motorcycle without a sidecar or a trailer, or it is a bicycle.
- (3) A person shall not park a motorcycle without a sidecar or a trailer, or a bicycle in a parking stall unless the stall is marked "M/C".
- (4) A person shall not, without the prior permission of the local government, the CEO, or an Authorized Person, park a vehicle in an area designated by a sign stating "Authorized Vehicles Only".
- (5) In a Loading Zone, a person shall not -
  - (a) park a vehicle other than a commercial vehicle which is being loaded or unloaded with goods; or
  - (b) park a commercial vehicle which is being loaded or unloaded with goods for more than 30 minutes.
- (6) In paragraph (b) of subclause (5) "goods" means an article or collection of articles weighing at least 13.6kg and of which the cubic measurement is not less than 0.17m<sup>3</sup>.

#### 3.3 Parking vehicle on a carriageway

A person parking a vehicle on a carriageway shall park it -

- (a) in the case of a two-way carriageway, so that it is as near as practicable to and parallel with, the left boundary of the carriageway and headed in the direction of the movement of traffic on the side of the thoroughfare on which the vehicle is parked;
- (b) in the case of a one-way carriageway, so that it is as near as practicable to and parallel with either boundary of the carriageway and headed in the direction of the movement of traffic on the side of the thoroughfare on which the vehicle is parked;
- (c) so that at least 3 metres of the width of the carriageway lies between the vehicle and the farther boundary of the carriageway, or between the vehicle and a vehicle parked on the farther side of the carriageway;
- (d) so that it is not less than 1.2 metres from any other vehicle, except a motorcycle without a trailer, or a bicycle parked in accordance with this Local Law;
- (e) so that it does not obstruct any vehicle on the carriageway; and
- (f) so that it is entirely within the confines of any parking stall marked on the carriageway.

#### 3.4 Vehicle to be wholly within parking area

A person shall not park a vehicle partly within and partly outside a parking area.

### 3.5 When parallel and right-angled parking apply

Where a traffic sign associated with a parking area is not inscribed with the words “angle parking” (or with an equivalent symbol depicting this purpose), then unless a sign associated with the parking area indicates or marks on the carriageway indicate that vehicles have to park in a different position where the parking area is -

- (a) adjacent to the boundary of a carriageway, a person parking a vehicle in the parking area shall park it as near as practicable to and parallel with that boundary; and
- (b) at or near the centre of the carriageway, a person parking a vehicle in that parking area shall park it at approximately right angles to the centre of the carriageway.

### 3.6 When angle parking applies

- (1) This clause does not apply to -
  - (a) a passenger vehicle or a commercial vehicle with a mass including any load, of over three tonnes; or
  - (b) a person parking either a motor cycle without a trailer or a bicycle.
- (2) Where a sign associated with a parking area is inscribed with the words “angle parking” (or with an equivalent symbol depicting this purpose), a person parking a vehicle in the area shall park the vehicle at an angle of approximately 45 degrees to the centre of the carriageway unless otherwise indicated by the inscription on the parking sign or by marks on the carriageway.

### 3.7 General prohibitions on parking

- (1)
  - (a) This clause does not apply to a vehicle parked in a parking stall nor to a bicycle in a bicycle rack.
  - (b) Paragraphs (c), (e) and (g) of subclause (2) do not apply to a vehicle which parks in a bus embayment.
- (2) A person shall not park a vehicle so that any portion of the vehicle is -
  - (a) between any other stationary vehicles and the centre of the carriageway;
  - (b) on or adjacent to a median strip, other than in a parking stall;
  - (c) obstructing a right of way, private drive or carriageway or so close as to deny a vehicle reasonable access to or egress from the right of way, private drive or carriageway;
  - (d) alongside or opposite any excavation, works, hoarding, scaffolding or obstruction on the carriageway, if the vehicle would obstruct traffic;
  - (e) on or within 9 metres of any portion of a carriageway bounded by a traffic island;
  - (f) on any footpath or pedestrian crossing;
  - (g) on a bridge or other elevated structure or within a tunnel or underpass;
  - (h) between the boundaries of a carriageway and any double longitudinal line consisting of two continuous lines or between a double longitudinal line consisting of a continuous line and a broken or dotted line and the boundary of a carriageway nearer to the continuous line, unless there is a distance of at least 3 metres clear between the vehicle and the double longitudinal line;
  - (i) on an intersection, except adjacent to a carriageway boundary that is not broken by an intersecting carriageway;
  - (j) within 1 metre of a fire hydrant or fire plug, or of any sign or mark indicating the existence of a fire hydrant or fire plug;
  - (k) within 3 metres of a public letter pillar box, unless the vehicle is being used for the purposes of collecting postal articles from the pillar box; or
  - (l) within 6 metres of the nearer property line of any thoroughfare intersecting the thoroughfare on the side on which the vehicle is parked.
- (3) A person shall not park a vehicle so that any portion of the vehicle is within 9 metres of the departure side of -



## **Agenda Attachment 9.3.1**

- (a) a sign inscribed with the words “Bus Stop” or “Hail Bus Here” (or with equivalent symbols depicting these purposes) unless the vehicle is a bus stopped to take up or set down passengers;
  - (b) a children’s crossing established on a two-way carriageway; or
  - (c) the nearest rail of a railway level crossing.
- (4) A person shall not park a vehicle so that any portion of the vehicle is within 18 metres of the approach side of -
  - (a) a sign inscribed with the words “Bus Stop” or “Hail Bus Here” (or with equivalent symbols depicting these purposes) unless the vehicle is a bus stopped to take up or set down passengers;
  - (b) a pedestrian crossing or children’s crossing; or
  - (c) the nearest rail of a railway level crossing.

### **3.8 Parking on verges**

- (1) A person shall not park a vehicle so that any portion of it is on a verge.
- (2) Unless in contravention of a sign adjacent and referable to that verge which prohibits the parking of vehicles on that verge, subclause (1) does not apply in the following circumstances—
  - (a) if the person is the occupier of the premises adjacent to that verge, or is a person authorised by the occupier of those premises to park the vehicle so that any portion of it is on the verge, or
  - (b) to a commercial vehicle when it is being loaded or unloaded with reasonable expedition with goods, merchandise or materials, collected from or delivered to the premises adjacent to the portion of the verge on which the commercial vehicle is parked, provided no obstruction is caused to the passage of any vehicle or person using a carriageway or a footpath.

### **3.9 Clause deleted.**

### **3.10 Clause deleted.**

### **3.11 Authorized person may order vehicle on thoroughfare to be moved**

The driver of a vehicle shall not park that vehicle on any part of a thoroughfare in contravention of this Local Law after an Authorized Person has directed the driver to move it.

### **3.12 Authorized person may mark tyres**

- (1) An Authorized Person may mark the tyres of a vehicle parked in a parking facility with chalk or any other non-indelible substance for a purpose connected with or arising out of his or her duties or powers.
- (2) A person shall not remove a mark made by an Authorized Person so that the purpose of the affixing of such a mark is defeated or likely to be defeated.

### 3.13 No movement of vehicles to avoid time limitation

- (1) Where the parking of vehicles in a parking facility is permitted for a limited time, a person shall not move a vehicle within the parking facility so that the total time of parking exceeds the maximum time allowed for parking in the parking facility.
- (2) Where the parking of vehicles in a thoroughfare is permitted for a limited time, a person shall not move a vehicle along that thoroughfare so that the total time of parking exceeds the maximum time permitted, unless the vehicle has first been removed from the thoroughfare for at least two hours.

### 3.14 No parking of vehicles exposed for sale and in other circumstances

A person shall not park a vehicle on any portion of a thoroughfare -

- (a) for the purpose of exposing it for sale;
- (b) if that vehicle is not licensed under the Road Traffic Act;
- (c) if that vehicle is a trailer or a caravan unattached to a motor vehicle; or
- (d) for the purpose of effecting repairs to it, other than the minimum repairs necessary to enable the vehicle to be moved to a place other than a thoroughfare.

### 3.15 Parking on private land

- (1) In this clause a reference to “land” does not include land –
  - (a) which belongs to the local government;
  - (b) of which the local government is the management body under the *Land Administration Act 1997*;
  - (c) which is an “otherwise unvested facility” within section 3.53 of the Act;
  - (d) which is the subject of an agreement referred to in clause 1.4 (2); or
  - (e) which is identified in the Fourth Schedule.
- (2) A person shall not park a vehicle on land without the consent of the owner or occupier of the land on which the vehicle is parked.
- (3) Where the owner or occupier of the land, by a sign referable to that land or otherwise, consents to the parking of vehicles of a specified class or classes on the land for a limited period, a person shall not park a vehicle on the land otherwise than in accordance with the consent.

### 3.16 Parking on reserves

No person other than an employee of the local government in the course of his or her duties or a person authorized by the local government shall drive or park a vehicle upon or over any portion of a reserve other than upon an area specifically set aside for that purpose.

### 3.17 Suspension of parking limitations for urgent, essential or official duties

- (1) Where by a sign the parking of vehicles is permitted for a limited time on a portion of a thoroughfare or parking facility, the local government, the CEO or an Authorized Person may, subject to the Code, permit a person to park a vehicle in that portion of the thoroughfare or parking facility for longer than the permitted time in order that the person may carry out urgent, essential or official duties.
- (2) Where permission is granted under subclause (1), the local government, the CEO or an Authorized Person may prohibit the use by any other vehicle of that portion of the thoroughfare or parking facility to which the permission relates, for the duration of that permission.

### **PART 4 - MISCELLANEOUS**

#### **4.1 Removal of notices on vehicle**

A person, other than the driver of the vehicle or a person acting under the direction of the driver of the vehicle, shall not remove from the vehicle any notice put on the vehicle by an Authorized Person.

#### **4.2 Unauthorized signs and defacing of signs**

A person shall not without the authority of the local government -

- (a) mark, set up or exhibit a sign purporting to be or resembling a sign marked, set up or exhibited by the local government under this Local Law;
- (b) remove, deface or misuse a sign or property, set up or exhibited by the local government under this Local Law or attempt to do any such act; or
- (c) affix a board, sign, placard, notice or other thing to or paint or write upon any part of a sign set up or exhibited by the local government under this Local Law.

#### **4.3 Signs must be complied with**

An inscription or symbol on a sign operates and has effect according to its tenor and a person contravening the direction on a sign commits an offence under this Local Law.

#### **4.4 General provisions about signs**

- (1) A sign marked, erected, set up, established or displayed on or near a thoroughfare is, in the absence of evidence to the contrary presumed to be a sign marked, erected, set up, established or displayed under the authority of this Local Law.
- (2) The first three letters of any day of the week when used on a sign indicate that day of the week.

#### **4.5 Special purpose and emergency vehicles**

Notwithstanding anything to the contrary in this Local Law, the driver of -

- (a) a special purpose vehicle may, only in the course of his or her duties and when it is expedient and safe to do so, stop, or park the vehicle in any place, at any time; and
- (b) an emergency vehicle may, in the course of his or her duties and when it is expedient and safe to do so or where he or she honestly and reasonably believes that it is expedient and safe to do so, stop, or park the vehicle at any place, at any time.

#### **4.6 Vehicles not to obstruct a public place**

- (1) A person shall not leave a vehicle, or any part of a vehicle, in a public place so that it obstructs the use of any part of that public place without the permission of the local government or unless authorized under any written law.
- (2) A person will not contravene subclause (1) where the vehicle is left for a period not exceeding 24 hours.

### **PART 5 - PENALTIES**

#### **5.1 Offences and penalties**

- (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) An offence against any provision of this Local Law is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (3) Any person who commits an offence under this Local Law shall be liable, upon conviction, to a penalty not exceeding \$1,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$100 for each day or part of a day during which the offence has continued.
- (4) The amount appearing in the final column of the Second Schedule directly opposite a clause specified in that Schedule is the modified penalty for an offence against that clause.

#### **5.2 Averment on complaint as to clause 1.4 (2) agreement**

An averment on a complaint that this Local Law applies to a parking facility or a parking station under an agreement referred to in clause 1.4 (2), shall be sufficient proof that this Local Law applies to that facility or station, unless there is proof to the contrary that such an agreement does not exist.

#### **5.3 Form of notices**

For the purposes of this Local Law -

- (a) the form of the notice referred to in section 9.13 of the Act is that of Form 1 in the Third Schedule;
- (b) the form of the infringement notice referred to in section 9.17 of the Act is that of Form 2 in the Third Schedule;
- (c) the form of the infringement notice referred to in section 9.17 of the Act which incorporates the notice referred to in section 9.13 of the Act, is that of Form 3 in the Third Schedule; and
- (d) the form of the notice referred to in section 9.20 of the Act is that of Form 4 in the Third Schedule.

### **FIRST SCHEDULE**

#### **PARKING REGION**

The parking region is the gazetted townsite of Trayning, but excludes the following portions of that townsite -

- (a) the approach and departure prohibition areas of all existing and future traffic control signal installations as determined by the Commissioner of Main Roads;
- (b) prohibition areas applicable to all existing and future bridges and subways as determined by the Commissioner of Main Roads; and
- (c) any thoroughfare which comes under the control of the Commissioner of Main Roads unless the control of parking and parking facilities on that thoroughfare has been delegated by the Commissioner of Main Roads to the local government.

SECOND SCHEDULE

PRESCRIBED OFFENCES

PARKING AND PARKING FACILITIES LOCAL LAW

ITEM NO.	CLAUSE NO.	NATURE OF OFFENCE	MODIFIED PENALTY \$
1	2.4 (1) (a)	Causing obstruction in parking station	45
2	2.4 (1) (b)	Parking contrary to sign in parking station	45
3	2.4 (1) (c)	Parking contrary to directions of Authorized Person	45
4	3.2 (1) (a)	Parking wrong class of vehicle	35
5	3.2 (1) (b)	Parking by persons of a different class	40
6	3.2 (1) (c)	Parking during prohibited period	40
7	3.2 (2) (a)	Parking in no parking area	45
8	3.2 (2) (b)	Parking contrary to signs or limitations	35
9	3.2 (2) (c)	Parking vehicle in motor cycle only area	35
10	3.2(3)	Parking motor cycle in stall not marked "M/C"	35
11	3.2 (5) (a)	Parking in Loading Zone	40
12	3.3 (a)	Fail to park on the left of two-way carriageway	35
13	3.3 (b)	Fail to park on boundary of one-way carriageway	35
14	3.3 (a)+(b)	Parking against the flow of traffic	40
15	3.3 (c)	Parking when distance from farther boundary less than 3 metres	40
16	3.3 (e)	Causing obstruction	45
17	3.7 (2) (a)	Double parking	40
18	3.7 (2) (c)	Denying access to private drive or right of way	40
19	3.7 (2) (d)	Parking beside excavation or obstruction so as to obstruct traffic	45
20	3.7 (2) (e)	Parking within 9 metres of traffic island	40
21	3.7 (2) (f)	Parking on footpath/pedestrian crossing	45
22	3.7 (2) (g)	Parking on bridge or in tunnel	40
23	3.7 (2) (i)	Parking on intersection	40
24	3.7 (2) (l)	Parking within 6 metres of intersection	40
25	3.7 (3) (a)	Parking vehicle within 9 metres of departure side of bus stop	45
26	3.7 (4) (a)	Parking vehicle within 18 metres of approach side of bus stop	45
27	3.7 (4) (b)	Parking vehicle within 18 metres of approach side of pedestrian/children's crossing	45
28	3.8 (1)	Parking vehicle on verge	35
29	3.8 (2) (a) or (b)	Parking on verge contrary to sign	35
30		Deleted	
31		Deleted	
32	3.11	Parking contrary to direction of Authorized Person	45
33	3.14 (c)	Parking a trailer/caravan on a thoroughfare	35
34	3.15 (2)	Parking on land that is not a parking facility without consent	50
35	3.15 (3)	Parking on land not in accordance with consent	35
36	3.16	Driving or parking on reserve	35
37	4.6 (1)	Leaving vehicle so as to obstruct a public place	45
38		All other offences not specified	30

THIRD SCHEDULE

LOCAL GOVERNMENT ACT 1995

FORM 1

PARKING AND PARKING FACILITIES LOCAL LAW  
NOTICE TO OWNER OF VEHICLE INVOLVED IN OFFENCE

Date ..... / ..... / .....

To: (1) .....

of: (2) .....

It is alleged that on ..... / ..... / ..... at (3) .....

at (4) ..... your vehicle:

make: ..... ;

model: ..... ;

registration: ..... ,

was involved in the commission of the following offence - .....

.....

.....

.....

contrary to clause ..... of the **Parking and Parking Facilities Local Law**.

You are required under section 9.13 of the *Local Government Act 1995* to identify the person who was the driver or person in charge of the vehicle at the time when the offence is alleged to have been committed.

If you do not prove otherwise, you will be deemed to have committed the offence unless:

(a) within 28 days after being served with this notice;

(i) you inform the Chief Executive Officer or another authorized officer of the local government as to the identity and address of the person who was the driver or person in charge of the vehicle at the time the offence is alleged to have been committed; and

(ii) you satisfy the Chief Executive Officer that the vehicle had been stolen, or was being unlawfully used, at the time the offence is alleged to have been committed;

or

(b) you were given an infringement notice for the alleged offence and the modified penalty specified in it is paid within 28 days after the notice was given or such further time as is allowed.

(5) .....

(6) .....

Insert:

- (1) Name of owner or "the owner"
- (2) Address of owner (not required if owner not named)
- (3) Time of alleged offence
- (4) Location of alleged offence
- (5) Signature of authorized person
- (6) Name and title of authorized person giving notice

THIRD SCHEDULE

LOCAL GOVERNMENT ACT 1995

FORM 2

PARKING AND PARKING FACILITIES LOCAL LAW  
INFRINGEMENT NOTICE

Serial No .....

Date ..... / ..... / .....

To: (1) .....

of: (2) .....

It is alleged that on ..... / ..... / ..... at (3) .....

at (4) .....

in respect of vehicle:

make: ..... ;

model: ..... ;

registration: ..... ,

you committed the following offence -

.....

.....

.....

contrary to clause ..... of the **Parking and Parking Facilities Local Law**.

The modified penalty for the offence is \$ .....

If you do not wish to have a complaint of the alleged offence heard and determined by a court, the amount of the modified penalty may be paid to an authorized person at (5) ..... within a period of 28 days after the giving of this notice.

If you take no action this infringement notice may be registered with the Fines Enforcement Registry after which your driver's licence or any vehicle licence held by you may be suspended. If the matter is registered with the Registry additional costs will also be payable.

If the above address is not your current address, or if you change your address, it is important that you advise us immediately. Failure to do so may result in your driver's licence or any vehicle licence you hold being suspended without your knowledge.

(6) .....

(7) .....

Insert:

(1) Name of alleged offender or "the owner"

(2) Address of alleged offender

(3) Time of alleged offence

(4) Location of alleged offence

(5) Place where modified penalty may be paid

(6) Signature of authorized person

(7) Name and title of authorized person giving notice



THIRD SCHEDULE

LOCAL GOVERNMENT ACT 1995

FORM 3

PARKING AND PARKING FACILITIES LOCAL LAW  
INFRINGEMENT NOTICE

Serial No .....

Date ..... / ..... / .....

To: (1) .....

of: (2) .....

It is alleged that on ..... / ..... / ..... at (3) .....

at (4) .....

in respect of vehicle:

make: ..... ;

model: ..... ;

registration: ..... ;

you committed the following offence -

.....

.....

.....

contrary to clause ..... of the **Parking and Parking Facilities Local Law**.

The modified penalty for the offence is \$ .....

If you do not wish to have a complaint of the alleged offence heard and determined by a court, the amount of the modified penalty may be paid to an authorized person at (5) ..... within a period of 28 days after the giving of this notice.

Unless within 28 days after being served with this notice -

(a) you pay the modified penalty; or

(b) you:

(i) inform the Chief Executive Officer or another authorized officer of the local government as to the identity and address of the person who was the driver or person in charge of the above vehicle at the time the offence is alleged to have been committed; or

(ii) satisfy the Chief Executive Officer that the above vehicle had been stolen or was being unlawfully used at the time the offence is alleged to have been committed,

you will, in the absence of proof to the contrary, be deemed to have committed the above offence and court proceedings may be instituted against you.

If you take no action this infringement notice may be registered with the Fines Enforcement Registry after which your driver's licence or any vehicle licence held by you may be suspended. If the matter is registered with the Registry additional costs will also be payable.

If the above address is not your current address, or if you change your address, it is important that you advise us immediately. Failure to do so may result in your driver's licence or any vehicle licence you hold being suspended without your knowledge.

(6) .....

(7) .....

Insert:

(1) Name of owner or "the owner"

(2) Address of owner (not required if owner not named)

(3) Time of alleged offence

(4) Location of alleged offence

(5) Place where modified penalty may be paid

(6) Signature of authorized person

(7) Name and title of authorized person giving notice

THIRD SCHEDULE

LOCAL GOVERNMENT ACT 1995

FORM 4

PARKING AND PARKING FACILITIES LOCAL LAW  
WITHDRAWAL OF INFRINGEMENT NOTICE

Serial No .....

Date ..... / ..... / .....

To: (1) .....

of: (2) .....

Infringement Notice No. .... dated ..... / ..... / .....

in respect of vehicle:

make: ..... ;

model: ..... ;

registration: ..... ,

for the alleged offence of .....

.....

.....

.....

has been withdrawn.

The modified penalty of \$ .....

\* has been paid and a refund is enclosed.

\* has not been paid and should not be paid.

\* *delete as appropriate.*

(3) .....

(4) .....

Insert:

(1) Name of alleged offender to whom infringement notice was given or "the owner".

(2) Address of alleged offender.

(3) Signature of authorized person

(4) Name and title of authorized person giving notice

**FOURTH SCHEDULE**

**PARKING AND PARKING FACILITIES LOCAL LAW**

**DEEMED PARKING STATIONS**

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Dated this                      day of                      200                      .

The Common Seal of the Shire of Trayning was affixed in the presence of:

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T R Lamond, President

---

G M Peddie, CEO

## LOCAL GOVERNMENT ACT, 1960.

The Municipality of the Shire of Trayning.

Adoption of Local Government Draft Model By-laws  
Relating to Prevention of Damage to Streets—No. 15.

L.G. 98/68.

IN pursuance of the powers conferred upon it by the abovementioned Act, the Council of the abovementioned Municipality hereby records having resolved, on the 15th day of August, 1966, to adopt without alteration the Local Government By-law—Prevention of Damage to Streets, No. 15, published in the *Government Gazette* on the 18th February, 1965.

Dated this 22nd day of January, 1968.

[L.S.]

P. T. MAIN, J.P.,  
President.R. T. SCOBLE,  
Shire Clerk.

Recommended—

L. A. LOGAN,  
Minister for Local Government.

Approved by His Excellency the Governor in Executive Council this 22nd day of March, 1968.

W. S. LONNIE,  
Clerk of the Council.

## LOCAL GOVERNMENT ACT, 1960.

The Municipality of the Shire of Trayning.

Adoption of Local Government Draft Model By-laws  
Relating to Deposit of Refuse and Litter—No. 16.

L.G. 98/68.

IN pursuance of the powers conferred upon it by the abovementioned Act, the Council of the abovementioned Municipality hereby records having resolved, on the 15th day of August, 1966, to adopt without alteration the Local Government By-law—Deposit of Refuse and Litter, No. 16, published in the *Government Gazette* on the 14th August, 1965.

Dated this 22nd day of January, 1968.

[L.S.]

P. T. MAIN, J.P.,  
President.R. T. SCOBLE,  
Shire Clerk.

Recommended—

L. A. LOGAN,  
Minister for Local Government.

Approved by His Excellency the Governor in Executive Council this 22nd day of March, 1968.

W. S. LONNIE,  
Clerk of the Council.

***Local Government Act 1995***

**Shire of Trayning**

**Public Places and Local Government  
Property Local Law 2015**

Gazetted 12 February 2015, No 25  
Amended in Government Gazette 15 December 2015, No 189

Administrative Copy

**Local Government Act 1995**

**Shire of Trayning**

**Public Places and Local Government Property Local Law 2015**

Under the powers conferred on it by the *Local Government Act 1995* and under all other enabling powers, the Council of the Shire of Trayning resolved on 17 December 2015 to make this local law.

**Part 1 - Preliminary**

**1.1 Title**

This is the *Shire of Trayning Public Places and Local Government Property Local Law 2015*.

**1.2 Commencement**

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

**1.3 Application**

This local law applies throughout the district.

**1.4 Repeal and transitional provisions**

(1) The following local laws are repealed –

(a) The *Shire of Trayning Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law*, published in the *Government Gazette* on 28 September 2001; and

(b) The *Shire of Trayning Local Government Property Local Law* published in the *Government Gazette* on 28 September 2001.

(2) An application for, or the renewal of, a licence, permit or other authorisation made under a repealed local law that has not been finally determined before the commencement day is to be dealt with and determined as if it were an application under this local law.

(3) A licence, permit or other authorisation under a repealed local law that is in force before the commencement day is to be regarded on and after that day as a licence under this local law and may be dealt with accordingly.

**1.5 Definitions**

In this local law -

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

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

**application** means an application for a licence;

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

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

**building** means any building which is local government property and includes any –

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

**building permit** means a permit granted under section 20 of the *Building Act 2011*

**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;

**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;

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

**district** means the district of the local government and includes any area placed under the jurisdiction of the local government under section 22 of the Health Act;

**eating house** means premises which are registered as an eating house under the Health Act or which are the subject of a hotel licence, a special facility licence or a restaurant licence under the Liquor Control Act;

**entertain** means conduct any form of theatrical, artistic, musical, audio or visual performance and includes busk;

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

**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;

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

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

**hire** includes offer to hire and expose for hire;

**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;

**licence** means a licence issued by the local government under this local law;

**licence document** means a licence document issued under this local law;

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

**licensee** means a person who holds a licence;

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

**Liquor Control Act** means the *Liquor Control Act 1988*;

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

**local government property** means anything except a street –

- (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*;

**manager** means the person for the time being employed or engaged by the local government to control and manage a facility which is local government property, and includes the person's assistant or deputy;

**market** means a collection of stalls, stands or displays erected for the purpose of selling or hiring goods or services or carrying out any other transaction;

**nuisance** means any activity, thing, condition, circumstance or state of affairs caused or contributed to by a person which –



## Agenda Attachment 9.3.1

- (a) is injurious or dangerous to the health of another person of normal susceptibility; or
- (b) which has a disturbing effect on the state of reasonable physical, mental or social well being of another person;

**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 6.3(2), and includes any reticulation pipes and sprinklers;

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

**prohibited drug** is given its meaning under section 4 of the *Misuse of Drugs Act 1981*

**proprietor** –

- (a) includes the owner, the occupier and any person having the management or control of any eating house; or
- (b) the holder of a licence granted under the Liquor Control Act where the premises in question is the subject of a hotel licence, a limited hotel licence, special facility licence or a restaurant licence granted under that Act;

**public place** means –

- (a) a street;
- (b) any local government property; or
- (c) a place to which the public have access;

**repealed local law** means a local law repealed under clause 1.4;

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

**sell** includes –

- (a) offer or attempt to sell;
- (b) display for sale;
- (c) send, forward or deliver for sale or on sale;
- (d) barter or exchange;
- (e) dispose, by lot or chance or by auction;
- (f) supply, or offer, agree or attempt to supply –
  - (i) in circumstances which the supplier derives or would be likely to derive a direct or indirect pecuniary benefit; or
  - (ii) gratuitously, but with a view to gaining or maintaining custom or other commercial advantage; or

- (g) authorise, direct, cause or permit to be done any act referred to in this definition;

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

**stall** means a movable or temporarily fixed structure, stand or table in, on or from which goods or services are sold and includes a vehicle;

**street** means any highway, thoroughfare or land used for vehicular or pedestrian traffic, and includes all the land lying between property lines, including the verge and footpath;

**street tree** any tree planted or self sown in the street, of an appropriate species and in an appropriate location, for the purposes of contributing to the streetscape;

**trading** means selling or hiring goods or services and includes the setting up of a stall and conducting business at a stall;

**vehicle** includes –

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

but excludes –

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

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

### 1.6 Interpretation

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

### 1.7 Overriding power to hire and agree

Despite anything to the contrary in this local law, the CEO or an authorised person, on behalf of the local government, may –

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

### 1.8 Agreement for building

Where a person applies for a licence to erect a building on local government property an authorised person, on behalf of the local government, may enter

into an agreement with the licensee in respect of the ownership of the materials in the building.

### **Part 2 - Determinations in respect of local government property**

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

- (1) The local government may make a determination in accordance with clause 2.2 –
  - (a) setting aside specified local government property for the pursuit of all or any of the activities referred to in clause 2.7;
  - (b) prohibiting a person from pursuing all or any of the activities referred to in clause 2.8 on specified local government property;
  - (c) as to the matters in clauses 2.7(2) and 2.8(2); and
  - (d) as to any matter ancillary or necessary to give effect to a determination.
- (2) The determinations in Schedule 1 –
  - (a) are to be taken to have been made in accordance with clause 2.2;
  - (b) may be amended or revoked in accordance with clause 2.6; and
  - (c) have effect on the commencement day.

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

- (1) The CEO or an authorised person is to give local public notice of the Council's 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 –
  - (a) to give local public notice that the proposed determination has effect as a determination on and from the date of publication;

- (b) to amend the proposed determination, in which case subclause (5) is to apply; or
  - (c) not to continue with the proposed determination.
- (4) If submissions are received in accordance with subclause (2)(c), the Council -
  - (a) is to consider those submissions; and
  - (b) is to decide –
    - (i) whether or not to amend the proposed determination; or;
    - (ii) whether or not to continue with the proposed determination.
- (5) If the Council decides to amend the proposed determination, it is to give local public notice –
  - (a) of the effect of the amendments; and
  - (b) that the proposed determination has effect as a determination on and from the date of publication.
- (6) If the Council decides not to amend the proposed determination, it is to give local public notice that the proposed determination has effect as a determination on and from the date of publication.
- (7) A proposed determination is to have effect as a determination on and from the date of publication of the local public notice referred to in subclauses (3), (5) and (6).
- (8) A decision under subclause (3) or (4) is not to be delegated by the Council.

### **2.3 Discretion to erect sign**

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

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

A person must comply with a determination.

### **2.5 Register of determinations**

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

### 2.6 Amendment or revocation of a determination

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

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

- (1) A determination may provide that specified local government property is set aside as an area on which a person may –
  - (a) take, ride or drive a vehicle, or a particular class of vehicle;
  - (b) fly or use a motorised model aeroplane;
  - (c) 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;
  - (d) launch, beach or leave a boat;
  - (e) take or use a boat, or a particular class of boat;
  - (f) play or practise –
    - (i) golf or archery;
    - (ii) pistol or rifle shooting, but subject to the compliance of that person with the *Firearms Act 1973*; or
    - (iii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property; and
  - (g) ride a bicycle, a skateboard, rollerblades, a sandboard or a similar device.
- (2) A determination may specify the extent to which and the manner in which an activity referred to in subclause (1) may be pursued and in particular –
  - (a) the days and times during which the activity may be pursued;
  - (b) that an activity may be pursued on a class of local government property, specified local government property or all local government property;

- (c) that an activity is to be taken to be prohibited on all local government property other than that specified in the determination;
- (d) may limit the activity to a class of vehicles, equipment or things, or may extend it to all vehicles, equipment or things;
- (e) may specify that the activity can be pursued by a class of persons or all persons; and
- (f) may distinguish between different classes of the activity.

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

- (1) A determination may provide that a person is prohibited from pursuing all or any of the following activities on specified local government property –
  - (a) riding a bicycle, a skateboard, rollerblades, a sandboard or a similar device;
  - (b) taking, riding or driving a vehicle on the property or a particular class of vehicle;
  - (c) riding or driving a vehicle of a particular class or any vehicle above a specified speed;
  - (d) taking or using a boat, or a particular class of boat;
  - (e) the playing or practice of –
    - (i) golf, archery, pistol shooting or rifle shooting; or
    - (ii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
  - (f) the playing or practice of any ball game which may cause detriment to the property or any fauna on the property; and
  - (g) the traversing of 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, equipment or things, or all vehicles, 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.

### **2.9 Sign under repealed local law taken to be determination**

- (1) Where a sign erected on local government property has been erected under a repealed 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 - Activities on local government property requiring a licence**

### **3.1 Activities requiring a licence**

- (1) A person must not without a licence –
  - (a) subject to subclause (3) hire local government property;
  - (b) advertise anything by any means on local government property;
  - (c) erect, on local government property a structure for public amusement or for any performance, whether for gain or otherwise;
  - (d) teach, coach or train, for profit, any person in any 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 licence to conduct a function, and where the trading is carried on under and in accordance with the licence; or
    - (ii) by a person who has a licence or permit to carry on trading on local government property under any written law;
  - (g) conduct or set up a market on local government property;
  - (h) 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;
  - (i) conduct a function on local government property ;
  - (j) 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;
  - (k) light a fire on local government property except in a facility provided for that purpose;
  - (l) parachute, hang glide, abseil or base jump from or on to local government property;
  - (m) erect a building or a refuelling site on local government property;
  - (n) make any excavation on or erect or remove any fence on local government property;
  - (o) erect or install any structure above or below ground, which is local government property, for the purpose of supplying any water, power, sewer, communication, television or similar service to a person;
  - (p) conduct or take part in any gambling game or contest or bet, or offer to bet, publicly;
  - (q) erect, install, operate or use any broadcasting, public address system, loudspeaker or other device for the amplification of sound on local government property; or
  - (r) conduct an entertainment event on local government property.
- (2) The CEO or an authorised person may exempt a person from compliance with subclause (1) on the application of that person.
  - (3) The CEO or an authorised person may exempt specified local government property or a class of local government property from the application of subclause (1)(a).

### 3.2 Erecting structures or camping

- (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 must not without a licence –
  - (a) camp on, lodge at or occupy any structure at night for the purpose of sleeping on local government property;



- (b) erect, on local government property, any tent, camp, hut or similar structure; or
- (c) erect, on local government property that is not enclosed, an umbrella or temporary shade structure unless –
  - (i) it is erected for protection from the sun or other elements;
  - (ii) it has an area of no more than 6 metres squared;
  - (iii) it has a height of no less than 2.5 metres;
  - (iv) it is removed by that person –
    - (I) immediately on leaving that local government property; and
    - (II) during daylight on the same day on which it was erected;
  - (v) it is for a private use.
- (4) The maximum period for which the CEO or an authorised person may approve an application for a licence in respect of paragraph (a) or (b) of subclause (3) is that provided in regulation 11(2)(a) of the *Caravan Parks and Camping Grounds Regulations 1997*.

### 3.3 Licence required for possession and consumption of liquor

- (1) A person, on local government property, must 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; and
  - (b) a licence has been obtained for that purpose.
- (2) Subclause (1) does not apply where the liquor is in a sealed container.

## Part 4 - Behaviour on all local government property

### Division 1 - Prohibited behaviour

#### 4.1 Behaviour which interferes with others

A person must not, in or on any local government property, behave in a manner which –

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

### 4.2 Behaviour detrimental to property

(1) A person must 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 including 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, including a plant, a seat provided for the use of any person or a building.

### 4.3 Taking or injuring fauna

(1) A person must 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, fly 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 unless it has been shed or discarded by the fauna in a normal or natural manner.

### 4.4 Flora

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

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

(2) In this clause –

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

### 4.5 Animals

(1) A person must not –

(a) tether any animal to an object or tree on local government property; or

(b) permit any animal to enter upon or into any local government property,

unless authorised by a licence.

(2) In this clause, 'animal' does not include a dog.

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

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

### ***Division 2 - Signs and powers to give directions***

#### **4.7 Signs**

(1) The local government may erect a sign on local government property –

(a) specifying any conditions of use which apply to that property; and

(b) for any other purpose relevant to this local law, including giving notice of a breach of clause 4.4 and substituting a sign for flora that has been removed, damaged or interfered with contrary to clause 4.4.

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

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

#### **4.8 Authorised person to be obeyed**

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

#### **4.9 Refusal of entry and removal**

(1) If the CEO or an authorised person considers that a person has behaved in a manner contrary to the provisions of this Part or reasonably suspects that a person has contravened a provision of a written law, the CEO or authorised person may –

(a) refuse to allow that person to enter local government property; and

(b) if the person is on local government property, direct the person to leave the local government property.

- (2) A person who has been refused entry or who has been directed to leave under subclause (1) must immediately leave the local government property quickly and peaceably.
- (3) If a person fails to comply with subclause (2), the CEO or an authorised person may remove the person, or arrange for the person to be removed, from the local government property.

### 4.10 Disposal of lost property

An article left on any local government property, and not claimed within a period of 3 months, may be disposed of by the CEO or an authorised person:

- (a) If the value of the property reasonably exceeds the amount prescribed by Regulation 30(3) of the *Local Government (Functions and General) Regulations* 1996, using the process section 3.58 of the Act for the sale of the article as if it was property referred to in that section; or
- (b) If otherwise, by donation to a not for profit body registered under the *Associations Incorporations Act 1987*; or
- (c) If the article is of a negligible or little value or likely to be of no interest to a not for profit body, in any manner he or she thinks fit.

## Part 5 - Matters relating to particular local government property

### *Division 1 - Functions and closed property*

#### 5.1 No unauthorised entry to functions

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

#### 5.2 No entry to fenced or closed local government property

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

### *Division 2 - Golf courses*

#### 5.3 Interpretation

In this Division –

**controller** means an authorised person who has been appointed to direct, control and manage a golf course;

**golf course** means that portion of a local government property which set aside by the local government for use as a golf course and includes –

- (a) all tees, fairways, greens, practice tees, practice fairways, practice greens and any driving range; and
- (b) all buildings, structures, fittings, fixtures and equipment on that property.

*Note: under these definitions, the provisions of this Division apply to a 'golf course' on 'local government property', whether operated by the Local government or, for example, by a contractor or lessee.*

### 5.4 Observance of special conditions of play

A person must not be present on a golf course except –

- (a) where the person is a player; or
- (b) with the permission of the controller or an authorised person.

### 5.5 Children under the age of 10 years

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

### ***Division 3 - Toilet blocks and change rooms***

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

- (1) Where a sign on a toilet block or change room specifies that a particular entry of the toilet block or change room is to be used by –
  - (a) females - then a person of the male gender must not use that entry of the toilet block or change room;
  - (b) males - then a person of the female gender must not use that entry of the toilet block or change room; or
  - (c) families - then, where the toilet block or change room is being used by a family, only an immediate member of that family may use that entry of the toilet block or change room.
- (2) Paragraphs (a) and (b) of subclause (1) do not apply to a child, when accompanied by a parent, guardian or caregiver, where the child is –
  - (a) under the age of 8 years; or
  - (b) otherwise permitted by an authorised person to use the relevant entry.

### 5.7 Use of shower or bath facilities

A person may use a shower or bath facility in changerooms only on conditions that –

- (a) the facilities must be used by the person only for the purpose of cleansing, bathing and washing themselves;
- (b) the facilities must not be used for the purpose of laundering of clothing or washing of other articles.

### Part 6 - Activities in streets

#### *Division 1 - General*

#### 6.1 General prohibitions

A person must not –

- (a) plant, or allow to remain, in a street a plant that by virtue of its height, position or density obstructs a reasonable sight line for a driver of any vehicle negotiating or using the street;
- (b) damage a lawn or a garden, or remove any plant or part of a plant from a lawn or a garden, in a street unless –
  - (i) the person is the owner or the occupier of the lot abutting that portion of the street 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) damage, or remove a street tree, or part of a street tree, irrespective of whether it was planted by the owner or occupier of the lot abutting the street or by the local government , unless –
  - (i) the damage to, or removal of, the street tree is authorised by the CEO or an authorised person in writing; or
  - (ii) the person is acting under authority of written law;
- (d) except as permitted by this local law place, or allow to be placed or remain, on a street any thing (except water) that –
  - (i) obstructs the street; or
  - (ii) results in a hazard for any person using the street;
- (e) unless at the direction of the CEO or an authorised person, damage, remove or interfere with any part of a street, or any structure erected on a street, by the local government or a person acting under the authority of a written law; or
- (f) play or participate in any game or sport so as to cause danger to any person or thing or unreasonably impede the movement of vehicles or persons on a street.

### 6.2 Activities allowed with a licence

- (1) A person must not, without a licence –
- (a) dig or otherwise create a trench through or under a kerb or footpath;
  - (b) 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 street as a street;
  - (d) cause any obstruction to a water channel or a water course in a street;
  - (e) throw, place or drain offensive, noxious or dangerous fluid onto a street;
  - (f) damage a street;
  - (g) fell or damage any street tree;
  - (h) fell any tree onto a street;
  - (i) light any fire or burn any thing on a street other than in a stove or fireplace provided for that purpose;
  - (j) 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, on any part of a thoroughfare, any thing such as gravel, stone, flagstone, cement, concrete slabs, blocks, bricks, pebbles, plastic sheeting, kerbing, wood chips, bark or sawdust;
  - (k) provide, erect, install or use in or on any building, structure or land abutting on a street any hoist or other thing for use over the street;
  - (l) on a street use anything or do anything so as to create a nuisance;
  - (m) place or cause to be placed on a street a bulk rubbish container;
  - (n) interfere with the soil of, or anything in, a thoroughfare or take anything from a street;
  - (o) carry on any trading on a street;
  - (p) conduct or set up a market on a street; or

- (q) conduct an entertainment event on a street.
- (2) The CEO or an authorised person may exempt a person from compliance with subclause (1) on the application of that person.

### ***Division 2 - Permissible verge treatments***

#### **6.3 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) A permissible verge treatment is—
  - (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 street in the vicinity of an intersection or bend in the street or using a driveway on land adjacent to the street for access to or from the street;
    - (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;
    - (iii) it does not include a wall or built structure; and
    - (iv) it is not of a thorny, poisonous or hazardous nature; and
  - (c) the installation of an acceptable material.
- (3) In this clause “acceptable material” means any material specified as acceptable for the purpose of this clause in a policy which has effect under Part 10.
- (4) A person must not install or maintain a verge treatment which is not a permissible verge treatment.
- (5) The owner and occupier of the lot abutting a verge treatment referred to in subclause (1) are each to be taken to have installed and maintained that verge treatment for the purposes of this clause and clause 6.4.

#### **6.4 Obligations of owner or occupier**

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

- (a) keep the permissible verge treatment in a good and tidy condition and ensure, where the verge treatment is a garden



or lawn, that a footpath on the verge and a carriageway adjoining the verge is not obstructed by the verge treatment;

- (b) ensure that clear sight visibility is maintained at all times for a person using the abutting thoroughfare in the vicinity of an intersection or bend in a thoroughfare, or using a driveway on land adjacent to the thoroughfare for access to or from the thoroughfare;
- (c) not place any obstruction on or around the verge treatment;
- (d) not disturb a footpath on the verge;
- (e) ensure that the verge treatment does not damage or obstruct a drain, manhole, galley, inspection pit, channel, kerb or tree planted by the local government; and
- (f) ensure that any sprinklers or pipes installed to irrigate a verge treatment –
  - (i) do not protrude above the level of the lawn or verge treatment when not in use;
  - (ii) are not used at such times so as to cause unreasonable inconvenience to pedestrians or other persons; and
  - (iii) do not otherwise present a hazard to pedestrians or other persons.

### 6.5 Transitional provision

- (1) In this clause –

**former provisions** means the provisions of the repealed local laws which permitted certain types of verge treatments, whether with or without the consent of the local government.

- (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.

### 6.6 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 3 - Vehicle crossings***

#### **6.7 Temporary crossings**

- (1) Where it is likely that works on a lot will involve vehicles leaving a street and entering the lot, the person responsible for the works must obtain a licence for the construction of a temporary crossing to protect the existing carriageway, kerb, drains, footpath, existing materials and street trees, where –
  - (a) a crossing does not exist; or
  - (b) a crossing does exist, but the nature of the vehicles and their loads is such that they are likely to cause damage to the crossing.
- (2) The ***person responsible for the works*** in subclause (1) is to be taken to be –
  - (a) the builder named on the building 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 CEO approves an application for a licence for the purpose of subclause (1), the licence is taken to be issued on the condition that until such time as the temporary crossing is removed, the licensee must 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 street.

#### **6.8 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 CEO.
- (2) The CEO 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 street, which may be affected by the removal,

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

### ***Division 4 - Property numbers***

#### **6.9 Assignment of numbers**

- (1) The CEO or an authorised person may assign a number to a lot in the district and may assign another number to the lot instead of that previously assigned.
- (2) In this clause, **number** means a number of a lot with or without an alphabetical suffix indicating the address of a lot by reference to a thoroughfare.

### ***Division 5 - Fencing***

#### **6.10 Public place – Item 4(1) of Division 1, Schedule 3.1 of Act**

Each of the following places is 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 1.5; and
- (b) local government property.

### ***Division 6 - Signs erected by the local government***

#### **6.11 Signs**

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

#### **6.12 Transitional**

Where a sign erected in a street has been erected under a repealed local law then, on and from the commencement day, it is to be taken to be a sign erected under clause 6.11 if –

- (a) the sign specifies a condition of use relating to the street 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***

#### **6.13 No driving on closed thoroughfare**

- (1) A person must not drive or take a vehicle on a closed thoroughfare unless –
  - (a) it is in accordance with any limit or exception specified in the order made under section 3.50 of the Act; or
  - (b) the person has first obtained a licence.
- (2) In this clause –

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

### ***Division 8 - Notices***

#### **6.14 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 street, the CEO or an authorised person may give a written notice to the owner or the occupier of the land abutting 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.

#### **6.15 Notice to remove hazardous plants**

- (1) Where a plant in a garden creates or may create a hazard for any person using a street, the CEO or an authorised person may give a written 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.

#### **6.16 Notice to remove any thing unlawfully placed on street**

Where any thing is placed on a street in contravention of this local law, the CEO or an authorised person may give a written notice –

- (a) to the owner or the occupier of the property which abuts that portion of the street where the thing has been placed; or
- (b) to any other person who may be responsible for the thing being so placed,

requiring the person to remove the thing.

*Note: other provisions relating to notices are set out in Division 1 of Part 10 of this local law.*

### Part 7 – Activities in public places

*Note that –*

1. *Parts 2-5 of this local law regulate activities relating to local government property;*
2. *Part 6 regulates activities in streets (defined to include verges and footpaths); and*
3. *Part 7 regulates activities in public places (which, in addition to any street or local government property, is defined to include any place to which the public have access).*

#### **Division 1 - General provisions**

##### **7.1 Leaving animal or vehicle in public place**

- (1) A person must not leave an animal or a vehicle, or any part of a vehicle, in a public place so that it obstructs the use of any part of that public place, unless that person has first obtained a licence or is authorised to do so under a written law.
- (2) A person does not contravene subclause (1) where the animal is secured or tethered for a period not exceeding 1 hour.
- (3) A person does not contravene subclause (1) where the vehicle is left for a period not exceeding 24 hours.

##### **7.2 Prohibitions relating to animals**

- (1) In subclause (2), **owner** in relation to an animal includes –
  - (a) an owner of it;
  - (b) a person in possession of it;
  - (c) a person who has control of it; and
  - (d) a person who ordinarily occupies the premises where the animal is permitted to stay.
- (2) An owner of an animal must not –
  - (a) allow the animal to enter or remain for any time on any public place except for the use of the public place 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 in a public place.
- (3) An owner of a horse must not lead, ride or drive a horse on a street, unless that person does so under a licence or under the authority of a written law.

- (4) This clause does not apply to a person with a disability where the animal is a guide dog or assistance animal as defined in the Disability Discrimination Act 1992 (Commonwealth) Section 9(2).

### **Part 8 - Licensing**

#### ***Division 1 - Applying for a licence***

##### **8.1 Application for licence**

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

##### **8.2 Decision on application for licence**

- (1) The CEO or an authorised person may –
- (a) approve an application for a licence unconditionally or subject to any conditions; or
  - (b) refuse to approve an application for a licence.
- (2) If the CEO or an authorised person approves an application for a licence, he or she is to issue to the applicant a licence in the form determined by the CEO.
- (3) If the CEO or an authorised person refuses to approve an application for a licence, he or she is to give written notice of that refusal to the applicant.
- (4) The CEO or an authorised person may, at any time, amend a condition of approval and the amended condition takes effect when written notice of it is given to the licensee.

### 8.3 General restrictions on grant of licence

- (1) The CEO or an authorised person must not grant a licence if there are reasonable grounds for believing that the provision of the activity to which the application relates would constitute an unacceptable risk to the safety of the public.
- (2) The CEO or an authorised person must not grant a licence unless the CEO or an authorised person is satisfied that –
  - (a) the applicant is capable of carrying on the activity in accordance with this local law and the terms and conditions of the licence;
  - (b) the public place at which the activity is to be provided is suitable for that purpose;
  - (c) a licence or similar authority granted or issued to the applicant has not been cancelled in the period of 5 years before the application is made; and
  - (d) the applicant is a fit and proper person to carry on the activity.
- (3)

### 8.4 Amendment of licence

- (1) In this clause –

**amend** includes –

  - (a) to impose any new condition; and
  - (b) to change or remove any existing condition.
- (2) The CEO may, by written notice given to the licensee, amend a licence.
- (3) An amendment may be made on application made by the licensee or on the CEO's initiative.
- (4) An amendment will come into effect on the day that written notice is given to the licensee, or some other date as specified in the notice.

### ***Division 2 - Conditions***

### 8.5 Examples of conditions

- (1) Examples of the conditions that the CEO or an authorised person may impose on a licence under clause 8.2(1)(a) or 8.4(2) are conditions relating to -
  - (a) the payment of a fee;
  - (b) compliance with a standard or a policy adopted by the local government;

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- (c) the duration and commencement of the licence;
  - (d) the commencement of the licence 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 licence which may be required by the local government under any written law;
  - (g) the area of the district to which the licence applies;
  - (h) where a licence 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 CEO or an authorised person.
- (2) Examples of the type and content of the conditions on which a licence to hire local government property may be issued include –
- (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 CEO or an authorised person to cancel a booking during the course of an annual or seasonal booking, if the CEO or an authorised person 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.

### 8.6 Imposing conditions under a policy

- (1) In this clause –

**policy** means a local government policy adopted by the Council under section 2.7 of the Act containing conditions subject to which an application for a licence may be approved under clause 8.2.

- (2) Under clause 8.2(1)(a) the CEO or an authorised person may approve an application subject to conditions by reference to a policy.
- (3) The CEO or an authorised person must give to the licensee a copy of the policy or, at the discretion of the CEO or the authorised person, the part of the policy which is relevant to the application for a licence, with the form of licence referred to in clause 8.2(2).
- (4) An application for a licence is not to be taken to have been approved subject to the conditions contained in a policy until the CEO or an authorised person gives the licensee 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 apply to a policy and, for that purpose, a policy is deemed to be information within section 5.94(u)(i) of the Act.

### 8.7 Compliance with conditions

Where an application for a licence has been approved subject to conditions, the licensee must comply with each of those conditions, as amended.

#### ***Division 3 - Duration of licences***

### 8.8 Duration of licence

A licence 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 licence; or
- (b) suspended or cancelled under this Division.

### 8.9 Renewal of licence

- (1) A licensee may apply to the CEO for the renewal of a licence.
- (2) An application for renewal must –
  - (a) be in the form determined by the CEO;
  - (b) be signed by the licensee;
  - (c) provide the information required by the form;

- (d) be forwarded to the CEO no later than 28 days before the expiry of the licence, or within a shorter period that the CEO in a particular case permits; and
  - (e) be accompanied by any fee imposed by the Council under section 6.16 to 6.19 of the Act.
- (3) The provisions of this Part that apply to an application for a licence also apply to an application for the renewal of a licence as though it were an application for a licence.

### 8.10 Transfer of licence

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

### 8.11 Suspension of licence

- (1) The CEO may, subject to clause 8.12, by written notice given to the licensee, suspend a licence if there are reasonable grounds for believing that –
  - (a) the licensee has contravened a term or condition of a licence;
  - (b) the licensee has contravened a provision of this local law; or
  - (c) the continued provision of the activity authorised by the licence constitutes or will constitute an unacceptable risk to the safety of the public.
- (2) The suspension notice must –

- (a) state the day, or the day and time, on or at which the suspension takes effect;
- (b) state the reasons for the CEO's decision to suspend the licence; and
- (c) where appropriate, indicate what steps need to be taken to ensure that there is compliance with the relevant provision, term or condition or that there is no longer a risk as described in subclause (1)(c); and
- (d) inform the licensee that the licensee has a right to apply under the Act for a review of the CEO's decision to suspend the licence.

*Note – Part 9 of this local law deals with objection and review rights.*

### **8.12 Proposed suspension**

- (1) If the CEO proposes to suspend a licence for the reason mentioned in clause 8.11(1)(a), the CEO must give written notice to the licensee of the proposed suspension.
- (2) The notice must –
  - (a) state that the CEO proposes to suspend the licence;
  - (b) state the reasons for the proposed suspension; and
  - (c) inform the licensee that the licensee is entitled to make representation to the CEO in respect of the proposed suspension within 7 days after the day on which the licensee is given the notice.
- (3) In considering whether to suspend the licence, the CEO must have regard to any representations made by the licensee within the period referred to in subclause (2)(c).

### **8.13 Revocation of suspension**

- (1) The CEO must, by written notice given to the licensee revoke the suspension of a licence if the CEO is satisfied that the steps specified in the suspension notice have been taken.
- (2) The CEO may, by written notice given to the licensee, revoke the suspension of the licence if it is appropriate to do so in the circumstances of a particular case.

### **8.14 Period of suspension**

The suspension of a licence has effect on the day, or the day and time, specified in the suspension notice until one of the following happens –

- (a) the suspension is revoked under clause 8.13;
- (b) the licence is cancelled under clause 8.15 or expires; or

- (c) the licence is surrendered in accordance with the provisions of this local law.

### 8.15 Cancellation of licence

A licence may be cancelled by the CEO if -

- (a) the licence was obtained improperly;
- (b) the licensee has persistently or frequently contravened a term or condition of the licence, or a provision of this local law, whether or not the licence is or has been suspended on the grounds of a contravention; or
- (c) there are reasonable grounds for believing that the continued provision of the activity constitutes or would constitute an unacceptable risk to the safety of the public, whether or not the licence has been suspended on the grounds of that risk.

*Note – objection and appeal rights under Part 9 apply to the suspension or cancellation of a licence*

### 8.16 Surrender of licence

A licensee may, at any time by notice in writing to the CEO, surrender the licence.

#### ***Division 4 - Responsibilities of licensees and others***

### 8.17 Production of licence

A licensee must produce to an authorised person her or his licence immediately after being required to do so by that authorised person.

### 8.18 Other responsibilities of licensee

A licensee must, in respect of local government property to which the licence relates -

- (a) ensure that an authorised person has unobstructed access to the local government property for the purpose of inspecting the property or enforcing any provision of this local law;
- (b) comply with a direction from the CEO or an authorised person to take the action specified in the direction for the purpose of maintaining public safety;
- (c) leave the local government property in a clean and tidy condition after its use;
- (d) report any damage or defacement of the local government property to the CEO or an authorised person; and
- (e) take all reasonable action to prevent the consumption of any liquor on the local government property unless the licence allows it and a licence has been obtained under the Liquor Control Act for that purpose.

### **8.19 Production of licence document for amendment**

If the CEO amends or renews a licence, the licensee must, if required by the CEO, produce the licence document to the CEO for amendment within the period specified by the CEO.

### **8.20 Return of licence document if licence no longer in effect**

If a licence –

- (a) has expired or has not been renewed; or
- (b) has been suspended or cancelled; or
- (c) has been surrendered,

the person who was the licensee must, as soon as practicable after the expiry, suspension, cancellation or surrender, return the licence document to the CEO.

### **8.21 Advertising**

A person must not advertise, or otherwise hold out in any way, that the person conducts a commercial activity in any public place unless that person holds a licence authorising that commercial activity.

### **8.22 False or misleading statement**

A person must not make a false or misleading statement in connection with an application in respect of a licence under this local law.

## **Part 9 – Objections and review**

### **9.1 Objection and review rights**

Division 1 of Part 9 of the Act applies to a decision under this local law in respect of the grant, renewal, transfer, amendment, suspension or cancellation of a licence or consent.

## **Part 10 – POLICIES**

### **10.1 Making policies**

The CEO may prepare a policy in respect of any matter related to this local law and so as to apply –

- (a) generally or for a particular class or classes of matters; and
- (b) throughout the district or in one or more parts of the district,

and may amend or add to or rescind the policy.

### **10.2 Due regard to be had to policy**

A policy does not bind the CEO in respect of any application for a licence, but the CEO is to have due regard to the provisions of the policy and the objectives which the policy is designed to achieve before making its determination.

### 10.3 Notice

- (1) If CEO resolves to prepare a policy, the CEO –
  - (a) is to publish a notice of the proposed policy once a week for 2 consecutive weeks in a newspaper circulating in the district, giving details of –
    - (i) where the draft policy may be inspected;
    - (ii) the subject and nature of the draft policy; and
    - (iii) in what form and during what period (being not less than 21 days from the day the notice is published) submissions may be made; and
  - (b) may publish a notice of the proposed policy in any manner and carry out any other consultation that the CEO considers appropriate.
- (2) After the expiry of the period within which submissions may be made, the CEO is to –
  - (a) review the proposed policy in the light of any submissions made; and
  - (b) resolve to adopt the policy with or without modification, or not to proceed with the policy.

### 10.4 Adoption

- (1) If the CEO decides to adopt the policy the CEO is to publish notice of the policy once in a newspaper circulating in the district.
- (2) A policy has effect on publication of a notice under subclause (1).
- (3) A copy of each policy, as amended from time to time, is to be kept and made available for public inspection during business hours at the offices of the local government.

### 10.5 Amendment

Clauses 10.1 to 10.4 with any necessary changes, apply to the amendment of a policy.

### 10.6 Revocation

A policy may be revoked by –

- (a) the adoption by CEO of a new policy made under clauses 10.1 to 10.4 that is expressed to supersede the existing policy; or
- (b) publication of a notice of revocation by the CEO once a week for 2 consecutive weeks in a newspaper circulating in the district.

### Part 11 – Enforcement

#### Division 1 - Notices

##### 11.1 Definition

In this Division –

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

##### 11.2 Damage to Local government property

If a person unlawfully removes, damages or interferes with local government property or portion of a street, the CEO or an authorised person may give the person a notice requiring that person, within the time specified in the notice, to do any one or more of the following (at the local government's option) –

- (a) reinstate the property to the state it was in before the removal, damage or interference;
- (b) replace that property; or
- (c) pay for the costs of reinstatement or replacement.

##### 11.3 Breach of a licence or failure to comply with direction

If a licence holder breaches a condition of the licence, or fails to comply with a direction under this local law, the CEO or an authorised person may give the person a notice.

##### 11.4 Notice requirements

A notice under this Division must –

- (a) be in writing;
- (b) specify the reason for giving the notice, the work or action that is required to be undertaken and the time within which it is to be undertaken; and
- (c) be given to the person referred to in clause 11.2 or 11.3, as the case may be.

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

- (1) If a person fails to comply with a notice referred to in clause 11.2, the local government may –
  - (a) do the thing specified in the notice, including replace the property, or reinstate the property to the state it was in before the removal, damage or interference; and
  - (b) recover from the person, as a debt, the costs of doing so.
- (2) If a person fails to comply with a notice referred to in clause 11.3, the local government may –

- (a) take whatever remedial action it considers appropriate to put the local government in the position it would have been in if the breach or failure had not occurred; and
- (b) recover from the person, as a debt, the costs of doing so.

### 11.6 Offence to fail to comply with notice

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

### *Division 2 - Offences and penalties*

### 11.7 Offences and general penalty

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.
- (2) A person who commits an offence under this local law is liable, on conviction, to a penalty not exceeding \$5,000, and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

### 11.8 Prescribed offences

- (1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of a modified penalty for a prescribed offence is the number specified adjacent to the clause in Schedule 2.
- (3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, the local government 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.

### 11.9 Form of notices

- (1) For the purposes of this local law -
  - (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*;
  - (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 *Local Government (Functions and General) Regulations 1996*; 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 *Local Government (Functions and General) Regulations 1996*.
- (2) Where an infringement notice is given under section 9.16 of the Act in respect of an alleged offence against clause 2.4, the notice is to contain a description of the alleged offence.

### **11.10 Evidence of a determination**

- (1) In any legal proceedings, evidence of a determination may be given by tendering the register referred to in clause 2.5 or a certified copy of an extract from the register.
- (2) If evidence of a determination is provided under subclause (1), 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 - DETERMINATIONS

(Clause 2.1)

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

### Part 1 - Preliminary

#### 1.1 Definition

In these determinations –

**local law** means the *Public Places and Local Government Property Local Law 2015* made by the local government.

#### 1.2 Interpretation

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

### Part 2 - Application

#### 2.1 Vehicles on local government property

- (1) Unless authorised by a licence or determination, a person must not take or cause a vehicle to be taken onto or driven on local government property unless –
  - (a) subject to subclause (3), the local government property is clearly designated as a road, access way, or car park;
  - (b) the vehicle is driven by a local government employee, authorised person or contractor engaged by the local government, who is engaged in –
    - (i) providing a service or making a delivery in connection with the local government property; or
    - (ii) maintaining the local government property;
  - (c) the person is driving an emergency vehicle in the course of his or her duties;
  - (d) the vehicle is –
    - (iii) driven on local government property that has been designated as a golf course;
    - (iv) used in accordance with the conditions set down by the local government or an authorised person; and
    - (v) of a type allowed to be taken onto the golf course by the local government or an authorised person;
  - (e) the vehicle is a motorised wheelchair, and the driver of that vehicle is a person with a disability.

- (2) A person must not drive a vehicle or allow a vehicle to be driven on local government property at a speed exceeding 10 kilometres per hour or as otherwise indicated by a sign, or in such a manner as to cause danger to any person.
- (3) Other than in accordance with paragraphs (b), (c), (d) or (e) of subclause (1), a person must not drive a vehicle on local government property or part of it that is being used for a function for which a licence has been obtained unless permitted to do so by the licence holder or an authorised person.

### **2.2 Motorised model aeroplanes, toys or ships**

A person must not use, launch or fly a motorised model aeroplane, toy, ship, glider or rocket that is propelled by mechanical, hydraulic, combustion or pyrotechnic means on or from local government property except:

- (1) On Reserve 17909 (known as the Trayning BMX track and skate park) and subject to any conditions that the local government may impose from time to time; or
- (2) where a licence or determination specifies a particular local government property.

### **2.3 Activities prohibited on local government property**

- (1) A person must not play or practise archery, pistol or rifle shooting on local government property except on land which is reserved by the local government for that purpose, or as otherwise provided by a determination or licence.
- (2) A person must not play or practise golf on local government property except on Reserve 10539 (known as the Yelbeni Golf Course and Reserve 15574, Reserve 15577 (known as the Trayning Golf Course).
- (3) A person must not, on any local government property, use or ride a bicycle or wheeled recreational device, skateboard, or sand board –
  - (a) inside, or on the curtilage to, a building;
  - (b) on a golf course except to the extent permitted under clause 2.1(1)(d) of these Determinations; or
  - (c) in or on a lakebed or waterway.

## SCHEDULE 2 - PRESCRIBED OFFENCES

(Clause 10.8)

Clause	Description	Modified Penalty \$
2.4	Failure to comply with a determination	100
3.1	Undertaking activity on local government property without a licence	100
3.2	Camping on local government property or erecting an unauthorised structure	100
3.3	Failure to obtain licence for liquor	100
4.1	Behaviour interfering with others	100
4.2	Behaviour detrimental to local government property	100
4.3	Taking or injuring fauna without authorisation	200
4.4	Removing, damaging or depositing flora without authorisation	200
4.5	Animal on local government property without a licence	100
4.6	Under influence of liquor or prohibited drug on local government property	100
4.8	Failure to comply with sign	100
4.9	Failure to comply with direction of authorised person	100
5.1, 5.2	Unauthorised entry to event, closed or fenced local government property	100
6.1(a), 6.4(b)	Planting or allowing plant or verge treatment in street to become a sightline hazard	100
6.1(b)	Damaging a street lawn or garden	100
6.1(c)	Damaging or removing whole or part of a street tree without authorisation	200
6.1(d)	Obstruction of street	100
6.1(e)	Damaging, removing or interfering with street, part of street, sign or structure in a street without authorisation	100
6.1(f)	Playing games in street so as to impede vehicles or persons	100
6.2	Carry on or undertake prohibited activity in street or damage local government property in a street without authorisation	200
6.3(4)	Install verge treatment that is not a permissible treatment	100
6.4(a), 6.4(d), 6.4(e)	Failure to keep permissible verge treatment in good and tidy condition, obstruct a street, footpath, drain, or driveway	100

## Agenda Attachment 9.3.1

Clause	Description	Modified Penalty \$
6.4(c)	Placing an obstruction on or around a verge treatment	100
6.4(f)	Failure to ensure sprinklers or reticulation pipes do not protrude above level of verge treatment when not in use, not used at such times as to cause inconvenience to pedestrians, or otherwise present a hazard	100
6.7	Failure to obtain licence for a temporary crossing	100
6.8	Failure to remove redundant crossing or reinstate kerb, drain, footpath, verge or street	100
6.11	Failure to comply with condition of use of a street indicated by a sign	100
7.1(1)	Animal or vehicle obstructing public place without authorisation	100
7.2(2)	Animal in public place when not led, ridden or driven	100
8.7	Failure to comply with licence condition	100
8.18	Failure to comply with licence condition in relation to local government property	150
8.17, 8.19, 8.20	Failure to produce licence for inspection, amendment or to return licence when no longer in effect	100
11.6	Failure to comply with notice	300

## Agenda Attachment 9.3.1

This local law was made at the meeting of the Council of the Shire of Trayning on 17 December 2014.

The Common Seal of the                    )  
Shire of Trayning was affixed in        )  
the presence of                                )

.....  
Cr F Tarr  
President

.....  
T McLennan  
Chief Executive Officer

Consolidated Version

# LOCAL GOVERNMENT ACT 1995



## STANDING ORDERS LOCAL LAW 2015

LOCAL GOVERNMENT ACT 1995

SHIRE OF TRAYNING

STANDING ORDERS LOCAL LAW 2015

Under the powers conferred by the *Local Government Act 1995*, and under all other powers enabling it, the Council of the Shire of Trayning resolved on 18 March 2015 to make the following local law.

PART 1 - PRELIMINARY

**1.1 Citation**

This local law may be cited as the *Shire of Trayning Standing Orders Local Law 2015*.

**1.2 Application**

All meetings of the Council or a committee and other matters as prescribed are to be conducted in accordance with the Act, the Regulations and these local laws.

**1.3 Commencement**

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

**1.4 Interpretation**

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

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

**CEO** means the Chief Executive Officer or Acting Chief Executive Officer for the time being of the local government;

**committee** means a committee of the Council;

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

**employee** means an employee of the local government;

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

**member** means the President or a councillor and includes in the case of a committee, a member of the committee who is not the President or a councillor;

**person presiding** means the presiding person at a meeting of the Council and when applicable to committee meetings means the presiding member;

**presiding member** means the presiding member of a committee or the deputy presiding member, or a member of the committee when performing a function of the presiding member in accordance with the Act;

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

**simple majority** is more than 50% of the members present and voting; and

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



(2) Unless otherwise defined in these local laws the terms and expressions used in this local law are to have the meaning given to them in the Act and Regulations.

### 1.5 Repeal

The following local laws are repealed –

- (1) The *Municipality of the Shire of Trayning By-law Relating to Standing Orders* published in the *Government Gazette* on 26 July 1972; and
- (2) The *Shire of Trayning Standing Orders Local Law* published in the *Government Gazette* on 7 July 1998.

## PART 2 - CALLING MEETINGS

### 2.1 Calling committee meetings

A meeting of a committee is to be held –

- (1) If called for in a verbal or written request to the CEO by the presiding member of the committee, setting out the date and purpose of the proposed meeting;
- (2) If called for by at least 1/3 of the members of the committee in a notice to the CEO, setting out the date and purpose of the proposed meeting; or
- (3) If so decided by the committee.

## PART 3 - BUSINESS OF THE MEETING

### 3.1 Business to be specified on notice paper

- (1) No business is to be transacted at any ordinary meeting of the Council other than that specified in the agenda, without the approval of the presiding person or a decision of the Council.
- (2) No business is to be transacted at a committee meeting other than that specified in the agenda or given in the notice as the purpose of the meeting, without the approval of the presiding member or a decision of the committee.

### 3.2 Order of business

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

- (a) Official opening
- (b) Apologies and leave of absence
- (c) Public question time
- (d) Petitions
- (e) Confirmation of minutes
- (f) Announcements by the presiding person without discussion
- (g) Matters for which meeting may be closed
- (h) Reports
- (i) Motions of which previous notice has been given
- (j) Questions by members of which due notice has been given
- (k) Urgent business approved by the presiding person or by decision
- (l) Matters behind closed doors
- (m) Closure

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

(3) Notwithstanding subclauses (1) and (2) in the order of business for any meeting of the Council or a committee, the provisions of the Act and Regulations relating to the time at which public question time is to be held are to be observed.

(4) Notwithstanding subclause (1), the CEO may include on the agenda of a Council or committee meeting in an appropriate place within the order of business any matter which must be decided, or which he or she considers is appropriately decided, by that meeting.

### 3.3 Public question time

- (1) A member of the public who raises a question during question time is to state his or her name and address.
- (2) A question may be taken on notice by the Council or committee for later response.
- (3) When a question is taken on notice under sub-clause (2) a response is to be given to the member of the public in writing by the CEO, and a copy is to be included in the agenda of the next meeting of the Council or committee as the case requires.

### 3.4 Confirmation of minutes

- (1) When minutes of a meeting are submitted to an ordinary meeting of the Council or committee for confirmation, if a member is dissatisfied with the accuracy of the minutes, then he or she is to -
  - (a) state the item or items with which he or she is dissatisfied; and
  - (b) propose a motion clearly outlining the alternative wording to amend the minutes.
- (2) Discussion of any minutes, other than discussion as to their accuracy as a record of the proceedings, is not permitted.

### 3.5 Announcements by the presiding person without discussion

- (1) At any meeting of the Council or a committee the presiding person may announce or raise any matter of interest or relevance to the business of the Council or committee, or propose a change to the order of business.
- (2) Any member may move that a change in order of business proposed by the presiding person not be accepted and if carried by a majority of members present, the proposed change in order is not to take place.

### 3.6 Matters for which meeting may be closed

For the convenience of members of the public a matter on the agenda of the meeting may be identified to be discussed behind closed doors and that matter is to be deferred for consideration at the end of the meeting.

### 3.7 Motions of which previous notice has been given

- (1) Unless the Act, Regulations or these Standing Orders otherwise provide, a member may raise at a meeting such business as he or she considers appropriate, in the form of a motion, of which notice has been given in writing to the CEO.
- (2) A notice of motion under subclause (1) is to be given at least four clear working days before the close of the agenda for the meeting at which the motion is moved.
- (3) A notice of motion is to relate to the good government of persons in the district.
- (4) The CEO -
  - (a) with the concurrence of the President, may exclude from the notice paper any notice of motion deemed to be out of order; or
  - (b) may on his or her own initiative make such amendments to the form but not the substance thereof as will bring the notice of motion into due form; and
  - (c) may under his or her name provide relevant and material facts and circumstances pertaining to the notice of motion on such matters as policy, budget and law.
- (5) No notice of motion is to be out of order because the matter involved is considered to be objectionable.
- (6) A motion of which notice has been given is to lapse unless -
  - (a) the member who gave notice thereof, or some other member authorised by him or her in writing moves the motion when called on; or
  - (b) the Council on a motion agrees to defer consideration of the motion to a later stage or date.
- (7) If a notice of motion is given and lapses in the circumstances referred to in subclause (6)(a), notice of motion in the same terms or the same effect is not to be given again for at least 3 months from the date of such lapse.

### 3.8 Questions by members of which due notice has been given

- (1) A question on notice is to be given by a member in writing to the CEO at least four clear working days before close of the agenda for the meeting at which it is raised.

- (2) If the question referred to in subclause (1) is in order, the answer is, so far as is practicable, to be included in written form in the agenda of the meeting, or otherwise tabled at that meeting.
- (3) Every question and answer is to be submitted as briefly and concisely as possible and no discussion is to be allowed thereon, unless with the consent of the presiding person.

### **3.9 Urgent business approved by the presiding person or by resolution**

In cases of extreme urgency or other special circumstance, matters may, with the consent of the presiding person, or by resolution of the members present, be raised without notice and decided by the meeting.

### **3.10 Deputations**

- (1) A deputation wishing to be received by the Council or a committee is to apply to the CEO who is to advise the President, or the presiding member as the case may be of the request.
- (2) The President if the request is to attend a Council meeting, or the presiding member of the committee, if the request is to attend a meeting of a committee, may either approve the request, in which event the CEO is to invite the deputation to attend a meeting of the Council or committee as the case may be, or may instruct the CEO to refer the request to the Council or committee to decide by simple majority whether or not to receive the deputation.
- (3) Arrangements for the deputation shall be as agreed by the President or presiding member as the case may be.
- (4) Any matter which is the subject of a deputation to the Council or a committee is not to be decided by the Council or that committee until the deputation has completed its presentation.

## **PART 4 - PUBLIC ACCESS TO AGENDA MATERIAL**

### **4.1 Confidentiality of information withheld**

- (1) Information withheld by the CEO from members of the public under Regulation 14.2, of the Regulations, is to be -
- (a) identified in the agenda of a Council or committee meeting under the item "Matters for which meeting may be closed"; and
  - (b) marked "confidential" in the agenda.
- (2) A member or an employee in receipt of confidential information is not to disclose such information to any person other than a member or employee to the extent necessary for the purpose of carrying out his or her duties.

## **PART 5 - FINANCIAL INTEREST DISCLOSURES**

### **5.1 Separation of committee recommendations**

Where a member has disclosed an interest in a matter at a committee meeting and the matter is contained in the recommendations of the committee to an ordinary meeting of Council or to another committee meeting that will be attended by the member, the recommendation concerned is to be separated on the agenda of that ordinary meeting or other committee meeting, from other recommendations of the committee, to enable the member concerned to declare the interest and leave the room prior to consideration of that matter only.

## **PART 6 - CONDUCT OF PERSONS AT COUNCIL AND COMMITTEE MEETINGS**

### **6.1 Official titles to be used**

- (1) Members are to speak of each other in the Council or committee by their respective titles of President or councillor.
- (2) Members, in speaking of or addressing employees, are to designate them by their respective official titles.

### **6.2 Members to occupy own seats**

- (1) At the first meeting held after each ordinary elections day, the CEO is to allot by random draw, a position at the Council table to each councillor.

- (2) The councillor is to occupy that position when present at meetings of the Council until such time as there is a call by a majority of councillors for a re-allotment of positions.

### **6.3 Leaving meetings**

During the course of a meeting of the Council or a committee no member is to enter or leave the meeting without first advising the presiding person, in order to facilitate the recording in the minutes of the time of entry or departure.

### **6.4 Recording of particular words in the minutes**

If a member specifically requests, immediately after their use, that any particular words used by a member be recorded in the minutes, the presiding person is to cause the words used to be taken down and read to the meeting for verification and to then be recorded in the minutes.

### **6.5 Recording of proceedings**

(1) No person is to use any electronic, visual or audio recording device or instrument to record the proceedings of the Council or a committee without the written permission of the Council.

(2) Subclause (1) does not apply if the record is taken by or at the direction of the CEO, with the permission of the Council or committee.

(3) If a person is permitted to record proceedings under this clause, the presiding member is to advise the meeting, immediately before the recording is commenced, that the recording is permitted and the extent of that permission.

### **6.6 Prevention of disturbance**

(1) Any member of the public addressing the Council or a committee is to extend due courtesy and respect to the Council or committee and the processes under which they operate and must take direction from the presiding person whenever called upon to do so.

(2) No person observing a meeting, is to 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.

### **6.7 Distinguished visitors**

If a distinguished visitor is present at a meeting of the Council or a committee, the presiding person may invite such person to sit beside the presiding person or at the Council table.

## **PART 7 - CONDUCT OF MEMBERS DURING DEBATE**

### **7.1 Members wishing to speak**

A member wishing to speak is to indicate by show of hands or other method agreed upon by the Council or committee.

### **7.2 Priority of speakers**

(1) In the event of two or more members wishing to speak at the same time, the presiding member is to decide which member is entitled to be heard first.

(2) A ruling of the presiding person under subclause (1) is final and will not be open to further discussion or debate, unless a majority of the members support a motion of dissent with the ruling of the presiding person.

### **7.3 The presiding person to take part in debates**

The presiding person may take part in a discussion of any matter before the Council, subject to compliance with this local law.

### **7.4 Relevance**

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.

### **7.5 Addressing the meeting**

The presiding person shall determine any limitation on the number of times a member addresses the meeting and duration of address.

### **7.6 Members not to speak after conclusion of debate**

No member is to speak to any question after it has been put by the presiding person.

### **7.7 Members not to interrupt**

No member is to interrupt another member whilst speaking unless –

- (a) to raise a point of order;
- (b) to call attention to the absence of a quorum;
- (c) to make a personal explanation under clause 8.16; or
- (d) to move a motion under clause 9.1(e).

### **7.8 Re-opening discussion on decisions**

No member is to re-open discussion on any decision of the Council or committee, except for the purpose of moving that the decision be revoked or changed.

## **PART 8 - PROCEDURES FOR DEBATE OF MOTIONS**

### **8.1 Motions to be stated**

A member who moves a substantive motion or amendment to a substantive motion is to state the substance of the motion before speaking to it.

### **8.2 Motions to be supported**

No motion or amendment to a substantive motion is open to debate until it has been seconded, or, in the case of a motion to revoke or change the decision made at a Council or a committee meeting, unless the motion has the support required under Regulation 10 of the Regulations.

### **8.3 Unopposed business**

- (1) Upon a motion being moved and seconded, the presiding person may ask the meeting if any member opposes it.
- (2) If no member signifies opposition to the motion the presiding person may declare the motion in subclause (1) carried without debate and without taking a vote on it.
- (3) A motion carried under subclause (2) is to be recorded in the minutes as a unanimous decision of the Council or committee.
- (4) If a member signifies opposition to a motion the motion is to be dealt with according to this Part.
- (5) This clause does not apply to any motion or decision to revoke or change a decision which has been made at a Council or committee meeting.

### **8.4 Only one substantive motion considered**

When a substantive motion is under debate at any meeting of the Council or a committee, no further substantive motion is to be accepted.

### **8.5 Breaking down of complex questions**

The presiding person may order a complex question to be broken down and put in the form of several motions, which are to be put in sequence.

### **8.6 Order of call in debate**

The presiding person is to call speakers to a substantive motion in the following order –

- (a) the mover to state the motion;
- (b) s 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 in view, if any;
- (h) mover takes right of reply which closes debate.

### **8.7 Limit of debate**

The presiding person may offer the right of reply and put the motion to the vote if he or she believes sufficient discussion has taken place even though all members may not have spoken.

### **8.8 Member may require questions 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 whilst speaking.

### **8.9 Consent of seconder required to accept alteration of wording**

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

### **8.10 Order of amendments**

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

### **8.11 Amendments must not negate original motion**

No amendment to a motion can be moved which negates the original motion or the intent of the original motion.

### **8.12 Substantive motion**

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

### **8.13 Withdrawal of motion and amendments**

Council or a committee may, without debate, grant leave to withdraw a motion or amendment upon request of the mover of the motion or amendment and with the approval of the seconder provided that there is no voice expressed to the contrary view by any member, in which case discussion on the motion or amendment is to continue.

### **8.14 Limitation of withdrawal**

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

### **8.15 Personal explanation**

No member is to speak at any meeting of the Council or a committee, except upon the matter before the meeting, unless it is to make a personal explanation. Any member who is permitted to speak under these circumstances is to confine the observations to a succinct statement relating to a specific part of the former speech which may have been misunderstood. When a member provides an explanation, no reference is to be made to matters unnecessary for that purpose.

### **8.16 Personal explanation - When heard**

A member wishing to make a personal explanation of matters referred to by any member then speaking, is entitled to be heard immediately, if the member then speaking consents at the time, but if the member who is speaking declines to give way, the explanation is to be offered at the conclusion of that speech.

### **8.17 Ruling on questions of personal explanation**

The ruling of the presiding person on the admissibility of a personal explanation is final unless a motion of dissent with the ruling is moved before any other business proceeds.

### 8.18 Right of reply

(1) The mover of a substantive motion has the right of reply. After the mover of the substantive motion has commenced the reply, no other member is to speak on the question.

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

### 8.19 Right of reply provisions

The right of reply is governed by the following provisions –

- (a) if no amendment is moved to the substantive motion, the mover may reply at the conclusion of the discussion on the motion;
- (b) if an amendment is moved to the substantive motion the mover of the substantive motion is to take the right of reply at the conclusion of the vote on any amendments;
- (c) the mover of any amendment does not have a right of reply;
- (d) once the right of reply has been taken, there can be no further discussion, nor any other amendment and the original motion or the original motion as amended is immediately put to the vote.

## PART 9 - PROCEDURAL MOTIONS

### 9.1 Permissible procedural motions

In addition to proposing a properly worded amendment to a substantive motion, it is permissible for a member to move the following procedural motions –

- (a) that the Council (or committee) proceed to the next business;
- (b) that the question be deferred until (specify meeting or circumstances);
- (c) that the Council (or committee) now adjourn;
- (d) that the question be now put;
- (e) that the member be no longer heard;
- (f) that the ruling of the presiding person be disagreed with;
- (g) that the Council (or committee) meet behind closed doors, if the meeting or part of the meeting to which the motion relates is a matter in respect of which the meeting may be closed to members of the public under section 5.23 of the Act.

### 9.2 No debate on procedural motions

(1) The mover of a motion stated in each of paragraphs (a), (b), (c), (f) and (g) of clause 9.1 may speak to the motion for not more than five minutes, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.

(2) The mover of a motion stated in each of paragraphs (d) and (e) of clause 9.1 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.

### 9.3 Procedural motions - Closing debate - Who may move

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

### 9.4 Procedural motions - Right of reply on substantive motion

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

## PART 10 - EFFECT OF PROCEDURAL MOTIONS

### 10.1 Council or committee to proceed to the next business - effect of motion

The motion “that the Council or committee proceed to the next business”, if carried, causes the debate to cease immediately and for the Council or committee to move to the next business of the

meeting. No decision will be made on the substantive motion being discussed, nor is there any requirement for the matter to be again raised for consideration.

### **10.2 Question to be deferred - effect of motion**

The motion "that the question be deferred", if carried, causes all debate on the substantive motion or amendment to cease but to continue at a time stated in the motion.

### **10.3 Council or committee to now adjourn - effect of motion**

(1) The motion "that the Council or committee now adjourn", if carried, causes the meeting to stand adjourned until it is re-opened at which time the meeting continues from the point at which it was adjourned, unless the presiding person or a simple majority of members upon vote, determine otherwise.

(2) Where debate on a motion is interrupted by an adjournment under subclause (1) the debate is to be resumed at the next meeting at the point where it was so interrupted.

### **10.4 Question to be put - effect of motion**

(1) The motion "that the question be now put", if carried during discussion of a substantive motion without amendment, causes the presiding person to offer the right of reply and then immediately put the matter under consideration without further debate.

(2) This motion, if carried during discussion of an amendment, causes the presiding person to put the amendment to the vote without further debate.

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

### **10.5 Member to be no longer heard - effect of motion**

The motion "that the member be no longer heard", if carried, causes the presiding person to not allow the speaker against whom the motion has been moved to speak to the current substantive motion or any amendment relating to it, except to exercise the right of reply if the person is the mover of the substantive motion.

### **10.6 Ruling of the presiding person be disagreed with - effect of motion**

The motion "that the ruling of the presiding person be disagreed with", if carried, causes the ruling of the presiding person about which this motion was moved, to have no effect and for the meeting to proceed accordingly.

### **10.7 Council or committee to meet behind closed doors - effect of motion**

(1) Subject to any deferral under clause 3.6 or other decision of the Council or committee, this motion, if carried, causes the general public and any employee the Council or committee determines, to leave the room.

(2) Upon the public again being admitted to the meeting the presiding person, unless the Council or committee decides otherwise, is to cause the motions passed by the Council or committee whilst it was proceeding behind closed doors to be read out including the vote of a member or members to be recorded in the minutes under section 5.21 of the Act.

(3) A member or an employee is not to publish, or make public any of the discussion taking place on a matter discussed behind closed doors, but this prohibition does not extend to the actual decision made as a result of such discussion and other information properly recorded in the minutes.

## **PART 11 - MAKING DECISIONS**

### **11.1 Question - When put**

When the debate upon any question is concluded and the right of reply has been exercised the presiding person shall immediately put the question to the Council or the committee, and, if so requested by any member, shall again state it.

### **11.2 Question - Method of putting**



If a decision of the Council or a committee is unclear or in doubt, the presiding person shall put the motion or amendment as often as necessary to determine the decision from a show of hands or other method agreed upon so that no voter's vote is secret, before declaring the decision.

### PART 12 - IMPLEMENTING DECISIONS

#### 12.1 Implementation of a Decision

(1) If a notice of motion to revoke or change a decision of the Council or a committee is received before any action has been taken to implement that decision, then no steps are to be taken to implement or give effect to that decision until such time as the motion of revocation or change has been dealt with, except that -

- (a) if a notice of motion to revoke or change a decision of the Council or a committee is given during the same meeting at which the decision was made, the notice of motion is of no effect unless the number of members required to support the motion under Regulation 10 of the Regulations indicate their support for the notice of motion at that meeting; and
- (b) if a notice of motion to revoke or change a decision of the Council or a committee is received after the closure of the meeting at which the decision was made, implementation of the decision is not to be withheld unless the notice of motion has the support in writing, of the number of members required to support the motion under Regulation 10 of the Regulations.

(2) Implementation of a decision is only to be withheld under sub-clause (1) if the effect of the change proposed in a notice of motion would be that the decision would be revoked or would become substantially different.

(3) The Council or a committee shall not vote on a motion to revoke or change a decision, whether the motion of revocation or change is moved with or without notice, if at the time the motion is moved or notice is given –

- (a) action has been taken to implement the decision; or
- (b) where the decision concerns the issue of an approval or the authorisation of a licence, permit or certificate, and where that approval or authorisation of a licence, permit or certificate has been put into effect by the local government in writing to the applicant or the applicant's agent by an employee authorised to do so,

without having considered a statement of impact prepared by or at the direction of the CEO of the legal and financial consequences of the proposed revocation or change.

### PART 13 - PRESERVING ORDER

#### 13.1 The presiding person to preserve order

The presiding person is to preserve order, and may call any member or other person in attendance to order, whenever, in his or her opinion, there is cause for so doing.

#### 13.2 Demand for withdrawal

A member at a meeting of the Council or a committee may be required by the presiding person, or by a decision of the Council or committee, to apologise and unreservedly withdraw any expression which is considered to reflect offensively on another member or an employee, and if the member declines or neglects to do so, the presiding person may refuse to hear the member further upon the matter then under discussion and call upon the next speaker.

#### 13.3 Points of order - When to raise - Procedure

Upon a matter of order arising during the progress of a debate, any member may raise a point of order including interrupting the speaker. Any member who is speaking when a point of order is raised, is to immediately stop speaking and be seated while the presiding person listens to the point of order.

#### 13.4 Points of order - When valid

The following are to be recognised as valid points of order –

- (a) that the discussion is of a matter not before the Council or committee;
- (b) that offensive or insulting language is being used;
- (c) drawing attention to the violation of any written law, or policy of the local government, provided that the member making the point of order states the written law or policy believed to be breached.

### **13.5 Points of order - Ruling**

The presiding person is to give a decision on any point of order which is raised by either upholding or rejecting the point of order.

### **13.6 Points of order - Ruling conclusive, unless dissent motion is moved**

The ruling of the presiding person upon any question of order is final, unless a majority of the members support a motion that the ruling of the presiding person be disagreed with.

### **13.7 Points of order take precedence**

Notwithstanding anything contained in these Standing Orders to the contrary, all points of order take precedence over any other discussion and until decided, suspend the consideration and decision of every other matter.

### **13.8 Precedence of person presiding**

(1) When the presiding person indicates their intention to speak during the progress of a debate, any member then speaking, or offering to speak, is to immediately cease speaking and every member shall preserve strict silence so that the presiding person may be heard without interruption.

(2) Subclause (1) is not to be used by the presiding person to exercise the right provided in clause 7.3, but to preserve order.

### **13.9 Right of the presiding person to adjourn without explanation to regain order**

(1) If a meeting ceases to operate in an orderly manner, the presiding person may use discretion to adjourn the meeting for a period of up to 15 minutes without explanation, for the purpose of regaining order.

(1) Upon resumption, debate is to continue at the point at which the meeting was adjourned.

(2) If, at any one meeting, the presiding person has cause to further adjourn the meeting, such adjournment may be to a later time on the same day or to any other day.

## **PART 14 - ADJOURNMENT OF MEETING**

### **14.1 Meeting may be adjourned**

The Council or a committee may decide to adjourn any meeting to a later time on the same day, or to any other day.

### **14.2 Unopposed business - Motion for adjournment**

On a motion for the adjournment of the Council or committee, the presiding person, before putting the motion, may seek leave of the Council or committee to proceed to the transaction of unopposed business.

### **14.3 Withdrawal of motion for adjournment**

A motion or an amendment relating to the adjournment of the Council or a committee may be withdrawn by the mover, with the consent of the seconder, except that if any member objects to the withdrawal, debate of the motion is to continue.

### **14.4 Time to which adjourned**

The time to which a meeting is adjourned for want of a quorum, by the presiding person to regain order, or by decision of the Council, may be to a specified hour on a particular day or to a time which coincides with the conclusion of another meeting or event on a particular day.

### PART 15 - COMMITTEES OF THE COUNCIL

#### 15.1 Establishment and appointment of committees

A committee is not to be established except on a motion setting out the proposed functions of the committee and either –

- (a) the names of the members, employees and other persons to be appointed to the committee; or
- (b) the number of members, employees and other persons to be appointed to the committee and a provision that they be appointed by a separate motion.

#### 15.2 Appointment of deputy committee members

(1) The Council may appoint one or more persons to be the deputy or deputies, as the case may be, to act on behalf of a member of a committee whenever that member is unable to be present at a meeting thereof and where two or more deputies are so appointed they are to have seniority in the order determined by the Council.

(2) Where a member of a committee does not attend a meeting thereof a deputy of that member, is entitled to attend that meeting in place of the member and act for the member, and while so acting has all the powers of that member.

#### 15.3 Presentation of committee reports

The report or recommendations of a committee are to be placed before the Council for consideration.

#### 15.4 Reports of committees - Questions

When a recommendation of any committee is submitted for adoption by the Council, any member may direct questions directly relating to the recommendation through the presiding person to the presiding member or to any member of the committee in attendance.

#### 15.5 Permissible motions on recommendation from committee

A recommendation made by or contained in the minutes of a committee may be -

- (a) be adopted by the Council without amendment
- (b) rejected by the Council and replaced by an alternative decision; or
- (b) amended or modified and adopted with such amendment or modification; or
- (c) referred back to the committee for further consideration.

#### 15.6 Standing Orders apply to committees

Where not otherwise specifically provided, these local laws apply generally to the proceedings of committees.

### PART 16 - ADMINISTRATIVE MATTERS

#### 16.1 Suspension of Local Law

(1) The Council or a committee may decide, by simple majority vote, to suspend temporarily one or more of the provisions of this local law.

(2) The mover of a motion to suspend temporarily any one or more of the provisions of this local law is to state the clause or clauses to be suspended, and the purpose of the suspension.

#### 16.2 Cases not provided for in Local Law

(1) The presiding person is to decide questions of order, procedure, debate, or otherwise in cases where this local law, or the Act and Regulations are silent.

(2) The decision of the presiding person in these cases is final, except where a motion is moved and carried under clause 9.1(f).

#### 16.3 Enforcement

## Agenda Attachment 9.3.1

- (1) The presiding person at any Council or committee meeting is authorised to enforce the provisions of this local law during the course of the meeting and to liaise with the CEO where appropriate regarding the appropriate action to be taken for any breach.
- (2) No action shall be taken by the local government to institute legal proceedings for an alleged breach of the provisions of this local law unless by resolution of Council.
- (3) Council may resolve to deal with any alleged breach of the provisions of this local law through the application of the procedures contained within the *Local Government (Rules of Conduct) Regulations 2007*.
- (4) A person who breaches a provision of this local law commits an offence.  
Penalty: \$1,000.00
- 

This local law was made at the meeting of the Council of the Shire of Trayning on 18 March 2015

The Common Seal of the )  
Shire of Trayning was affixed in )  
the presence of )

For

Cr F Tarr  
President



T McLennan  
Chief Executive Officer