



MINUTES

Special Meeting of Council

On	31 January 2018
At	Council Chambers, Calingiri
Commenced	2.02pm

TABLE OF CONTENTS

1	DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS	3
2	ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE GRANTED	3
	F1/2018 ANNUAL REPORT 2016-2017	3
	A1/2018 LOCAL LAW – BUSH FIRE BRIGADES AMENDMENT	5
	A2/2018 LOCAL LAW – PROPOSED STANDING ORDERS AMENDMENT	12
	A3/2018 LOCAL LAW – CEMETERIES 2018.....	14
	A4/2018 LOCAL LAW – FENCING 2018 – FINAL ADOPTION	41
	A5/2018 LOCAL LAW – DOGS 2018 – FINAL ADOPTION.....	59
3	DECLARATION OF CLOSURE	78

1 DECLARATION OF OPENING AND ANNOUNCEMENT OF VISITORS

The President declared the meeting open at 2.02pm.

Visitors

Mr Gary McGill

Mr Niel Mitchell

2 ATTENDANCE, APOLOGIES AND LEAVE OF ABSENCE GRANTED

Attendees

Cr D Lovelock	West Ward	President
Cr P Bantock	West Ward	Deputy President
Cr N Clarke	South Ward	
Cr J Corless-Crowther	Central Ward	
Cr J King	Central Ward	

Chief Executive Officer:	Mrs G Teede
Executive Assistant:	Ms Suzanne Mearns

Apologies

Cr S Penn	South Ward
Cr A Broadhurst	East Ward

3 GENERAL BUSINESS

F1/2018 ANNUAL REPORT 2016-2017

FILE REFERENCE	F1.5
REPORT DATE	28 January 2018
APPLICANT/PROPONANT	N/A
OFFICER DISCLOSURE OF INTEREST	Nil
PREVIOUS MEETING REFERENCES	Nil
AUTHOR	Glenda Teede – Chief Executive Officer
AUTHORISED BY	Glenda Teede – Chief Executive Officer
ATTACHMENTS	Annual Report 2016-2017

PURPOSE OF REPORT

To present the Annual Report for 2016-2017 to Council for acceptance.

COMMENT

The Annual Report 2016-2017 was not completed in time to allow for the Annual General Meeting of Electors to be held prior to the end of the 2017 calendar year.

Included in the Annual Report 2016-2017 is the Annual Financial Report and Independent Auditors Report for the year ended 30th June 2017.

POLICY REQUIREMENTS

Nil

LEGISLATIVE REQUIREMENTS

S5.54 of the Local Government Act requires that the Annual Report:-

1. Be accepted by the Local Government by 31st December after the financial year reported on, or
2. Be accepted by the Local Government no later than 2 months after the Auditor's Report becomes available.

STRATEGIC IMPLICATIONS

Corporate Business Plan references and impacts:-

Strategy 4.3.1 "Maintain/retain full compliance with statutory obligations".

➤ Environment

There are no known significant environmental implications associated with this proposal.

➤ Economic

There are no known significant economic implications associated with this proposal.

➤ Social

There are no known significant social implications associated with this proposal.

FINANCIAL IMPLICATIONS

There are no financial implications to Council in relation to this item.

VOTING REQUIREMENTS

Absolute Majority Required: Yes

RESOLUTION 5/2018

Moved: Cr N Clarke

Seconded: Cr J King

That the Annual Report for 2016-2017 be accepted by Council and presented to the Annual General Meeting of Electors to be held on Wednesday 21 February 2018 at 5.00pm.

Motion Put and Carried: 5/0

A1/2018 LOCAL LAW – BUSH FIRE BRIGADES AMENDMENT

FILE REFERENCE	
REPORT DATE	19 JANUARY 2018
APPLICANT/PROPONANT	NONE
OFFICER DISCLOSURE OF INTEREST	NONE
PREVIOUS MEETING REFERENCES	NONE
PREPARED BY	NIEL MITCHELL, CONSULTANT
AUTHORISED BY	
ATTACHMENTS	
	<ul style="list-style-type: none">• DRAFT BUSH FIRE BRIGADES AMENDMENT LOCAL LAW 2018

PURPOSE OF REPORT

The purpose of this report is –

- 1) To allow the Presiding Person to give notice to the meeting of the intention to make the proposed Local Law as follows –
 - Draft Shire of Victoria Plains Bush Fire Brigades Amendment Local Law 2018
- 2) For Council to give notice of the purpose and effect of the proposed local laws;
- 3) For Council to resolve intent to advertise the proposed local laws,
- 4) To allow for advertising of the proposed local law for public comment.

BACKGROUND

The draft local law is to comply with an undertaking given to the Western Australian Parliamentary Joint Standing Committee on Delegated Legislation.

The Interpretation Act 1984 s.42 specifies the authority of each House of Parliament to review local laws and to pass a resolution to disallow.

COMMENT

As advised to Council on 13 December 2017 the Committee noted a number of matters they considered requiring amendment, as well as a number of minor errors that should be attended to at the same time.

Accordingly the Amendment Local Law has the –

- Purpose – to remove matters identified by the JSCDL, correct errors and improve consistency;
- Effect – to align the local law with the matters identified

The changes do not affect the operation of the local law other than to –

- align definitions and consequential amendments
- extend the list of brigade officers to be elected or appointed
- clarify the rights of, and process for, a brigade member if suspended, terminated etc.

Conclusion

The procedure for making a local law requires Council to advertise state-wide, advising of its intention to make a local law, and invite submissions to be made on the proposed local law for a six-week period. The draft is also to be submitted to the

relevant Ministers at this time, for review and comment. At the closure of the submission period, Council is to consider all submissions before making a local law.

Notices are to invite the public to comment on the proposed local law, with submissions being open for a period of not less than 6 weeks. Internal submissions may also be made during this time.

The advertisement will be placed once Council has resolved its intent to make the local law.

After the submission period is closed, Council is required to consider any submissions received. Minor amendments not affecting the intent of the provisions can be made, but if significant changes are needed, the proposal must be readvertised.

If finally adopted, the proposed local law is then published in the Government Gazette, and comes into effect on the date specified. The Gazettal copy and other documentation is then sent to the Parliamentary Joint Standing Committee on Delegated Legislation to review, which may then disallow or require changes, even though having been Gazetted.

POLICY REQUIREMENTS

None

LEGISLATIVE REQUIREMENTS

Local Government Act 1995 –

- 3.12 – Procedure for making local laws
 - (2) Notice of purpose and effect of local law to be given by the person presiding
 - (3) Statewide public notice required, and copies to Minister/s immediately after notice given, minimum 6 weeks notice
 - (3a) Local Public notice also required to be given
 - (4) After notice period, all submissions to be considered, and local law may then be made by absolute majority
 - (5) Publication in Government Gazette required
 - (7) Parliament to be advised within 10 working days of Gazettal
 - s.3.13 – Significant changes require recommencement of proposal
 - s.3.14 – Unless otherwise provided for, local laws come into effect 14 days after Gazettal
 - s.3.15 – local public notice of the final adoption/making of a local law to be given
- Bush Fires Act 1954*

Shire of Victoria Plains Bush Fire Brigades Local Law 2017 –

- clauses as notified in text of this item to be inoperative by virtue of the undertaking until amended or deleted

STRATEGIC IMPLICATIONS

There are no known strategic implications associated with this proposal.

Corporate Business Plan references and impacts:-

STRATEGY 4.3.1 – Maintain / retain full compliance with statutory obligations.

➤ **Environment**

There are no known significant environmental implications associated with this proposal.

➤ **Economic**

There are no known significant economic implications associated with this proposal.

➤ **Social**

There are no known significant social implications associated with this proposal.

FINANCIAL IMPLICATIONS

None

VOTING REQUIREMENTS

Absolute Majority Required: No

RESOLUTION 6/2018

Moved: Cr P Bantock

Seconded: Cr J Corless-Crowther

That Council –

- 1. pursuant to section 3.12(3) and (3a) of the Local Government Act 1995, and all other legislation enabling it, give Statewide and local public notice that it intends to make the following local law –**
 - Shire of Victoria Plains Bush Fires Brigades Amendment Local Law 2018 –**
 - Purpose – to remove matters identified by the JSCDL, correct errors and improve consistency;**
 - Effect – to align the local law with the matters identified**
- 2. in accordance with section 3.12(3) of the Local Government advise the Minister for Local Government and Minister for Emergency Services of the proposed Local Law.**

Motion Put and Carried: 5/0

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

SHIRE OF VICTORIA PLAINS

BUSH FIRES ACT AMENDMENT LOCAL LAW 2018

Under the powers conferred by the *Bush Fires Act 1954* and the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Victoria Plains resolved on _____ to adopt the following local law.

a. Citation

This local law may be cited as the *Shire of Victoria Plains Bush Fire Brigades Amendment Local Law 2018*.

b. Commencement

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

c. Principal local law amended

This local law amends the *Shire of Victoria Plains Bush Fire Brigades Local Law 2017* published in the *Government Gazette* on 29 August 2017.

d. Table of Contents amended

In the Contents, delete reference to clauses 3.3, 3.5 and 4.4 and insert in order –

- 3.3 Election and appointment of bush fire brigade officers
- 3.5 Duties of CBFCA and Captain
- 3.6 Training of officers
- 4.4 Right to object to or review of decision

e. Clause 1.5 amended

In clause 1.5, delete the definitions of ***brigade area***, ***brigade member***, ***brigade officer*** and ***Regulations*** and insert in order –

- bush fire brigade area*** has the meaning given to it in clause 2.2(b);
- bush fire brigade member*** means a volunteer fire fighter having current membership of a bush fire brigade;
- bush fire brigade officer*** means a person holding a position referred to in clause 3.4(1), irrespective of method of appointment to the position;
- Regulations*** means Regulations made under the Act; and

f. Clause 2.4 amended

Delete subclause 2.4(1)(b) and insert –

- (b) bush fire brigade officers in order of seniority; and

g. Clause 2.7 amended

Delete clause 2.7 and insert –

2.7 New arrangement after dissolution

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

h. Clause 3.3 amended

Delete clause 3.3 and insert –

3.3 Election and appointment of bush fire brigade officers

- (1) Subject to subclause (2), the members of a bush fire brigade shall elect –
 - (b) a Captain;
 - (c) a first lieutenant;
 - (d) a second lieutenant; and
 - (e) any additional officers considered appropriate for the effective management of normal brigade activities.
- (2) If the members of a bush fire brigade have not elected a bush fire brigade member to a position, the local government may make an appointment to the position as they see fit and as considered appropriate.
- (3) When considering the election or appointment of persons to the positions in subclause (1), the bush fire brigade members or the local government as the case may be, are to have regard to the qualifications, training and experience which may be advisable to fill each position.
- (4) The local government may remove any person elected or appointed from any position.

a. Clause 3.5 amended

(a) Delete the title of clause 3.5 and insert –

3.5 Duties of CBFCO and Captain

(b) Delete subclauses 3.5(c) and (d) and insert –

- (c) to liaise with the local government concerning fire prevention or fire suppression matters generally and directions to be issued by the local government to bush fire control officers (including those who issue permits to burn), bush fire brigades or bush fire brigade officers;
- (d) to ensure that lists of bush fire brigade members are maintained in accordance with clause 4.3;

b. Clause 3.6 inserted

Insert clause 3.6 –

3.6 Training of officers

- (1) The local government is to supply each bush fire control officer and Captain with a copy of the Act, the Regulations, any Bush Fire Operating Procedures adopted, this local law and any other written laws which may be relevant to the performance of the bush fire brigade officers' functions, and any amendments made from time to time.
- (2) Bush fire control officers are to complete a Bush Fire Control Officers course conducted by an organisation approved by the CEO, within 12 months of appointment, unless a course has been completed within the 4 years prior to appointment as a bush fire control officer.
- (3) Bush fire control officers are required to complete a bush fire control officers course or a bush fire control officers refresher course at least once every 5 years.

c. Clause 4.3 amended

Delete subclause 4.3(1) and insert –

- (1) The Captain is to review the membership and report to the CEO and CBFCO the name and contact details of each bush fire brigade member.

d. Clause 4.4 amended

Delete clause 4.4 and insert –

4.4 Rights to object to or review of decision

- (1) If an application for membership is refused under clause 4.2, the CEO is to notify the applicant in writing as soon as practicable after the decision is made, of –
 - (a) the reasons for the refusal; and
 - (b) the right to object to the local government within 14 days of the date of notice.
- (2) If it is proposed that bush fire brigade member is to be suspended under clause 4.3(2) or terminated under clause 4.3(3)(c) or (d), the CEO is to notify the bush fire brigade member in writing as soon as practicable after the decision is made, of –
 - (a) the reasons for the intention to suspend or terminate the bush fire brigade member;
 - (b) the opportunity to respond and answer any matters which might give grounds for suspension or dismissal –
 - (i) in person or in writing to the CEO; or
 - (ii) to meet with a minimum of any three of the Captain, CBFCO, CEO; or President; and
 - (c) the right to object to the local government within 14 days of the date of notice, or such other time as may be agreed.
- (3) The decisions of any meeting in accordance with subclause (2)(b)(ii) of a bush fire brigade member with a minimum of any three of the Captain, CBFCO, CEO; or President –
 - (a) are to be made by simple majority; and
 - (b) may revoke, vary or confirm the original decision to suspend or terminate the bush fire brigade member.
- (4) The bush fire brigade member is to be notified in writing as soon as practical after a decision under subclause (3) is made, of –
 - (a) the decision and the reasons for the decision; and
 - (b) the right to object to the local government within 14 days of the date of notice.
- (5) The local government may dispose of an objection by –
 - (a) dismissing the objection;
 - (b) varying the decision objected to; or
 - (c) revoking the decision objected to, with or without –
 - (i) substituting for it another decision; or
 - (ii) referring the matter, with or without directions, for another decision by a minimum of any three of the Captain, CBFCO, CEO; or President.
- (6) The local government shall give written advice of the decision made under subclause (5) to the person.

e. Clause 4.5 amended

Delete clause 4.5 and insert –

4.5 Existing liabilities to continue

The resignation, suspension or termination of a member under clause 4.3 does not affect any liability of the bush fire brigade member arising prior to the date of resignation, suspension or termination of membership.

f. Clause 4.6 amended

Delete subclause 4.6(1) and insert –

(1) Any disagreement between bush fire brigade members regarding normal brigade activities may be referred to the Captain.

g. Clauses 5.1 and 5.2 amended

Delete clauses 5.1 and 5.2 and insert –

5.1 Administration

All administrative matters of a bush fire brigade are to be managed by the local government, other than bush fire brigade specific internal arrangements.

5.2 Finances

All financial matters of a bush fire brigade are to be managed by the local government, other than bush fire brigade specific internal arrangements.

Dated _____ 2018

The Common Seal of the Shire of Victoria Plains was affixed by authority of a resolution of Council in the presence of –

D.S. LOVELOCK, President

G.M. TEEDE, Chief Executive Officer.

A2/2018 LOCAL LAW – PROPOSED STANDING ORDERS AMENDMENT

FILE REFERENCE	
REPORT DATE	3 January 2018
APPLICANT/PROPONENT	None
OFFICER DISCLOSURE OF INTEREST	None
PREVIOUS MEETING REFERENCES	A21/2017 of 14 June 2017
PREPARED BY	Niel Mitchell, Consultant
AUTHORISED BY	
ATTACHMENTS	
None	

PURPOSE OF REPORT

To consider discontinuation of the proposed Standing Orders Amendment Local Law in favour of a new Meeting Procedures Local Law.

BACKGROUND

The current Standing Orders were adopted in 1997, and amendments were proposed at the 14 June 2017 Council Meeting.

COMMENT

Following reference to them as required by the Local Government Act, the Department of Local Government, Sporting and Cultural Industries also notified a number of additional and consequential amendments. Given the total number of amendments needed, the principal local law will become somewhat disjointed once the changes are incorporated, as well as still omitting some aspects included in more recent local laws adopted. If all matters are to be incorporated, it is simpler and more cohesive to start over, rather than try to fix a local law that is no longer suitable. Accordingly, it is suggested that the proposed amendment local law be discontinued, and a new Meeting Procedures Local Law be prepared in its place.

The benefits of doing so include –

- simplification of structure of the local law
- referencing of relevant matters relating to legislation and regulations
- greater consistency with more modern Meeting Procedures Local Laws in the industry
- clear application to all ordinary and special meetings of Council, committees and electors
- improved clarity around a number of matters

Should Council wish to continue with the proposed Amendment Local Law, comment from the Department has been received, and will be collated for the next Ordinary Meeting.

POLICY REQUIREMENTS

None

LEGISLATIVE REQUIREMENTS

Local Government Act 1995 –

- s.3.12 – procedure for making local laws

Shire of Victoria Plains Standing Orders Local Law 1997

STRATEGIC IMPLICATIONS

There are no known strategic implications associated with this proposal.

Corporate Business Plan references and impacts:-

STRATEGY 4.3.1 – Maintain / retain full compliance with statutory obligations.

➤ **Environment**

There are no known significant environmental implications associated with this proposal.

➤ **Economic**

There are no known significant economic implications associated with this proposal.

➤ **Social**

There are no known significant social implications associated with this proposal.

FINANCIAL IMPLICATIONS

None

VOTING REQUIREMENTS

Absolute Majority Required: No

RESOLUTION 7/2018

Moved: Cr P Bantock

Seconded: Cr J Corless-Crowther

That Council –

- **discontinue the proposed Standing Orders Amendment Local Law; and**
- **approve the preparation of a new Meeting Procedures Local Law.**

Motion put and Carried: 5/0

A3/2018 LOCAL LAW – CEMETERIES 2018

FILE REFERENCE	
REPORT DATE	20 January 2018
APPLICANT/PROPONANT	None
OFFICER DISCLOSURE OF INTEREST	None
PREVIOUS MEETING REFERENCES	None
PREPARED BY	Niel Mitchell, Consultant
AUTHORISED BY	Glenda Teede – Chief Executive Officer
ATTACHMENTS	
	<ul style="list-style-type: none">• Draft Cemeteries Local Law 2018 – tracked changes• Submissions received

PURPOSE OF REPORT

To consider readvertising of the proposed Cemeteries Local Law.

BACKGROUND

The draft local law is to comply with an undertaking given to the Western Australian Parliamentary Joint Standing Committee on Delegated Legislation.

The Interpretation Act 1984 s.42 specifies the authority of each House of Parliament to review local laws and to pass a resolution to disallow. Reasons for disallowance include if there are significant changes in the draft to be adopted and what was originally advertised.

Subject to Council's agreement, it is suggested that –

- the current process be discontinued
- the amended draft local law as attached be approved for readvertising
- re-commence the process for the Cemeteries Local Law.

Accordingly, the additional purpose of this report is –

- 1) To allow the Presiding Person to give notice to the meeting of the proposal to make a new local law, being –
 - Shire of Victoria Plains Cemeteries Local Law 2018
- 2) For Council to approve the proposed local law;
- 3) For Council to give notice of the purpose and effect of the proposed local law; and
- 4) To allow for advertising of the proposed local law for public comment.

COMMENT

Discontinuance

The attached draft Cemeteries Local Law highlights suggested changes arising from internal review as well as the comments provided by the Department of Local Government, Sporting and Cultural Industries –

- blue indicates insertions
- red indicates deletions

The following changes are considered significant, as they create new requirements or restrictions, or impose new modified penalties –

- cl.4.2 – Memorial service or processions

- The rewording of the clause creates an offence if breached
- cl.5.5(2)(a) – Disposal of ashes
Insertion of paragraph places a new restriction
 - cl.7.4 – specification for memorial plaque base
Insertion of clause places new requirements
 - Sch.1 – deletion of three modified penalties

Re-commencement

The attached draft incorporates the changes suggested by the Department and other matters identified. As noted above, several matters are considered significant, and therefore in terms of the Local Government, require readvertising for public comment etc.

The proposed local laws are set out in the attachments to this report. In making a new local law, Council must comply with the provisions of section 3.12 of the Local Government Act, and any specific requirements of other legislation.

The *Local Government (Functions and General) Regulations* (Regulation 3) states that for the purpose of Section 3.12(2) of the Act, the person presiding at a council meeting is to give notice of the purpose of the local law by ensuring that the purpose and effect of the proposed local law is included in the agenda for that purpose and that the minutes of the meeting of the council include the purpose and effect of the proposed local law.

Purpose – to provide for the management of the Calingiri and Bolgart Cemeteries and create offences for non-compliance.

Effect – to repeal the existing bylaw and provide for the management and control of the Calingiri and Bolgart Cemeteries

The draft local law makes a significant change to what has been current practice in almost all local governments –

- grant of right of burial –
These will only be issued at time of burial, and is not to be used for either memorial garden or placement of ashes or for reservation of a gravesite for future use. Under the Cemeteries Act, a grant of right of burial has a mandatory 25 minimum period, with an extension of 25years exercised at the option of the holder. The holder can also assign or transfer the grant of right in a will. A further option of 25 years is at by mutual agreement. Once issued, the Shire has effectively lost control of that site for potentially 50 years.

This makes keeping track of reservations extremely difficult for administrative purposes.

- Pre-need certificate –
To allow for reservations to be made, a number of local governments are using re-need certificates. These are generally for a maximum period of 5 years, and are issued only with consent of the local government, with options also by mutual consent.

Administratively, it is much more likely to be able to track a holder of a certificate every 5 years, than after 25 years or more.

The local law does not include either New Norcia Cemetery, nor Glentromie Cemetery, since –

- New Norcia Cemetery is under the control of the monastery
- Glentromie Cemetery is on privately owned land

Process

The procedure for making a local law requires Council to advertise state-wide, advising of its intention to make a local law, and invite submissions to be made on the proposed local law for a six-week period. The draft is also to be submitted to the relevant Ministers at this time, for review and comment. At the closure of the submission period, Council is to consider all submissions before making a local law. Notices are to invite the public to comment on the proposed local law, with submissions being open for a period of not less than 6 weeks. Internal submissions may also be made during this time.

The advertisement will be placed once Council has resolved its intent to make the local law.

After the submission period is closed, Council is required to consider any submissions received. Minor amendments not affecting the intent of the provisions can be made, but if significant changes are needed, the proposal must be readvertised.

If finally adopted, the proposed local law is then published in the Government Gazette, and comes into effect on the date specified. The Gazettal copy and other documentation is then sent to the Parliamentary Joint Standing Committee on Delegated Legislation to review, which may then disallow or require changes, even though having been Gazetted.

POLICY REQUIREMENTS

None

LEGISLATIVE REQUIREMENTS

Local Government Act 1995 –

- 3.12 – Procedure for making local laws
 - (6) Notice of purpose and effect of local law to be given by the person presiding
 - (7) Statewide public notice required, and copies to Minister/s immediately after notice given, minimum 6 weeks notice
 - (3a) Local Public notice also required to be given
 - (8) After notice period, all submissions to be considered, and local law may then be made by absolute majority
 - (9) Publication in Government Gazette required
 - (7) Parliament to be advised within 10 working days of Gazettal
- s.3.13 – Significant changes require recommencement of proposal
- s.3.14 – Unless otherwise provided for, local laws come into effect 14 days after Gazettal

- s.3.15 – local public notice of the final adoption/making of a local law to be given

Cemeteries Act 1986 –

- s.54 – local government may make local laws
- s.55 – list of purposes for which local laws may be made

Shire of Victoria Plains Local Law No.2 Calingiri Cemetery Local Laws 1998 –

STRATEGIC IMPLICATIONS

There are no known strategic implications associated with this proposal.

Corporate Business Plan references and impacts:-

STRATEGY 4.3.1 – Maintain / retain full compliance with statutory obligations.

➤ **Environment**

There are no known significant environmental implications associated with this proposal.

➤ **Economic**

There are no known significant economic implications associated with this proposal.

➤ **Social**

There are no known significant social implications associated with this proposal.

FINANCIAL IMPLICATIONS

None

VOTING REQUIREMENTS

Absolute Majority Required: No

RESOLUTION 8/2018

Moved: Cr P Bantock

Seconded: Cr N Clarke

That Council –

- 1. discontinue the proposed Cemeteries Local Law, and recommence the process incorporating the matters identified in the report above;**
- 2. pursuant to section 3.12(3) and (3a) of the Local Government Act 1995, and all other legislation enabling it, give Statewide and local public notice that it intends to make the following local law –**
 - Shire of Victoria Plains Cemeteries Local Law 2018 –**
 - Purpose – to provide for the management of the Calingiri and Bolgart Cemeteries and create offences for non-compliance.**
 - Effect – to repeal the existing bylaw and provide for the management and control of the Calingiri and Bolgart Cemeteries**
- 3. in accordance with section 3.12(3) of the Local Government advise the Minister for Local Government of the proposed Local Law.**

Motion Put and Carried: 5/0

Proposed **Cemeteries Local Law 2018**
Summary of submissions received

Dept of Local Government, Sporting and Cultural Industries –

Item	Clause	Comment	Review Comment	Recommendation
1		<p>Clause structure The Department notes that many of the clauses in the local law are uniquely drafted or derived from older local law formats. It is suggested that the Shire consider some recent cemeteries local laws and consider whether their format and wording should be incorporated.</p>	<p>There are aspects within the draft local law that are not common, but all aspects have been previously included in Gazetted local laws, eg –</p> <ul style="list-style-type: none"> - Clarification of use of Grants of rights of Burial - Pre-Need Certificates - Removal of annual licences for funeral directors and monumental masons 	No changes
2		<p>Application This clause states that it applies to the Calingiri and Bolgart Cemeteries, but the reserve numbers are currently blank. The Shire should ensure that these details are added to the final version of the local law prior to it being submitted to Council.</p>	<p>Calingiri – cemetery Res.16738, carpark Res.37801 Bolgart – Res.47876</p>	Amend as suggested
3	1.4	<p>Repeal reference to the repealed local law should contain the exact title of the repealed local law being: “Shire of Victoria Plains Local Law No. 2 Calingiri Cemetery Local Laws”.</p>	Amended	Amend as suggested
4	1.5	<p>Definitions a) natural stone It is recommended in part (b) you remove “and includes granite”. It is not necessary to specify this one type of fabricated stone. b) utility services Please change this sentence to read “...and includes the supply of water, electrical power and gas and also includes refuse, building waste and sewerage disposal services”.</p>	<p>Amended</p> <p>Amended</p>	<p>Amend as suggested</p> <p>Amend as suggested</p>

5	2.2	<p>Plans</p> <p>a) In (1)(a) please change “memorial garden to “memorials, gardens”.</p> <p>b) In (1)(e) the reference to “clause 2.6” is inaccurate. It should be corrected to refer to the appropriate clause, or deleted if the relevant clause no longer exists.</p>	<p>The intention is not gardens for beautification, but gardens established for the placement of memorials</p> <p>Amended</p>	<p>No change</p> <p>Amend as suggested</p>
6	3.4	<p>Minimum notice required</p> <p>a) For consistency, please change the words “charge” with “fee” and “made” with “charged”.</p>	Amended	Amend as suggested
7	4.4	<p>Conduct of interments by the Board</p> <p>a) In (c) after “where no fee...” appears, please insert “is applicable,”</p>	Amended	Amend as suggested
8	5.5(1)	<p>Disposal of ashes</p> <p>After the words “clause 3.1” insert “or subclause (2)”.</p>	Amended	Amend as suggested
9	9.1	<p>Vehicle access</p> <p>In subclause (1) replace “shall” with “must only”.</p>	Amended	Amend as suggested
10	9.11	<p>Firearms</p> <p>In the clause title, delete “Fireworks or” and put a capital letter for “Firearms”.</p>	Amended	Amend as suggested
11	Sch.1	<p>Modified penalties</p> <ul style="list-style-type: none"> Item 1 and 2 can be deleted, since clause 4.2 does not prescribe any offence. Item 7 can be deleted, since clause 5.5(2) does not prescribe an offence. Item 31 can be deleted. If a person fails to comply with a direction to leave a closed area, this would be addressed under item 30. If a person fails to comply with a sign indicating that an area is closed to the public, this would be addressed by item 29. 	<p>Reworded to create an offence</p> <p>Amended</p> <p>Amended</p>	<p>No change</p> <p>Amend</p> <p>Amend</p>

Shire internal submission –

Item	Clause	Comment	Review Comment	Recommendation
		None		

Public comment –

Item	Clause	Comment	Review Comment	Recommendation
		<p>Why is there a limit on what type of head stone and monument that can be placed in cemetery and why has stone only been chosen as it the most expensive option ,also why no ceramic ,glass or pottery ornaments allowed has there been vandalism of such items at our cemetery .</p> <p>I question the necessity of a funeral director having to place ashes and the continued payment of a plot when it being held use against the present option of purchasing a plot .</p>	<p>The current Cemeteries Act is over 30 years old, and has its origin in an Act dating from 1896. Some of the concepts in it are reflective of the late 1800's, and do not fit current needs or wishes at all well. In response to your specific questions –</p> <ul style="list-style-type: none"> • headstones - in the past, vandalism in cemeteries has been low, but in recent years have become a target for vandals, especially in the metro area, but the activity is not restricted to high population places. Accordingly, it has been the general trend to limit as far as possible, anything that may be damaged such as glass, ceramics and pottery, and which would potentially be dangerous if broken. It is completely within Council's scope to permit these, rather than refuse their use. The measure is intended as preventative, rather than waiting for incidents to occur before taking action. • similarly, many places wish to have monuments that last as long as possible, and generally this means some form of stone or aggregate composition. While the term "natural stone" is used in the general text of the local law, the definition is broader than just stone. The aim is to limit as far as possible, any materials that may deteriorate by being exposed to weather (eg: plastics) or pests (eg: timber). There is 	<p>No change – sufficient discretion in local law</p> <p>No change – sufficient discretion in local law</p>

		<p>This appears to be economic driven as opposed to necessity</p>	<p>the grant on to another person, and it can be left to another person in a will. It is easy to keep the original record, but it is extremely difficult to keep track of who has the right to use the plot for potentially 50 years, as there is no obligation on the holder to notify the Shire of changes. It is quite a common occurrence for a grant of right to be issued, and then years later find out that the person who bought the right has died, was buried years ago in a different cemetery altogether such as Perth or Albany or some place they retired to, and the family were never aware of the Grant of Right of Burial. The use of Pre-Need Certificates in the local law is limited to 5 years, and means that there is a much higher prospect of being able to track down the person if they've moved away, or the family.</p> <ul style="list-style-type: none"> • The fees for all cemetery charges are as set by Council each year during the Budget process. 	<p>No change – explanation</p> <p>No change – Annual decision of Council</p>
			<p>No fee, charge or licence cost is set within the local laws, as these are discretionary decisions of Council, and are reviewed every year in the annual Budget.</p> <p>Please note that I cannot commit Council to any particular decision, course of action, or level of fees and charges, as these are up to Council to determine.</p>	<p>No change – explanation</p>

CEMETERIES ACT 1986
LOCAL GOVERNMENT ACT 1995

SHIRE OF VICTORIA PLAINS

CEMETERIES LOCAL LAW ~~2017~~2018

CONTENTS

Part 1 - Preliminary

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

Part 2 - Administration

- 2.1 Powers and functions of CEO
- 2.2 Plans
- 2.3 Grant of right of burial
- 2.4 Pre-need certificate
- 2.5 Board may enter into an agreement for maintenance

Part 3 - Application for interment

- 3.1 Application for interment permit
- 3.2 Applications to be accompanied by certificates etc.
- 3.3 Certificate of identification
- 3.4 Minimum notice required
- 3.5 Refusal of application

Part 4 - Funerals and memorial services

- 4.1 Fixing times for interments
- 4.2 Memorial services or processions
- 4.3 Processions
- 4.4 Conduct of interments by the Board

Part 5 - Interments

- 5.1 Requirements for burials and coffins
- 5.2 Preparation of graves
- 5.3 Dimensions of graves
- 5.4 Ashes not to be held by the Board
- 5.5 Disposal of ashes
- 5.6 Vaults and mausoleums
- 5.7 Re-opening a grave
- 5.8 Exhumation of a coffin
- 5.9 Opening of coffin

Part 6 - Applications for memorials

- 6.1 Application to place memorial
- 6.2 Australian War Graves

Part 7 - Memorials permitted

- 7.1 Limitation on dimensions of memorials
- 7.2 Specification for monument

- [7.3](#) [Specification for headstone](#)
- [7.4](#) [Specification for memorial plaque](#)
- [7.5](#) [Specification for gravesite fencing](#)
- [7.6](#) [Display of trade names on memorials not allowed](#)
- [7.7](#) [Use of wood](#)

[Part 8 - Memorials and other work](#)

- [8.1](#) [Carrying out memorial work](#)
- [8.2](#) [Removal of sand, soil or loam](#)
- [8.3](#) [Removal of rubbish](#)
- [8.4](#) [Plants and trees](#)
- [8.5](#) [Supervision](#)
- [8.6](#) [Placing of grave ornaments](#)
- [8.7](#) [Hours of work](#)
- [8.8](#) [Unfinished work](#)

[Part 9 - General](#)

- [9.1](#) [Vehicle access and speed limitation](#)
- [9.2](#) [Assistance animals](#)
- [9.3](#) [Utility services](#)
- [9.4](#) [Damaging and removing of objects](#)
- [9.5](#) [Withered flowers](#)
- [9.6](#) [Littering and vandalism](#)
- [9.7](#) [Advertising](#)
- [9.8](#) [Signs and directions of the Board](#)
- [9.9](#) [Removal from the cemetery](#)
- [9.10](#) [Board may close cemetery](#)
- [9.11](#) [Fireworks or firearms](#)
- [9.12](#) [Liability for damage or works required to comply](#)
- [9.13](#) [Offence to fail to comply with notice](#)
- [9.14](#) [Board may undertake requirements of notice](#)

[Part 10 - Offences and modified penalties](#)

- [10.1](#) [General penalties](#)
- [10.2](#) [Modified penalties](#)

[Schedule 1 – Modified Penalties](#)

[Schedule 2 – Infringement Notice](#)

[Schedule 3 – Withdrawal of Infringement Notice](#)

CEMETERIES ACT 1986
LOCAL GOVERNMENT ACT 1995

SHIRE OF VICTORIA PLAINS

CEMETERIES LOCAL LAW ~~2017~~2018

Under the powers conferred by the *Cemeteries Act 1986* and the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Victoria Plains resolved on _____ to adopt the following local law.

(a) PRELIMINARY

(1) Citation

This local law may be cited as the *Shire of Victoria Plains Cemeteries Local Law ~~2017~~2018*.

(2) Commencement

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

(3) Application

This local law applies to the following cemeteries located in the district –

- (a) Calingiri Cemetery situated on a portion of Reserve _____; 16738 and a portion of Reserve 37801 as indicated by signs or fencing; and
- (b) Bolgart Cemetery situated on a portion Reserve _____ 47876 as indicated by signs or fencing.

(4) Repeal

Shire of Victoria Plains Local ~~Laws~~ Law No. 2 Calingiri Cemetery Local Laws published in the *Government Gazette* on 17 March 1998 ~~are~~ is repealed.

(5) Definitions

In this local law, unless the context otherwise requires –

Act means the *Cemeteries Act 1986*;

~~ashes~~ means so much of the remains of a dead body after the due processes of cremation as may be contained in a standard sized cremation urn ~~of which the volume does not exceed 4,000 cubic centimetres, or such greater volume as approved by the CEO in writing;~~

authorised person means a person –

- (a) appointed by the Board ~~under section 9.10 of the Local Government Act 1995~~ for the purposes of performing any function or exercising any power, other than the giving of infringement notices, conferred upon an authorised person by this local law; or
- (b) authorised under section 64 of the Act to give infringement notices;

Board means the local government;

business day means any week day other than a public holiday in Western Australia;

cemetery means a cemetery under the care and control of the Board;

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

coffin means a coffin or other receptacle used for the transportation of a dead body to the grave site, or the receptacle used for the burial of a dead body in a grave;

Commissioner of Police means the Commissioner of Police for the time being appointed under the *Police Act 1892* and includes any person for the time being acting in that capacity;

district means the district of the local government;

funeral director means a person –

- (a) holding current membership of –
 - (i) the Australian Funeral Directors Association, or
 - (ii) the National Funeral Directors Association; or
- (b) a person authorised by the personal representative of a deceased person, and approved by the CEO;

grant of right of burial means a right granted under clause 2.3 for immediate burial of a dead body, and for the purposes of this local law, includes placement of ashes in a grave, the memorial garden or under a memorial plaque, or scattering of ashes within the cemetery;

headstone means a memorial designed for placement at the head of a grave, commemorating a grave or the placement of ashes;

interment includes, as the case may be –

- (a) burial of a dead body;
- (b) placement of ashes in a grave, memorial garden or under a commemorative plaque; or
- (c) scattering of ashes;

interment permit means a single funeral permit issued by the Board under section 20 or 21 of the Act which entitles the holder to conduct the interment of a person named in the permit, and includes placement ~~of ashes in a memorial garden,~~ or scattering of ashes;

local government means the Shire of Victoria Plains;

mausoleum means a burial chamber 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;

memorial has the meaning set out in the Act;

memorial plaque means a panel, plate or tablet designed or used for purposes of bearing a commemorative inscription;

memorial work means to install, repair, renovate or remove a memorial;

monument means a sculpture, statue, cover of a grave or other form of memorial approved by the Board commemorating a grave or the placement of ashes, other than a headstone or memorial plaque;

natural stone means –

- (a) any variety of non-fabricated, naturally occurring stone or rock; or
- (b) ~~any fabricated compound or fabricated aggregate which, in the opinion of the~~ Board, has similar durability and aesthetic qualities as the materials specified in paragraph (a) above, suitable for decorative purposes and monumental sculpture ~~and includes granite,~~ but not glass, porcelain, ceramics or any pottery;

personal representative means –

- (a) the administrator or executor of an estate of a deceased person;
- (b) the person who, by law of practice, has the right to apply for administration of the estate of the deceased person; or
- (c) a person having the lawful custody of a dead body;

pre-need certificate means the purchase of a certificate made under clause 2.4 setting aside for use of the person who wishes to secure the use of the grave, niche or memorial position, prior to any grant of right of burial made under clause 2.3;

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;

standard grave means a grave which does not exceed any of the following dimensions: 2m long, 1.2m wide and 2.1m deep;

utility services means municipal or public services and ~~include~~ includes the supply of water, electrical power, ~~and~~ gas and also includes refuse, building waste and sewerage disposal services;

vault means a below ground lined grave with 1 or more sealed compartments constructed to specifications approved from time to time by the Board; and

vehicle includes every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise, other than a wheelchair or baby stroller, and includes a bicycle and a skateboard.

(b) Administration

(1) Powers and functions of CEO

Unless a matter is specified to be determined by the Board, the CEO shall exercise all the powers and functions of the Board in respect of the cemetery.

(2) Plans

- (1) The Board shall establish and maintain a plan of the cemetery showing –
 - (a) the location of areas set aside for burials, memorial garden, and placement of ashes in a garden;
 - (b) the location of an area to be used only for burials of persons of a particular religious denomination;
 - (c) the location of different areas of the cemetery to which different requirements for memorials apply;
 - (d) the location of areas set aside for the works and other uses as specified in sections 24(2)(a) and (b) of the Act; and
 - (e) any restricted areas ~~restricted in accordance with clause 2.6.~~
- (2) The Board may from time to time establish and vary the boundaries of any area referred to in subclause (1).
- (3) The plans referred to in subclause (1) shall be open for inspection by members of the public during normal office hours of the Board.

(3) Grant of right of burial

- (1) Upon payment of the set fee, a grave, niche compartment or memorial location shall be granted right of burial for a period in accordance with section 25(1) of the Act.
- (2) Upon payment of the set fee, a grant of right of burial shall be extended for a further period in accordance with section 25(2) or (4) of the Act.
- (3) A grant of right of burial made and recorded at the commencement of this local law, shall remain valid for the periods specified by the Act.
- (4) If the Board refuses ~~to~~ an application under subclause (1) or (2), written notice of the refusal is to be given to the applicant.

(4) Pre-need certificate

- (1) Prior to issue of a grant of right of burial, and upon payment of the set fee, purchase of a pre-need certificate for a specific position of gravesite, niche compartment or memorial location may be approved for a period not exceeding to 5 years.
- (2) Upon payment of the set fee, a pre-need certificate may be renewed for a further period not exceeding 5 years.
- (3) Cancellation of a pre-need certificate may be made by the person holding the pre-need certificate or authorised representative at any time.
- (4) For avoidance of doubt, a pre-need certificate is not a grant of right of burial.
- (5) If the Board refuses to grant an application under subclause (1) or (2), written notice of the refusal is to be given to the applicant.

(5) Board may enter into an agreement for maintenance

The Board may enter into an agreement with the holder of a grant of right of burial under clause 2.3 or holder of a pre-need certificate under clause 2.4 for the maintenance of an area of the cemetery at the expense of the holder.

(c) Application for interment

(1) Application for interment permit

- (1) A funeral director may apply for approval for [an](#) interment in the cemetery.
- (2) An application for an interment permit is for a dead body and shall include coffin specifications and details of the vehicle transporting the dead body to the gravesite.
- (3) An application under subclause (1) shall be accompanied by the set fee.

(2) Applications to be accompanied by certificates etc.

- (1) An application under clause 3.1 shall be accompanied by a certificate issued under clause 3.3, in respect of the dead body.
- (2) An application under clause 3.1 shall be accompanied by either a medical certificate of death or a Coroner's order of burial, in respect of the dead body.

(3) Certificate of identification

- (1) After a dead body is placed in a coffin and prior to the dead body being removed to the cemetery, a person who personally knew the deceased shall identify the dead body and shall provide a certificate of identification, 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) A funeral director shall provide a certificate, 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.

(4) Minimum notice required

An application for interment shall be made to the Board at least 4 business days prior to the day proposed for interment, otherwise an extra ~~charge-fee~~ may be ~~made~~[charged](#).

(5) Refusal of application

- (1) The Board may refuse an application for a interment permit –
 - (a) 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
 - (b) on any other grounds.
- (2) The Board may refuse an application for a pre-need certificate.
- (3) If the Board refuses to approve an application under subclause (1) or (2), written notice of the refusal is to be given to the applicant.

(d) Funerals and memorial services

(1) Fixing times for interments

- (1) On receipt of a properly completed application form and the satisfaction of all other requirements of the Act and this local law, the Board may –
 - (a) approve a time for the funeral; and
 - (b) dig or re-open any grave that is required.

- (2) The time approved for an interment is at the discretion of the Board but will be as near as possible to the time requested by the applicant.
- (3) Except with the permission of the Board and subject to such conditions as may be applied, a person shall not carry out an interment –
 - (a) on a Saturday, a Sunday or a public holiday;
 - (b) commencing at any time other than between the hours 9:00 am to 2.00 pm; or
 - (c) to conclude later than 3.00pm.

(2) Memorial services or processions

~~Upon application, the Board may permit, with or without interment or broadcasting of ashes –
(a) the conduct of a memorial service; or
(b) a procession.~~

A person shall not conduct a memorial service or procession within a cemetery unless that person has the permission of the Board.

(3) Processions

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

(4) Conduct of interments by the Board

When conducting an interment, or for the purposes of deciding whether to conduct an interment, under section 22 of the Act the Board may –

- (a) require a written request to be made for the Board to conduct an interment;
- (b) in its absolute discretion, charge any person requesting it to conduct an interment the set fee for the conduct of that funeral;
- (c) where no fee is applicable or a reduced fee has been charged by it for the conduct of the interment, determine the manner in which the interment shall be conducted;
- (d) specify an area in the cemetery for the interment;
- (e) conduct the funeral notwithstanding the failure of a person to make any application or to obtain any consent required under this local law; and
- (f) do or require anything which is considered necessary or convenient for the conduct of the funeral by the Board.

(e) Interments

(1) Requirements for burials 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 clause 3.1;
- (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 properly affixed in a clearly visible position on the lid of the coffin; 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.

(2) Preparation of graves

- (1) A person shall not dig or prepare a grave or fill a grave, unless that person has the permission of the Board.

- (2) Regardless of prior grant of right of burial under clause 2.3 or gravesite approved upon application made under clause 3.1, the Board may direct the digging or preparation of a grave in an alternate position, where –
 - (a) evidence of a prior interment is found, or known to have occurred;
 - (b) access to the position is constrained;
 - (c) the digging or preparation of the grave is unreasonably difficult; or
 - (d) utility services may be interfered with.
- (3) Where an alternative position for the grave is directed under subclause (2), the Board is to advise the funeral director immediately.

(3) Dimensions of graves

- (1) A person shall not bury a dead body in the cemetery other than in a standard grave, unless that person has the permission of ~~the CEO~~ [an authorised person](#).
- (2) Every grave prepared by the Board shall be dug at least 1.8m deep and shall not exceed 2.3m in depth, unless otherwise determined by the Board.
- (3) A person shall not bury a ~~dead body~~ [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 1600mm, unless that person has the permission of ~~the CEO~~ [an authorised person](#); or
 - (b) in any circumstances less than 750mm.
- (4) The permission of the Board in subclause (3) shall not be granted unless in the opinion of ~~the CEO~~ [an authorised person](#) exceptional circumstances require granting of that permission.

(4) Ashes not to be held by the Board

The Board shall not accept custody of ashes of a deceased person.

(5) Disposal of ashes

- (1) Except in accordance with an approved application under clause 3.1 [or subclause \(2\)](#), a person shall not bring or dispose of the ashes of a deceased person in the cemetery.
- (2) A funeral director, the personal representative of a deceased person whose body has been cremated, or other person approved by ~~the CEO~~ [an authorised person](#), may apply to the Board for permission to dispose of the ashes of that deceased person in a cemetery by one of the following methods, if that method is available –
 - [\(a\) placed within the perimeter of an authorised gravesite's at a depth of at least 600mm;](#)
 - ~~(a)~~[\(b\)](#) placed in a ~~grave~~, vault or mausoleum;
 - ~~(b)~~[\(c\)](#) scattered in an area approved by the Board; or
 - ~~(c)~~[\(d\)](#) placed in a memorial garden.
- (3) The Board may require a person making an application under subclause (2) to provide additional information reasonably related to the application before determining the application.
- (4) The Board may –
 - (a) approve an application under subclause (2) unconditionally or subject to any conditions; or
 - (b) refuse to approve an application under subclause (2).
- (5) Where an application under subclause (2) has been approved subject to conditions, the applicant must comply with each of those conditions, as amended.
- (6) If the Board refuses to approve an application under subclause (2), written notice of the refusal is to be given to the applicant.

(6) Vaults and mausoleums

- (1) A person shall not construct a vault or mausoleum within the cemetery, except with the specific approval of the Board.
- (2) A vault or mausoleum within the cemetery shall at all times remain the property of the Board.

- (3) An application under subclause (1) shall be in writing and shall be accompanied by payment of the set fee.
- (4) The Board may require a person making an application under subclause (1) to provide additional information reasonably related to the application before determining the application.
- (5) The Board may –
 - (a) approve an application under subclause (1) unconditionally or subject to any conditions; or
 - (b) refuse to approve an application under subclause (1).
- (6) Where an application under subclause (1) has been approved subject to conditions, the applicant must comply with each of those conditions, as amended.
- (7) If the Board refuses to approve an application under subclause (1), written notice of that refusal is to be provided to the applicant.
- (8) A person shall not place a dead body in a vault or mausoleum except –
 - (a) in a closed coffin;
 - (b) in a soundly constructed and sealed chamber; and
 - (c) in accordance with subclause (9).
- (9) The number of burials in a chamber must not exceed the number for which the chamber was designed.

(7) Re-opening a grave

- (1) A person shall not reopen a grave without the approval of the Board.
- (2) If for the purpose of re-opening a grave in the cemetery, the Board finds it necessary to remove plants, grass, shrubs or other like matter from the grave, then the person ordering the re-opening of that grave shall bear the cost of the removal and any necessary reinstatement.

(8) Exhumation of a coffin

- (1) Subject to subclause (2), a person shall not exhume a coffin in the cemetery for the purposes of reburial within 12 months after the date of its interment.
- (2) Subclause (1) shall not apply where the exhumation is ordered or authorised pursuant to the Act.
- (3) Subject to subclause (1) and (2) prior to any other exhumation, the holder of a grant of right of burial must have applied in writing to the CEO requesting the exhumation and ~~the CEO~~[an authorised person](#) has authorised the exhumation.

(9) Opening of coffin

- A person shall not open a coffin in the cemetery unless –
- (a) the coffin is opened for the purposes of the exhumation of a dead body; or
 - (b) that person has produced to the ~~CEO~~[Board](#) an order signed by the Commissioner of Police and ~~the CEO~~[an authorised person](#) has approved the opening of that coffin.

(f) Applications for memorials

(1) Application to place memorial

- (1) Upon payment of the set fee, the Board may approve an application to place a memorial with or without conditions, including restricting use of materials such as wood, dimensions of a memorial etc, so as not to detract from the amenity of the cemetery.
- (2) The Board may require the written consent of the holder of the right of burial of the grave, the personal representative of a deceased person, or other person to the satisfaction of the CEO to accompany an application for a memorial made under section 30 of the Act.
- (3) Where written consent is not able to be produced, the Board may approve with or without conditions or decline an application in its absolute discretion.
- (4) If the Board refuses to approve an application under subclause (2), written notice of that refusal is to be provided to the applicant.

(2) Australian War Graves

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

- (a) may place a complying 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.

(g) Memorials permitted

(1) Limitation on dimensions of memorials

- (1) No part of a memorial, including any grave cover, kerbing, boundary marker or enclosure is to extend beyond the standard dimensions of a gravesite.
- (2) No part of a monument above its base shall extend horizontally beyond its base.
- (3) Notwithstanding subclause (1), on request of the personal representative, the Board may approve a memorial over adjoining multiple gravesites –
 - (a) where the persons interred are of the same family; or
 - (b) for another acceptable reason.

(2) Specification for monument

- (1) A monument in the cemetery –
 - (a) shall be made of natural stone;
 - (b) shall be placed on a base of natural stone;
 - (c) the portion not being a grave cover, shall comply with the following specifications –
 - (i) unless a greater height is approved by the Board, the overall height of a monument above the original surface of the grave shall not exceed 1.2m;
 - (ii) the height of the base of the monument above the original surface of the grave shall not be less than 150mm nor more than 450mm;
 - (iii) the width of the base of the monument shall not exceed 1.2m;
 - (iv) the length of the base of the monument measured along the length of the grave shall not exceed 600m;
 - (d) the portion being a grave cover, shall comply with the following specifications
 - (i) unless a greater height is approved by the Board, the overall height of a monument above the original surface of the grave shall not exceed 300mm;
 - (ii) the width of the grave cover shall not exceed 1.2m;
 - (iii) the length of the grave cover shall not exceed 2.4m; and
 - (e) shall have foundations extending to a depth of 1m unless concrete beam foundations are approved by the Board.
- (2) Subject to subclause (3) a memorial plaque may be attached to a monument that has been or is being erected.
- (3) The provisions of clause [7.47.5](#) apply to plaques that are attached to a monument.

(3) Specification for headstone

- (1) A headstone shall –
 - (a) be made of natural stone;
 - (b) be placed on a base of natural stone;
 - (c) comply with the following specifications –
 - (i) be placed on proper and substantial foundations extending to a depth of 1m unless concrete beam foundations are provided
 - (ii) the height of the base of the headstone above the highest point of the original surface of the grave shall not be less than 150mm nor more than 200mm;
 - (iii) the overall height of the headstone, including the base, shall not exceed 1.2m;
 - (iv) the length of the base of the headstone measured across the width of the grave shall not exceed 1.2m;

- (v) the width of the base of the headstone measured along the length of the grave shall not exceed 300mm; and
- (vi) no part of a headstone above its base shall extend horizontally beyond that base.
- (d) have foundations extending to the bottom of the grave unless concrete beam foundations are approved by the Board.
- (2) Subject to subclause (3) a memorial plaque may be attached to a headstone erected or being erected within the cemetery.
- (3) The provisions of clause ~~7.47.5~~ apply to plaques that are attached to a headstone.

(4) Specification for memorial plaque base

(1) A memorial plaque base shall –

(a) have the following dimensions –

- (i) at ground level of 85mm wide; and 105mm long;**
- (ii) front elevation of 30mm;**
- (iii) back elevation of 85mm; and**
- (iv) all measurements to be within 5mm.**

(b) be constructed of materials approved by the Board;

(c) be in a position approved by the Board; and

(d) have foundations as approved by the Board.

(2) The provisions of clause 7.5 apply to plaques that are attached to a memorial plaque base.

(3) Upon application, the Board may permit an exemption from any of the requirements of subclause (1)(a), but shall not delegate the decision to permit an exemption to the CEO.

(4)(5) Specification for memorial plaque

(1) A memorial plaque shall be made of –

- (a) admiralty bronze not exceeding 20mm in thickness;**
- (b) polished or brushed stainless steel not exceeding 8mm in thickness;**
- (c) stone, and –**
 - (i) if placed upon a headstone, monument or memorial plaque base, shall not exceed 50mm in thickness; or**
 - (ii) if it is not to be placed upon a headstone, monument or memorial plaque base, shall not be less than 100mm in thickness; or**
- (d) other material approved by the Board.**

(2) A memorial plaque placed on a monument, headstone or other item shall not extend beyond the physical dimensions of the monument, headstone or other item on which it is affixed.

(3) A memorial plaque to be placed on a commemorative wall shall –

(a) have the following dimensions –

- (i) Calingiri Cemetery – 200mm wide and 150mm high;**
- (ii) Bolgart Cemetery – 275mm wide and 120mm high; or**
- (iii) if a backing plate with multiple plaques attached – multiple plaques to be not more than 2 plaques wide subject to allowing a 10mm border and a maximum of 10mm between plaques; and**
- (iv) all measurements to be within 5mm; and**

(b) be placed in such a manner and in a position approved by the Board.

(4) Upon application, the Board may permit an exemption from any of the requirements of subclauses (3)(a) but shall not delegate the decision to permit an exemption to the CEO.

(5)(6) Specification for gravesite fencing

Any fencing used as a memorial or part of a memorial shall –

- (a) be a picket fence made of white powder coated aluminium or other materials approved by the Board;**

- (b) have concrete foundations not less than 250mm square and 750mm deep not more than 1200mm apart, or concrete beam foundations approved by the Board;
- (c) unless otherwise approved by the Board, comply with the following specification –
 - (i) in length, not be more than 2400mm in length, nor less than 900mm;
 - (ii) in width, not be more than 1200mm in width, nor less than 900mm; and
 - (iii) in height, not less than 450mm, nor more than 550mm from the original surface of the grave.

~~(6)~~(7) Display of trade names on memorials not allowed

A person shall not display any trade names or marks on a memorial.

~~(7)~~(8) Use of wood

No wooden fence, railing or construction other than a cross, shall be allowed on or around a grave, other than as a temporary marker or with the permission of the Board.

(h) Memorials and other work

(1) Carrying out memorial work

- (1) A person shall not carry out memorial work within the cemetery unless that person is authorised by the Board to do so under clause 6.1.
- (2) All material required in the erection and completion of any memorial work shall, be prepared before being taken to the cemetery.
- (3) The Board may place restrictions on the hours of work, access to the cemetery or other matters considered appropriate.
- (4) Memorial works shall be suspended during the conduct of any funeral within the cemetery.
- (5) Work is not permitted to be left unattended in an untidy or unsafe state.

(2) 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 construction of any memorial or other work, or cause any material to be removed from the cemetery except with the written approval of the Board.

(3) Removal of rubbish

All refuse, rubbish or surplus material remaining after approved memorial works are completed shall be immediately removed from the cemetery by the person carrying out the same.

(4) 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 Board.

(5) Supervision

All workers, whether employed by the Board or by any other person, shall at all times while within the boundaries of the cemetery be subject to the supervision of the Board and shall obey any directions of the Board.

(6) Placing of grave ornaments

- (1) A person shall not place vases or other grave ornaments –
 - (a) outside the perimeter of a grave in the cemetery as defined in the plans kept and maintained under section 40(2) of the Act; or
 - (b) outside of an area set aside by the Board as a memorial plaque section.
- (2) The use of glass, porcelain, ceramics or pottery is not permitted, other than that already in place at commencement of this local law.

(7) Hours of work

Except in accordance with the permission of an authorised person, a person shall not carry out memorial or other work within the cemetery –

- (a) during a funeral; or
- (b) other than between the hours of 8:00 am and 5:00 pm on a business day.

(8) Unfinished work

A person who does not complete any work before 5:00 pm on a business day shall leave the work in a neat and safe condition to the satisfaction of the Board.

(i) General

(1) Vehicle access and speed limitation

- (1) A person ~~shall~~must only drive a vehicle on a vehicular access way or the constructed roadway or other areas designated for the use of vehicles within the cemetery, unless otherwise authorised by the Board.
- (2) A person driving a vehicle, within the cemetery, shall not exceed the speed limit of 20km per hour, and shall comply with the signs and directions in the cemetery.

(2) Assistance animals

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

(3) Utility services

- (1) Other than with the approval of the Board, a person shall not –
 - (a) connect any device or equipment to any utility services supplied on or at the cemetery; or
 - (b) alter or interfere with utility services infrastructure located in the cemetery.
- (2) The Board may recover from a person the reasonable costs incurred by the Board for the supply to and use of any utility services by that person at the cemetery.

(4) Damaging and removing of objects

Subject to clause 9.5, 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.

(5) Withered flowers

A person may remove withered flowers from a grave or memorial and these are to be disposed of in an appropriate manner.

(6) Littering and vandalism

A person shall not –

- (j) damage, deface or interfere with any monument or gravesite in any manner whatsoever;
- (k) break or cause to be broken any glass, ceramic or other material in or upon the cemetery;
- (l) discard, deposit, leave or cause to be discarded, deposited or leave any refuse or litter in the cemetery other than in a receptacle provided for that purpose.

(1) Advertising

- (1) A person shall not advertise or carry on any trade, business or profession in the cemetery without the approval of the Board.
- (2) Upon payment of the set fee, the Board may consider and give approval subject to such conditions as the Board thinks fit.

(2) Signs and directions of the Board

- (1) The Board may display, mark, place or erect a sign within the cemetery specifying conditions relating to the use of the cemetery.
- (2) A person shall obey all signs displayed, marked, placed or erected by the Board within the cemetery and any other lawful direction by the Board.

(3) Removal from the cemetery

- (1) Any person failing to comply with any provisions of this local law or behaving in a manner that in the opinion of the Board is inappropriate in the cemetery may in addition to any penalty provided by this local law be ordered to leave the cemetery.
- (2) A person to whom an order under subclause (1) is given must comply with that order.

(4) Board may close cemetery

The Board may –

- (a) temporarily close the cemetery or any part of it;
- (b) exclude from the cemetery the public and all persons or so many of the public or so many persons as the Board consider to be necessary;
- (c) regulate, prohibit or restrict access to the cemetery or any part of it; or
- (d) direct persons to leave the cemetery or any part of it, for purposes of –
 - (i) a funeral or public convenience;
 - (ii) maintenance, redevelopment or extension of the cemetery;
 - (iii) public safety; or
 - (iv) other operational reasons.

(5) Fireworks or firearms [Firearms](#)

Upon application, and subject to the approval of the Commissioner of Police, ~~the CEO~~ [an authorised person](#) may permit an honour guard and discharge of firearms in a volley salute for a deceased military or police officer.

(6) Liability for damage or works required to comply

- (1) Where a person –
 - (a) causes damage to any grave, memorial, structure, building, furniture, plant or any other item or thing in the cemetery;
 - (b) does a thing not authorised by this local law; or
 - (c) does not do a thing required by this local law;the Board may by notice in writing to that person require that person within the time required in the notice to, at the option of the Board –
 - (d) pay the costs of reinstating the property to the state it was in prior to the occurrence of the damage;
 - (e) pay the costs of replacing that property;
 - (f) pay the costs of works required to comply with this local law; or
 - (g) carry out works required to comply with this local law.
- (2) On a failure to comply with a notice issued under subclause (1), the Board may recover the costs referred to in the notice as a debt due to it.

(7) Offence to fail to comply with notice

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

(8) Board may undertake requirements of notice

Where a person fails to comply with a notice referred to in clause 9.13, the Board may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs incurred in so doing.

(m) Offences and modified penalties

(1) General penalties

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, and if the offence is a continuing one to a further penalty not exceeding \$20 for every day or part of a day during which the offence has continued.

(2) Modified penalties

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

Schedule 1 – Modified Penalties

[cl.10.2]

Item	Clause	Nature of offence	Modified Penalty \$
1	4.2(a)	Holding <u>Conducting</u> a memorial service <u>or procession</u> without permission	50
2	4.2(b)	Conducting a procession without permission	50
<u>3</u> 2	5.1	Failure to obtain approval to bring a dead body into the cemetery	50
<u>4</u> 3	5.2(1)	Unauthorised digging, preparation or filling of grave	50
<u>5</u> 4	5.3(1)	Unauthorised burial of dead body	50
<u>6</u> 5	5.5(1)	Unauthorised disposal of ashes	50
7	5.5(2)	Disposal of ashes in an unauthorised manner	50
<u>8</u> 6	5.6(1)	Unauthorised construction of vault or mausoleum	50
<u>9</u> 7	5.7(1)	Unauthorised reopening of a grave	50
<u>10</u> 8	5.8(1)	Unauthorised exhumation of a coffin	50
<u>11</u> 9	5.9	Unauthorised opening of a coffin	50
<u>12</u> 10	7.6 <u>7.7</u>	Use of trade name or mark on a memorial	50
<u>13</u> 11	7.7 <u>7.8</u>	Unauthorised use of wood on a gravesite	50
<u>14</u> 12	8.1	Unauthorised construction of a memorial	50

1513	8.2	Unauthorised use of materials taken from within the cemetery	50
1614	8.3	Failure to remove rubbish and surplus materials	50
1715	8.4	Unauthorised planting of tree or shrub	50
1816	8.5	Failure to comply with direction of authorised person	50
1917	8.6	Unauthorised placing of grave ornaments	50
2018	8.7	Works carried out during unauthorised times	50
2119	8.8	Failure to leave uncompleted works in a tidy and safe condition	50
2220	9.1(1)	Driving vehicle other than on vehicular access way or constructed roadways or within designated areas	50
2321	9.1(2)	Exceeding speed limit	50
2422	9.3	Interference with utility services	50
2523	9.4	Damaging or removing object	50
2624	9.5	Failure to dispose of withered flowers appropriately	50
2725	9.6	Littering and/or vandalism	50
2826	9.7	Unauthorised advertising and/or trading	50
2927	9.8(2)	Failure to obey sign or lawful direction within cemetery	50
3028	9.9(2)	Failure to comply with order to leave cemetery	50
31	9.10	Failure to comply with closure of all or part of cemetery	50
3229	9.13	Failure to comply with notice within specified period	50

Schedule 2 – Infringement Notice
[cl. 10.2(3)]

Shire of Victoria Plains

INFRINGEMENT NUMBER –		
To:		
Address:		
	It is alleged that –	
At –		
On –	Day	Date
Location –	Calingiri Cemetery	Bolgart Cemetery
	You committed the following offence –	
Contrary to –	Shire of Victoria Plains Cemeteries Local Law 2017	
Schedule 1 reference –	Item No. –	Clause –
Offence –		

Brief description –	
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 at the Shire of Victoria Plains within a period of 28 days after the giving of this notice.
Name of authorised person –	
Position –	
Signature –	
Date –	
	<p>Payments may be made –</p> <p>a) EFT to BSB – 633 000 A/c – 118 278 670</p> <p>b) In person at – Shire of Victoria Plains, 28 Cavell Street St, Calingiri during business hours</p> <p>c) By mail to – Shire of Victoria Plains PO Box 21, Calingiri 6569</p> <p>Please make cheques payable to Shire of Victoria Plains.</p>

Schedule 3 – Withdrawal of Infringement Notice
[cl. 10.2(4)]

Shire of Victoria Plains

To –	
Address –	
	It is advised that –
Infringement Notice No. –	
Dated –	
For the alleged offence of –	
	has been withdrawn.
The modified penalty of –	\$
Reason for withdrawal –	No further action will be taken.
(Delete whichever does not apply)	It is proposed to institute court proceedings for the alleged offence

Name of authorised person –	
Position –	
Signature –	
Date –	

Dated _____

The Common Seal of the Shire of Victoria Plains was affixed by authority of a resolution of Council in the presence of –

D.S. LOVELOCK, President

G.M. TEEDE, Chief Executive Officer

A4/2018 LOCAL LAW – FENCING 2018 – FINAL ADOPTION

FILE REFERENCE	
REPORT DATE	22 January 2018
APPLICANT/PROPONENT	None
OFFICER DISCLOSURE OF INTEREST	None
PREVIOUS MEETING REFERENCES	A31/2017 on 20 September 2017
AUTHOR	Niel Mitchell, Consultant
AUTHORISED BY	Glenda Teede – Chief Executive Officer
ATTACHMENTS	
<i>Attachment</i>	<i>Submissions received</i>
<i>Attachment</i>	<i>Draft Fencing Local Law 2018 text</i>

PURPOSE OF REPORT

To finalise the process of adoption of the Fencing Local Law 2018.

BACKGROUND

The purpose of this report is to –

- 1) consider the submissions received on the proposed local law and determine if any drafting amendment(s) are required as a result of the submissions received;
- 2) give notice of the purpose and effect of the local law;
- 3) make the local law, incorporating all amendments as approved by Council;
- 4) authorise the affixing of the Common Seal to the local law;
- 5) authorise the local law publication in the *Government Gazette*; and
- 6) give local public notice of the date the local law will come into effect.

COMMENT

At its Ordinary Meeting on 20 September 2017 the Council resolved to commence the process to make Fencing Local Law 2017.

Process

The procedure for making local laws requires Council to advertise state-wide, advising of its intention to make a local law, and invite submissions to be made on the proposed local law for a six-week period. At the closure of the submission period, Council is to consider all submissions before making a local law.

Council advertised, both locally and state-wide, for public comment on the proposed Local Laws.

An advertisement was placed in the West Australian on 4 October 2017 and the Shire Newsletter for October 2017, with the submission period for public comment closing on 22 November 2017.

Purpose – to prescribe a sufficient fence and the standard for construction of fences.

Effect – to establish the minimum requirements for fencing, provide for permitted and prohibited fencing, and create offences for non-compliance.

The draft local law detail the requirements of sufficient fence as required by the

Dividing Fences Act, and provides for varying standards so as to be applicable and appropriate for the rural area.

At the close of the submission period, submissions had been received from –

- Dept of Local Government, Sporting and Cultural Interests
- Shire of Victoria Plains

The Departmental submissions covered multiple areas. No substantive issues were raised, with the comments being of –

- minor editorial nature, and
- being of a context or technical nature, punctuation and grammar.

The Shire of Victoria Plains submission was made to –

- correct dates
- extend the descriptions of sufficient fencing.

As the amendments to Schedules 1 and 2 are to increase the permitted types of fencing without requiring approval, they serve to improve resident options and not act as restrictions.

Some concern has previously been expressed in relation to several clauses as follows –

- cl.3.4 – gates in fences
 - o the clause acts to prevent a gate between farms unless agreed by the neighbours under clause 2.4
 - o Uniform Local Provisions Regulations r.9 also applies if opening over a thoroughfare, in that local government permission is required
- cl.3.6 – estate fencing
 - o “estate” is not defined other than as part of the definition of “estate boundary fence” around a subdivision of land
 - o If problematic, this clause, the definitions and relevant penalties could be deleted, and rely on the provisions relating to sufficient fences according to land zoning
- cl.3.7 – maintenance of fences
 - o terms used “good condition” etc, are subjective, as is “condition appropriate for required purpose”
 - o provision to be “fit for purpose” inserted to further clarify “good condition”
- cl.5.1(2) – placement of barbed wire on fences
 - o provision for fixing to the top of posts now included
- Sch.3(1)(c) – star pickets
 - o amended to be set in ground to 400mm
- Sch.4 – penalties
 - o maximum penalties are set by legislation
 - o fencing and extractive industries penalties are set by the Local Government Act, with a maximum modified penalty permitted of \$500
 - o fencing issues are generally individuals and not usually for gain
 - o extractive industries are commercial activity, and the penalty reflect this
 - o Cemeteries Act stipulates a maximum modified penalty of \$50

In relation to clause 3.7 Maintenance of fences, Council may also be aware of –

- Local Government (Uniform Local Provisions) Regulations 1996 –
8. Separating land from public thoroughfare — Sch. 9.1 cl. 4
A person who is the owner or occupier of land must keep in good repair any fence or gate that separates the land from a public thoroughfare.
Penalty: a fine of \$5 000.
Note: See also the Local Government Act 1995 Schedule 3.1 Division 1 item 4, which, for related reasons, allows a person to be given a notice under section 3.25(1)(a) of the Act and if the notice is not complied with the local government may, under section 3.26, itself do what the notice required and recover the cost from the person.
- Local Government Act 1995 Schedule 3.1 –
Powers under notices to owners or occupiers of land
4. (1) Ensure that land that adjoins a public thoroughfare or other public place that is specified for the purposes of this item by a local law –
 - (a) is suitably enclosed to separate it from the public place; and*
 - (b) where applicable, is enclosed with a close fence, to the satisfaction of the local government, suitable to prevent sand or other matter coming from the land onto the public place.**(2) The notice cannot be given to an occupier who is not an owner.*

Please note – there is no requirement to make a decision at this time, if further opportunity to consider the draft is desired.

Finalisation

None of the suggested changes altered the intent of the provision amended nor placed additional obligations on the community. Accordingly, it is considered that the amendments are not of a significant nature that requires re-advertising. However, depending on any additional changes identified in the concerns expressed, re-advertising for submissions would be advisable.

The attached draft local law have been amended from the proposed local law advertised for public submissions, in accordance with the DLGC comments and Shire's internal submission.

Once formally adopted by Council, the local laws –

- are to be published in the *Government Gazette*
- local public notice given of adoption of the local laws (separate to previous advertising of proposals),
- signed copies are to be sent to the relevant Ministers, and
- copies sent to the Parliamentary Joint Standing Committee on Delegated Legislation together with other required documentation, within 10 days of publication in the *Government Gazette*.

Please note –

- disallowance of the local law may be made by Parliament, and could take some time depending on sitting days,
- takes effect on the day stipulated in the local law, generally 14 days after publication in the *Government Gazette*.

POLICY REQUIREMENTS

None

LEGISLATIVE REQUIREMENTS

Local Government Act 1995 –

- s.3.5 to 3.16 – local laws: authority to make and incorporate penalties, procedures when making, periodic review and procedures
- s.3.12 – Procedure for making local laws
incl. subclause (4) – requirement for absolute majority

STRATEGIC IMPLICATIONS

There are no known strategic implications associated with this proposal.

Corporate Business Plan references and impacts:-

STRATEGY 4.3.1 – Maintain / retain full compliance with statutory obligations.

➤ **Environment**

There are no known significant environmental implications associated with this proposal.

➤ **Economic**

There are no known significant economic implications associated with this proposal.

➤ **Social**

There are no known significant social implications associated with this proposal.

FINANCIAL IMPLICATIONS

Cost of publication in the *Government Gazette* and giving local public notice.

VOTING REQUIREMENTS

Absolute Majority Required: Yes

RESOLUTION 9/2018

Moved: Cr J Corless-Crowther

Seconded: Cr J King

That Council –

- a) notes the submissions and comment received in relation to the proposed Fencing Local Law 2018;
- b) resolves to make the Fencing Local Law 2018 as per the attached draft, incorporating amendments outlined by the Department of Local Government, Sporting and Cultural Interests and Shire of Victoria Plains;
- c) authorise the President and CEO to sign and affix the Common Seal to the Fencing Local Law 2018;
- d) publish the Fencing Local Law 2018, in the Government Gazette;
- e) provide copies of the local law to the Minister for Local Government; and
- f) forward copies of the Gazetted Local Laws, explanatory memoranda and associated documentation to the Parliamentary Joint Standing Committee on Delegated Legislation for review.

Motion Put and Carried: 5/0

Proposed Shire of Victoria Plains **Fencing Local Law 2018**
Summary of submissions received

Dept of Local Government, Sporting and Cultural Industries–

Item	Clause	Comment	Review Comment	Recommendation
1	1.4	<p>Definitions</p> <ul style="list-style-type: none"> • Definition of commercial lot: replace “men a lot” with “means a lot”. • Definition of rural lot: replace “men a lot” with “means a lot”. • Definition of residential lot: replace “men a lot” with “means a lot”. • In the definition of occupier, place the defined term in italics. 	Amend each definition	Amended as per suggested wording
2	3.1(2)	<p>Fences within front setback</p> <p>Consider rewording, perhaps by breaking the clause down into parts. A suggestion has been provided for the Shire’s consideration:</p> <p>---</p> <p>(2) An authorised person may approve the construction of a fence of a height greater than 1200mmm in the front setback area of a residential lot or town site lot only if -</p> <p>(a) the fence on each side of the driveway into the lot across the front boundary is to be angled –</p> <p style="padding-left: 40px;">(i) into the lot for a distance of not less than 1500mm along the frontage; and</p> <p style="padding-left: 40px;">(ii) to a distance of not less than 1500mm from the frontage;</p> <p style="padding-left: 40px;">in order to provide appropriate splayed lines of vision for a motorist using the driveway for access to a thoroughfare.</p>	<p>Amend to –</p> <p>(2) In order to provide appropriate lines of vision for a motorist using the driveway for access to a thoroughfare, an authorised person may approve the construction of a fence of a height greater than 1200mm in the front setback area of a residential lot or townsite lot only if the fence on each side of the driveway into the lot across the front boundary is to be angled –</p> <p style="padding-left: 40px;">(a) into the lot for a distance of not less than 1500mm along the frontage, and</p> <p style="padding-left: 40px;">(b) to a distance of not less than 1500mm from the frontage.</p>	Amended as per Review comment

3		<p>Decision on application</p> <ul style="list-style-type: none"> In subclause (3), insert “at any time” after “subclause (1)(b)”. The Shire should ensure this inclusion reflects the intention of the clause. In subclause (5), delete “to issue”. In subclause (5), insert “the” before “approval”. 	Amend as suggested	Amend as suggested
4		<p>Schedules</p> <p>Each Schedule should start on a new page</p>	Not consistent with usual presentation	Not amended
5		<p>Schedule 1</p> <p>Delete the full stop and insert a hyphen after “1800mm”.</p>	Amend as suggested	Amend as suggested
6		<p>Schedules 2 and 3</p> <p>In the first sentence, delete the full stop and insert a hyphen.</p>	Amend as suggested	Amend as suggested

Shire of Victoria Plains – Internal

Item	Clause	Comment	Review Comment	Recommendation
1		Date of Local Law and adoption	Amend to 2018 in titles, clause 1.1 and signing block	Amend
2	1.4	Definition of “rural lot” reinserted in order	Amended	Amend
3	3.7	“Good condition” is subjective, consider “condition appropriate for intended use”	In (1) – “suitably enclosed” as used in the LG Act and “unfit for purpose” inserted as being part of good condition (2) deleted – covered by cl.8.1 Notices of breach	Amend Amend
4	Sch.1	Schedule 1 expanded to include additional sufficient fence definitions, and to add clarity	Amended	Amend
5	Sch.2	Schedule 2 expanded to include additional sufficient fence definitions, and to add clarity	Amended	Amend

LOCAL GOVERNMENT ACT 1995
SHIRE OF VICTORIA PLAINS
FENCING LOCAL LAW 2018

CONTENTS

Part 1 - Preliminary

- 1.1 Citation
- 1.2 Commencement
- 1.3 Application
- 1.4 Definitions
- 1.5 Requirements of local planning scheme
- 1.6 Requirements of *Building Act 2011*

Part 2 - Sufficient fences

- 2.1 Sufficient fences – requirement
- 2.2 Sufficient fences – generally
- 2.3 Sufficient fences – between lots having different requirements
- 2.4 General discretion of the local government
- 2.5 Transitional provision

Part 3 - Fencing generally

- 3.1 Fences within front and secondary setback areas
- 3.2 Alteration of ground levels
- 3.3 Obstruction of watercourse
- 3.4 Gates or doors in fences
- 3.5 Retaining walls
- 3.6 Estate fencing
- 3.7 Maintenance of fences
- 3.8 Fences across rights-of-way, public access ways or thoroughfares

Part 4 - Fencing materials, screening and maintenance

- 4.1 Prohibited materials
- 4.2 Pre-used fencing materials
- 4.3 Approved materials
- 4.4 Screening

Part 5 - Restricted fencing

- 5.1 Barbed wire fencing
- 5.2 Electrified fencing
- 5.3 Razor wire fencing

Part 6 - Approvals

- 6.1 Application for approval
- 6.2 Decision on application for approval
- 6.3 Compliance with approval
- 6.4 Cancellation of an approval
- 6.5 Duration of approval

Part 7 - Objections and review

- 7.1 Objections and review

Part 8 - Enforcement

- 8.1 Notices of breach

[8.2 Offences and penalties](#)

[8.3 Modified penalties](#)

[8.4 Form of notices](#)

[Schedule 1 – Sufficient fence – Residential and townsite lots](#)

[Schedule 2 - Sufficient fence – Commercial, industry, service industry and special use lots](#)

[Schedule 3 – Sufficient fence – Rural and rural residential lots](#)

[Schedule 4 – Prescribed offences](#)

LOCAL GOVERNMENT ACT 1995
SHIRE OF VICTORIA PLAINS
FENCING LOCAL LAW 2018

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

Preliminary

Citation

This local law may be cited as the *Shire of Victoria Plains Fencing Local Law 2018*.

Commencement

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

Application

This local law applies throughout the district.

Definitions

In this local law unless the context otherwise requires –

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

approval means a favourable decision in respect of an application which is in writing, may be subject to conditions and which allows a proposal to proceed;

AS or AS/NZS means an Australian or Australian/New Zealand Standard published by Standards Australia, and available for viewing free of charge at the Shire of Victoria Plains Administration Centre;

authorised person means a person appointed by the local government to perform any of the functions under this local law;

boundary fence means a fence constructed on the boundary of a lot which abuts a thoroughfare, and results in the application of section 16(1) of the *Dividing Fences Act 1961*;

Building Code has the meaning given in section 3 of the *Building Regulations 2012*;

commercial lot means a lot zoned as commercial under the local planning scheme;

CEO means the Chief Executive Officer of the local government;

dangerous in relation to any fence means –

- (a) an electrified fence which does not comply with clause 5.2 of this local law;
- (b) a fence containing barbed wire other than a fence constructed and maintained in accordance with this local law;
- (c) a fence containing exposed broken glass, asbestos fibre, razor wire, metal spikes or any other potentially harmful projection or material; or
- (d) a fence which is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause;

district means the district of the local government;

dividing fence has the meaning given in section 5 of the *Dividing Fences Act 1961*;

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

estate boundary fence means the fence constructed around the external boundary of a subdivision of land to indicate the extent of that subdivision and includes any special works or construction that identifies the entrance to that land;

estate entry statement means a fence, or wall constructed of masonry or other materials to identify the entrance of an estate and may include but not be limited to a sign indicating the estate name and locality, sculptures, flagpoles and flags;

fence means any structure used or functioning as a barrier, irrespective of where it is located and includes any affixed gate or screening;

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

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

height in relation to a fence means the vertical distance between the top of the fence at any point and –

- (a) the ground level; or
- (b) where the ground levels on each side of the fence are not the same, the higher ground level, immediately below that point; or
- (c) where the fence is constructed on a retaining wall approved by the local government, from the top of the retaining wall;

industry lot means a lot zoned as industry under the local planning scheme;

local government means the Shire of Victoria Plains;

local planning scheme means a local planning scheme and includes any structure plan adopted or approved by the local government made under the *Planning and Development Act 2005*;

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

notice of breach means a notice referred to in clause 8.1;

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

owner has the meaning given to it in section 5 of the *Dividing Fences Act 1961*;

repair has the meaning given to it under section 5 of the *Dividing Fences Act 1961*;

residential lot means a lot zoned as residential under the local planning scheme;

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

rural lot means a lot zoned as rural under the local planning scheme;

rural residential lot means a lot zoned as rural residential under the local planning scheme;

Schedule means a Schedule to this local law;

screening means any perforated panels or trellises composed of solid or obscured translucent panels;

service industry lot means a lot zoned as service industry under the local planning scheme;

set fee means a fee determined by the local government in accordance with sections 6.16 to 6.19 of the *Local Government Act 1995*;

special use lot means a lot zoned as special use under the local planning scheme;

street setback area has the meaning given to it for the purposes of the *Residential Design Codes of Western Australia*;

sufficient fence means a fence described in clause 2.2 or 2.3 and includes a fence of the description and quality agreed upon by the owners of adjoining lots which does not fail to satisfy clause 2.2 or 2.3;

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

townsite lot means a lot zoned as townsite under the local planning scheme.

Requirements of local planning scheme

In the event of any inconsistency between the provisions of a local planning scheme and the provisions of this local law, the provisions of the local planning scheme are to prevail.

Requirements of *Building Act 2011*

Nothing in this local law affects a provision in any written law in respect of a building permit for a fence.

Sufficient fences

Sufficient fences – requirement

A person shall not construct a dividing fence or a boundary fence that is not a sufficient fence.

Sufficient fences – generally

Subject to clause 2.3 a sufficient fence –

- (a) on a residential lot or townsite lot is a dividing fence or a boundary fence constructed in accordance with Schedule 1;
- (b) on a commercial lot, industry lot, service industry lot or special use lot is a dividing fence or a boundary fence constructed in accordance with Schedule 2; and

- (c) on a rural lot or rural residential lot is a dividing fence or a boundary fence constructed in accordance with Schedule 3.

Sufficient fences – between lots having different requirements

Where a fence is constructed on or near the boundary between –

- (a) a residential lot or townsite lot and a lot zoned for any other purpose, a sufficient fence is a fence constructed in accordance with Schedule 1; and
- (b) a commercial lot, industry lot, or service industry lot and a rural lot or rural residential lot, a sufficient fence is a fence constructed in accordance with Schedule 3.

General discretion of the local government

- (1) Notwithstanding the provisions of clause 2.1, an authorised person may give written consent for the construction or repair of a fence which is not a sufficient fence where all of the owners of the lots adjoin the fence make an application for approval for that purpose.
- (2) In determining whether to grant its approval under subclause (1), the local government may consider whether the construction or repair of the fence would have an adverse effect on –
 - (a) the safe or convenient use of any land;
 - (b) the safety or convenience of any person;
 - (c) the visual amenity of the locality; and
 - (d) any other matter considered relevant.

Transitional provision

A dividing fence or fence lawfully constructed prior to this local law coming into operation constitutes a sufficient fence.

Fencing generally

Fences within front and secondary setback areas

- (1) A person shall not, without the written consent of an authorised person, construct a free-standing fence greater than 1200mm in height, within the front setback area of a residential lot or townsite lot.
- (2) An authorised person may approve the construction of a fence of a height greater than 1200mm in the front setback area of a residential lot or townsite lot, if provision is made for lines of vision for a motorist using the driveway to access a thoroughfare where the fence on each side of the driveway into the lot across the front boundary is angled –
 - (c) into the lot for a distance of not less than 1500mm along the frontage, and
 - (d) to a distance of not less than 1500mm from the frontage.
- (3) The provision of subclause (2) shall not apply to a fence of open construction that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare.
- (4) The provision of subclause (2) shall apply to a secondary setback area where a driveway in the secondary setback area is used as the primary driveway access.

Alteration of ground levels

- (1) A person shall not alter the natural ground level of land on or within 1000mm of the boundary of a lot, whether by removing soil or bringing onto the land any fill of any kind, by more than 500mm without the approval of an authorised person.
- (2) A fence constructed of corrugated fibre-reinforced pressed cement shall not have more than 150mm difference in the ground levels on each side of the fence.
- (3) Where land has been filled or retained to a height of more than 500mm above natural ground level at or within 1000mm of a boundary of a lot, a person shall only construct a dividing fence that is a sufficient fence on the said filled land or retaining wall if the person produces to an authorised person the written agreement of the owners of the adjoining lot.

Obstruction of watercourse

No person shall construct a fence of impervious material in any place, position or location where it will, or is likely to, act as a barrier to or restrict the flow of a natural watercourse.

Gates or doors in fences

A person shall not construct a gate or door in a fence which encroaches into or over any other property.

Retaining walls

A person must not commence to construct a retaining wall which is on the boundary line unless –

- (a) an application has been lodged with the local government including –
 - (i) two copies of a plan and specifications of the proposed retaining wall; and
 - (ii) in the case of a retaining wall exceeding 500mm in height and when required by an authorised person, engineering calculations in respect of the proposed retaining wall; and
- (b) an authorised person has approved the application.

Estate fencing

- (1) A person shall not construct an estate entry statement or estate boundary fence without the approval of an authorised person.
- (2) Where an estate entry statement or estate boundary fence is constructed and contains an estate name, the entry statement or estate boundary fence shall also depict the locality name in at least equal prominence.
- (3) An owner or occupier of a lot adjacent to an estate boundary fence shall, where that fence is damaged, dilapidated or in need of repair, cause it to be repaired or replaced with the same or similar materials with which it was first constructed, so as far as practicable the repaired or replaced section shall be the same as the original fence.

Maintenance of fences

An owner or occupier of a lot on which a fence is constructed shall maintain the fence in good condition and suitably enclosed so as to prevent it from becoming damaged, dangerous, dilapidated, unfit for purpose or unsightly.

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

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

Fencing materials, screening and maintenance

Prohibited materials

A person must not construct a fence which is comprised, in whole or in part of spikes, broken glass, jagged materials, barbed wire, razor wire, asbestos or any other dangerous material except to the extent provided for in Part 5.

Pre-used fencing materials

- (1) A person shall not construct a boundary fence, dividing fence or estate fence from pre-used materials without the approval of an authorised person.
- (2) Where an authorised person approves the use of pre-used materials, the materials shall be structurally fit for the purpose, and comply with any conditions imposed by an authorised person.
- (3) Conditions for use of pre-used fencing materials may include but are not limited to –
 - (a) painting;
 - (b) treated;
 - (c) specific use or placement; and
 - (d) upgrading.

Approved materials

Subject to clause 4.2, a person shall only construct a dividing fence or boundary fence from materials specified in the Schedules of this local law, unless otherwise approved or required by an authorised person.

Screening

- (1) Screening may be fixed to a sufficient fence that is compliant with Schedule 1 which is consistent with the colours, materials and specification of that sufficient fence.
- (2) Screening is not to be affixed to a fence so that the maximum height exceeds 2.1m.
- (3) Screening affixed to a fence shall be installed and maintained in accordance with the

manufacturer's specifications and not compromise the structural integrity of a fence.

Restricted fencing

Barbed wire fencing

- (1) An owner or occupier of a residential lot shall not affix or allow to remain any barbed wire on any fence bounding that lot.
- (2) An owner or occupier of a townsite lot, rural lot or rural residential lot shall not place or affix barbed wire upon a fence on that lot where the fence is adjacent to a thoroughfare or other public place unless the barbed wire is fixed to the top or the side of the fence posts furthest from the thoroughfare or other public place.
- (3) An owner or occupier of a commercial lot, industry lot, service industry lot or special use lot shall not construct or affix to any fence bounding that lot any barbed wire unless –
 - (a) the wire or material are attached on posts vertically or at an angle of 45 degrees; and
 - (b) the bottom row of wire or other materials is not less than 2000mm above the ground level.
- (4) If the posts which carry the barbed wire or other materials referred to in subclause (3) are angled towards the outside of the lot bounded by the fence, the face of the fence must be set back from the lot boundary a sufficient distance to ensure that the angled posts, barbed wire or other materials do not encroach onto or over adjoining land.

Electrified fencing

- (1) An owner or occupier of a lot shall not construct or use an electrified fence on that lot without first obtaining approval of an authorised person.
- (2) Notwithstanding subclause (1), approval is not required for an electrified fence if –
 - (a) constructed on a rural lot or rural residential lot;
 - (b) for the purpose of animal control;
 - (c) installed in accordance with the manufacturer's specifications; and
 - (d) which is not the dividing fence with a residential lot, townsite lot or special use lot.
- (3) An electrified fence for the purpose of security must not be present on a lot unless it complies with *AS/NZS 3016:2002 Electrical Installations – Electric Security Fences*, as amended from time to time, and which is available for viewing free of charge at the Shire of Victoria Plains Administration Centre.
- (4) Approval to have and use an electrified fence for the purpose of security shall not be issued –
 - (a) in respect of a lot which is or which abuts a residential lot or townsite lot; and
 - (b) unless provision is made so as to enable the fence to be rendered inoperable during the hours of business operations, if any, on the lot where it is constructed.

Razor wire fencing

- (1) An owner or occupier of a lot shall not construct a fence wholly or partly of razor wire on that lot without first obtaining approval under subclause (2).
- (2) Approval to have a fence constructed wholly or partly of razor wire shall not be issued –
 - (a) in respect of a lot which is or which abuts a residential lot or townsite lot;
 - (b) if the fence is within 3m of the boundary of the lot; or
 - (c) where any razor wire used in the construction of the fence is less than 2000mm or more than 2400mm above the ground level.

Approvals

Application for approval

- (1) An owner of a lot may apply to the local government for approval of any discretionary matter contained within this local law.
- (2) An application for approval under this local law shall –
 - (a) provide all necessary documentation and information required for a decision;
 - (b) provide two copies of a plan and specifications of the proposed;
 - (c) engineering certification of structural or electrical engineering specifications, if required;
 - (d) be signed by the owner of the lot;
 - (e) be forwarded to the CEO together with any set fee; and
 - (f) be in the form determined by the local government from time to time.
- (3) An authorised person may require an applicant to provide additional information reasonably related to an application before determining an application for approval.

- (4) An authorised person may refuse to consider an application for approval which is not in accordance with subclauses (2) and (3).

Decision on application for approval

- (1) An application submitted to the local government under this local law may be –
- (a) approved by an authorised person;
 - (b) approved by an authorised person subject to conditions as the authorised person sees fit; or
 - (c) rejected by an authorised person.
- (2) In determining whether to grant its consent to the construction or installation, an authorised person may consider, in addition to any other matter that it is authorised to consider, whether the construction or retention of the fence would have an adverse impact on –
- (a) the safe or convenient use of any land;
 - (b) the safety or convenience of any person; or
 - (c) the visual amenity of the streetscape or neighbouring properties.
- (3) An authorised person may by written notice amend a condition imposed under subclause (1)(b) at any time.
- (4) An amendment under subclause (3) is effective from the date specified in the notice.
- (5) If an authorised person approves an application for approval, it is to give written notice of the approval and any conditions applied, to the applicant.
- (6) If an authorised person refuses to approve an application for approval, it is to give written notice of that refusal and the reasons for the decision to the applicant.

Compliance with approval

Where an application for approval has been approved under clause 6.2, the applicant and the owner or occupier of the lot to which the approval relates, shall comply with the terms and any conditions of that approval.

Cancellation of an approval

An authorised person may cancel an approval if –

- (a) the owner or occupier requests an authorised person to do so;
- (b) the fence to which the approval applies has been demolished and is not rebuilt for a period of 6 months;
- (c) the circumstances have changed in such a way that an approval for the fence could no longer be granted under the local law;
- (d) the owner or occupier fails to comply with a condition of the permit or breaches a provision of this local law in respect of the fence; or
- (e) the owner or occupier fails to comply with a notice of breach issued under clause 8.1.

Duration of approval

- (1) Unless otherwise stated in the form of approval, an approval granted under this local law transfers with the lot to which it relates and is deemed to transfer to each successive owner or occupier of the lot to which the approval applies.
- (2) Where an approval is transferred under subclause (1), the successive owner or occupier may apply to an authorised person for written confirmation of this transfer.
- (3) For the avoidance of doubt, approval granted under this local law may be relied upon by any subsequent owner or occupier of the lot, and may be enforced against them by the local government.

Objections and review

Objections and review

Where an authorised person exercises a discretion pursuant to this local law, an affected person has a right of objection and appeal under Division 1 of Part 9 of the *Local Government Act 1995*.

Enforcement

Notices of breach

- (1) Where a breach of any provision of this local law has occurred in relation to a fence on a lot, an authorised person may give a notice of breach in writing to the owner or occupier of that lot.
- (2) A notice of breach shall –

- (a) specify the provision of this local law which has been breached;
 - (b) specify the particulars of the breach; and
 - (c) state that the owner or occupier is required to remedy the breach within the time specified in the notice.
- (3) An owner or occupier given a notice of breach shall comply with the terms of the notice and remedy the breach within the time specified in the notice.
 - (4) Should an owner or occupier fail to comply with a notice, an authorised person may enter upon the lot to which the notice relates and remedy the breach, and may recover the expenses of doing so from the owner or occupier of the lot, as the case may be, in a court of competent jurisdiction.
 - (5) The provisions of this clause are subject to section 3.25 and item 12 of Division 1 of Schedule 3.1 of the *Local Government Act 1995* and any power of entry exercised by the local government under this local law is subject to Part 3, Division 3 of the *Local Government Act 1995*.

Offences and penalties

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

Modified penalties

The amount appearing in the final column of Schedule 4 directly opposite a prescribed offence in that Schedule is the modified penalty for that prescribed offence.

Form of notices

For the purposes of this local law –

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

Schedule 1 – Sufficient fence – Residential and townsite lots

[Clause 2.2(a)]

Each of the following is a sufficient fence on residential and townsite lots –

- (a) except with respect to the front setback area for which there is no minimum height but which is subject to clause 3.1; and
- (b) where constructed to an average height of 1800mm.

1. Timber fence

- (1) Any type of professionally manufactured timber fence, constructed in accordance with the manufacturer's specifications.
- (2) A dense brushwood constructed in accordance with the manufacturer's specifications.
- (3) A timber fence constructed as follows –
 - (a) corner posts to be 125mm x 125mm x 2 400mm and intermediate posts to be 125mm x 75mm x 2400mm spaced at 2400mm centres;
 - (b) corner posts to be strutted two ways with 100mm x 50mm x 450mm sole plates and 75mm x 50mm struts;
 - (c) intermediate posts to be doubled yankee strutted with 150mm x 25mm x 450mm struts;
 - (d) all posts to have tops with a 60mm weather cut and to be sunk at least 600mm into the ground;
 - (e) rails to be 75mm x 50mm with each rail spanning 2 bays of fencing double railed or bolted to each post with joints staggered; and
 - (f) the fence to be covered with 75mm x 20mm sawn pickets, 1800mm in height placed 75mm apart and affixed securely to each rail.

2. Corrugated fence

- (1) Any fence constructed of corrugated fibre reinforced pressed cement sheet fence or steel sheeting fence in accordance with the manufacturer's specifications.
- (2) A fence constructed of corrugated fibre reinforced pressed cement or steel sheeting constructed to manufacturer's specifications or which satisfies the following specifications –
 - (a) a minimum in-ground length of 25 per cent of the total length of the sheet, but in any case shall have a minimum in-ground depth of 600mm;
 - (b) the total height and depth of the fence to consist of a single continuous fibre reinforced cement or steel sheet; and
 - (c) the sheets to be lapped and capped with extruded snap-fit type capping in accordance with the manufacturer's specifications.

3. Brick, stone or concrete fence

Any type of brick stone or concrete fence that –

- (a) is constructed in accordance with the Building Code, finished plumb, true and level and appropriately jointed, cleaned and of good general appearance.
- (a) has footings having a minimum of 225mm x 150mm concrete 15MPa or 300mm x 175mm brick laid in cement mortar;
- (b) fences to be offset a minimum of 200mm at maximum 3000mm centres or 225mm x 100mm engaged piers to be provided at maximum 3000mm centres; and
- (c) expansion joints in accordance with the manufacturer's specifications.

4. Composite fence

- (1) A composite fence which satisfies the following specifications for the brick construction –
 - (a) brick piers shall have a minimum of 345mm x 345mm at 1800mm centres bonded to a minimum height base wall of 514mm;
 - (b) each brick pier shall be reinforced with one R10 galvanised starting rod 1 500mm high with a 250mm horizontal leg bedded into a 500mm x 200mm concrete footing and set 65mm above the base of the footing. The top of the footing shall be 1 course (85mm) below ground level;
 - (c) the minimum ultimate strength of brickwork shall be 20MPa. Mortar shall be a mix of 1 part cement, 1 part lime and 6 parts sand;
 - (d) the ground under the footings is to be compacted to 6 blows per 300mm and checked with a standard falling weight penetrometer; and
 - (e) control joints in brickwork shall be provided with double piers at a maximum of 6 metre centres;
- (2) Notwithstanding paragraphs (1)(a) and (b), a composite fence may be constructed so that –
 - (a) brick piers of a minimum 345mm x 345mm x 2700mm centres bonded to the base wall;
 - (b) each pier shall be reinforced with two R10 galvanised starting rods as previously specified, and
 - (c) all other requirements are as previously specified.

Schedule 2 - Sufficient fence – Commercial, industry, service industry and special use lots
[Clause 2.2(b)]

Each of the following is a sufficient fence on commercial, industry and service industry lots –

- (1) A fence constructed of galvanized or PVC coated –
 - (a) rail-less link;
 - (b) chain; or
 - (c) steel mesh.
- (2) A fence constructed in accordance with clause (1) shall be constructed in accordance with the following specifications –
 - (a) to a height of 2000mm;
 - (b) corner posts to be a minimum of 50mm nominal bore x 3.5mm and with footings of a 225mm diameter x 900mm;
 - (c) intermediate posts to be minimum 37mm nominal bore x 3.15mm at maximum 4 metre centres and with footings of a 225mm diameter x 600mm;
 - (d) struts to be minimum 30mm nominal bore x 3.15mm fitted at each gate and two at each corner post and with footings 225mm x 600mm;
 - (e) cables to be affixed to the top, centre and bottom of all posts and to consist of two or more 3.15mm wires twisted together or single 4mm wire;

- (f) galvanised link mesh wire to be 2000mm in height and constructed of 50mm mesh 2.5mm galvanised iron wire and to be strained, neatly secured and laced to the posts and affixed to cables;
 - (g) vehicle entry gates shall provide an opening of not less than 3.6 metres and shall be constructed of 25mm tubular framework with one horizontal and one vertical stay constructed of 20mm piping and shall be covered with 50mm x 2.5mm galvanised link mesh strained to framework; and
 - (h) gates shall be fixed with a drop bolt and locking attachment.
- (3) A fence constructed in accordance with paragraph (2) may have up to 3 strands of plain or barbed wire, none being less than 1800mm above ground level, not more than 2400mm above ground level
- (4) Fences constructed in accordance with Schedule 1.

Schedule 3 – Sufficient fence – Rural and rural residential lots

[Clause 2.2(c)]

Each of the following is a sufficient fence on rural and rural residential lots –

- (1) In the case of a non-electrified fence, a fence of posts and wire construction, the minimum specifications for which are –
 - (a) wire shall be –
 - (i) high tensile wire and not less than 2.5mm; and
 - (ii) a minimum of seven wires shall be used, generally with the lower wires spaced closer together than the higher wires so as to prevent smaller stock passing through, and connected to posts in all cases;
 - (b) posts shall be of indigenous timber or other suitable material including –
 - (i) timber impregnated with a termite and fungicidal preservative, and not less than 1650mm long x 50mm diameter at small end if round or 125mm x 60mm if split or sawn;
 - (ii) standard iron star pickets; or
 - (iii) concrete;
 - (c) posts to be set minimum 400mm in the ground and 1200mm above the ground; and
 - (d) strainer posts shall be –
 - (i) not less than 2250mm long and 50mm diameter at the small end (tubular steel to be 50mm in diameter);
 - (ii) cut from indigenous timber or other suitable material; and
 - (iii) placed a minimum of 1000mm in the ground.
- (2) An electrified fence having five wires only is a sufficient fence if constructed generally in accordance with clause (1).

Schedule 4 – Prescribed offences

[Clause 8.3]

Item	Clause	Nature of offence	Modified penalty \$
1	2.1	Construction of a dividing fence or boundary fence on a lot that is not a sufficient fence without approval	200
2	3.1	Construction of a non-compliant fence within setback area without approval	200
3	3.2(1)	Alteration of ground levels without approval	500
4	3.3	Obstruction of a watercourse	200

5	3.4	Construction of a gate or fence encroaching over other property	200
6	3.5	Construction of retaining wall without approval	500
7	3.6(1)	Construction of estate fencing without approval	500
8	3.7(1)	Failure to maintain fence in good condition	200
9	3.8	Construction of a fence across right-of-way etc. without approval	500
10	4.1	Use of prohibited materials in a fence	500
11	4.2(1)	Use of pre-used fencing materials without approval	200
12	4.4	Construction of screen exceeding 2.1m in height	200
13	5.1(1)	Using or allowing to remain barbed wire on a residential lot	200
14	5.1(2)	Non-compliant use of barbed wire on a townsite, rural or rural residential lot	200
15	5.1(3)	Non-compliant use of barbed wire on a commercial, industry, service industry or special use lots	500
16	5.2	Construction of an electric fence without approval	500
17	5.3	Construction of a razor wire fence without approval	500
18	6.3	Failure to comply with conditions of approval for fence	500
19	8.1(3)	Failure to comply with notice of breach in relation to Part 5 – Restricted Fencing	500
20	8.1(3)	Failure to comply with notice of breach in relation to all matters other than Part 5 – Restricted Fencing	200
21	8.2(1)	Other offences not specified	200

_____ 2018

The Common Seal of the Shire of Victoria Plains was affixed by authority of a resolution of Council in the presence of –

D.S. LOVELOCK, President

G.M. TEEDE, Chief Executive Officer

A5/2018 LOCAL LAW – DOGS 2018 – FINAL ADOPTION

FILE REFERENCE	
REPORT DATE	22 January 2018
APPLICANT/PROPONENT	None
OFFICER DISCLOSURE OF INTEREST	None
PREVIOUS MEETING REFERENCES	A31/2017 on 20 September 2017
AUTHOR	Niel Mitchell, Consultant
AUTHORISED BY	Glenda Teede – Chief Executive Officer
ATTACHMENTS	
<i>Attachment</i>	<i>Submissions received</i>
<i>Attachment</i>	<i>Draft Dogs Local Law 2018 text</i>

PURPOSE OF REPORT

To finalise the process of adoption of the Dogs Local Law 2018.

BACKGROUND

The purpose of this report is to –

- 1) consider the submissions received on the proposed local law and determine if any drafting amendment(s) are required as a result of the submissions received;
- 2) give notice of the purpose and effect of the local law;
- 3) make the local law, incorporating all amendments as approved by Council;
- 4) authorise the affixing of the Common Seal to the local law;
- 5) authorise the local law publication in the *Government Gazette*; and
- 6) give local public notice of the date the local law will come into effect.

COMMENT

At its Ordinary Meeting on 20 September 2017 the Council resolved to commence the process to make Dogs Local Law 2017.

Process

The procedure for making local laws requires Council to advertise state-wide, advising of its intention to make a local law, and invite submissions to be made on the proposed local law for a six-week period. At the closure of the submission period, Council is to consider all submissions before making a local law.

Council advertised, both locally and state-wide, for public comment on the proposed Local Laws.

An advertisement was placed in the West Australian on 4 October 2017 and the Shire Newsletter for October 2017, with the submission period for public comment closing on 22 November 2017.

Purpose – to make provisions about the impounding of dogs, the number of dogs that may be kept on premises and the manner of keeping dogs and create offences for non-compliance within the district.

Effect – to repeal existing Dogs Local Laws and extend the controls over dogs which exist under the Dog Act 1976.

At the close of the submission period, submissions had been received from –

- Dept of Local Government, Sporting and Cultural Interests

The Departmental submissions covered multiple areas. No substantive issues were raised, with the comments being of –

- minor editorial nature, and
- being of a context or technical nature, punctuation and grammar.

Finalisation

None of the suggested changes altered the intent of the provision amended nor placed additional obligations on the community. Accordingly, it is considered that the amendments are not of a significant nature that requires re-advertising. However, depending on any additional changes identified in the concerns expressed, re-advertising for submissions would be advisable.

The attached draft local law have been amended from the proposed local law advertised for public submissions, in accordance with the DLGC comments and Shire's internal submission.

Once formally adopted by Council, the local laws –

- are to be published in the *Government Gazette*
- local public notice given of adoption of the local laws (separate to previous advertising of proposals),
- signed copies are to be sent to the relevant Ministers, and
- copies sent to the Parliamentary Joint Standing Committee on Delegated Legislation together with other required documentation, within 10 days of publication in the *Government Gazette*.

Please note –

- disallowance of the local law may be made by Parliament, and could take some time depending on sitting days,
- takes effect on the day stipulated in the local law, generally 14 days after publication in the *Government Gazette*.

POLICY REQUIREMENTS

None

LEGISLATIVE REQUIREMENTS

Local Government Act 1995 –

- s.3.5 to 3.16 – local laws: authority to make and incorporate penalties, procedures when making, periodic review and procedures
- s.3.12 – Procedure for making local laws
incl. subclause (4) – requirement for absolute majority

Dog Act 1976

STRATEGIC IMPLICATIONS

There are no known strategic implications associated with this proposal.

Corporate Business Plan references and impacts:-

STRATEGY 4.3.1 – Maintain / retain full compliance with statutory obligations.

➤ **Environment**

There are no known significant environmental implications associated with this proposal.

➤ **Economic**

There are no known significant economic implications associated with this proposal.

➤ **Social**

There are no known significant social implications associated with this proposal.

FINANCIAL IMPLICATIONS

Cost of publication in the *Government Gazette* and giving local public notice.

VOTING REQUIREMENTS

Absolute Majority Required: Yes

RESOLUTION 10/2018

Moved: Cr P Bantock

Seconded: Cr J King

That Council –

- g) notes the submissions and comment received in relation to the proposed Dogs Local Law 2018;
- h) resolves to make the Dogs Local Law 2018 as per the attached draft, incorporating amendments outlined by the Department of Local Government, Sporting and Cultural Interests and Shire of Victoria Plains;
- i) authorise the President and CEO to sign and affix the Common Seal to the Dogs Local Law 2018;
- j) publish the Dogs Local Law 2018, in the Government Gazette;
- k) provide copies of the local law to the Minister for Local Government; and
- l) forward copies of the Gazetted Local Laws, explanatory memoranda and associated documentation to the Parliamentary Joint Standing Committee on Delegated Legislation for review.

Motion Put and Carried: 5/0

Proposed **Dogs Local Law 2018**
Summary of submissions received

Dept of Local Government, Sporting and Cultural Industries–

Item	Clause	Comment	Review Comment	Recommendation
1	1.5	<p>Definitions</p> <p>The definition of “<i>dog management facility</i>” currently includes a kennel establishment. This may be interpreted to mean that kennel establishments are always considered a dog management facility. This could have certain implications under the Act and clause 2.2 of the local law, so the Shire should ensure that this definition reflects the Shire’s intentions.</p> <p>It is also suggested that the definition for nuisance be removed. WALGA has advised that the definition has caused enforceability issues for local governments and the term is no longer defined in their templates.</p>	<p>“kennel establishment’ deleted from definition</p> <p>Deleted</p>	<p>Amend</p> <p>Amend</p>
2	3.2	<p>Limitation on the number of dogs</p> <p>Subclause (2)(a) and (2)(b) appear to contradict each other. It is suggested that these paragraphs be reviewed. It is likely that one of the paragraphs is unnecessary or intended to apply to a different type of property zone.</p>	<p>(2)(a) amended to premises zoned other than as rural or rural residential</p> <p>(2)(b) refers to premises zoned as rural or rural residential</p>	<p>Amended</p> <p>No change</p>
3	3.3	<p>Application to keep dog or dogs</p> <p>Instead of “real estate agent” It is recommended that a more accurate description would “property manager” or “building manager”. The same is recommended for (2)(b) in this clause.</p>	<p>(1)(c) and (2)(b) amended</p>	<p>Amended</p>
4	4.15	<p>Review of decisions</p> <p>Clause 4.15 does not clearly indicate whether a decision under clause 4.13 is reviewable. The Shire may wish to review the clause to ensure it reflects the Shire’s intentions.</p>	<p>Amended to include transfer of a licence</p>	<p>Amend</p>

5	5.1	<p>Dog prohibited areas</p> <p>It is suggested that subclause (2) and (3) be deleted. As a result of amendments to the Dog Act, local laws can no longer deal with any aspect relating to dog prohibited areas. These matters are now completely addressed under the Act.</p> <p>If these subclauses are retained, it is possible that the Delegated Legislation Committee will deem them technically invalid and request their removal.</p>	<p>While the subclauses do comply with the Act, there is no need to reiterate.</p> <p>(1) Is retained as a reminder to refer to the Act, as is cl.5.2</p>	Amend
6	6.2	<p>Offence to excrete</p> <p>Clause 7.2 provides that the unmodified penalty for every offence in the local law is \$5000. This penalty will also apply to clause 6.2, which means it is possible for a person to receive a penalty of \$5000 if they fail to clean up after their dog.</p> <p>While the Dog Act permits penalties of up to \$5000 for an offence, it is possible that the Delegated Legislation Committee may deem the penalty excessive for this particular clause.</p> <p>It is suggested that a lower penalty be specified for clause 6.2. The standard penalties in the WALGA model are \$1000 and a modified penalty of \$100.</p>	<p>While the Act does not stipulate a general penalty, the usual penalties listed in the provisions is \$5,000 for a dog that is not a dangerous dog. The draft provisions are therefore consistent with the Act.</p> <p>The maximum penalty of \$5000 would only occur if the offender is prosecuted, and would be applied at the discretion of the Court.</p> <p>The modified penalty is \$100.</p>	No change
7	4.14(g)	<p>Notification – Inconsistency</p> <p>For consistency please state the clause number before the paragraph. So that it reads "... of a licensee under clause 4.12(2)(b) or (c).</p>	Amended	Amend

8		<p>Minor edits The following minor edits are suggested:</p> <ul style="list-style-type: none"> • Clause 1.5 – In the definition for <i>licence</i> and <i>licensee</i> replace “4.4” with “4.7” • Clause 3.3 – Redesignate paragraphs (1) to (3) as (a) to (b). The subparagraphs should follow the format (i), (ii), (iii). The sections to the subparagraphs should follow the format (I), (II), (III). For example: <ul style="list-style-type: none"> Subject to clause 3.5, the local government may consider – (a) Paragraph (i) Subparagraph (I) Section (b) Ect.... • Schedule 1 – In clause 5 c) please add an “r” to the word “unde” so that it reads “under”. 	<p>Amended</p> <p>Amended / reworded</p> <p>Amended</p>	<p>Amend</p> <p>Amend / reword</p> <p>Amend</p>
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Shire internal submission –

Item	Clause	Comment	Review Comment	Recommendation
		None		

LOCAL GOVERNMENT ACT 1995
DOG ACT 1976

SHIRE OF VICTORIA PLAINS

DOGS LOCAL LAW 2018

CONTENTS

Part 1 - Preliminary

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

Part 2 - Impounding of dogs

- 2.1 Fees and charges
- 2.2 Attendance of authorised person at dog management facility
- 2.3 Release of impounded dog
- 2.4 Unauthorised release

Part 3 - Keeping of dogs

- 3.1 Dogs to be confined
- 3.2 Limitation on the number of dogs
- 3.3 Application to keep additional dog or dogs
- 3.4 Determination of application
- 3.5 Where application cannot be approved
- 3.6 Conditions of approval
- 3.7 Revocation of licence to keep additional dogs

Part 4 - Approved kennel establishments

- 4.1 Application for licence for approved kennel establishment
- 4.2 Notice of proposed use
- 4.3 Exemption from notice requirements
- 4.4 When application can be determined
- 4.5 Determination of application
- 4.6 Where application cannot be approved
- 4.7 Conditions of approval
- 4.8 Compliance with conditions of approval
- 4.9 Fees
- 4.10 Form of licence
- 4.11 Period of licence
- 4.12 Variation or cancellation of licence
- 4.13 Transfer
- 4.14 Notification
- 4.15 Objections and appeals
- 4.16 Inspection of kennel

Part 5 - Dogs in public places

- 5.1 Places where dogs are prohibited absolutely
- 5.2 Places which are dog exercise areas

Part 6 - Miscellaneous

- [6.1 Fees and charges](#)
- [6.2 Offence to excrete](#)

[Part 7 - Enforcement](#)

- [7.1 Offences](#)
- [7.2 General penalty](#)
- [7.3 Modified penalties](#)
- [7.4 Issue of infringement notice](#)
- [7.5 Failure to pay modified penalty](#)
- [7.6 Payment of modified penalty](#)
- [7.7 Withdrawal of infringement notice](#)
- [7.8 Service of notices](#)

[Schedule 1 – Information required for application for a licence for an approved kennel establishment](#)

[Schedule 2 – Conditions of a licence for an approved kennel establishment](#)

[Schedule 3 – Prescribed offences](#)

LOCAL GOVERNMENT ACT 1995
DOG ACT 1976

SHIRE OF VICTORIA PLAINS

DOGS LOCAL LAW 2018

Under the powers conferred by the *Dog Act 1976*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Victoria Plains resolved on _____ to make the following local law.

Preliminary

Citation

This local law may be cited as the *Shire of Victoria Plains Dogs Local Law 2018*.

Commencement

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

Application

This local law applies throughout the district.

Repeal

The *By-laws Relating to Dogs* made by the Shire of Victoria Plains and published in the *Government Gazette* on 16 October 1987, are repealed.

Definitions

In this local law unless the context otherwise requires –

Act means the *Dog Act 1976*;

adjoining includes land or premises which have a portion of a common boundary with a lot or is separated from that lot by a public reserve, road, right-of-way, pedestrian access way, access leg of a battle-axe lot or the equivalent not more than 6m in width;

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

CEO means the Chief Executive Officer of the local government;

dangerous dog has the meaning given to it by section 3(1) of the Act;

district means the district of the Shire of Victoria Plains;

dog management facility has the meaning given to it in section 3(1) of the Act;

infringement notice means the notice referred to in clause 7.4;

kennel establishment means any premises where more than the number of dogs under clause 3.3 over the age of 3 months are kept, boarded, trained or bred temporarily, usually for profit and where the occupier of the premises is not the ordinary keeper of the dogs;

licence means a licence to keep an approved kennel establishment on premises granted under clause 4.7;

licensee means the holder of a licence granted under clause 4.7;

local government means the Shire of Victoria Plains;

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

notice of withdrawal means the notice referred to in clause 7.7(1);

owner, in relation to a dog, has the same meaning as in section 3(1) and (2) of the Act;

person liable for the control of the dog has the same meaning as in section 3(1) of the Act;
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 made under clause 4.1;
public place has the meaning given to it by section 3(1) of the Act;
Regulations means the *Dog Regulations 2013*;
Schedule means a schedule to this local law;
set fee means a fee or charge made by the local government in accordance with clause 2.1 or clause 4.9;
thoroughfare has the meaning given to it in section 1.4 of the *Local Government Act 1995*; and
transferee means a person who applies for the transfer of a licence to her or him under clause 4.13.

Impounding of dogs

Fees and charges

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

- (a) the charges to be levied under section 29(4) of the Act relating to the seizure and impounding of a dog;
- (b) the additional set 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) application for additional costs of the destruction and the disposal of a dog referred to in section 29(15) of the Act.

Attendance of authorised person at dog management facility

An authorised person is to be in attendance at the dog management facility for the release of dogs at the times and on the days of the week as determined by the CEO.

Release of impounded dog

- (1) A claim for the release of a dog seized and impounded is to be made to an authorised person.
- (2) An authorised person is not to release a dog seized and impounded to any person unless that person has produced, to the satisfaction of an authorised person, 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.

Unauthorised release

Unauthorised release of dogs is dealt with by section 43 of the Act.

Keeping of dogs

Dogs to be confined

- (1) An occupier of premises on which a dog is kept must –
 - (a) cause a portion of the premises on which the dog is kept to be fenced in a manner capable of confining the dog;
 - (b) ensure the fence used to confine the dog and every gate or door in the fence is of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through it;
 - (c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises (unless the gate is temporarily opened in a manner that ensures that the dog remains confined) and is fitted with a proper latch or other means of fastening it;
 - (d) maintain the fence and all gates and doors in the fence in good order and condition; and
 - (e) where no part of the premises consists of open space, yard or garden or there is no open space or garden or yard of which the occupier has exclusive use or occupation, ensure that

other means exist on the premises (other than the tethering of the dog) for effectively confining the dog within the premises.

- (2) Where an occupier fails to comply with subclause (1), he or she commits an offence.
- (3) Notwithstanding subclause (1) and (2), the confinement of dangerous dogs is dealt with in the Act and the Regulations.

Limitation on the number of dogs

- (1) This clause does not apply to premises which have been –
 - (a) licensed under Part 4 of this local law 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 zoned other than as rural or rural residential under a local planning scheme; or
 - (b) 4 dogs over the age of 3 months and the young of those dogs under that age if the premises are zoned as rural or rural residential under a local planning scheme.

Application to keep additional dog or dogs

- (1) Subject to clause 3.5, the local government may consider an application to keep an additional dog or dogs where –
 - (a) the property is deemed suitable by an authorised person –
 - (i) having sufficient space capable of confining all dogs;
 - (ii) noise, odours, fleas, flies and other vectors of disease will be effectively controlled; and
 - (iii) the care and welfare of the dogs is considered adequate.
 - (b) the details of every dog proposed to be kept on the premises are provided including name, age, colour/description, breed, registration number and microchip details; and
 - (c) sufficient reason has been provided, including –
 - (i) to replace an elderly or sick dog not expected to live;
 - (ii) a family emergency resulting in the dog being inherited;
 - (iii) merging of 2 households;
 - (iv) where the applicants have had approval to keep an additional dog or dogs in another local authority; or
 - (v) on premises zoned as rural or rural residential under a local planning scheme, the dog or dogs are required for stock management or to be on the premises temporarily for the purposes of training for stock management.
- (2) An application to keep 2 additional dogs on premises that are zoned other than as rural or rural residential under a local planning scheme shall –
 - (a) provide sufficient detail regarding the reason for keeping more than 2 dogs;
 - (b) provide written consent from owners and occupiers of any premises adjoining the premises; and
 - (c) in the case of a tenanted property, provide written consent from either the landowner or their appointed property manager.
- (3) An application to keep more than 4 dogs on premises zoned as rural or rural residential under a local planning scheme shall –
 - (a) provide sufficient detail regarding the reason for keeping more than 4 dogs; and
 - (b) in the case of a tenanted property, provide written consent from either the landowner or their appointed property manager.

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 3.5;
- (b) the effect which approval of the proposed may have on the environment or amenity of the

- neighbourhood; and
- (c) whether approval of the application will create a nuisance for the owners and occupiers of adjoining premises.

Where application cannot be approved

The local government will not approve an application to keep an additional dog or dogs where –

- (a) more than 4 dogs are proposed to be kept on premises zoned other than as rural or rural residential under a local planning scheme;
- (b) more than 6 dogs are proposed to be kept on premises zoned as rural or rural residential under a local planning scheme; or
- (c) where any dog already kept on the premises is a dangerous dog.

Conditions of approval

- (1) The local government may approve an application to keep an additional dog or dogs subject to any conditions as considered appropriate.
- (2) Approval of an application is not transferable to successive owners or occupiers of the premises.

Revocation of licence to keep additional dogs

Where a person does not comply with the conditions of approval to keep an additional dog or dogs under clause 3.6 the local government may revoke the approval to keep an additional dog or dogs.

Approved kennel establishments

Application for licence for approved kennel establishment

An application for a licence must contain the information listed in Schedule 1, and must be lodged with the local government together with –

- (a) 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;
- (b) any other information reasonably required by the local government; and
- (c) the set fee for the application for a licence referred to in clause 4.9(1).

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, plans and specifications may be inspected at the offices of the local government.
- (3) The local government may refuse to determine the application for a licence until the notice or notices, as the case may be, is given in accordance with its directions where –
- (a) a notice given under subclause (1) does 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.

Exemption from notice requirements

The requirements of clauses 4.2 and 4.4(a) and Schedule 1 clause 5(c) do not apply in respect of the application for a licence where under a local planning scheme 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.

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 4.2(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 4.2(2)(a) on the proposed use of the premises.

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 4.6;
- (b) any written submissions received within the time specified in clause 4.2(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.

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.

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.

Compliance with conditions of approval

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

Fees

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

Form of licence

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

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 set fee referred to in clause 4.9(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.

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 set fee paid for that licence is not refundable for the term of the licence that has not yet expired.

Transfer

- (1) An written application for the transfer of a valid licence from the licensee to another person must be –
 - (a) made by the transferee;
 - (b) made with the written consent of the licensee; and
 - (c) 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;
 - (ii) the set fee for the application for the transfer of a licence referred to in clause 4.9(3); and
 - (iii) any other relevant information required.
- (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 4.14(b), the transferee becomes the licensee of the licence for the purposes of this local law.

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 4.12(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 4.12(2)(a); and

- (g) a licensee of the cancellation of a licence under clause 4.12(2)(b) or (c), which notice is to be given in accordance with section 27(6) of the Act.

Objections and appeals

- (1) The provisions of Division 1 of Part 9 of the *Local Government Act 1995* and regulation 33 of the *Local Government (Functions and General) Regulations 1996* apply to a decision where the local government makes a decision as to whether it will –
- (a) grant an application for a licence;
 - (b) vary or cancel a licence;
 - (c) impose or amend a condition to which a licence is subject; or
 - (d) transfer of a licence.
- (2) Under these provisions, an affected person may have the right to object to, or to appeal against, a decision of the local government.

Inspection of kennel

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

Dogs in public places

Places where dogs are prohibited absolutely

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

Places which are dog exercise areas

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

Miscellaneous

Fees and charges

Set fees and charges are to be imposed and determined by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995*.

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.
- (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.

Enforcement

Offences

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.

General penalty

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 \$100 for each day or part of the day during which the offence has continued.

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 fourth column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is not a dangerous dog.
- (3) The amount appearing in the fifth 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.

Issue of infringement notice

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

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.

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.

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 3 of Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.
- (2) A person authorised to issue an infringement notice under clause 7.4 cannot sign or send a notice of withdrawal.

Service of notices

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 – Information required for application for a licence for an approved kennel establishment

[cl. 4.1]

1. Details of applicant/s –
 - a) Full name/s of applicant/s
 - b) Postal address
 - c) Telephone number
 - d) Mobile number
 - e) Fax number
 - f) E-mail address.
2. Address of proposed premises

3. Dogs to be kept –
 - a) Number
 - b) Breed
4. Either –
 - a) Person residing on the premises –
 - i) Name
 - ii) As from
 - iii) Mobile phone number, or
 - b) Person sufficiently close to the premises so as to control the dogs and ensure their health and welfare –
 - i) Name
 - ii) Address
 - iii) As from
 - iv) Mobile phone number.
5. To be included –
 - 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 proposed kennel establishment;
 - c) copy of notice of proposed use to appear in newspaper and to be given to adjoining premises unde clause 4.2;
 - d) 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
 - e) if the person in item (e) is not the applicant, written evidence that the person is a person in charge of the dogs
6. Signature of applicant/s
7. Date

Schedule 2 – Conditions of a licence for an approved kennel establishment
[cl. 4.7]

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

- (a) each kennel, unless it is fully enclosed, must have a yard attached to it;
- (b) each kennel and each yard must be at a distance of not less than –
 - (i) 25m from the front boundary of the premises and 5m from any other boundary of the premises;
 - (ii) 10m from any dwelling; and
 - (iii) 25m from any church, school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;
- (c) each yard for a kennel must be kept securely fenced with a fence constructed of link mesh or netting or other materials approved by the local government;
- (d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;
- (e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the

- floor area of the kennel or group of kennels to which it is attached;
- (f) the upper surface of the kennel floor must be –
 - (i) at least 100mm above the surface of the surrounding ground;
 - (ii) smooth so as to facilitate cleaning;
 - (iii) rigid;
 - (iv) durable;
 - (v) slip resistant;
 - (vi) resistant to corrosion;
 - (vii) non-toxic;
 - (viii) impervious;
 - (ix) free from cracks, crevices and other defects; and
 - (x) finished to a surface having a fall of not less than 1 in 100 to a spoon drain which in turn must lead to a suitably sized diameter sewerage pipe which must be properly laid, ventilated and trapped in accordance with the health requirements of the local government;
 - (g) all kennel floor washings must pass through the drain in item (f)(x) and must be piped to approved apparatus for the treatment of sewage in accordance with the health requirements of the local government;
 - (h) the kennel floor must have a durable upstand rising 75mm above the floor level from the junction of the floor and external and internal walls, or internal walls must be so constructed as to have a minimum clearance of 50mm from the underside of the bottom plate to the floor;
 - (i) where a yard is to be floored, the floor must be constructed in the same manner as the floor of any kennel;
 - (j) from the floor, the lowest internal height of a kennel must be, whichever is the lesser of -
 - (i) 2m; or
 - (ii) 4 times the height of the breed of dog in the kennel, when it is fully grown, measured from the floor to the uppermost tip of its shoulders while in a stationary upright position;
 - (k) the walls of each kennel must be constructed of concrete, brick, stone or framing sheeted internally and externally with good quality new zincalume or new pre-finished colour coated steel sheeting or new fibrous cement sheeting or other durable material approved by the local government;
 - (l) all external surfaces of each kennel must be kept in good condition;
 - (m) the roof of each kennel must be constructed of impervious material;
 - (n) all kennels and yards and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorised person;
 - (o) all refuse, faeces and food waste must be disposed of daily into the approved apparatus for the treatment of sewage;
 - (p) noise, odours, fleas, flies and other vectors of disease must be effectively controlled;
 - (q) suitable water must be available at the kennel via a properly supported standpipe and tap; and
 - (r) the licensee or the person nominated in the application for a licence, must, in accordance with the application for the licence, continue to reside –
 - (i) at the premises; or
 - (ii) in the opinion of the local government, sufficiently close to the premises so as to control the dogs, and to ensure their health and welfare.

Schedule 3 – Prescribed offences

[cl.7.3]

Item	Clause	Nature of offence	Modified penalty \$	Dangerous Dog Modified

				Penalty \$
1	3.1	Failing to provide means for effectively confining a dog	200	As per Regulations
2	3.6	Failure to comply with conditions of approval to keep additional dog or dogs	200	500
3	6.2	Dog excreting in prohibited place	100	100

Dated _____

The Common Seal of the Shire of Victoria Plains was affixed by authority of a resolution of Council in the presence of –

D.S. LOVELOCK, President

G.M. TEEDE, Chief Executive Officer

3 DECLARATION OF CLOSURE

There being no further business the Presiding Member declared the meeting closed at 2.29pm.

Signed this *Twenty First* day of *February* *2018*

Presiding Member 