

# LOCAL GOVERNMENT ACT 1995

## SHIRE OF BROOKTON

### ACTIVITIES ON THOROUGHFARES AND TRADING IN THOROUGHFARES AND PUBLIC PLACES LOCAL LAW 2012

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Brookton resolved on 19 April 2012 to make the following local law.

#### PART 1—PRELIMINARY

##### 1.1 Citation

This local law is cited as the *Shire of Brookton Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law 2012*.

##### 1.2 Commencement

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

##### 1.3 Application

This local law applies throughout the district.

##### 1.4 Definitions

In this local law unless the context otherwise requires—

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

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

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

**bicycle** has the meaning given to it in the Code;

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

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

**carriageway** has the meaning given to it in the Code;

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

**Code** means the *Road Traffic Code 2000*;

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

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

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

(a) private land; or

(b) a private thoroughfare serving private land;

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

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

**footpath** has the meaning given to it in the Code;

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

**intersection** has the meaning given to it in the Code;

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

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

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

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

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

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

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

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

**nuisance** means-

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

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

**permissible verge treatment** means any one of the 4 treatments described in clause 2.7(2), and includes any reticulation pipes and sprinklers;

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

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

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

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

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

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

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

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

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

**townsite** means the townsites within the district which are—

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

**vehicle** includes—

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

but excludes—

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

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

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

### ***Division 1—General***

#### **2.1 General prohibitions**

A person shall not—

- (a) plant any plant which exceeds or which may exceed 0.75m in height on a thoroughfare so that the plant is within 10m of an intersection, or plant any plant, other than grass and similar plants, within 6m of an intersection;
- (b) damage a lawn or a garden or remove any plant or part of a plant from a lawn or a garden unless —
  - (i) the person is the owner or the occupier of the lot abutting that portion of the thoroughfare and the lawn or the garden or the particular plant has not been installed or planted by the local government; or
  - (ii) the person is acting under the authority of a written law;
- (c) plant any plant (except grass or a similar plant) on a thoroughfare so that it is within 2m of a carriageway;
- (d) place on any footpath any fruit, fruit skins or other substance or fluid (whether vegetable or otherwise, but not water) which may create a hazard for any person using the footpath;
- (e) unless at the direction of the local government, damage, remove or interfere with any signpost, direction plate, guidepost, notice, shelter, shed, fence or any structure erected on a thoroughfare by the local government or a person acting under the authority of a written law;
- (f) play or participate in any game or sport so as to cause danger to any person or thing or impede the movement of vehicles or persons on a thoroughfare; or
- (g) within a mall, arcade or verandah of a shopping centre, ride any bicycle, skateboard, rollerblades or similar device.

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

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

- (a) dig or otherwise create a trench through or under a kerb or footpath;
- (b) subject to Division 3 of this Part, throw, place or deposit any thing on a verge except for

- removal by the local government under a bulk rubbish collection, and then only during the period of time advertised in connection with that collection by the local government;
- (c) cause any obstruction to a vehicle or a person using a thoroughfare as a thoroughfare;
  - (d) cause any obstruction to a water channel or a water course in a thoroughfare;
  - (e) throw, place or drain offensive, noxious or dangerous fluid onto a thoroughfare;
  - (f) damage a thoroughfare;
  - (g) light any fire or burn any thing on a thoroughfare other than in a stove or fireplace provided for that purpose or under a permit issued under clause 5.13;
  - (h) fell any tree onto a thoroughfare;
  - (i) unless installing a permissible verge treatment—
    - (i) lay pipes under or provide taps on any verge; or
    - (ii) place or install any thing on any part of a thoroughfare, and without limiting the generality of the foregoing, any gravel, stone, flagstone, cement, concrete slabs, blocks, bricks, pebbles, plastic sheeting, kerbing, wood chips, bark or sawdust;
  - (j) provide, erect, install or use in or on any building, structure or land abutting on a thoroughfare any hoist or other thing for use over the thoroughfare;
  - (k) on a public place use anything or do anything so as to create a nuisance;
  - (l) place or cause to be placed on a thoroughfare a bulk rubbish container; or
  - (m) interfere with the soil of, or anything in a thoroughfare or take anything from a thoroughfare.
- (2) The local government may exempt a person from compliance with subclause (1)-
- (a) if that person complies with a policy issued by the local government issued under clause 7.5 in relation to a specific activity in a thoroughfare, verge or footpath; or
  - (b) on the application of that person.

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

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

## ***Division 2—Verge treatments***

### Subdivision 1—Preliminary

#### **2.4 Interpretation**

In this Division, unless the context otherwise requires—

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

#### **2.5 Application**

This Division only applies to the townsite.

### Subdivision 2—Permissible verge treatments

## **2.6 Permissible verge treatments**

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

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

- (1) A person shall not install or maintain a verge treatment which is not a permissible verge treatment.
- (2) The owner and occupier of the lot abutting a verge treatment referred to in subclause (1) are each to be taken to have installed and maintained that verge treatment for the purposes of this clause and clause 2.8.

## **2.8 Obligations of owner or occupier**

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

- (a) keep the permissible verge treatment in a good and tidy condition and ensure, where the verge treatment is a garden or lawn, that a footpath on the verge and a carriageway adjoining the verge is not obstructed by the verge treatment;
- (b) not place any obstruction on or around the verge treatment;
- (c) not disturb a footpath on the verge;
- (d) ensure the verge treatment does not cause a sight distance obstruction to any person using a footpath on the verge or a carriageway or crossing adjoining the verge or in proximity to it;
- (e) ensure that the verge treatment does not damage or obstruct a drain, manhole, gully, inspection pit, channel, kerb, or tree planted by the local government; and
- (f) ensure that any sprinklers or pipes installed to irrigate a verge treatment:
  - (i) do not protrude above the level of the lawn when not in use,
  - (ii) are not used at such times so as to cause unreasonable inconvenience to pedestrians or other persons, and
  - (iii) do not otherwise present a hazard to pedestrians or other persons.

## **2.9 Notice to owner or occupier**

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

## **2.10 Transitional provision**

(1) In this clause—

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

(2) A verge treatment which—

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

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

### **Subdivision 4—Public works**

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

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

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

### ***Division 3—Property numbers***

#### **Subdivision 1—Preliminary**

## **2.12 Interpretation**

In this Division, unless the context requires otherwise—

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

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

## **2.13 Assignment of numbers**

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

### ***Division 4—Fencing***

## **2.14 Public place—Item 4(1) of Division 1, Schedule 3.1 of Act**

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

- (a) a public place, as that term is defined in clause 1.4; and
- (b) local government property.

### ***Division 5—Signs erected by the local government***

## **2.15 Signs**

(1) A local government may erect a sign on a public place specifying any conditions of use which

apply to that place.

- (2) A person shall comply with a sign erected under subclause (1).
- (3) A condition of use specified on a sign erected under subclause (1) is to be for the purpose of giving notice of the effect of a provision of this local law.

## **2.16 Transitional**

Where a sign erected on a public place has been erected under a local law of the local government repealed by this local law, then on and from the commencement day, it is to be taken to be a sign erected under clause 2.15 if—

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

### ***Division 6—Driving on a closed thoroughfare***

## **2.17 No driving on closed thoroughfare**

- (1) In this clause—

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

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

## **PART 3—ADVERTISING SIGNS ON THOROUGHFARES**

### ***Division 1—Preliminary***

## **3.1 Interpretation**

In this Part, unless the context otherwise requires—

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

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

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

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

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

### ***Division 2—Permit***

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

- (1) A person shall not, without a permit—
  - (a) erect or place an advertising sign on a thoroughfare; or
  - (b) post any bill or paint, place or affix any advertisement on a thoroughfare.
- (2) Notwithstanding subclause (1), a permit is not required in respect of a portable direction sign which neither exceeds 500mm in height nor 0.5 square metres in area, provided that the sign is placed or erected on a thoroughfare on an infrequent or occasional basis only to direct attention to a place, activity or event during the hours of that activity or event.

- (3) Notwithstanding subclause (1), a person shall not erect or place an advertising sign—
- (a) on a footpath;
  - (b) over any footpath where the resulting vertical clearance between the sign and the footpath is less than 2.5m;
  - (c) on or within 3m of a carriageway;
  - (d) in any other location where, in the opinion of the local government, the sign is likely to obstruct lines of sight along a thoroughfare or cause danger to any person using the thoroughfare; or
  - (e) on any natural feature, including a rock or tree, on a thoroughfare, or on any bridge or the structural approaches to a bridge.

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

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

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

#### ***Division 3—Conditions on permit***

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

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

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

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

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

- (a) being erected at least 30m from any intersection;

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

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

##### ***Division 1—Animals and vehicles***

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

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

#### **4.2 Prohibitions relating to animals**

- (1) In subclause (2), ***owner***
  - in relation to an animal includes—
  - (a) an owner of it;
  - (b) a person in possession of it;
  - (c) a person who has control of it; and
  - (d) a person who ordinarily occupies the premises where the animal is permitted to stay.
- (2) An owner of an animal shall not—
  - (a) allow the animal to enter or remain for any time on any thoroughfare except for the use of the thoroughfare as a thoroughfare and unless it is led, ridden or driven;
  - (b) allow an animal which has a contagious or infectious disease to be led, ridden or driven in a public place;
  - (c) train or race the animal on a thoroughfare; or
  - (d) subject to subclause (4), allow an animal to excrete on a thoroughfare.
- (3) An owner of a horse shall not lead, ride or drive a horse on a thoroughfare in a built-up area,

unless that person does so under a permit or under the authority of a written law.

(4) An owner of an animal does not commit an offence if the excreta is immediately removed.

#### **4.3 Removal of vehicle or animal**

An authorised person may impound an animal or vehicle left in contravention of clause 4.1.

### **PART 5—ROADSIDE CONSERVATION**

#### ***Division 1—Preliminary***

##### **5.1 Interpretation**

In this Part—

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

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

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

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

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

##### **5.2 Application**

This Part does not apply to the townsite.

#### ***Division 2—Flora roads***

##### **5.3 Declaration of flora road**

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

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

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

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

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

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

- (1) A person driving or riding a vehicle on a flora road shall only drive or ride the vehicle on the carriageway.
- (2) Subclause (1) does not apply where—
  - (a) conditions on the thoroughfare do not reasonably permit a vehicle to remain on the carriageway;
  - (b) there is no carriageway; or
  - (c) an exemption from the application of subclause (1) has been obtained from the local government.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **5.12 Application for permit**

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

#### ***Division 6—Fire management***

#### **5.13 Permit to burn thoroughfare**

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

#### **5.14 Application for permit**

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

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

#### **5.15 When application for permit can be approved**

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

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

of native flora and fauna.

#### **5.16 Prohibitions on burning**

Subject to any other written law and notwithstanding anything to the contrary in this local law, an application for a permit for the purpose of clause 5.13 is not to be approved by the local government for burning between 31 August and 1 May of the following year where the intensity of the burn could damage native flora and fauna.

### ***Division 7—Firebreaks***

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

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

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

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

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

#### **5.19 General prohibition on commercial wildflower harvesting**

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

#### **5.20 Permit for revegetation projects**

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

## **PART 6—TRADING IN THOROUGHFARES AND PUBLIC PLACES**

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

#### **Subdivision 1—Preliminary**

#### **6.1 Interpretation**

In this Division, unless the context otherwise requires—

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

***public place*** includes—

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

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

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

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

**stallholder's permit** means a permit issued to a stallholder;

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

**trader's permit** means a permit issued to a trader; and

**trading** includes—

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

#### Subdivision 2—Permits

### 6.2 Stallholder's permit

- (1) A person shall not conduct a stall on a public place unless that person is—
  - (a) the holder of a valid stallholder's permit; or
  - (b) an assistant specified in a valid stallholder's permit.
- (2) Every application for a stallholder's permit shall—
  - (a) state the full name and address of the applicant;
  - (b) specify the proposed number of assistants to be engaged by the applicant in conducting the

stall, as well as their names and addresses if already engaged;

- (c) specify the proposed location of the stall;
- (d) specify the period of time for which the permit is sought, together with the proposed days and hours of operation;
- (e) specify the proposed goods or services to be sold or hired or offered for sale or hire from the stall; and
- (f) be accompanied by an accurate plan and description of the proposed stall.

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

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

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

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

### **6.5 Exemptions from requirement to pay fee or to obtain a permit**

- (1) In this clause—

***charitable organisation*** means an institution, association, club, society or body whether incorporated or not, the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature and from which any member does not receive any pecuniary profit except where the member is an employee or the profit is an honorarium; and

***commercial participant*** means any person who is involved in operating a stall or in conducting any trading activity for personal gain or profit.

- (2) The local government may waive any fee required to be paid by an applicant for a stallholder's permit or a trader's permit on making an application for or on the issue of a permit, or may return any such fee which has been paid, if the stall is conducted or the trading is carried on—
  - (a) on a portion of a public place adjoining the normal place of business of the applicant; or
  - (b) by a charitable organisation that does not sublet space to, or involve commercial participants in the conduct of a stall or trading, and any assistants that may be specified in the permit are members of that charitable organisation.
- (3) The local government may exempt a person or a class of persons, whether or not in relation to a specified public place, from the requirements of this Division.

### Subdivision 3—Conduct of stallholders and traders

#### 6.6 Conduct of stallholders and traders

- (1) A stallholder while conducting a stall or a trader while trading shall—
  - (a) display her or his permit to do so in a conspicuous place on the stall, vehicle or temporary structure or if there is no stall, vehicle or temporary structure, carry the permit with her or him while conducting a stall or trading;
  - (b) not display a permit unless it is a valid permit; and
  - (c) when selling goods by weight, carry and use for that purpose, scales tested and certified in accordance with the provisions of the *Trade Measurement Administration Act 2006*.
- (2) A stallholder or trader shall not—
  - (a) attempt to conduct a business within a distance of 300m of any shop or permanent place of business that is open for business and has for sale any goods or services of the kind being offered for sale by the stall holder or trader;
  - (b) deposit or store any box or basket containing goods on any part of a thoroughfare so as to obstruct the movement of pedestrians or vehicles;
  - (c) act in an offensive manner;
  - (d) use or cause to be used any apparatus or device including any flap or shelf, whereby the dimensions of a stall, vehicle or structure are increased beyond those specified in the permit; or
  - (e) in the case of a trader, carry on trading from a public place, unless there is adequate parking for customers' vehicles reasonably close to the place of trading.

#### ***Division 2—Outdoor eating facilities on public places***

#### 6.7 Interpretation

In this Division—

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

***permit holder*** means the person to whom a permit has been issued for the purpose of clause 6.8; and

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

#### 6.8 Permit required to conduct facility

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

#### 6.9 Matters to be considered in determining application

In determining an application for a permit for the purpose of clause 6.8, the local government may consider in addition to any other matter it considers relevant, whether or not—

- (a) the facility is conducted in conjunction with and as an extension of food premises which abut on the Facility, and whether the applicant is the person conducting such food premises;
- (b) any abutting food premises are registered in accordance with the *Food Act 2008* and whether the use of the premises is permitted under the town planning scheme;
- (c) the facility will comply with the *Food Act 2008*;
- (d) users of the facility will have access to proper and sufficient sanitary and ablutionary conveniences;
- (e) the facility would—

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

#### **6.10 Obligations of permit holder**

- (1) The permit holder for a facility shall—
  - (a) ensure that the facility is conducted at all times in accordance with the provisions of this local law and the *Food Act 2008*;
  - (b) ensure that the eating area is kept in a clean and tidy condition at all times;
  - (c) maintain the chairs, tables and other structures in the eating area in a good, clean and serviceable condition at all times;
  - (d) be solely responsible for all and any costs associated with the removal, alteration, repair, reinstatement or reconstruction of any part of the public place arising from the conduct of the facility; and
  - (e) be solely responsible for all rates and taxes levied upon the land occupied by the facility.
- (2) Whenever, in the opinion of the local government, any work is required to be carried out to a facility, the local government may give a notice to the permit holder for the facility to carry out that work within the time limited by the notice.
- (3) In subclause (2), **work** includes the removal, alteration, repair, reinstatement or reconstruction of any part of a public place arising from or in connection with the setting up or conduct of a facility.

#### **6.11 Removal of facility unlawfully conducted**

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

#### **6.12 Use of facility by public**

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

#### **6.13 Temporary removal of facility may be requested**

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

### **PART 7—PERMITS**

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

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

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

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

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

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

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

- (1) In determining an application for a permit, the local government is to have regard to –
  - (a) any relevant policy of the local government;
  - (b) the National Competition Principles Agreement;
  - (c) the desirability of the proposed activity;
  - (d) the location of the proposed activity; and
  - (e) such other matters as the local government may consider to be relevant in the circumstances of the case.
- (2) The local government may refuse to approve an application for a permit on any one or more of the following grounds –
  - (a) that the applicant has committed a breach of any provision of this local law or of any written law relevant to the activity in respect of which the permit is sought;
  - (b) that the applicant is not a desirable or suitable person to hold a permit; or
  - (c) such other grounds as the local government may consider to be relevant in the circumstances of the case.

## ***Division 2—Conditions***

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

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

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

### **7.5 Imposing conditions under a policy**

(1) In this clause—

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

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

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

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

## ***Division 3—General***

### **7.7 Duration of permit**

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

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 7.11.

### **7.8 Renewal of permit**

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

### **7.9 Transfer of permit**

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

### **7.10 Production of permit**

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

### **7.11 Cancellation of permit**

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

## **PART 8—OBJECTIONS AND REVIEW**

### **8.1 Review of a decision**

When the local government makes a decision—

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

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

## **PART 9—MISCELLANEOUS NOTICES**

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

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

### **9.2 Hazardous plants**

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

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

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

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

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

## **PART 10—ENFORCEMENT**

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

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

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

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

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

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

#### **Subdivision 1—General**

#### **10.3 Offences**

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

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

Subdivision 2—Infringement notices and modified penalties

**10.4 Prescribed offences**

- (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.
- (3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorised person should be satisfied that—
- (a) commission of the prescribed offence is a relatively minor matter; and
  - (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

**10.5 Forms**

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

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

**Schedule 1 - Prescribed offences**

[cl. 10.4(1)]

CLAUSE	DESCRIPTION	MODIFIED PENALTY \$
2.1(a)	Plant of 0.75m in height on thoroughfare within 10m of intersection, or any plant other than grass or similar plant within 6m of an intersection	125
2.1(b)	Damaging lawn or garden	125
2.1(c)	Plant (except grass) on thoroughfare within 2m of carriageway	125
2.1(d)	Placing hazardous substance on footpath	200
2.1(e)	Damaging or interfering with signpost or structure on thoroughfare	350
2.1(f)	Playing games so as to impede vehicles or persons on thoroughfare	125
2.1(g)	Riding of bicycle, skateboard or similar device on mall or verandah of shopping centre	125
2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	200
2.2(1)(b)	Throwing or placing anything on a verge without a permit	200
2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	200
2.2(1)(d)	Causing obstruction to water channel on thoroughfare without a permit	250

2.2(1)(e)	Placing or draining offensive fluid on thoroughfare without a permit	250
2.2(1)(g)	Lighting a fire on a thoroughfare without a permit	350
2.2(1)(h)	Felling tree onto thoroughfare without a permit	200
2.2(1)(i)	Installing pipes or stone on thoroughfare without a permit	200
2.2(1)(j)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	350
2.2(1)(k)	Creating a nuisance on a thoroughfare without a permit	200
2.2(1)(l)	Placing a bulk rubbish container on a thoroughfare without a permit	200
2.2(1)(m)	Interfering with anything on a thoroughfare without a permit	200
2.3(1)	Consumption or possession of liquor on thoroughfare	200
2.7(1)	Installation of verge treatment other than permissible verge treatment	250
2.8	Failure to maintain permissible verge treatment or placement of obstruction on verge	200
2.9	Failure to comply with notice to rectify default	200
2.15(2)	Failure to comply with sign on public place	125
2.17(2)	Driving or taking a vehicle on a closed thoroughfare	350
3.2(1)	Placing advertising sign or affixing any advertisement on a thoroughfare or verge without a permit	125
3.2(3)	Erecting or placing of advertising sign in a prohibited area	125
4.1(1)	Animal or vehicle obstructing a public place or local government property	125
4.2(2)(a)	Animal on thoroughfare when not led, ridden or driven	125
4.2(2)(b)	Animal on public place with infectious disease	125
4.2(2)(c)	Training or racing animal on thoroughfare	125
4.2(2)(d)	Failure to remove animal excreta	125
4.2(3)	Horse led, ridden or driven on thoroughfare in built-up area	125
5.6(1)	Driving a vehicle on other than the carriageway of a flora road	300
5.9	Planting in a thoroughfare without a permit	300
5.11	Failure to obtain a permit to clear a thoroughfare	500
5.13	Burning of a thoroughfare without a permit	500
5.17	Construction of firebreak on thoroughfare without a permit	500
5.19	Commercial harvesting of native flora on thoroughfare	500
5.20(1)	Collecting seed from native flora on thoroughfare without a permit	350
6.2(1)	Conducting of stall in public place without a permit	350
6.3(1)	Trading without a permit	350
6.6(1)(a)	Failure of stallholder or trader to display or carry permit	125
6.6(1)(b)	Stallholder or trader not displaying valid permit	125

6.6(1)(c)	Stallholder or trader not carrying certified scales when selling goods by weight	125
6.6(2)	Stallholder or trader engaged in prohibited conduct	125
6.8	Establishment or conduct of outdoor eating facility without a permit	350
6.10	Failure of permit holder of outdoor eating facility to comply with obligations	200
6.12(1)	Use of equipment or outdoor eating facility without purchase of food or drink from facility	125
6.12(2)	Failure to leave outdoor eating facility when requested to do so by permit holder	125
7.6	Failure to comply with a condition of a permit	200
7.10	Failure to produce permit on request of authorised person	125
10.1	Failure to comply with notice given under local law	200
	All other offences not specified	125

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Dated 23 April 2012

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

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