



ORDINARY MINUTES

ORDINARY Meeting
of the Council held:

DATE: Tuesday, 25 March 2008

TIME: 2.45pm

VENUE: Council Chambers

Rob Stewart
CHIEF EXECUTIVE OFFICER

MEMBERSHIP – Quorum (5)

Members:

Cr K Forbes - Rocky Gully / West Ward - Shire President
Cr B Hollingworth - Town Ward - Deputy Shire President
Cr K Clements - Town Ward
Cr J Mark - Town Ward
Cr J Moir - South Ward
Cr M Skinner - East Ward
Cr D Nye-Chart - East Ward
Cr S Grylls - Rocky Gully / West Ward
Cr A Budrikis - Kendenup Ward

Information and recommendations are included in the reports to assist the Council in the decision making process and may not constitute the Council's decision until considered by the Council.

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1 DECLARATION OF OPENING / ANNOUNCEMENT OF VISITORS

2.46PM The Presiding Member declared the meeting open.

2 RESPONSE TO PREVIOUS PUBLIC QUESTIONS TAKEN ON NOTICE

Nil

3 RECORD OF ATTENDANCE / APOLOGIES / LEAVE OF ABSENCE (PREVIOUSLY APPROVED)Members Present:

Cr K Forbes
Cr B Hollingworth
Cr K Clements
Cr S Grylls
Cr J Mark
Cr J Moir
Cr D Nye-Chart
Cr M Skinner
Cr A Budrikis

In Attendance:

Mr R Stewart	Chief Executive Officer
Mr J Fathers	Deputy Chief Executive Officer
Ms Nicole Selesnew	Manager Community Services
Mrs K Skinner	Executive Secretary

There were no members of the public in attendance.
There were no members of the media in attendance.

4 PUBLIC QUESTION TIME

Section 5.24 Local Government 1995

Nil

5 PETITIONS / DEPUTATIONS / PRESENTATIONS

Nil

6 DISCLOSURE OF INTEREST

Part 5 Division Local Government Act 1995

Nil

7 APPLICATIONS FOR LEAVE OF ABSENCE

Section 5.25 Local Government Act 1995

Nil

8 CONFIRMATION OF MINUTES

Moved Cr M Skinner, seconded Cr J Mark

THAT the Minutes of the Ordinary Meeting of the Shire of Plantagenet, held on 11 March 2008 as circulated, be taken as read and adopted as a correct record.

CARRIED (9/0)

NO. 50/08

9 ANNOUNCEMENTS BY PRESIDING MEMBER WITHOUT DISCUSSION

- 13 March 2008 – Attended an Interagency Workshop along with the Chief Executive Officer and Manager Community Services which looked at survey results.
- 13 March 2008 – Attended with Councillors and Staff a Kendenup Public Meeting on recreation and community needs, including the need for a united direction.
- 17 March 2008 – Met with Presidents, Mayor and Chief Executive Officers of five (5) owner Councils former Chillinup Waste Site to discuss disposal of the Chillinup property with a possible direction for later in 2008 early 2009.
- 18 March 2008 – Attended the 'Blessing of the Roads' function which was held in conjunction with RoadWise and the Community in Mount Barker.
- 22 March 2008 – With wife Lyn attended the opening of 'Art in the Park' at the Porongurup. Mr Terry Redman MLA officiated at the opening.
- 27 March 2008 – Will be attending a Western Power Workshop in Cranbrook with the possible announcement of the new power line route.
- 28 March 2008 – With Cr Hollingworth and the Chief Executive Officer will be attending a Special Meeting of the Great Southern Zone of Western Australian Local Government Association (WALGA) in Mount Barker. The meeting will commence at 9.30am to conduct normal business and the Systemic Sustainability Study Report.
- 31 March 2008 – With Manager Works and Services Mr Ian Bartlett, will be attending a Regional Road Group Meeting in Gnowangerup.
- 1 April 2008 – Annual Road Inspection. Leaving the Shire Office at 8.15am.

- 2 April 2008 – Will be attending a State Council Meeting of WALGA in Perth.
- 4 April 2008 – Advised that there will be a workshop on Finance with Mr Ron Back for all Councillors.
- 9 April 2008 – Advised that there would be a Timber Industry Roads Evaluation Strategy (TIRES) meeting at the Shire of Plantagenet commencing at 9.30am.
- 9 April 2008 – Advised that there would be representatives from the Glenelg Shire Council visiting Mount Barker at 2.00pm.

10 REPORTS OF COMMITTEES AND OFFICERS

10.1 DEVELOPMENT SERVICES REPORTS

Nil

10.2 WORKS AND SERVICES REPORTS

Nil

10.3 COMMUNITY SERVICES REPORTS

Nil

10.4 CORPORATE SERVICES REPORTS

10.4.1 FINANCIAL STATEMENTS

File No:	FM/65/1
Attachments: (1)	February 2008
Responsible Officer:	Rob Stewart Chief Executive Officer
Author:	John Fathers Deputy Chief Executive Officer
Proposed Meeting Date:	25 March 2008

Purpose

The purpose of this report is to present the financial position of the Shire of Plantagenet for the period ending 29 February 2008.

Statutory Environment

Regulation 34 of the Financial Management Regulations (1996) requires a Statement of Financial Activity to be prepared each month which is to contain the following details.

- (a) annual budget estimates;
- (b) budget estimates to the end of the month;
- (c) actual amount of expenditure and revenue;
- (d) material variances between comparable amounts in (b) and (c) above; and
- (e) the net current assets at the end of the month to which the statement relates (i.e. surplus / (deficit) position).

The Statement is to be accompanied by:

- (a) explanation of the composition of net current assets, less committed assets and restricted assets;
- (b) explanation of the material variances; and
- (c) such other information considered relevant by the local government.

Policy Implications

There are no policy implications for this report.

Financial Implications

There are no financial implications for this report.

Strategic Implications

There are no strategic implications for this report.

Officer Comment

In addition to the monthly financial information, which is produced on an accrual basis, the following cash based information is provided.

The movements in the municipal fund over the month of February 2008 are shown below:

Balance 1 February 2008	\$2,177,161
Receipts - Rates	\$ 384,531
- Other	\$ 514,832
Payments - Payroll	\$ 208,859
- Other Creditors	<u>\$ 726,844</u>
Balance 29 February 2008	<u>\$2,140,821</u>

The Municipal cash position is made up as follows:

Restricted Funds – Unspent Grants	\$ 358,679
Restricted Funds – Former Trust Deposits	\$ 467,362
Committed Funds - Sale of Old Station House	\$ 180,749
- Sale of Rocky Gully lots	\$ 28,309
- Sale of Redman House	\$ 531,822
Unrestricted Funds	<u>\$ 573,900</u>
TOTAL	<u>\$2,140,821</u>

The Shire's current cash position on its non-municipal funds are as follows:

- Reserve Funds \$1,033,587
- Loan Funds \$ 267,807
- Trust Funds \$ 402,990

Voting Requirements

Simple Majority

OFFICER RECOMMENDATION / COUNCIL DECISION

Moved Cr B Hollingworth, seconded Cr S Grylls

That the Financial Statements for 29 February 2008, be received.

CARRIED (9/0)

NO. 51/08

10.4.2 LIST OF ACCOUNTS - FEBRUARY 2008

File No: FM/65/3
Attachments: (1) List of Accounts
Responsible Officer: Cherie Delmage
Accountant
Author: Donna Jo Fawcett
Accounts Officer
Proposed Meeting Date: 25 March 2008

Purpose

The purpose of this report is to present the list of payments that were made during the months of February 2008.

Statutory Environment

Regulation 13 of the Local Government (Financial Management) Regulations 1996 defines the reporting requirements to the Council of the List of Accounts.

Financial Implications

There are no financial implications for this report.

Policy Implications

There are no policy implications for this report.

Strategic Implications

There are no strategic implications for this report.

Voting Requirements

Simple Majority

OFFICER RECOMMENDATION / COUNCIL DECISION

Moved Cr J Mark, seconded Cr J Moir

That:

- (1) The payment of accounts for the month of February 2008 covering the following:
 - (a) Electronic Payments;
 - (b) Municipal Cheques 38458, 38461 - 38462, 38464 – 38485, 38503 – 38509, 38511 – 38525, 38536, 38559 to 38586, 38588 – 38600, 38602 – 38603, 38605 – 38645 totalling \$705,473.98; and
 - (c) Trust cheques 220 to 225 totalling \$119,950.00;be received.
-

(2) Municipal Cheques:

(a) Spoiled – 38463, 38499 – 38502, 38510, 38526 – 38535, 38537 – 38558, 38601, 38604; and

(b) Cancelled – 38515, 38522, and 38587;

be noted.

CARRIED (9/0)

NO. 52/08

10.4.3 COMPLIANCE AUDIT RETURN 2007

File No:	CM/19/1
Attachments:	Compliance Audit Return 2007
Responsible Officer:	John Fathers Deputy Chief Executive Officer
Author:	Donna Stevens Senior Administration Human Resource Officer
Proposed Meeting Date:	11 March 2008

Purpose

The purpose of this report is to enable the Council to fulfil its statutory obligations with regard to the Compliance Audit.

Background

A Compliance Audit is required to be completed once in each calendar year. The 2007 Compliance Audit revealed some areas of non-compliance. Those areas have been reviewed and process changes implemented to ensure full compliance in future. These areas are identified within the Compliance Audit return.

Statutory Environment

The Compliance Audit is required pursuant to Section 7.13 of the Local Government Act (1995).

Further, the Local Government (Audit) Regulations 1996 provide that the Compliance Audit is to be:

- (a) Presented to the Council at a meeting of the Council.
- (b) Adopted by the Council; and
- (c) Recorded in the minutes of the meeting at which it is adopted.

Also, after the compliance audit return has been presented to the Council a certified copy of the return together with:

- (a) A copy of the relevant section of the minutes referred to in the regulations; and
- (b) Any additional information explaining or qualifying the Compliance Audit, is to be submitted to the Executive Director by 31 March next following the period to which the return relates.

Consultation

Consultation has occurred with the appropriate council officers.

Financial Implications

There are no financial implications for this report.

Policy Implications

There are no policy implications for this report.

Strategic Implications

The Compliance Audit report helps to ensure that appropriate organisation practices are provided in financial management, administration, information technology and trading undertakings (Key Result Area 1).

Officer Comment

The completed Compliance Audit return is attached to this report.

Voting Requirements

Simple Majority

OFFICER RECOMMENDATION / COUNCIL DECISION

Moved Cr J Moir, seconded Cr B Hollingworth

That the Compliance Audit Return for the calendar year 1 January 2007 to 31 December 2007 be adopted and submitted to the Director General of the Department of Local Government and Regional Development.

CARRIED (9/0)

NO. 53/08

**10.4.4 ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND TRADING
LOCAL LAW REVIEW**

File No: LE/98/8
Attachments: [Thoroughfares Local Law](#)
Responsible Officer: John Fathers
Deputy Chief Executive Officer
Author: John Gilfellon
Consultant
Proposed Meeting Date: 25 March 2008

Purpose

The purpose of this report is to allow the Presiding Person to give notice to the meeting of the purpose and effect of the proposed Activities in Thoroughfares and Public Places and Trading Amendment Local Law, for the Council to adopt the proposed Local Law and to allow for advertising of the proposed Local Law for public comment.

Background

The purpose of this local law is to introduce a penalty for persons in charge of horses who fail to remove horse excreta from thoroughfares and public places within townsites and to update legislative titles.

The effect of this local law is to ensure a cleaner environment for users of thoroughfares and public places.

The principal local law was gazetted on 9 November 2001. The Shire of Kojonup Activities on Thoroughfares and Trading in Thoroughfares and Public Places local law was adopted by reference with a number of modifications. The local law is in the form of the WALGA model local law.

The vast majority of modifications gazetted in 2001 related to correcting drafting errors and updating changes to legislation.

A significant 2001 modification was the substituting of the following clause:-

'5.11 Permit to clear

(1) A person shall not clear and maintain in a cleared state, the surface of a thoroughfare outside a gazetted town boundary, beyond 2m of that person's land without first obtaining a permit and any other approvals which may be required under any written law.

(2) A person shall not clear and maintain in a cleared state, the surface of any thoroughfare within a gazetted town boundary, without first obtaining a permit and any other approvals which may be required under any written law.'

The Council previously raised a query regarding the 2 metre limit and whether legislation stated 1.5 metres. The Environmental Protection (Clearing of Native Vegetation) Regulations 2004 prescribe that clearing is permitted if the clearing is no more than 1.5m from the fence line (Clearing of Crown land along a fence line to provide access to construct or maintain a fence between alienated Land (Freehold) and Crown land). The Local Law has been amended to reduce the 2m to 1.5m.

The issue of horses excreting in public places has been identified as an issue and a relevant subclause in the City of Swan Consolidated Local Law was located which has been included in this local law. Although not preventing excretion the clause makes it an offence liable to a modified penalty if not removed immediately by the person in charge of the horse. This penalty is the same as for dogs excreting in public places. The subclause relates to townsites only.

The following subclause has been added to clause 4.2 in the current local law:-

'(3) Any person liable for the control of a horse who permits that horse to excrete in a public place or other local government property within any townsite in the district commits an offence unless the excreta is removed immediately and disposed of either on private land with consent of the owner or occupier or in such other manner as the local government or an authorised person may approve.'

'Kendenup' has been deleted from the definition of townsite as it is not a gazetted townsite and the title Planning and Development Act 2005 has been substituted where mentioned. Apart from some minor wording amendments the remainder of the local law does not require modification.

Statutory Environment

Section 3.16(1) of the Local Government Act 1995 requires a local government to review each of its local laws within an eight year period since its adoption or last review.

Consultation

The Shire's intention to review the Activities in Thoroughfares and Public Places and Trading Local Law and inviting public submissions was advertised on 12 May 2007. The submission period was open for 42 days. No public submissions were received.

A 42 day public submissions period on the proposed Activities in Thoroughfares and Public Places and Trading Amendment Local Law will be advertised Statewide when adopted by the Council.

In addition copies of the proposed Amendment Local Law, the principal Local Law, as amended and the National Competition Policy review must be sent to the relevant Minister for comment.

Financial Implications

Funding for the review of the local laws and for statutory advertising has been included in the 2007/08 annual budget.

Policy Implications

There are no policy implications for this report.

Legal Implications

Section 3.18 of the Local Government Act 1995 requires that a local government is to administer its local laws.

Strategic Implications

There are no strategic implications for this report.

Officer Comment

The following amendments are proposed for the Activities in Thoroughfares and Public Places and Trading Local Law:

1. General

Wherever the word “authorized” appears in the local law substitute the word “authorised”.

2. 1.2 - Definitions

(a) Wherever “Town Planning and Development Act 1928” appears substitute “Planning and Development Act 2005”.

(b) In the definition of the “townsite”, delete “Kendenup,”.

3. 1.4 - Repeal

Delete the whole of clause “1.4”

4. Clause 4.2 – Prohibitions relating to animals

Add the following clause:

“4.2(3) Any person liable for the control of a horse who permits that horse to excrete in a public place or other local government property within any townsite in the district commits an offence unless the excreta is removed immediately and disposed of either on private land with consent of the owner or occupier or in such other manner as the local government or an authorised person may approve.”

5. Clause 5.2 – Application

Substitute the wording of the Clause with the words “This Part does not apply to any townsite within the district”.

6. Clause 5.11 Permit to clear

In subclause 5.11(1) delete the measurement 2m and substitute 1.5m

7. Schedule 1 – Prescribed Offences

Add immediately after the line 4.2(2)(c) under the respective “Clause” “Description” and “Modified Penalty \$” columns the following –
4.2(3) – Permitting a horse to excrete in a public place – 100

A copy of the proposed Activities in Thoroughfares and Public Places and Trading Amendment Local Law is attached.

Voting Requirements

Absolute Majority

OFFICER RECOMMENDATION

Moved Cr J Moir, seconded Cr J Mark

That the proposed amendments to the Shire of Plantagenet Activities in Thoroughfares and Public Places and Trading Local Law, as detailed below, be adopted and advertised for public comment:

- ‘1. General**
Wherever the word “authorized” appears in the local law substitute the word “authorised”.
- 2. 1.2 - Definitions**
 - (a) Wherever “Town Planning and Development Act 1928” appears substitute “Planning and Development Act 2005”.**
 - (b) In the definition of the “townsite”, delete “Kendenup,”.**
- 3. 1.4 - Repeal**
Delete the whole of clause “1.4”
- 4. Clause 4.2 – Prohibitions relating to animals**
Add the following clause:
“4.2(3) Any person liable for the control of a horse who permits that horse to excrete in a public place or other local government property within any townsite in the district commits an offence unless the excreta is removed immediately and disposed of either on private land with consent of the owner or occupier or in such other manner as the local government or an authorised person may approve.”
- 5. Clause 5.2 – Application**
Substitute the wording of the Clause with the words “This Part does not apply to any townsite within the district”.
- 6. Clause 5.11 Permit to clear**
In subclause 5.11(1) delete the measurement 2m and substitute 1.5m

7. **Schedule 1 – Prescribed Offences**
Add immediately after the line 4.2(2)(c) under the respective “Clause”
“Description” and “Modified Penalty \$” columns the following –
4.2(3) – Permitting a horse to excrete in a public place – 100’

MOTION TO ADJOURN QUESTION

Moved Cr M Skinner, seconded Cr J Mark

That the question be adjourned so that a further report can be prepared regarding horses on Council property other than thoroughfares and presented to the meeting of the Council to be held on 22 April 2008.

CARRIED (9/0)

NO. 54/08

10.4.5 PEST PLANTS LOCAL LAW AMENDMENT 2008

File No: LE/98/7
Attachments: [Pest Plant Local Law](#)
Responsible Officer: John Fathers
Deputy Chief Executive Officer
Author: John Gilfellow
Consultant
Proposed Meeting Date: 25 March 2008

Purpose

The purpose of this report is to consider any submissions made on the proposed Pest Plants Amendment Local Law that was advertised for public comment on 6 October 2007 and to make the Shire of Plantagenet Pest Plants Amendment Local Law 2008.

Background

The purpose of this amendment local law is to bring the current Pest Plant Local Law into line with current legislative requirements.

The effect of this amendment local law is to allow the Pest Plant Local Law to be enforced in an effective manner.

The draft Shire of Plantagenet Pest Plants Amendment Local Law 2008 amends the Shire of Plantagenet By-law relating to Pest Plants as adopted in 1987. The Amendment Local Law sets out those wording and terminology changes needed to modernise the local law and make it easier to enforce.

In October 2007 when public submissions were invited on the proposed local law a copy was sent to the Minister for Agriculture and Food and the Minister for Local Government for comment. The Minister for Agriculture advised on 24 October 2007, 'I note that the proposed amendments would not effect any change to the substance of the local law.'

The Department of Local Government and Regional Development sought a number of extensions to the 42 day submission period and its comments were received on 5 February 2008.

The Department's comments related to the principles of drafting and wording local laws and the proposed local law adopted by the Council has been amended to include those comments. None of the Department's comments changed the intent of the local law and the local law being presented to the Council is not significantly different to the proposed local law.

Statutory Environment

The Pest Plants Local Law is made under the powers of the Agriculture and Related Resources Protection Act 1976. However, section 110 of that Act requires that in making a local law the process required by the Local Government Act 1995 is to be followed.

Section 3.12 of the Local Government Act 1995 sets out the procedures to be followed in making a local law.

Consultation

The Shire of Plantagenet's intention to undertake a review of its local laws was advertised on 12 May 2007 and public submissions were invited within a 42 day submission period. The review was advertised Statewide and locally. No submissions were received.

On 11 September 2007 the Council adopted the proposed Pest Plants Amendment Local Law and resolved that it be advertised for public comment. On 6 October 2007 the proposed local law was advertised for public comment and public submissions were invited within a 42 day consultation period. The invitation was advertised Statewide and locally. No public submissions were received.

Financial Implications

The Council is required to pay for all advertising and gazetting costs associated with the local law. This is estimated to be one thousand dollars (\$1,000.00).

Policy Implications

There are no policy implications for this report.

Legal Implications

Section 3.18 of the Local Government Act 1995 requires that a local government is to administer its local laws.

Strategic Implications

There are no strategic implications for this report.

Officer Comment

Except for minor drafting amendments suggested by the Department of Local Government and Regional Development the Local Law presented is not significantly different from the proposed Local Law adopted by the Council on 11 September 2007 and advertised for public comment.

A copy of the principal local law is attached.

Voting Requirements

Absolute Majority

OFFICER RECOMMENDATION / COUNCIL DECISION

Moved Cr D Nye-Chart, seconded Cr M Skinner

That under the power conferred by the Agriculture and Related Resources Protection Act 1976, the Local Government Act 1995 and under all other powers enabling it, the Shire of Plantagenet Pest Plants Amendment Local Law 2008 be made in the following form.

The Shire of Plantagenet By-laws Relating to Pest Plants 1987 as published in the Government Gazette on 7 August 1987 is referred to as the principal local law. The principal local law is amended as follows.

1. **1. Citation**
Delete Clause 1 and substitute.
1. These Local Laws may be cited as the *“Shire of Plantagenet Pest Plants Local Laws 2008”*.
2. **Preliminary**
Where they appear in the principal local law delete the words “By-laws” or “by-laws” and substitute “local laws”.
3. **2. Interpretation**
In clause 2:
 - (a) In the definition of “Council” delete the words “of the Municipality”;
 - (b) In the definition of “district” delete “Council” and substitute “Shire of Plantagenet”;
 - (c) Insert after the definition of “district” and before the definition of “pest plant” the definition “local government” means the Shire of Plantagenet;”
 - (d) In the definition “pest plant” delete the words “By-law 4” and substitute the words “clause 4”.
4. **5(1) Service of Notice**
In clause 5(1) delete the word “Council” and substitute the words “local government”.
5. **5(2) A person served**
In clause 5(2) delete the words “sub-by-law (1)” and substitute the words “subclause (1)”.
6. **6. Person fails to comply**
In clause 6:
 - (a) Delete the words “By-law 5” and substitute the words “clause 5”;
 - (b) Delete the word “Council” and substitute the words “local government”.

7. Second Schedule

In the Second Schedule:

- (a) Delete the word "Council" where it first appears and substitute the words "local government";**
- (b) Delete the words "Signature of person authorised by the Council of the Municipality of Plantagenet" and substitute the words "Signature of authorised person".**

CARRIED (9/0)

NO. 55/08

(ABSOLUTE MAJORITY)

10.4.6 PROPERTY LOCAL LAW 2008

File No:	LE/98/9
Responsible Officer:	John Fathers Deputy Chief Executive Officer
Author:	John Gilfellon Consultant
Proposed Meeting Date:	25 March 2008

Purpose

The purpose of this report is to consider any submissions made on the proposed Local Government Property Local Law that was advertised for public comment on 6 October 2007 and to make the Shire of Plantagenet Local Government Property Local law 2008.

Background

The purpose of this local law is to regulate the care, control and management of all property of the local government except thoroughfares.

The effect of this local law is to control the use of local government property. Some activities are permitted only under permit or under a determination and some activities are restricted or prohibited. Offences are created for inappropriate behaviour in or on local government property.

The draft Shire of Plantagenet Local Government Property Local Law 2008 adopts the Shire of York Local Government Property Local Law by reference and sets out those amendments required to take into account those matters that have been identified and to make the local law Shire of Plantagenet specific.

In October 2007 when public submissions were invited on the proposed local law a copy was sent to the Minister for Local Government for comment. The Department of Local Government and Regional Development sought a number of extensions to the 42 day submission period and its comments were received on the 5 February 2008.

The Department's comments related to the principles of drafting and wording local laws and the proposed local law adopted by the Council has been amended to include those comments. None of the Department's comments changed the intent of the local law and the local law being presented to the Council is not significantly different to the proposed local law.

Statutory Environment

Section 3.12 of the Local Government Act 1995 sets out the procedures to be followed in making a local law.

Consultation

The Shire of Plantagenet's intention to undertake a review of its local laws was advertised on 12 May 2007 and public submissions were invited within a 42 day

submission period. The review was advertised Statewide and locally. No submissions were received.

On 11 September 2007 the Council adopted the proposed Local Government Property Local Law and resolved that it be advertised for public comment. On 6 October 2007 the proposed local law was advertised for public comment and public submissions were invited within a 42 day consultation period. The invitation was advertised Statewide and locally. No public submissions were received.

Financial Implications

The Council is required to pay for all advertising and gazetting costs associated with the local law. This is estimated to be one thousand dollars (\$1,000.00).

Policy Implications

There are no policy implications for this report.

Legal Implications

Section 3.18 of the Local Government Act 1995 requires that a local government is to administer its local laws.

Strategic Implications

There are no strategic implications for this report.

Officer Comment

Except for minor drafting amendments suggested by the Department of Local Government and Regional Development the Local Law presented is not significantly different from the proposed Local Law adopted by the Council on 11 September 2007 and advertised for public comment.

This report recommends that under the powers conferred by the Local Government Act 1995 and under all other powers enabling it, the Council resolve to make the Shire of Plantagenet Local Government Property Local Law 2008 in the following form.

The Shire of York Local Government Property Local Law as published in the Government Gazette of 17 January 2001 is adopted as a local law of the Shire of Plantagenet, with the modifications as are here set out.

1. Preliminary

(a) Wherever the "Shire of York" is mentioned in the local law substitute "Shire of Plantagenet".

(b) Wherever the "Liquor Licensing Act 1988" is mentioned substitute the "Liquor Control Act 1988".

2. Definitions

In Clause 1.2 -

(a) Delete the definition of "boat".

(b) In the definition of "building" –

(i) after ";" in paragraph (a) add "and".

(ii) in paragraph (b) delete " ; and" and substitute ".".

(iii) delete paragraph (c).

(c) In the definition of "vehicle" –

(i) after ";" in paragraph (c) add "and".

(ii) in paragraph (d) delete " ; and" and substitute a ".".

(iii) delete paragraph (e).

3. Repeal

In subclause (1) of clause 1.5, delete -

"The following local laws are repealed –

Local Laws relating to—

York Memorial Swimming Pool published in the Government Gazette of 21 December 1966 as amended in Government Gazettes of 2 July 1982 and 5 May 1989;

The Speed of Vehicles Driven on Land which is Vested in or under the Care, Control or Management of the Council of the Shire of York, published in the Government Gazette of 10 May 1974, as amended in the Government Gazette of 29 September 1989"

and substitute:

"The Shire of Plantagenet (Local Government Act) Local Laws published in the Government Gazette on 15 July 1997 are repealed."

4. Activities which may be pursued on specified local government property

(a) In subclause (1) of clause 2.7 –

(i) delete paragraphs (e) and (f); and

(ii) renumber paragraphs (g) to (j) inclusive as (e) to (h) respectively.

(b) In paragraph (d) of subclause 2.7(2), delete "boats," in the two places in which it occurs.

5. Activities which may be prohibited on specified local government property

(a) In subclause (1) of clause 2.8 –

(i) delete paragraph (e); and

(ii) renumber paragraphs (f) to (h) inclusive as (e) to (g) respectively.

(b) In paragraph (c) of subclause 2.8(2), delete "boats," in the two places in which it occurs.

6. Cancellation of permit

In subclause (1) of clause 3.12, delete "clause 9.1" and substitute "clause 8.1".

7. Activities needing a permit

- (a) In paragraph (a) of subclause 3.13(1), delete “subclause 3” and substitute “subclause (3)”.
- (b) In subparagraph (ii) of paragraph (g) of subclause 3.13(1), delete “stand” and substitute “stop”.

8. Permit required to camp outside a facility

In paragraph (b) of subclause 3.14(3), delete “beach” where it occurs.

9. PART 5 – MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY

- (a) After clause 5.1 in Division 1 of PART 5, insert:

“Consumption of food or drink may be prohibited

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

- (b) Renumber clause “5.2” in Division 2 of PART 5 to “5.3”.
- (c) Renumber clause “5.3” in Division 2 of PART 5 to “5.4”.
- (d) Delete “Division 4 - Golf Course” of PART 5 in its entirety.

10. PART 7 – JETTIES AND BRIDGES

Delete “PART 7 – JETTIES AND BRIDGES” in its entirety.

11. PART 8 – SALEYARDS

- (a) Renumber PART 8 as PART 7.
- (b) Renumber clauses 8.1 to 8.14 inclusive as clauses 7.1 to 7.14 respectively.
- (c) In clause 7.12, delete “8.11” where it appears and substitute “7.11”.
- (d) In clause 7.10, delete the word “immediately” where it appears after the word “be” and insert the words “immediately following the sale” after the word “saleyard”.
- (e) In subclause (a) of clause 7.11, delete the words “within 7 days of bringing the stock into a saleyard” and substitute the words “by the end of the sale day”.
- (f) In subclause (b) of clause 7.11, substitute the words “within 28 days of bringing the stock into a saleyard” with the words “in accordance with the conditions for payment of invoices determined by the local government”
- (g) Delete clause 7.13 and substitute the clause:

“Dogs to be kept under control

7.13 An authorised person may require the owner, or person in charge of a dog, to remove the dog from the saleyard if the authorised person considers that the dog is causing a nuisance or disrupting the sale.”

- (h) Delete clause 7.14.

12. PART 9 – OBJECTIONS AND APPEALS

- (a) Renumber PART 9 as PART 8.
- (b) Renumber clause 9.1 as 8.1.

13. Application of Division 1, Part 9 of the Act

In subclause (b) of clause 8.1, delete the words “regulations 33 and 34” and substitute “regulation 33”

14. PART 10 – MISCELLANEOUS

- (a) Renumber PART 10 as PART 9.
- (b) Renumber clauses 10.1 to 10.4 inclusive as clauses 9.1 to 9.4 respectively.

15. PART 11 – ENFORCEMENT

- (a) Renumber PART 11 as PART 10.
- (b) Renumber clauses 11.1 to 11.6 inclusive as clauses 10.1 to 10.6 respectively.
- (c) In clause 10.2, delete “11.1” where it appears and substitute “10.1”.

16. Schedule 1 – PRESCRIBED OFFENCES

- (a) In Schedule 1, delete the following references in the “Clause” column and those references in the “Description” and “Modified Penalty \$” columns which relate to clauses “5.9”, “7.3”, “7.4”, “7.5”, “7.6”, “7.7” and “8.13”.
- (b) In Schedule 1, under the heading “Clause” delete the clause designations “5.5”, “5.6”, “8.2”, “8.8”, “8.10”, “8.11”, “8.12” and “11.1”, and substitute “5.3”, “5.4”, “7.2”, “7.8”, “7.10”, “7.11”, “7.12” and “10.1” respectively.
- (c) In Schedule 1, in the appropriate numerical order insert under the heading Clause “5.2”, under heading Description insert “Consuming food or drink in prohibited area” and under the heading Modified penalty \$ insert “100”.

17. Schedule 2 - DETERMINATIONS

In Schedule 2, after clause 1.2 of PART 1, insert the following –

“PART 2 – DRIVING VEHICLES ON LOCAL GOVERNMENT PROPERTY**Speed of Vehicles on Reserves**

2.1 A person shall not drive a vehicle or allow a vehicle to be driven upon a reserve which is local government property at a speed exceeding 20 kilometres an hour, or in such a manner as to cause danger, inconvenience or annoyance to any person.

PART 3 – ACTIVITIES PROHIBITED ON LOCAL GOVERNMENT PROPERTY**Activities prohibited on local government property**

3.1 A person is prohibited from pursuing all or any of the following activities on local government property except on land which is reserved to the local government for the purpose, or which is set aside under clause 2.7(1) for the purpose.”

18. Schedule 3 – GOLF COURSE RESERVE

Delete Schedule 3 – GOLF COURSE RESERVE.

Voting Requirements

Absolute Majority

OFFICER RECOMMENDATION / COUNCIL DECISION

Moved Cr B Hollingworth, seconded Cr K Clements

That the following local law relating to Property be adopted:

'LOCAL GOVERNMENT ACT 1995

Shire of Plantagenet

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SCHEDULE 1 - PRESCRIBED OFFENCES**SCHEDULE 2 - DETERMINATIONS****LOCAL GOVERNMENT ACT 1995****Shire of Plantagenet****LOCAL GOVERNMENT PROPERTY LOCAL LAW 2008**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Plantagenet resolved on 25 March 2008 to make the following local law.

PART 1 - PRELIMINARY**Citation**

1.1 This local law may be cited as the *Shire of Plantagenet Local Government Property Local Law 2008*.

Definitions

1.2 In this local law unless the context otherwise requires -

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

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

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

"building" means any building which is local government property and includes a –

(a) hall or room; and

(b) corridor, stairway or annexe of any hall or room.

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

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

"Council" means the council of the local government;

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

"determination" means a determination made under clause 2.1;

"district" means the district of the local government;

"function" means an event or activity characterised by all or any of the following –

(a) formal organisation and preparation;

(b) its occurrence is generally advertised or notified in writing to particular persons;

(c) organisation by or on behalf of a club;

(d) payment of a fee to attend it; and

(e) systematic recurrence in relation to the day, time and place;

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

"local government" means the Shire of Plantagenet;

"local government property" means anything except a thoroughfare –

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

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

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

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

"person" does not include the local government;

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

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

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

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

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

"vehicle" includes –

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

but excludes –

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

Interpretation

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

Application

1.4 (1) This local law applies throughout the district.

- (2) Notwithstanding anything to the contrary in this local law, the local government may -
- (a) hire local government property to any person; or
 - (b) enter into an agreement with any person regarding the use of any local government property.

**PART 2 - DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT
PROPERTY**

Division 1 - Determinations

Determinations as to use of local government property

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

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

Procedure for making a determination

2.2 (1) The local government is to give local public notice of its intention to make a determination.

- (2) The local public notice referred to in subclause (1) is to state that –
- (a) the local government intends to make a determination, the purpose and effect of which is summarised in the notice;
 - (b) a copy of the proposed determination may be inspected and obtained from the offices of the local government; and
 - (c) submissions in writing about the proposed determination may be lodged with the local government within 21 days after the date of publication.
- (3) If no submissions are received in accordance with subclause (2)(c), the Council is to decide to –
- (a) give local public notice that the proposed determination has effect as a determination on and from the date of publication;
 - (b) amend the proposed determination, in which case subclause (5) will apply; or
 - (c) not continue with the proposed determination.

(4) If submissions are received in accordance with subclause (2)(c) the Council is to –

- (a) consider those submissions; and
- (b) decide –
 - (i) whether or not to amend the proposed determination;

or

- (ii) not to continue with the proposed determination.

(5) If the Council decides to amend the proposed determination, it is to give local public notice –

- (a) of the effect of the amendments; and
- (b) that the proposed determination has effect as a determination on and from the date of publication.

(6) If the Council decides not to amend the proposed determination, it is to give local public notice that the proposed determination has effect as a determination on and from the date of publication.

(7) A proposed determination is to have effect as a determination on and from the date of publication of the local public notice referred to in subclauses (3), (5) and (6).

(8) A decision under subclause (3) or (4) is not to be delegated by the Council.

Discretion to erect sign

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

Determination to be complied with

2.4 A person shall comply with a determination.

Register of determinations

2.5 (1) The local government is to keep a register of determinations made under clause 2.1, and of any amendments to or revocations of determinations made under clause 2.6.

(2) Sections 5.94 and 5.95 of the Act are to apply to the register referred to in subclause (1) and for that purpose the register is to be taken to be information within section 5.94(u)(i) of the Act.

Amendment or revocation of a determination

2.6 (1) The Council may amend or revoke a determination.

(2) The provisions of clause 2.2 are to apply to an amendment of a determination as if the amendment were a proposed determination.

(3) If the Council revokes a determination it is to give local public notice of the revocation and the determination is to cease to have effect on the date of publication.

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

Activities which may be pursued on specified local government property

2.7 (1) A determination may provide that specified local government property is set aside as an area on which a person may –

- (a) bring, ride or drive an animal;
- (b) take, ride or drive a vehicle, or a particular class of vehicle;
- (c) fly or use a motorised model aeroplane;
- (d) use a children's playground provided that the person is under an age specified in the determination, but the determination is not to apply to a person having the charge of a person under the specified age;
- (e) deposit refuse, rubbish or liquid waste, whether or not of particular classes, and whether or not in specified areas of that local government property;
- (f) play or practice –
 - (i) golf or archery;
 - (ii) pistol or rifle shooting, but subject to the compliance of that person with the *Firearms Act 1973*; or
 - (iii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
- (g) ride a bicycle, a skateboard, rollerblades, a sandboard or a similar device; and
- (h) wear no clothing.

(2) A determination may specify the extent to which and the manner in which an activity referred to in subclause (1) may be pursued and in particular –

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

Activities which may be prohibited on specified local government property

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

- (a) smoking on premises;
- (b) riding a bicycle, a skateboard, rollerblades, a sandboard or a similar device;
- (c) taking, riding or driving a vehicle on the property or a particular class of vehicle;
- (d) riding or driving a vehicle of a particular class or any vehicle above a specified speed;
- (e) the playing or practice of -
 - (i) golf, archery, pistol shooting or rifle shooting; or

- (ii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
 - (f) the playing or practice of any ball game which may cause detriment to the property or any fauna on the property; and
 - (g) the traversing of sand dunes or land which in the opinion of the local government has environmental value warranting such protection, either absolutely or except by paths provided for that purpose.
- (2) A determination may specify the extent to which and the manner in which a person is prohibited from pursuing an activity referred to in subclause (1) and, in particular –
- (a) the days and times during which the activity is prohibited;
 - (b) that an activity is prohibited on a class of local government property, specified local government property or all local government property;
 - (c) that an activity is prohibited in respect of a class of vehicles, equipment or things, or all vehicles, equipment or things;
 - (d) that an activity is prohibited in respect of a class of persons or all persons; and
 - (e) may distinguish between different classes of the activity.
- (3) In this clause –
"premises" means a building, stadium or similar structure which is local government property, but not an open space such as a park or a playing field.

Division 3 - Transitional

Signs taken to be determinations

2.9 (1) Where a sign erected on local government property has been erected under a local law of the local government repealed by this local law, then it is to be taken to be and have effect as a determination on and from the commencement day, except to the extent that the sign is inconsistent with any provision of this local law or any determination made under clause 2.1.

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

PART 3 - PERMITS *Division 1 - Preliminary*

Application of Part

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

Division 2 - Applying for a permit

Application for permit

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

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

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

- (b) be signed by the applicant;
- (c) provide the information required by the form; and
- (d) be forwarded to the CEO together with any fee imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

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

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

(5) The local government may refuse to consider an application for a permit which is not in accordance with subclause (2).

Decision on application for permit

3.3 (1) The local government may –

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

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

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

Division 3 - Conditions

Conditions which may be imposed on a permit

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

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

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

- (a) when fees and charges are to be paid;
- (b) payment of a bond against possible damage or cleaning expenses or both;

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

Imposing conditions under a policy

3.5 (1) In this clause –

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

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

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

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

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

Compliance with and variation of conditions

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

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

Division 4 - General**Agreement for building**

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

Duration of permit

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

–

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

Renewal of permit

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

(2) The provisions of this Part shall apply to an application for the renewal of a permit *mutatis mutandis*.

Transfer of permit

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

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

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

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

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

Production of permit

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

Cancellation of permit

3.12 (1) Subject to clause 8.1, a permit may be cancelled by the local government if the permit holder has not complied with a –

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

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

- (a) shall return the permit as soon as practicable to the CEO;
- and

- (b) is to be taken to have forfeited any fees paid in respect of the permit.

Division 5 - When a permit is required

Activities needing a permit

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

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

- (p) conduct or take part in any gambling game or contest or bet, or offer to bet, publicly.
- (2) The local government may exempt a person from compliance with subclause (1) on the application of that person.
- (3) The local government may exempt specified local government property or a class of local government property from the application of subclause (1)(a).

Permit required to camp outside a facility

3.14 (1) In this clause –

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

(2) This clause does not apply to a facility operated by the local government.

(3) A person shall not without a permit –

- (a) camp on, lodge at or occupy any structure at night for the purpose of sleeping on local government property; or
- (b) erect any tent, camp, hut or similar structure on local government property other than a shade or windbreak erected for use during the hours of daylight and which is dismantled during those hours on the same day.

(4) The maximum period for which the local government may approve an application for a permit in respect of paragraph (a) or (b) of subclause (3) is that provided in regulation 11(2)(a) of the *Caravan Parks and Camping Grounds Regulations 1997*.

Permit required for possession and consumption of liquor

3.15 (1) A person, on local government property, shall not consume any liquor or have in her or his possession or under her or his control any liquor, unless –

- (a) that is permitted under the *Liquor Control Act 1988*; and
- (b) a permit has been obtained for that purpose.

(2) Subclause (1) does not apply where the liquor is in a sealed container.

Division 6 - Responsibilities of permit holder

Responsibilities of permit holder

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

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

PART 4 - BEHAVIOUR ON ALL LOCAL GOVERNMENT PROPERTY***Division 1 - Behaviour on and interference with local government property*****Behaviour which interferes with others**

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

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

Behaviour detrimental to property

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

(2) In subclause (1) -

'detrimental to the property' includes -

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

Taking or injuring any fauna

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

(2) In this clause -

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

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

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

Intoxicated persons not to enter local government property

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

No prohibited drugs

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

Division 2 - Signs**Signs**

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

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

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

- (a) not to be inconsistent with any provision of this local law or any determination; and

- (b) to be for the purpose of giving notice of the effect of a provision of this local law.

PART 5 – MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY

Division 1 - Swimming pool areas

When entry must be refused

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

–

- (a) in her or his opinion is -
- (i) under the age of 6 years and who is unaccompanied by a responsible person over the age of 14 years;
 - (ii) suffering from any contagious, infectious or cutaneous disease or complaint, or is in an unclean condition; or
 - (iii) under the influence of liquor or a prohibited drug; or
- (b) is to be refused admission under and in accordance with a decision of the local government for breaching any clause of this local law.

Consumption of food or drink may be prohibited

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

Division 2 - Fenced or closed property

No entry to fenced or closed local government property

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

Division 3 - Toilet blocks and change rooms

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

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

- (a) females, then a person of the male gender shall not use that entry of the toilet block or change room; or
- (b) males, then a person of the female gender shall not use that entry of the toilet block or change room.

PART 6 - FEES FOR ENTRY ON TO LOCAL GOVERNMENT PROPERTY

No unauthorised entry to function

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

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

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

PART 7 - SALEYARDS

Division 1 - Preliminary

Interpretation

7.1 In this Part -

"auction" has the meaning given to it in the *Auction Sales Act 1973*;

"sale" means a sale by way of auction;

"saleyard" means local government property which is used for the sale of stock;

"stock" has the meaning given to "livestock" in the *Auction Sales Act 1973*; and

"stock agent" means any person appointed by the owner of stock to sell that stock at a saleyard.

Division 2 - Sale of stock

Requirements of auctioneer's licence

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

Sale times to be approved

7.3 Sales are to be conducted at a saleyard only on such days and at such times as may be appointed by the local government.

Order of sales

7.4 The order in which stock agents conduct sales on any day under clause 7.3 is to be the order agreed to by those stock agents, and in default of agreement, as directed by the CEO or an authorised person.

Division 3 - Care of and responsibility for stock

Diseased and injured stock

7.5 (1) A person shall not -

(a) offer for sale any stock which is diseased, emaciated, injured or suffering from ill health for sale at a saleyard; or

(b) deliver to any saleyard any stock which is diseased, emaciated, injured or suffering from ill health.

(2) Where in the opinion of an authorised person stock at a sale yard is diseased, emaciated, injured or suffering from ill health, the authorised person may direct the stock agent of the stock, or if there is no stock agent, the owner or the person apparently in control of that stock, to remove that stock immediately from the saleyard.

Care of stock

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

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

When purchaser becomes responsible for stock

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

Time limit for removal of stock

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

Removal of unsold stock

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

Removal of dead or maimed stock

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

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

Division 4 - Payment of fees

Payment of yard fees

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

- (a) by the end of the sale day, give the local government a written statement signed by the stock agent or owner advising -
 - (i) the total number of stock by class brought into the saleyard; and
 - (ii) the date on which the stock was brought into the saleyard; and
- (b) in accordance with the conditions for payment of invoices determined by the local government, pay the local government the applicable yard fees set by the local government.

Documents may be inspected

7.12 The stock agent or owner shall, on demand by the CEO, make available to the CEO for inspection such documents as may be necessary to enable the CEO to verify a statement given under clause 7.11.

Division 5 - Control of dogs**Dogs to be kept under control**

7.13 An authorised person may require the owner, or person in charge of a dog, to remove the dog from the saleyard if the authorised person considers that the dog is causing a nuisance or disrupting the sale.

PART 8 - OBJECTIONS AND APPEALS**Application of Division 1, Part 9 of the Act**

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

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

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

PART 9 - MISCELLANEOUS**Authorised person to be obeyed**

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

Persons may be directed to leave local government property

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

Disposal of lost property

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

Liability for damage to local government property

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

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

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

PART 10 - ENFORCEMENT***Division 1 - Notices given under this local law*****Offence to fail to comply with notice**

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

Local government may undertake requirements of notice

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

Division 2 - Offences and penalties**Subdivision 1 - General****Offences and general penalty**

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

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

Subdivision 2 - Infringement notices and modified penalties**Prescribed offences**

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

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

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

Form of notices

10.5 (1) For the purposes of this local law –

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

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

Division 3 – Evidence in legal proceedings

Evidence of a determination

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

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

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

SCHEDULE 1
Local Government Act 1995
Local Government Property Local Law 2008
PRESCRIBED OFFENCES

CLAUSE	DESCRIPTION	MODIFIED PENALTY \$
2.4	Failure to comply with determination	100
3.6	Failure to comply with conditions of permit	100
3.13(1)	Failure to obtain a permit	100
3.14(3)	Failure to obtain permit to camp outside a facility	100
3.15(1)	Failure to obtain permit for liquor	100
3.16	Failure of permit holder to comply with responsibilities	100
4.2(1)	Behaviour detrimental to property	100
4.4	Under influence of liquor or prohibited drug	100
4.6(2)	Failure to comply with sign on local government property	100
5.2	Consuming food or drink in prohibited area	100
5.3	Unauthorised entry to fenced or closed local government property	100
5.4	Gender not specified using entry of toilet block or change room	100
6.1(1)	Unauthorised entry to function on local government property	100
7.2	Selling by way of auction without licence	100
7.8	Failure to remove stock	200
7.10	Failure to immediately remove dead or maimed stock	200
7.11	Failure to give statement or pay fees to local government	200
7.12	Failure to produce documents for inspection by local government	200
10.1	Failure to comply with notice	200

SCHEDULE 2

DETERMINATIONS

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

PART 1 – PRELIMINARY

Definitions

In these determinations unless the context otherwise requires –

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

Interpretation

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

Part 2 – DRIVING VEHICLES ON LOCAL GOVERNMENT PROPERTY

Speed of Vehicles on Reserves

2.1 A person shall not drive a vehicle or allow a vehicle to be driven upon a reserve which is local government property at a speed exceeding 20 kilometres an hour, or in such a manner as to cause danger, inconvenience or annoyance to any person.

Part 3 – ACTIVITIES PROHIBITED ON LOCAL GOVERNMENT PROPERTY

Activities prohibited on local government property

3.1 A person is prohibited from pursuing all or any of the following activities on local government property except on land which is reserved to the local government for the purpose, or which is set aside under clause 2.7(1) for the purpose.

(a) Play or practice at golf, archery, pistol shooting or rifle shooting.

Dated _____ 2008

The Common Seal of the Shire of Plantagenet was affixed by authority of a resolution of the Council in the presence of -

K M FORBES, Shire President
R J STEWART, Chief Executive Officer'

CARRIED (9/0)

NO. 56/08

(ABSOLUTE MAJORITY)

10.4.7 PROPOSED REPEAL LOCAL LAW 2008

File No: LE/98/9
Responsible Officer: John Fathers
Deputy Chief Executive Officer
Author: John Gilfellon
Consultant
Proposed Meeting Date: 25 March 2008

Purpose

The purpose of this report is to consider any submissions made on the proposed Repeal Local Law that was advertised for public comment on 6 October 2007 and determine whether the local law should be made.

Background

The Council at its meeting held on 28 August 2007 adopted the proposed Shire of Plantagenet Repeal Local Law 2008 and it was advertised for public comment on 6 October 2007. A copy of the proposed local law was forwarded to the Minister for Local Government as required by the Local Government Act 1995.

The Repeal Local Law proposed to repeal the following local laws:

- Shire of Plantagenet By-Law relating to the Control and Storage of Old and Disused Motor Vehicles and Machinery as published in the Government Gazette on 28 February 1975.
- Shire of Plantagenet Local Government Draft Model By-law Relating to Caravan Parks No 2 – as published in the Government Gazette on 18 February 1965.
- Shire of Plantagenet (Local Government) Local Laws – as published in the Government Gazette on 15 July 1997

The Department of Local Government and Regional Development responded on 5 February 2008.

The Department advises that despite the 1975 Shire of Plantagenet By-Law relating to the Control and Storage of Old and Disused Motor Vehicles and Machinery and the 1965 Shire of Plantagenet Local Government Draft Model By-law Relating to Caravan Parks No 2 appearing on the Department's Local Law Register the local laws were repealed in 1985 and 1975 respectively.

As the two local laws did not require repealing the Repeal Local Law 2008 was effectively only repealing the 1997 Shire of Plantagenet (Local Government) Local Laws. This local law was being superseded mostly by the Local Government Property Local Law 2008.

With a view to efficiency and unnecessary expenditure it is appropriate that the repeal of the 1997 Shire of Plantagenet (Local Government) Local Laws could be undertaken in the Local Government Property Local Law 2008. The repeal has been included in that local law.

There is therefore no need to proceed with the Shire of Plantagenet Repeal Local Law 2008.

Statutory Environment

Section 3.12 of the *Local Government Act 1995* sets out the procedures to be followed in making a local law.

Consultation

The Shire of Plantagenet's intention to undertake a review of its local laws was advertised on 12 May 2007 and public submissions were invited within a 42 day submission period. The review was advertised Statewide and locally. No submissions were received.

On 28 August 2007 the Council adopted the proposed Repeal Local Law and resolved that it be advertised for public comment. On 6 October 2007 the proposed local law was advertised for public comment and public submissions were invited within a 42 day consultation period. The invitation was advertised Statewide and locally. No public submissions were received.

Financial Implications

There are no financial implications for this report.

Policy Implications

There are no policy implications for this report.

Legal Implications

Section 3.18 of the Local Government Act 1995 requires that a local government is to administer its local laws.

Strategic Implications

There are no strategic implications for this report.

Voting Requirements

Simple Majority

OFFICER RECOMMENDATION / COUNCIL DECISION

Moved Cr K Clements, seconded Cr J Mark

That there is no requirement for the proposed Shire of Plantagenet Repeal Local Law 2008, advertised for public comment on 6 October 2007, to be made.

CARRIED (9/0)

NO. 57/08

10.4.8 BUSH FIRE BRIGADES LOCAL LAW 2008

File No: LE/98/1
Responsible Officer: John Fathers
Deputy Chief Executive Officer
Author: John Gilfellon
Consultant
Proposed Meeting Date: 25 March 2008

Purpose

The purpose of this report is to consider any submissions made on the proposed Bush Fire Brigades Local Law that was advertised for public comment on the 6 October 2007 and to make the Shire of Plantagenet Bush Fire Brigades Local Law 2008.

Background

The purpose of this local law is to amend the Bush Fire Brigades Local Law to remove the provision allowing the Council to amend the Rules Governing the Operation of Bush Fire Brigades as incorporated in the Bush Fire Brigade Local Law without the due process required in amending a Local Law.

The effect of this local law is to ensure that the community has the opportunity to comment on proposed changes to the Rules Governing the Operation of Bush Fire Brigades before they are introduced.

The draft Shire of Plantagenet Bush Fire Brigades Local Law 2008 amends the Shire of Plantagenet Bush Fire Brigades as adopted in 2004. The Amendment Local Law sets out those wording and terminology changes needed to modernise the local law and make it easier to enforce. The amendments also take into account the comments of the Joint Standing Committee on Delegated Legislation made in regards to the 2004 Bush Fire Brigades Local law.

In October 2007 when public submissions were invited on the proposed local law a copy was sent to the Minister for Police and Emergency Services and the Minister for Local Government and Regional Development for comment.

The Minister for Police and Emergency Services referred the correspondence to the Fire and Emergency Services Authority and an Officer from the Great Southern Region provided comment. The comments received related to terminology and structure and did not effect the intent of the local law.

Statutory Environment

The Bush Fire Brigades Local Law is made under the powers of the Bush Fires Act 1954. However, that Act requires that in making a local law the process required by the Local Government Act 1995 is to be followed.

Section 3.12 of the Local Government Act 1995 sets out the procedures to be followed in making a local law.

Consultation

The Shire of Plantagenet's intention to undertake a review of its local laws was advertised on 12 May 2007 and public submissions were invited within a 42 day submission period. The review was advertised statewide and locally. No submissions were received.

On 28 August 2007 the Council adopted the proposed Bush Fire Brigades Local Law and resolved that it be advertised for public comment. On 6 October 2007 the proposed local law was advertised for public comment and public submissions were invited within a 42 day consultation period. The invitation was advertised statewide and locally. No public submissions were received.

Each Bush Fire Brigade within the Shire was also advised by letter of the review. No submissions were received.

Financial Implications

The Council is required to pay for all advertising and gazetting costs associated with the local law. This is estimated to be one thousand dollars (\$1000.00).

Policy Implications

There are no policy implications for this report.

Legal Implications

Section 3.18 of the Local Government Act 1995 requires that a local government is to administer its local laws.

Strategic Implications

There are no strategic implications for this report.

Officer Comment

Except for minor drafting amendments suggested by the Fire and Emergency Services Authority the Local Law presented is not significantly different from the proposed Local Law adopted by the Council on 28 August 2007 and advertised for public comment.

For reference a copy of the principal Bush Fire Brigades Local Law is attached.

Voting Requirements

Absolute Majority

OFFICER RECOMMENDATION / COUNCIL DECISION

Moved Cr D Nye-Chart, seconded Cr M Skinner

That under the power conferred by the Bush Fires Act 1954 and the Local Government Act 1995 and under all other powers enabling it, the Shire of Plantagenet Bush Fire Brigades Amendment Local Law 2008 be made in the following form.

In this local law, the Shire of Plantagenet Bush Fire Brigades Local Law as published in the Government Gazette on 7 April 2004 and amended by Shire of Plantagenet Bush Fire Brigades Local Law Amendment 2006 published in the Government Gazette on 17 March 2006, is referred to as the principal local law. The principal local law is amended as follows:

1. **Clause 1.2 – Definitions**
In subclause (1) of Clause 1.2 in the definition of “Rules”, delete the comma and words “, as varied from time to time under clause 2.5”.
2. **Clause 2.5 – Variation of Rules**
Delete clause 2.5
3. **Clauses in Part 2 to be renumbered**
Renumber clauses 2.6, 2.7 and 2.8 to 2.5, 2.6 and 2.7 respectively.
4. **Clause 3.3 – Delegation of Authority**
In Clause 3.3 substitute the word “council” with the words “local government”.
5. **First Schedule – Rules Governing the Operation of Bush Fire Brigades**
Clause 2.4 Application for membership
In paragraph (a) of subclause 2.4(1) of the FIRST SCHEDULE, delete the words “of that in Appendix I” and substitute the words “determined by the local government from time to time”.
In paragraph (b) of subclause 2.4(1) of the FIRST SCHEDULE, delete the words “of that in Appendix II” and substitute the words “determined by the local government from time to time”.
In paragraph (c) of subclause 2.4(1) of the FIRST SCHEDULE, delete the words “of that in Appendix III” and substitute the words “determined by the local government from time to time”.
6. **Appendices**
Delete Appendices I, II and III.

CARRIED (9/0)

NO. 58/08

(ABSOLUTE MAJORITY)

10.4.9 EXTRACTIVE INDUSTRIES LOCAL LAW 2008

File No:	LE/98/15
Responsible Officer:	John Fathers Deputy Chief Executive Officer
Author:	John Gilfellon Consultant
Proposed Meeting Date:	25 March 2008

Purpose

The purpose of this report is to consider any submissions made on the proposed Extractive Industries Local Law that was advertised for public comment on the 6 October 2007 and to make the Shire of Plantagenet Extractive Industries Local law 2008.

Background

The purpose of this local law is to repeal the existing Extractive Industries Local Law and to make a new local law to:

- prohibit the carrying on of an extractive industry unless by authority of a licence issued by the Shire of Plantagenet;
- regulate the carrying on of the extractive industry in order to minimise damage to the environment, road and other people's health and property; and
- provide for restoration and reinstatement of any excavation site.

The effect of this local law is to ensure that extractive industries operating in the Shire of Plantagenet are licenced and their operation is regulated.

The draft Shire of Plantagenet Extractive Industries Local Law 2008 adopts the Shire of Dandaragan's Extractive Industries Local Law by reference and sets out those amendments required to take into account those matters that have been identified and to make the local law Shire of Plantagenet specific.

In October 2007 when public submissions were invited on the proposed local law a copy was sent to the Minister for Local Government for comment. The Department of Local Government and Regional Development sought a number of extensions to the 42 day submission period and its comments were received on 5 February 2008.

The Department's comments related to the principles of drafting and wording local laws and the proposed local law has been amended to include those comments. None of the Department's comments changed the intent of the local law and the local law being presented to the Council is not significantly different to the proposed local law.

Statutory Environment

Section 3.12 of the *Local Government Act 1995* sets out the procedures to be followed in making a local law.

Consultation

The Shire of Plantagenet's intention to undertake a review of its local laws was advertised on 12 May 2007 and public submissions were invited within a 42 day submission period. The review was advertised Statewide and locally. No submissions were received.

On 28 August 2007 the Council adopted the proposed Extractive Industries Local Law and resolved that it be advertised for public comment. On 6 October 2007 the proposed local law was advertised for public comment and public submissions were invited within a 42 day consultation period. The invitation was advertised Statewide and locally. No public submissions were received.

Financial Implications

The Council is required to pay for all advertising and gazetting costs associated with the local law. This is estimated to be one thousand dollars (\$1000.00).

Policy Implications

There are no policy implications for this report.

Legal Implications

Section 3.18 of the Local Government Act 1995 requires that a local government is to administer its local laws.

Strategic Implications

There are no strategic implications for this report.

Officer Comment

Except for minor drafting amendments suggested by the Department of Local Government and Regional Development the Local Law presented is not significantly different from the proposed Local Law adopted by the Council on 28 August 2007 and advertised for public comment.

This report recommends that under the powers conferred by the Local Government Act 1995 and under all other powers enabling it, the Council of the Shire of Plantagenet resolve to make the Shire of Plantagenet Extractive Industries Local Law 2008 in the following form:-

The Shire of Dandaragan Extractive Industries Local Law as published in the Government Gazette of 9 May 2001, is adopted as a local law of the Shire of Plantagenet, with the modifications which follow.

1. Preliminary

Wherever the "Shire of Dandaragan" is mentioned in the local law substitute "Shire of Plantagenet".

2. Clause 1.1 – Definitions

In clause 1.1 –

- (a) delete the definition "carry on an extractive industry" and substitute the definition –

“**carry on an extractive industry**” means quarrying and excavating for stone, gravel, sand and other material and without limiting the generality includes stripping vegetation and top soil, stockpiling, excavating and earthworks, loading of trucks and vehicle movement associated with an extractive industry, blasting rehabilitation and includes all of the time from commencement to the satisfactory completion of the works as required by a condition of a licence or as directed by the local government;”

(b) in the appropriate alphabetical order add the definitions -

”**land**”, unless the context otherwise requires, means the land on which the applicant proposes carrying on the extractive industry to which the application relates;

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

”**owner**” has the meaning given it in the Act;

3. Clause 1.3 – Repeal

In clause 1.3, delete the words -

“The Local Laws of the Shire of Dandaragan Relating to Extractive Industries, published in the *Government Gazette* of 24 July 1968, are repealed.”

and substitute the words –

“The *Shire of Plantagenet Extractive Industries Local Law 1999* published in the *Government Gazette* of 11 September 2000 and as amended and published in the *Government Gazette* of 7 May 2004 is hereby repealed.”

4. Clause 2.3 – Application for Licence

(a) In subclause (1) of clause 2.3, delete the words “and shall forward the application duly completed and signed by both the applicant, and the owner of the land” and substitute the words “and must forward the application duly completed and signed by each of the applicant, the owner of the land and any occupier of the land”.

(b) Delete subclause (3) of clause 2.3 and substitute the following subclause -

“(3) Where, in relation to a proposed excavation –

(a) the surface area is not to exceed 2000 square metres; and

(b) the extracted material is not to exceed 2000 cubic metres;

the local government may exempt a person making application for a licence under subclause (1) from supplying any of data specified in paragraph (b), (d) (e) and (i) of subclause (1).”

Voting Requirements

Absolute Majority

OFFICER RECOMMENDATION / COUNCIL DECISION

Moved Cr K Clements, seconded Cr J Mark

That the following local law relating to extractive industries be adopted:

'LOCAL GOVERNMENT ACT 1995

Shire of Plantagenet

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PRESCRIBED OFFENCES****LOCAL GOVERNMENT ACT 1995****Shire of Plantagenet****EXTRACTIVE INDUSTRIES LOCAL LAW 2008**

Under the powers conferred by the *Local Government Act 1995* and by all other powers, the local government of the Shire of Plantagenet resolved on 25 March 2008 to make the *Shire of Plantagenet Extractive Industries Local Law 2008*.

PART 1—PRELIMINARY**1.1 Definitions**

In this local law, unless the context otherwise requires—

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

“carry on an extractive industry” means quarrying and excavating for stone, gravel, sand and other material and without limiting the generality includes stripping vegetation and top soil, stockpiling, excavating and earthworks, loading of trucks and vehicle movement associated with an extractive industry, blasting rehabilitation and includes all of the time from commencement to the satisfactory completion of the works as required by a condition of a licence or as directed by the local government;

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

“district” means the district of the local government;

“excavation” includes quarry;

“land”, unless the context otherwise requires, means the land on which the applicant proposes carrying on the extractive industry to which the application relates;

“licence” means a licence issued under this local law;

“licensee” means the person named in the licence as the licensee;

“local government” means the Shire of Plantagenet;

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

“owner” has the meaning given it in the Act;”

“person” does not include the local government;

“secured sum” means the sum required to be paid or the amount of a bond, guarantee or other security under clause 5.1;

“site” means the land specified by the local government in a licence.

1.2 Application

(1) The provisions of this local law—

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

(2) In subclause (1)(d) land includes adjoining lots or locations in the same occupation or ownership of the owner or occupier referred to in subclause (1)(d).

1.3 Repeal

The *Shire of Plantagenet Extractive Industries Local Law 1999* as published in the *Government Gazette* on 11 September 2000 and as amended and published in the *Government Gazette* on 7 May 2004 is hereby repealed.

PART 2—LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY

2.1 Extractive Industries Prohibited Without Licence

A person must not carry on an extractive industry—

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

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

2.2 Applicant to Advertise Proposal

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

- (a) forward by registered mail a notice in the form determined by the local government from time to time to—
 - (i) the owners and occupiers of all land adjoining the land upon which it is proposed to excavate, or within an area determined by the local government as likely to be affected by the granting of a licence, advising of the application and specifying that they may, within twenty-one days from the date of service of the letter, object to or make representations in writing in respect of the issue of a licence by the local government.

- (ii) every authority or person having control or jurisdiction over any of the things referred to in clause 2.3(1)(a)(vii) and (viii) within 500 metres from the boundaries of the land, or within an area determined by the local government as likely to be affected by the granting of a licence; and
 - (b) as soon as practicable after complying with the requirements of paragraph (a)—
 - (i) forward a copy of the notice to the CEO; and
 - (ii) publish the notice in a newspaper circulating in the area in which the proposed excavation is located.
- (2) The local government may, within 14 days after receiving a copy of a notice referred to in sub-clause (1), cause to be displayed, or require the proposed applicant to display, in a prominent position on the land one or more notices—
- (a) in the form determined by the local government from time to time;
 - (b) the content, size and construction of which have been approved by the CEO;
 - (c) specifying particulars of the proposed excavation; and
 - (d) inviting objections or comments within 21 days from the placement of the notice.

2.3 Application for Licence

- (1) Subject to subclause (3), a person seeking the issue of a licence in respect of any land shall apply in the form determined by the local government from time to time and must forward the application duly completed and signed by each of the applicant, the owner of the land and any occupier of the land to the CEO together with—
- (a) 3 copies of a plan of the excavation site to a scale of between 1:500 and 1:2000 showing—
 - (i) the existing and proposed land contours based on the Australian Height Datum and plotted at 1 metre contour intervals;
 - (ii) the land on which the excavation site is to be located;
 - (iii) the external surface dimensions of the land;
 - (iv) the location and depth of the existing and proposed excavation of the land;
 - (v) the location of existing and proposed thoroughfares or other means of vehicle access to and egress from the land and to public thoroughfares in the vicinity of the land;
 - (vi) the location of buildings, treatment plant, tanks and other improvements and developments existing on, approved for or proposed in respect of the land;
 - (vii) the location of existing power lines, telephone cables and any associated poles or pylons, sewers, pipelines, reserves, bridges, railway lines and registered grants of easement or other encumbrances over, on, under or adjacent to or in the vicinity of the land;
 - (viii) the location of all existing dams, watercourses, drains or sumps on or adjacent to the land;
 - (ix) the location and description of existing and proposed fences, gates and warning signs around the land; and
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- (x) the location of the areas proposed to be used for stockpiling excavated material, treated material, overburden and soil storage on the land and elsewhere;
- (b) 3 copies of a works and excavation programme containing—
- (i) the nature and estimated duration of the proposed excavation for which the licence is applied;
 - (ii) the stages and the timing of the stages in which it is proposed to carry out the excavation;
 - (iii) details of the methods to be employed in the proposed excavation and a description of any on-site processing works;
 - (iv) details of the depth and extent of the existing and proposed excavation of the site;
 - (v) an estimate of the depth of and description of the nature and quantity of the overburden to be removed;
 - (vi) a description of the methods by which existing vegetation is to be cleared and topsoil and overburden removed or stockpiled;
 - (vii) a description of the means of access to the excavation site and the types of thoroughfares to be constructed;
 - (viii) details of the proposed number and size of trucks entering and leaving the site each day and the route or routes to be taken by those vehicles;
 - (ix) a description of any proposed buildings, water supply, treatment plant, tanks and other improvements;
 - (x) details of drainage conditions applicable to the land and methods by which the excavation site is to be kept drained;
 - (xi) a description of the measures to be taken to minimise sand drift, dust nuisance, erosion, watercourse siltation and dangers to the general public;
 - (xii) a description of the measures to be taken to comply with the *Environmental Protection (Noise) Regulations 1997*;
 - (xiii) a description of the existing site environment and a report on the anticipated effect that the proposed excavation will have on the environment in the vicinity of the land;
 - (xiv) details of the nature of existing vegetation, shrubs and trees and a description of measures to be taken to minimise the destruction of existing vegetation; and
 - (xv) a description of the measures to be taken in screening the excavation site, or otherwise minimising adverse visual impacts, from nearby thoroughfares or other areas;
- (c) 3 copies of a rehabilitation and decommissioning programme indicating—
- (i) the objectives of the programme, having due regard to the nature of the surrounding area and the proposed end-use of the excavation site;
 - (ii) whether restoration and reinstatement of the excavation site is to be undertaken progressively or upon completion of excavation operations;
 - (iii) how any face is to be made safe and batters sloped;
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- (iv) the method by which topsoil is to be replaced and revegetated;
 - (v) the numbers and types of trees and shrubs to be planted and other landscaping features to be developed;
 - (vi) how rehabilitated areas are to be maintained; and
 - (vii) the programme for the removal of buildings, plant, waste and final site clean up;
- (d) evidence that a datum peg has been established on the land related to a point approved by the local government on the surface of a constructed public thoroughfare or such other land in the vicinity;
 - (e) a certificate from a licensed surveyor certifying the correctness of—
 - (i) the plan referred to in paragraph (a); and
 - (ii) the datum peg and related point referred to in paragraph (d);
 - (f) evidence that the requirements of clause 2.2(1) and (2) have been carried out;
 - (g) copies of all land use planning approvals required under any planning legislation;
 - (h) copies of any environmental approval required under any environmental legislation;
 - (i) copies of any geotechnical information relating to the excavation site;
 - (j) the consent in writing to the application from the owner of the excavation site;
 - (k) evidence that a notice of clearing has been given to the Commissioner of Soil and Land Conservation if that is required under regulation 4 of the *Soil and Land Conservation Regulations 1992*;
 - (l) any other information that the local government may reasonably require; and
 - (m) the licence application fee specified by the local government from time to time.
- (2) All survey data supplied by an applicant for the purpose of sub clause (1) shall comply with Australian Height Datum and Australian Map Grid standards.
- (3) Where, in relation to a proposed excavation –
- (a) the surface area is not to exceed 2000 square metres; and
 - (b) the extracted material is not to exceed 2000 cubic metres;
- the local government may exempt a person making application for a licence under subclause (1) from supplying any of the data specified in paragraph (b), (d), (e) and (i) of subclause (1).

PART 3—DETERMINATION OF APPLICATION

3.1 Determination of Application

- (1) The local government may refuse to consider an application for a licence that does not comply with the requirements of clause 2.3, and in any event shall refuse an application for a licence where planning approval for an extractive industry use of the land has not first been obtained.
- (2) The local government may, in respect of an application for a licence—
 - (a) refuse the application; or
 - (b) approve the application—

- (i) over the whole or part of the land in respect of which the application is made; and
 - (ii) on such terms and conditions, if any, as it sees fit.
- (3) Where the local government approves an application for a licence, it shall –
 - (a) determine the licence period, not exceeding 21 years from the date of issue; and
 - (b) approve the issue of a licence in the form determined by the local government from time to time.
- (4) Where the local government approves the issue of a licence, the CEO upon receipt by the local government of—
 - (a) payment of the annual licence fee, or the relevant proportion of the annual licence fee to 30 June, determined by the local government from time to time;
 - (b) payment of the secured sum if any, imposed under clause 5.1;
 - (c) the documents, if any, executed to the satisfaction of the CEO, under clause 5.1; and
 - (d) a copy of the public liability insurance policy required under clause 7.1(1) shall issue the licence to the applicant.
- (5) Without limiting subclause (2), the local government may impose conditions in respect of the following matters—
 - (a) the orientation of the excavation to reduce visibility from other land;
 - (b) the appropriate siting of access thoroughfares, buildings and plant;
 - (c) the stockpiling of material;
 - (d) the hours during which any excavation work may be carried out;
 - (e) the hours during which any processing plant associated with, or located on, the site may be operated;
 - (f) requiring all crushing and treatment plant to be enclosed within suitable buildings to minimise the emission of noise, dust, vapour and general nuisance to the satisfaction of the local government;
 - (g) the depths below which a person shall not excavate;
 - (h) distances from adjoining land or thoroughfares within which a person must not excavate;
 - (i) the safety of persons employed at or visiting the excavation site;
 - (j) the control of dust and wind-blown material;
 - (k) the planting, care and maintenance of trees, shrubs and other landscaping features during the time in which the extractive industry is carried out in order to effectively screen the area to be excavated and to provide for progressive rehabilitation;
 - (l) the prevention of the spread of dieback or other disease;
 - (m) the drainage of the excavation site and the disposal of water;
 - (n) the restoration and reinstatement of the excavation site, the staging of such works, and the minimising of the destruction of vegetation;
 - (o) the provision of retaining walls to prevent subsidence of any portion of the excavation or of land abutting the excavation;

- (p) requiring the licensee to furnish to the local government a surveyor's certificate each year, prior to the renewal fee being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved excavation programme;
- (q) requiring the licensee to enter into an agreement with the local government by which it agrees to pay any extraordinary expenses incurred by the local government in repairing damage caused to thoroughfares in the district by heavy or extraordinary traffic conducted by or on behalf of the licensee under the licence;
- (r) requiring the licensee to enter into an agreement with the local government in respect of any condition or conditions imposed under this local law; and
- (s) any other matter for properly regulating the carrying on of an extractive industry.

3.2 Payment of Annual Licence Fee

On or before 30 June in each year, a licensee shall pay to the local government the annual licence fee determined by the local government from time to time.

PART 4—TRANSFER, CANCELLATION AND RENEWAL OF LICENCE

4.1 Transfer of Licence

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

4.2 Cancellation of Licence

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

4.3 Renewal of Licence

- (1) A licensee who wishes to renew a licence must apply in writing to the local government at least 45 days before the date of expiry of the licence and shall submit with the application for renewal—
- (a) the fee determined by the local government from time to time;
 - (b) a copy of the current licence;
 - (c) a plan showing the contours of the excavation carried out to the date of that application;
 - (d) details of the works, excavation and rehabilitation stages reached and of any changes or proposed changes with respect to any of the things referred to in clauses 2.3(1) (b) and (c); and
 - (e) any other things referred to in clauses 2.3 and 3.1.
- (2) The local government may waive any of the requirements specified in clause 4.3 (1) (d) or (e).
- (3) If—
- (a) an application to renew a licence is in relation to land in respect of which the current licence was issued less than 12 months prior to the date from which the new licence if granted would apply; and
 - (b) the methods to be employed in the proposed land excavation are identical to those being employed at the date of the application, then the applicant shall not be obliged, unless otherwise required by the local government to submit details of any of the things referred to in clauses 2.3 and 3.1.

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

PART 5—SECURED SUM AND APPLICATION THEREOF

5.1 Security For Restoration And Reinstatement

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

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

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

5.2 Use By The Local Government Of Secured Sum

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

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

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

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

PART 6—LIMITATIONS, OBLIGATIONS OF THE LICENSEE AND PROHIBITIONS

6.1 Limits on Excavation Near Boundary

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

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

- (d) 40 metres of any watercourse.

Penalty \$2,000

6.2 Obligations Of The Licensee

A licensee shall—

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

Penalty \$5,000 for each offence, and if an offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day during which the offence has continued.

6.3 Prohibitions

A licensee shall not—

- (a) remove any trees or shrubs within 40 metres (or such lesser distance as may be allowed, in writing, by the local government) of the boundary of any thoroughfare on land in respect of which a licence has been granted, except for the purpose of constructing access thoroughfares, erecting buildings or installing plant for use in connection with the excavation and then only with the express approval of the local government and subject to any conditions which the local government may impose in accordance with clause 3.1;
- (b) store, or permit to be stored, any explosives or explosive devices on the site to which the licence applies other than with the approval of the local government and the Department administering the Mining Act 1978; or
- (c) fill or excavate, other than in accordance with the terms and conditions of the licence, the site plans and the works and excavation programme approved by the local government.

Penalty \$5,000 for each offence, and if an offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day during which the offence has continued.

6.4 Blasting

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

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

Penalty \$5,000 for each offence, and if the offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day during which the offence has continued.

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

Penalty \$2,000.

PART 7—MISCELLANEOUS PROVISIONS

7.1 Public Liability

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

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

7.2 Mines Safety and Inspection Act and Environmental Protection Act

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

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

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

7.3 Notice Of Cessation Of Operations

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

- (a) temporarily for a period in excess of 12 months; or
- (b) permanently,

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

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

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

7.4 Works To Be Carried Out On Cessation of Operations

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

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

- (g) break up, scarify, cover with topsoil and plant with grass, trees and shrubs all parts of the site where buildings, plant and equipment were erected or installed and all areas which were used for stockpiling unless otherwise specified under this local law.

Penalty \$5,000 for each offence, and if the offence is of a continuing nature, to a daily penalty not exceeding a fine of \$500 in respect of each day or part of a day during which the offence has continued.

PART 8—OBJECTIONS AND APPEALS

8.1 Objections and Appeals

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

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

PART 9—MODIFIED PENALTIES

9.1 Modified Penalty – Prescribed Offence

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

9.2 Modified Penalty – Amount of Penalty

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

9.3 Forms

For the purposes of this local law—

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

Schedule Extractive industries Local Law 2008

PRESCRIBED OFFENCES

Item No	Clause No	Nature of Offence	Modified Penalty \$
1	2.1	Carry on extractive Industry without licence or in breach of terms and conditions	500
2	6.1	Excavate near boundary	400
3	6.2(a)	Gateways not kept locked where required	400
4	6.2(b)	Warning signs not erected or maintained as required	400
5	6.2©	Excavation not drained as required	400
6	6.3(a)	Remove trees or shrubs near boundary without approval	250
7	6.3(b)	Store without required approval explosives or	400

		explosive devices	
8	6.3©	Fill or excavate in breach of licence	400
9	6.4(1)(a)	Blasting without approval of the local government	400
10	6.4(1)(b)	Blasting outside times authorised	400
11	6.4(1)(d)	Blasting in breach of conditions imposed by the local government	400
12	6.4(2)	Blasting without approval on Saturday, Sunday or public holiday	400
13		Other offences not specified	300

Dated this.....day of2008

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

**K M FORBES, Shire President.
R J STEWART, Chief Executive Officer.'**

CARRIED (9/0)

NO. 59/08

(ABSOLUTE MAJORITY)

**10.4.10 LANDFILL AND TRANSFER STATION FACILITIES AMENDMENT
LOCAL LAW 2008**

File No:	LE/98/14
Attachments:	<u>The Shire of Plantagenet Landfill and Transfer Station Facilities Amendment Local Laws 2004</u>
Responsible Officer:	John Fathers Deputy Chief Executive Officer
Author:	John Gilfellon Consultant
Proposed Meeting Date:	25 March 2008

Purpose

The purpose of this report is to consider any submissions made on the proposed Landfill and Transfer Station Facilities Amendment Local Law that was advertised for public comment on the 6 October 2007 and to make the Shire of Plantagenet Landfill and Transfer Station Facilities Amendment Local law 2008.

Background

The purpose of the Amendment Local Law is to ensure that authority can be correctly delegated to the Site Controller for the operation of the facility and enforcement of the Local laws.

The effect of the Amendment Local Law is to provide for the efficient operation of the Landfill and Transfer Station Facilities.

The draft Shire of Plantagenet Landfill and Transfer Station Facilities Amendment Local Law 2008 amends the Shire of Plantagenet Landfill and Transfer Station Facilities Local Law adopted in 2004. The Amendment Local Law sets out those wording and terminology changes needed to modernise the local law and make it easier to enforce.

In October 2007 when public submissions were invited on the proposed local law a copy was sent to the Minister for Local Government for comment. The Department of Local Government and Regional Development sought a number of extensions to the 42 day submission period and its comments were received on the 5 February 2008.

The Department's comments related to the principles of drafting and wording local laws and the proposed local law adopted by the Council has been amended to include those comments. None of the Department's comments changed the intent of the local law and the local law being presented to the Council is not significantly different to the proposed local law.

Statutory Environment

Section 3.12 of the *Local Government Act 1995* sets out the procedures to be followed in making a local law.

Consultation

The Shire of Plantagenet's intention to undertake a review of its local laws was advertised on 12 May 2007 and public submissions were invited within a 42 day submission period. The review was advertised Statewide and locally. No submissions were received.

On 11 September 2007 the Council adopted the proposed Landfill and Transfer Station Facilities Amendment Local Law and resolved that it be advertised for public comment. On 6 October 2007 the proposed local law was advertised for public comment and public submissions were invited within a 42 day consultation period. The invitation was advertised Statewide and locally. No public submissions were received.

Financial Implications

The Council is required to pay for all advertising and gazetting costs associated with the local law. This is estimated to be one thousand dollars (\$1,000.00).

Policy Implications

There are no policy implications for this report.

Legal Implications

Section 3.18 of the Local Government Act 1995 requires that a local government is to administer its local laws.

Strategic Implications

There are no strategic implications for this report.

Officer Comment

Except for minor drafting amendments suggested by the Department of Local Government and Regional Development the Local Law presented is not significantly different from the proposed Local Law adopted by the Council on the 11 September 2007 and advertised for public comment.

For reference a copy of the Landfill and Transfer Station Facilities Amendment Local Law 2004 is attached.

Voting Requirements

Absolute Majority

OFFICER RECOMMENDATION / COUNCIL DECISION

Moved Cr D Nye-Chart, seconded Cr J Moir

That under the power conferred by the Local Government Act 1995 and under all other powers enabling it, the Shire of Plantagenet Landfill and Transfer Station Facilities Amendment Local Law 2008 be made in the following form.

The Shire of Plantagenet Landfill and Transfer Station Facilities Amendment Local Law 2004 as published in the Government Gazette on 11 June 2004, is referred to as the principal local law. The principal local law is amended as follows:

1. **2. Interpretation**
 - (a) In Clause 2, in the definition “Authorised Staff Member” delete the word “Council” and substitute the words “Local Government”.
 - (b) In Clause 2, in the definition of “Facilities” delete the word “Council” and substitute the words “Local Government”.
 - (c) In Clause 2, in the definition of “Chief Executive Officer” delete the word “Council” and substitute the words “Local Government”.
 - (d) In Clause 2, in the appropriate alphabetical position add “Chief Bush Fire Control Officer” means the Chief Bush Fire Control Officer appointed by the Local Government from time to time in accordance with the provisions of the Bush Fires Act 1954.

2. In Clause 9 add the words “in consultation with the Chief Bush Fire Control Officer” after the word “Controller”.

CARRIED (9/0)

NO. 60/08

(ABSOLUTE MAJORITY)

10.4.11 DOGS LOCAL LAW 2008

File No: LE/98/12
Responsible Officer: John Fathers
Deputy Chief Executive Officer
Author: John Gilfellon
Consultant
Proposed Meeting Date: 25 March 2008

Purpose

The purpose of this report is to consider any submissions made on the proposed Dogs Local Law that was advertised for public comment on the 6 October 2007 and to make the Shire of Plantagenet Dogs Local Law 2008.

Background

The purpose of this local law is to repeal existing local laws relating to Dogs and to make and new local law providing for the impounding of dogs, to control the number of dogs that can be kept on premises and the manner of keeping those dogs and to prescribe areas which dogs are prohibited and dog exercise areas.

The effect of this local law is to extend the controls over dogs which exist under the *Dog Act 1976*.

The Shire of Plantagenet Dogs Local Law 2008 to be made by the Council adopts the Shire of Perenjori's Dogs Local Law by reference and sets out those amendments required to take into account those matters that have been identified and to make the local law Shire of Plantagenet specific.

In October 2007 when public submissions were invited on the proposed local law a copy was sent to the Minister for Local Government for comment. The Department of Local Government sought a number of extensions to the 42 day submission period and its comments were received on the 5 February 2008.

The Department's comments related to the principles of drafting and wording local laws and the proposed local law adopted by the Council has been amended to include those comments. None of the Department's comments changed the intent of the local law and the local law being presented to Council is not significantly different to the proposed local law.

Statutory Environment

Section 3.12 of the *Local Government Act 1995* sets out the procedures to be followed in making a local law.

Consultation

The Shire of Plantagenet's intention to undertake a review of its local laws was advertised on 12 May 2007 and public submissions were invited within a 42 day submission period. The review was advertised Statewide and locally. No submissions were received.

On 11 September 2007 the Council adopted the proposed Dogs Local Law and resolved that it be advertised for public comment. On 6 October 2007 the proposed local law was advertised for public comment and public submissions were invited within a 42 day consultation period. The invitation was advertised Statewide and locally. No public submissions were received.

Financial Implications

The Council is required to pay for all advertising and gazetting costs associated with the local law. This is estimated to be one thousand dollars (\$1000.00).

Policy Implications

There are no policy implications for this report.

Legal Implications

Section 3.18 of the Local Government Act 1995 requires that a local government is to administer its local laws.

Strategic Implications

There are no strategic implications for this report.

Officer Comment

Except for minor drafting amendments suggested by the Department of Local Government and Regional Development the Local Law presented is not significantly different from the proposed Local Law adopted by the Council on the 11 September 2007 and advertised for public comment.

This report recommends that under the powers conferred by the *Dog Act 1976* and under all other powers enabling it, the Council of the Shire of Plantagenet resolves to make the *Shire of Plantagenet Dogs Local Law 2008* in the following form:–

The *Shire of Perenjori Dogs Local Law 2005* as published in the *Government Gazette* of 24 January 2006, is adopted as a local law of the Shire of Plantagenet, with the modifications which follow –

1 Title

Delete “Dogs Local Law 2005” where it appears in the local law and substitute “Dogs Local Law 2008”.

2. Preliminary

Wherever the “Shire of Perenjori” is mentioned in the local law substitute “Shire of Plantagenet”.

3 Clauses in Part 1 renumbered

Renumber clauses 1.2 and 1.3 to 1.3 and 1.4 respectively.

4. Clause 1.2 – Repeal

Insert clause 1.2 –

“The *Shire of Plantagenet Local Law Relating to Dogs* published in the *Government Gazette* of 11 September 2000 is repealed.”

5. Clause 1.3 – Definitions

In clause 1.3 -

(a) in the appropriate alphabetical order insert the definition –

“**dangerous dog**” means a dog which is the subject of a declaration under section 33E of the Act declaring it to be a dangerous dog;”

(b) in the definition “**town planning scheme**” delete “*Town Planning and Development Act 1928*” and substitute “*Planning and Development Act 2005*”.

6. Clause 5.1 – Places where dogs are prohibited absolutely

In subclause 5.1(1) delete “Dogs” and substitute “Subject to section 8 of the *Dog Act 1976* and section 66J of the *Equal Opportunity Act 1984*, dogs”.

7. Clause 5.2 – Places which are dog exercise areas.

In clause 5.2(1) delete paragraphs (a), (b), (c) and (d) and substitute –

“(a) Townsite of Mount Barker -

Reserve 1790 Recreation and Agricultural Showgrounds, McDonald Avenue;

(b) Townsite of Kendenup -

Lot 15 and 16 Chauvel Road, Kendenup Community Grounds;

(c) Townsite of Narrikup -

Reserve 17849 Recreation and Showgrounds, Albany Highway;

(d) Townsite of Rocky Gully -

Reserve 25271 Recreation, Lot 129 Muir Highway.”

8. SCHEDULE 3

In SCHEDULE 3 delete “2.4(b)&(c)” and substitute “2.4(b)”.

Voting Requirements

Absolute Majority

OFFICER RECOMMENDATION / COUNCIL DECISION

Moved Cr B Hollingworth, seconded Cr D Nye-Chart

That the Dog Local Law 2008 be adopted:

‘DOG ACT 1976
LOCAL GOVERNMENT ACT 1995

SHIRE OF PLANTAGENET

DOGS LOCAL LAW 2008
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SCHEDULE 1
SCHEDULE 2
SCHEDULE 3

DOG ACT 1976
LOCAL GOVERNMENT ACT 1995

SHIRE OF PLANTAGENET

DOGS LOCAL LAW 2008

Under the powers conferred by the *Dog Act 1976* and under all other powers enabling it, the Council of the Shire of Plantagenet resolved on 25 March 2008 to make the *Shire of Plantagenet Dogs Local Law 2008*.

PART 1 - PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Plantagenet Dogs Local Law 2008*.

1.2 Repeal

The *Shire of Plantagenet Local Laws Relating to Dogs* published in the *Government Gazette* on 11 September 2000 is repealed.

1.3 Definitions

In this local law unless the context otherwise requires -

“Act” means the *Dog Act 1976*;

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

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

“dangerous dog” means a dog which is subject of a declaration under section 33E of the Act declaring it to be a dangerous dog;

“local government” means the Shire of Plantagenet;

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

“Regulations” means the *Dog Regulations 1976*;

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

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

1.4 Application

This local law applies throughout the district.

PART 2 - IMPOUNDING OF DOGS

2.1 Charges and costs

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

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

2.2 Attendance of pound keeper at pound

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

2.3 Release of impounded dog

(1) A claim for the release of a dog seized and impounded is to be made to the pound keeper or in the absence of the pound keeper, to the CEO.

(2) The pound keeper is not to release a dog seized and impounded to any person unless that person has produced, to the satisfaction of the pound keeper, satisfactory evidence -

- (a) of her or his ownership of the dog or of her or his authority to take delivery of it; or
- (b) that he or she is the person identified as the owner on a microchip implanted in the dog.

2.4 No breaking into or destruction of pound

A person who -

- (a) unless he or she is the pound keeper or a person authorised to do so, releases or attempts to release a dog from a pound; or
- (b) destroys, breaks into, damages or in any way interferes with or renders not dog-proof -
 - (i) any pound; or
 - (ii) any vehicle or container used for the purpose of catching, holding or conveying a seized dog, commits an offence.

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

PART 3 - REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS**3.1 Dogs to be confined**

- (1) An occupier of premises on which a dog is kept must -
- (a) cause a portion of the premises on which the dog is kept to be fenced in a manner capable of confining the dog;
 - (b) ensure the fence used to confine the dog and every gate or door in the fence is of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through it;
 - (c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises and is fitted with a proper latch or other means of fastening it;
 - (d) maintain the fence and all gates and doors in the fence in good order and condition; and
 - (e) where no part of the premises consists of open space, yard or garden or there is no open space or garden or yard of which the occupier has exclusive use or occupation, ensure that other means exist on the premises (other than the tethering of the dog) for effectively confining the dog within the premises.
- (2) Where an occupier fails to comply with subclause (1), he or she commits an offence.

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

3.2 Limitation on the number of dogs

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

PART 4 - APPROVED KENNEL ESTABLISHMENTS**4.1 Interpretation**

In this Part and in Schedule 2 -

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

“licensee” means the holder of a licence;

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

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

4.2 Application for licence for approved kennel establishment

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

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

4.3 Notice of proposed use

(1) An applicant for a licence must give notice of the proposed use of the premises as an approved kennel establishment after the application for a licence has been lodged –

- (a) once in a newspaper circulating in the district; and
- (b) to the owners and occupiers of any premises adjoining the premises.

(2) The notices in subclause (1) must specify that -

- (a) any written submissions as to the proposed use are to be lodged with the CEO within 14 days of the date the notice is given; and
- (b) the application and plans and specifications may be inspected at the offices of the local government.

(3) Where –

- (a) the notices given under subclause (1) do not clearly identify the premises; or
- (b) a notice given under subclause (1)(a) is of a size or in a location in the newspaper which, in the opinion of the local government, would fail to serve the purpose of notifying persons of the proposed use of the premises, then the local government may refuse to determine the application for a licence until the notices or notice, as the case may be, is given in accordance with its directions.

4.4 Exemption from notice requirements

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

- (a) permitted use; or
- (b) use which the local government may approve subject to compliance with specified notice requirements, under a town planning scheme, then the requirements of clauses 4.2(b), 4.3 and 4.5(a) do not apply in respect of the application for a licence.

4.5 When application can be determined

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

- (a) the applicant has complied with clause 4.2;

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

4.6 Determination of application

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

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

4.7 Where application cannot be approved

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

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

4.8 Conditions of approval

(1) The local government may approve an application for a licence subject to the conditions contained in Schedule 2 and to such other conditions as the local government considers appropriate.

(2) In respect of a particular application for a licence, the local government may vary any of the conditions contained in Schedule 2.

4.9 Compliance with conditions of approval

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

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

4.10 Fees

- (1) On lodging an application for a licence, the applicant is to pay a fee to the local government.

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

4.11 Form of licence

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

4.12 Period of licence

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

4.13 Variation or cancellation of licence

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

4.14 Transfer

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

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

4.15 Notification

The local government is to give written notice to -

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

4.16 Inspection of kennel

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

PART 5 - DOGS IN PUBLIC PLACES

5.1 Places where dogs are prohibited absolutely

(1) Subject to section 8 of the *Dog Act 1976* and section 66J of the *Equal Opportunity Act 1984*, dogs are prohibited absolutely from entering or being in any of the following places –

- (a) a public building, unless permitted by a sign;
- (b) a theatre or picture gardens;
- (c) all premises or vehicles classified as food premises or food vehicles under the Health (Food Hygiene) Regulations 1993;
- (d) a public swimming pool.

(2) If a dog enters or is in a place specified in subclause (1), every person liable for the control of the dog at that time commits an offence.

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

5.2 Places which are dog exercise areas

(1) Subject to clause 5.1 and subclause (2) of this clause, for the purposes of sections 31 and 32 of the Act, the following are dog exercise areas –

- (a) Townsite of Mount Barker
Reserve 1790 Recreation and Agricultural Showgrounds, McDonald Avenue;
- (b) Townsite of Kendenup
Lot 15 and 16 Chauvel Road, Kendenup Community Grounds;
- (c) Townsite of Narrikup
Reserve 17849 Recreation and Showgrounds, Albany Highway; and

- (d) Townsite of Rocky Gully
Reserve 25271 Recreation, Lot 129 Muir Highway
- (2) Subclause (1) does not apply to –
- (a) land which has been set apart as a children's playground;
 - (b) an area being used for sporting or other activities, as permitted by the local government, during the times of such use; or
 - (c) a car park.

PART 6 - MISCELLANEOUS

6.1 OFFENCE TO EXCRETE

- (1) A dog must not excrete on –
- (a) any thoroughfare or other public place; or
 - (b) any land which is not a public place without the consent of the occupier.
- (2) Subject to subclause (3), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.
- Penalty: \$200.
- (3) The person liable for the control of the dog does not commit an offence against subclause (2) if any excreta is removed immediately by that person.

PART 7 - ENFORCEMENT

7.1 Interpretation

In this Part -

- “infringement notice” means the notice referred to in clause 7.3; and
- “notice of withdrawal” means the notice referred to in clause 7.6(1).

7.2 Modified penalties

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

7.3 Issue of infringement notice

Where an 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 7 of the First Schedule of the Regulations.

7.4 Failure to pay modified penalty

Where a person who has received an infringement notice fails to pay the modified penalty within the time specified in the notice, or within such further

time as may in any particular case be allowed by the CEO, he or she is deemed to have declined to have the offence dealt with by way of a modified penalty.

7.5 Payment of modified penalty

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

7.6 Withdrawal of infringement notice

(1) Whether or not the modified penalty has been paid, an authorised person may withdraw an infringement notice by sending a notice in the form of Form 8 of the First Schedule of the Regulations.

(2) A person authorised to issue an infringement notice under clause 7.3 cannot sign or send a notice of withdrawal.

7.7 Service

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

**SCHEDULE 1
(clause 4.2)
Shire of Plantagenet
DOGS LOCAL LAW 2008**

Application for a licence for an approved kennel establishment

I/we (full name)
of (postal address)
(telephone number)
(facsimile number)
(E-mail address)

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

.....

For (number and breed of dogs)

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

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

on and from (insert date).

Attached are -

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

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

Signature of applicant

Date

* delete where inapplicable.

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

OFFICE USE ONLY

Application fee paid on [insert date].

SCHEDULE 2

(clause 4.8(1))

Shire of Plantagenet

DOGS LOCAL LAW 2008

CONDITIONS OF A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT

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

- (a) each kennel, unless it is fully enclosed, must have a yard attached to it;
- (b) each kennel and each yard must be at a distance of not less than -
 - (i) 25m from the front boundary of the premises and 5m from any other boundary of the premises;
 - (ii) 10m from any dwelling; and
 - (iii) 25m from any church, school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;
- (c) each yard for a kennel must be kept securely fenced with a fence constructed of link mesh or netting or other materials approved by the local government;

-
- (d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;
 - (e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the floor area of the kennel or group of kennels to which it is attached;
 - (f) the upper surface of the kennel floor must be –
 - (i) at least 100mm above the surface of the surrounding ground;
 - (ii) smooth so as to facilitate cleaning;
 - (iii) rigid;
 - (iv) durable;
 - (v) slip resistant;
 - (vi) resistant to corrosion;
 - (vii) non-toxic;
 - (viii) impervious;
 - (ix) free from cracks, crevices and other defects; and
 - (x) finished to a surface having a fall of not less than 1 in 100 to a spoon drain which in turn must lead to a suitably sized diameter sewerage pipe which must be properly laid, ventilated and trapped in accordance with the health requirements of the local government;
 - (g) all kennel floor washings must pass through the drain in item (f)(x) and must be piped to approved apparatus for the treatment of sewage in accordance with the health requirements of the local government;
 - (h) the kennel floor must have a durable upstand rising 75mm above the floor level from the junction of the floor and external and internal walls, or internal walls must be so constructed as to have a minimum clearance of 50mm from the underside of the bottom plate to the floor;
 - (i) where a yard is to be floored, the floor must be constructed in the same manner as the floor of any kennel;
 - (j) from the floor, the lowest internal height of a kennel must be, whichever is the lesser of -
 - (i) 2m; or
 - (ii) 4 times the height of the breed of dog in the kennel, when it is fully grown, measured from the floor to the uppermost tip of its shoulders while in a stationary upright position;
 - (k) the walls of each kennel must be constructed of concrete, brick, stone or framing sheeted internally and externally with good quality new zincalume or new pre-finished colour coated steel sheeting or new fibrous cement sheeting or other durable material approved by the local government;
 - (l) all external surfaces of each kennel must be kept in good condition;
 - (m) the roof of each kennel must be constructed of impervious material;
 - (n) all kennels and yards and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorised person;
 - (o) all refuse, faeces and food waste must be disposed of daily into the approved apparatus for the treatment of sewage;
-

- (p) noise, odours, fleas, flies and other vectors of disease must be effectively controlled;
- (q) suitable water must be available at the kennel via a properly supported standpipe and tap; and
- (r) the licensee or the person nominated in the application for a licence, must, in accordance with the application for the licence, continue to reside -
- (i) at the premises; or
 - (ii) in the opinion of the local government, sufficiently close to the premises so as to control the dogs, and to ensure their health and welfare.

SCHEDULE 3
(clause 7.2)
Shire of Plantagenet
DOGS LOCAL LAW 2008

OFFENCES IN RESPECT OF WHICH MODIFIED PENALTY APPLIES

Offence	Nature of offence	Modified penalty \$	Dangerous Dog Modified Penalty \$
2.4(a)	Attempting to or causing the unauthorized release of a dog from a pound	200	400
2.4(b)	Interfering with any pound or vehicle used for the purpose of catching, holding or conveying dogs	200	
3.1	Failing to provide means for effectively confining a dog	50	200
4.9	Failing to comply with the conditions of a licence	100	200
5.1(2)	Dog in place from which prohibited absolutely	200	400
6.1(2)	Dog excreting in prohibited place	40	

Dated this day of 2008

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

K M FORBES, Shire President
R J STEWART, Chief Executive Officer'

CARRIED (9/0)

NO. 61/08

(ABSOLUTE MAJORITY)

10.4.12 CEMETERIES LOCAL LAW 2008

File No: LE/98/10
Responsible Officer: John Fathers
Deputy Chief Executive Officer
Author: John Gilfellon
Consultant
Proposed Meeting Date: 25 March 2008

Purpose

The purpose of this report is to consider any submissions made on the proposed Cemeteries Local Law that was advertised for public comment on the 6 October 2007 and to make the Shire of Plantagenet Cemeteries Local Law 2008.

Background

The purpose of this local law is to repeal existing local laws relating to Cemeteries and to make a new local law providing for the orderly management of the Mount Barker, Kendenup and Rocky Gully Cemeteries in accordance with established plans and to create offences for inappropriate behaviour within the grounds of the cemeteries.

The effect of this local law is that all persons in the administration of the cemeteries, burying deceased in the cemeteries, or otherwise providing services to or making use of the cemeteries, are to comply with the provisions of this Local Law.

The Shire of Plantagenet Cemeteries Local Law 2008 to be made by Council adopts the Model Local Law (Cemeteries) 1998 by reference and sets out those amendments required to take into account those matters that have been identified and to make the local law Shire of Plantagenet specific.

In October 2007 when public submissions were invited on the proposed local law a copy was sent to the Minister for Local Government for comment. The Department of Local Government and Regional Development sought a number of extensions to the 42 day submission period and its comments were received on 5 February 2008.

The Department's comments related to the principles of drafting and wording local laws and the proposed local law adopted by the Council has been amended to include those comments. None of the Department's comments changed the intent of the local law and the local law being presented to the Council is not significantly different to the proposed local law.

Statutory Environment

The Cemeteries Local Law is made under the powers of the Cemeteries Act 1986. However, the Act requires that in making a local law the process required by the Local Government Act 1995 is to be followed.

Section 3.12 of the Local Government Act 1995 sets out the procedures to be followed in making a local law.

Consultation

The Shire of Plantagenet's intention to undertake a review of its local laws was advertised on 12 May 2007 and public submissions were invited within a 42 day submission period. The review was advertised Statewide and locally. No submissions were received.

On 11 September 2007 the Council adopted the proposed amendments to the Model Cemeteries Local Law and resolved that it be advertised for public comment. On 6 October 2007 the proposed local law was advertised for public comment and public submissions were invited within a 42 day consultation period. The invitation was advertised Statewide and locally. No public submissions were received.

Financial Implications

The Council is required to pay for all advertising and gazetting costs associated with the local law. This is estimated to be one thousand dollars (\$1000.00).

Policy Implications

There are no policy implications for this report.

Legal Implications

Section 3.18 of the Local Government Act 1995 requires that a local government is to administer its local laws.

Strategic Implications

There are no strategic implications for this report.

Officer Comment

The Council did request that the Modified Penalties for "Placing and removal of rubbish and surplus materials" and "Dumping of Rubbish" as set out in the First Schedule be increased to \$200, however Section 55(1)(q) of the Cemeteries Act 1986 restricts the amount of modified penalty to a maximum of \$50. The Local Law presented for adoption reflects the maximum allowable.

Except for minor drafting amendments suggested by the Department of Local Government and Regional Development the Local Law presented is not significantly different from the proposed Local Law adopted by the Council on the 11 September 2007 and advertised for public comment.

This report recommends that 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 Plantagenet resolve to make the Shire of Plantagenet Cemeteries Local Law 2008 in the following form:-

The Model Local Law (Cemeteries) 1998 as published in the Government Gazette on 12 May 1998 is adopted as the local law of the Shire of Plantagenet, with such modifications as are here set out;

1. - Preliminary

(a) In construing the following modifications, where a modification requires the

renumbering of a clause, subclause or paragraph, subsequent modifications have been drafted on the basis that the renumbering has been effected.

(b) Delete the phrase *[insert "Local Law" or "By-law" as applicable]* where it appears in this Model and substitute "Local Law".

(c) Delete the phrases *[insert name of Local Law or By-law]* *[insert year]* and *[insert name of Local Law or By-law]* where they appear in this Model and substitute "Shire of Plantagenet Cemeteries Local Law 2008".

(d) Delete the phrase *[insert name of local government or Board]* where it appears in this Model and substitute "Shire of Plantagenet"

(e) Delete the phrase *[insert address of local government or Board]* where it appears in this Model and substitute "Lowood Road (PO Box 48) Mt Barker WA 6324".

2. - 1.3 Repeal

In Clause 1.3 delete the phrase *[insert details of Local Law or By-law repealed]* and substitute -

"Shire of Plantagenet Local Laws Relating to Denmark Cemetery (Reserve 11655) as published in the Government Gazette on 15 July 1997; and as amended and published in the Government Gazette of 2 June 1998".

3. - 3.2 - Application for Cremation

(a) Delete the whole of Clause 3.2.

(b) Renumber Clauses 3.3 to 3.5 inclusive to "3.2" to "3.4" respectively.

(c) In renumbered Clause 3.2 –

(i) delete "clauses 3.1 and 3.2" and substitute "clause 3.1"; and

(ii) delete "clause 3.4" and substitute "clause 3.3".

4. - 3.3 – Certificate of Identification

In subclause (1) of renumbered Clause 3.3 delete the words "or crematorium within the cemetery,".

5. - 4.2 – Single Funeral Permits

In Clause 4.2 delete the words ", or crematorium" and insert a "." at the end of the word gravesite.

6. - 4.3 – Application refusal

In Clause 4.3 delete the words "or crematorium,".

7. - 5.1 – Requirements for Funerals and Coffins

In subclause (a) of Clause 5.1 delete the words "or cremation".

8. - 5.2 – Funeral Processions

In Clause 5.2 delete the words "or cremation" and "or clause 3.2".

9. - 5.6 – Conduct of Funeral by Board

In Clause 5.6 delete subclause (d) and renumber subclauses (e), (f) and (g) as subclauses (d), (e) and (f) respectively.

10. - Part 5, - Division 2 – Cremation

In Part 5, delete the whole of Division 2 – Cremation.

11. - Part 5, Division 3 – Placement of Ashes

In Part 5 –

- (a) renumber “Division 3” as “Division 2”;
- (b) renumber “Clause 5.12” as “Clause 5.7”;
- (c) in subclause (1) of renumbered Clause 5.7 delete –
“Garden of Remembrance
Ground Niche
Memorial Rose, Tree or Shrub
Family Shrub
Memorial Desk
Granite Seat”
“Book of Remembrance”
“Memorial Gardens”;
- (d) delete Clauses 5.13 and 5.14.

12. - 7.12(b) – Placing of Glass Domes and Vases

In subclause (b) of Clause 7.12 delete the words “a lawn or”.

13. - Part 7, Division 2 – Lawn Section

In Part 7, delete the whole of “Division 2 – Lawn Section”.

14. - Part 7, Division 3 – Memorial Plaque Section

In Part 7 –

- (a) renumber “Division 3” as “Division 2”.
- (b) renumber “Clause 7.15” as “Clause 7.13”.

15. - Part 7, Division 4 – Licensing of Monumental Masons

In Part 7-

- (a) renumber “Division 4” as “Division 3”;
- (b) renumber “Clauses 7.16 to 7.20” inclusive as “Clauses 7.14 to 7.18” respectively;
- (c) in renumbered Clause 7.15, paragraph (a), delete “7.20” and substitute “7.18”;
- (d) in renumbered clause 7.16, paragraph (a), delete “7.16” and substitute “7.14”.

16. - Second Schedule

In the Second Schedule, delete the prefix “19” where it is used as part of the date an alleged offence occurred and substitute “20”.

Voting Requirements

Absolute Majority

OFFICER RECOMMENDATION / COUNCIL DECISION

Moved Cr D Nye-Chart, seconded Cr M Skinner

That the following Cemeteries Local Law 2008 be adopted:

**'CEMETERIES ACT 1986
LOCAL GOVERNMENT ACT 1995
Shire of Plantagenet**

CEMETERIES LOCAL LAW 2008

PART 1—PRELIMINARY

- 1.1 Citation
- 1.2 Application
- 1.3 Interpretation
- 1.4 Repeal

PART 2—ADMINISTRATION

- 2.1 Powers and Functions of CEO

PART 3—APPLICATIONS FOR FUNERALS

- 3.1 Application for Burial
- 3.2 Applications to be accompanied by Certificates etc
- 3.3 Certificate of Identification
- 3.4 Minimum Notice Required

PART 4—FUNERAL DIRECTORS

- 4.5 Funeral Director's Licence Expiry
- 4.6 Single Funeral Permits
- 4.7 Application Refusal

PART 5—FUNERALS

Division 1—General

- 5.1 Requirements for Funerals and Coffins
- 5.2 Funeral Processions
- 5.3 Vehicle Entry Restricted
- 5.4 Vehicle Access and Speed Limitations
- 5.5 Offenders may be expelled
- 5.6 Conduct of Funeral by the Board

Division 2—Placement of Ashes

- 5.7 Disposal of Ashes

PART 6—BURIALS

- 6.1 Depth of Graves
- 6.2 Mausoleum, etc

PART 7—MEMORIALS AND OTHER WORK

Division 1—General

- 7.1 Application for Monumental Work
-

- 7.2 Placement of Monumental Work
- 7.3 Removal of Rubbish
- 7.4 Operation of Work
- 7.5 Removal of Sand, Soil or Loam
- 7.6 Hours of Work
- 7.7 Unfinished Work
- 7.8 Use of Wood
- 7.9 Plants and Trees
- 7.10 Supervision
- 7.11 Australian War Graves
- 7.12 Placing of Glass Domes and Vases

Division 2—Memorial Plaque Section

- 7.13 Requirements of a Memorial Plaque

Division 3—Licensing of Monumental Masons

- 7.14 Monumental Mason's Licence
- 7.15 Expiry Date, Non-Transferability
- 7.16 Carrying out Monumental Work
- 7.17 Responsibilities of the Holder of a Monumental Mason's Licence
- 7.18 Cancellation of a Monumental Mason's Licence

PART 8—GENERAL

- 8.1 Animals
- 8.2 Guide Dogs
- 8.3 Damaging and Removing of Objects
- 8.4 Withered Flowers
- 8.5 Littering and Vandalism
- 8.6 Advertising
- 8.7 Obeying Signs and Directions
- 8.8 Removal from the Cemetery

PART 9—OFFENCES AND MODIFIED PENALTY

- 9.1 General
- 9.2 Modified Penalties

**FIRST SCHEDULE - MODIFIED PENALTIES
SECOND SCHEDULE - INFRINGEMENT NOTICE
THIRD SCHEDULE – WITHDRAWAL OF INFRINGEMENT NOTICE**

**CEMETERIES ACT 1986
LOCAL GOVERNMENT ACT 1995**

Shire of Plantagenet

CEMETERIES LOCAL LAW 2008

Under the powers conferred by the *Cemeteries Act 1986* and under all other powers, the Council of the Shire of Plantagenet resolved on 25 March 2008 to make the *Shire of Plantagenet Cemeteries Local Law 2008*.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Plantagenet Cemeteries Local Law 2008*.

1.2 Application

This local law applies to the Mt Barker, Kendenup and Rocky Gully Cemeteries

1.3 Interpretation

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 process of cremation as may be contained in a standard sized cremation urn;

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

“Board” for the purpose of the Act means the Shire of Plantagenet;

“CEO” means the Chief Executive Officer or Acting Chief Executive Officer for the time being, of the Shire of Plantagenet;

“Council” means the Council of the Shire of Plantagenet;

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

“local government” means the Shire of Plantagenet;

“memorial” includes headstone, plaque, tombstone, monumental work, inscription, kerbing, enclosure and any other fixture or thing commemorating a grave;

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

“personal representative” includes the administrator and executor of an estate of a deceased person who, by law or practice, has the best right to apply for administration and any person having the lawful custody of a dead body;

“right of burial” means permission given by the Board for the right to use a specified area of the cemetery for burial;

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

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

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

1.4 Repeal

The following local laws are repealed on the day that this local law comes into operation –

“*Shire of Plantagenet Local Laws Relating to Mount Barker, Kendenup and Rocky Gully Cemeteries* as published in the *Government Gazette* on 15 July 1997; and as amended and published in the *Government Gazette* of 2 June 1998”.

PART 2—ADMINISTRATION

2.1 Powers and Functions of CEO

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

PART 3—APPLICATION FOR FUNERALS

3.1 Application for Burial

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

3.2 Applications to be Accompanied by Certificates etc

All applications referred to in clause 3.1 shall be accompanied by either a medical certificate of death or a Coroner's order of burial, and a certificate issued under clause 3.3, in respect of the body.

3.3 Certificate of Identification

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

3.4 Minimum Notice Required

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

PART 4—FUNERAL DIRECTORS

4.1 Funeral Director's Licence Expiry

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

4.2 Single Funeral Permits

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

4.3 Application Refusal

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

PART 5—FUNERALS

Division 1—General

5.1 Requirements for Funerals and Coffins

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

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

5.2 Funeral Processions

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

5.3 Vehicle Entry Restricted

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

5.4 Vehicle Access and Speed Limitations

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

5.5 Offenders may be Expelled

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

5.6 Conduct of Funeral by the Board

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

- (a) require a written request for it to conduct a funeral to be lodged with it;
- (b) in its absolute discretion, charge any person requesting it to conduct a funeral the set fee for the conduct of that funeral by it;

- (c) where no fee or a reduced fee has been charged by it for the conduct of the funeral, determine the manner in which the funeral shall be conducted;
- (d) specify an area in the cemetery where the dead body is to be buried or the ashes placed;
- (e) conduct the funeral notwithstanding the failure of a person to make any application or to obtain any consent required under this local law;
- (f) do or require anything which it considers is necessary or convenient for the conduct of a funeral by it.

Division 2—Placement of Ashes

5.7 Disposal of Ashes

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

PART 6—BURIALS

6.1 Depth of Graves

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

6.2 Mausoleum, etc

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

PART 7—MEMORIALS AND OTHER WORK

Division 1—General

7.1 Application for Monumental Work

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

7.2 Placement of Monumental Work

Every memorial shall be placed on proper and substantial foundations.

7.3 Removal of Rubbish

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

7.4 Operation of Work

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

7.5 Removal of Sand, Soil or Loam

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

7.6 Hours of Work

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

7.7 Unfinished Work

Should any work by masons or others be not completed before 6.00pm on weekdays and noon on Saturdays, they shall be required to leave the work in a neat and safe condition to the satisfaction of the CEO or an authorised officer.

7.8 Use of Wood

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

7.9 Plants and Trees

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

7.10 Supervision

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

7.11 Australian War Graves

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

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

7.12 Placing of Glass Domes and Vases

A person shall not place glass domes, vases or other grave ornaments—

- (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) in an area set aside by the Board as a memorial plaque section.

Division 2—Memorial Plaque Section

7.13 Requirements of a Memorial Plaque

(1) All memorial plaques placed in a memorial plaque section of the cemetery shall—

- (a) be made of admiralty bronze or any other material approved by the Board; and
- (b) not be less than the dimensions 380mm x 280mm, nor more than 560mm x 305mm; and

(2) All memorial plaques made of admiralty bronze shall—

- (a) not exceed 20mm in thickness; and
- (b) be placed upon a base mounting approved by the Board.

(3) All memorial plaques made of stone shall—

- (a) not exceed 50mm in thickness placed upon a base mounting approved by the Board; or

- (b) not be less than 100mm in thickness if it is not to be placed upon a base mounting.

Division 3—Licensing of Monumental Masons

7.14 Monumental Mason's Licence

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

7.15 Expiry Date, Non-Transferability

A monumental mason's licence—

- (a) shall, subject to clause 7.18, be valid from the date specified therein until the 30th day of June next following; and
- (b) is not transferable.

7.16 Carrying out Monumental Work

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

- (a) is the holder of a current monumental mason's licence issued pursuant to clause 7.14 or does so as the employee of a person who holds such a licence; or
- (b) is authorised by the Board to do so.

7.17 Responsibilities of the Holder of a Monumental Mason's Licence

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

7.18 Cancellation of a Monumental Mason's Licence

- (1) The Board may by notice in writing to the holder of a monumental mason's licence terminate the licence on any of the following grounds—
 - (a) that the holder of the licence has committed a breach of the requirements and conditions of the licence, this local law, the Act or any other written law which may affect the carrying out of monumental works;
 - (b) that, in the opinion of the Board, the conduct of the holder of the licence or any person in the employ of that holder in carrying out or attempting to carry out any works within the cemetery, is inappropriate or unbecoming; or
 - (c) that the holder of the licence has purported to transfer the licence issued to that holder.
- (2) Upon the termination of a monumental mason's licence under this clause no part of any fee paid for the issue of that licence is refundable by the Board.

- (3) An aggrieved person whose licence has been terminated under subclause (1) may appeal to a Local Court against a decision of the Board under this clause in the manner stated in section 19(3) of the Act.

PART 8—GENERAL

8.1 Animals

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

8.2 Guide Dogs

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

8.3 Damaging and Removing of Objects

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

8.4 Withered Flowers

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

8.5 Littering and Vandalism

A person shall not—

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

8.6 Advertising

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

8.7 Obeying Signs and Directions

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

8.8 Removal from the Cemetery

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

PART 9—OFFENCES AND MODIFIED PENALTIES

9.1 General

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

9.2 Modified Penalties

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

FIRST SCHEDULE

Cemeteries Act
1986
Shire of Plantagenet
Cemeteries Local Law 2008

Modified Penalties

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

SECOND SCHEDULE

**Cemeteries Act 1986
Shire of Plantagenet
Cemeteries Local Law 2008**

Infringement Notice

TO: _____
(Name)

(Address)

It is alleged that at _____ : _____ hours on _____ day
of _____ 20 _____ at _____

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

(Authorised Person)

Offence

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

Other Offence _____
\$ _____

you may dispose of this matter:

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

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

The Chief Executive Officer
Shire of Plantagenet
PO Box 48, Mount Barker WA 6324

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

THIRD SCHEDULE

**Cemeteries Act, 1986
Shire of Plantagenet
Cemeteries Local Law 2008**

Withdrawal of Infringement Notice

No. _____

Date ____ / ____ / ____

To
(1) _____

Infringement Notice No _____ dated ____ / ____ / ____ for the alleged offence of (2)

Penalty (3) \$ _____ is withdrawn.

(Delete whichever does not apply)

* No further action will be taken.

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

- (1) Insert name and address of alleged offender.
- (2) Insert short particulars of offence alleged.
- (3) Insert amount of penalty prescribed.

(Authorised Person)

Dated this.....day of2008

The Common Seal of the Shire of Plantagenet was affixed by authority of a resolution of the Council in the presence of -

**K M FORBES, Shire President
R J STEWART, Chief Executive Officer'**

CARRIED (9/0

NO. 62/08

(ABSOLUTE MAJORITY))

10.4.13 HEALTH AMENDMENT LOCAL LAW 2008

File No: LE/98/13
Attachments: [Health Local Law](#)
Responsible Officer: John Fathers
Deputy Chief Executive Officer
Author: John Gilfellon
Consultant
Proposed Meeting Date: 25 March 2008

Purpose

The purpose of this report is to consider any submissions made on the proposed Health Amendment Local Law that was advertised for public comment on 6 October 2007 and to make the Shire of Plantagenet Health Amendment Local law 2008.

Background

The purpose of the Local Law is to align the existing Health Local Law with current public health requirements and update legislation and Australian Standards references in accordance with the required statutory review process.

The effect of the Local Law is to enable public health in the community to be adequately protected by current statutory mechanisms.

The draft Shire of Plantagenet Health Amendment Local Law 2008 amends the Shire of Plantagenet Health Local Laws as adopted in 1997. The Amendment Local Law sets out those wording and terminology changes needed to modernise the local law and make it easier to enforce.

In October 2007 when public submissions were invited on the proposed local law a copy was sent to the Health Department as per the Delegation of the Minister for Health and the Minister for Local Government for comment.

The Health Department suggested a number of changes to the existing Health local law all related to terminology changes and changes of references to legislation and Australian Standards. None of the changes amended the intent of the local law.

The Department of Local Government and Regional Development sought a number of extensions to the 42 day submission period and its comments were received on the 5 February 2008.

The Department's comments related to the principles of drafting and wording local laws and the proposed local law adopted by the Council has been amended to include those comments. None of the Department's comments changed the intent of the local law and the local law being presented to the Council is not significantly different to the proposed local law.

Statutory Environment

The Health Local Law is made under the powers of the Health Act 1911. However, the Act requires that in making a local law the process required by the Local Government Act 1995 is to be followed.

Section 3.12 of the *Local Government Act 1995* sets out the procedures to be followed in making a local law.

Consultation

The Shire of Plantagenet's intention to undertake a review of its local laws was advertised on 12 May 2007 and public submissions were invited within a 42 day submission period. The review was advertised Statewide and locally. No submissions were received.

On 25 September 2007 the Council adopted the proposed Health Amendment Local Law and resolved that it be advertised for public comment. On 6 October 2007 the proposed local law was advertised for public comment and public submissions were invited within a 42 day consultation period. The invitation was advertised Statewide and locally. No public submissions were received.

Financial Implications

The Council is required to pay for all advertising and gazetting costs associated with the local law. This is estimated to be one thousand dollars (\$1,000.00).

Policy Implications

There are no policy implications for this report.

Legal Implications

Section 3.18 of the Local Government Act 1995 requires that a local government is to administer its local laws.

Strategic Implications

There are no strategic implications for this report.

Officer Comment

Except for drafting amendments suggested by the Health Department and the Department of Local Government and Regional Development the Local Law presented is not significantly different from the proposed Local Law adopted by Council on 25 September 2007 and advertised for public comment.

A copy of the principal local law is attached.

Voting Requirements

Absolute Majority

OFFICER RECOMMENDATION / COUNCIL DECISION

Moved Cr J Mark, seconded Cr J Moir

That under Section 342 of the Health Act 1911 and in accordance with Subdivision 2 of Division 2 of Part 3 of the Local Government Act 1995 the Shire of Plantagenet Health Local Law 2008 be made in the following form:-

In these local laws, the Shire of Plantagenet Health Local Laws 1997 made under the Health Act 1911 and passed by the Local Government of the Shire of Plantagenet on 25 November 1997, by notice published in the Government Gazette No 69 Special, on 30 March 1998, are referred to as the principal local laws.

The principal local law is amended as follows:

Item	Sections Affected	Description
1	1.1	Insert the section title "Citation" above section 1.1.
2	1.3(1)	In subsection 1.3(1) in the definition of "Act", delete the words "and includes subsidiary legislation made under the <i>Health Act 1911</i> ".
3	1.3(1)	In subsection 1.3(1) delete the definition of "approved" and substitute the definition "'approved" means approved by the local government".
4	1.3(1)	In subsection 1.3(1) in the appropriate alphabetical order add the following definitions: "'AS 1530.2: 1993" means the standard published by the Standards Association of Australia as AS 1530.2: 1993 and called "Methods for fire testing on buildings materials, components and structures – Tests for flammability of materials." "'AS/NZS 1530.3: 1999" means the standard published by the Standards Association of Australia as AS/NZS 1530.3: 1999 and called "Methods for fire tests on building materials, components and structures – Simultaneous determination of ignitability, flame propagation, heat release and smoke release." "'AS 1668.2 – 2002" means the standard published by the Standards Association of Australia as AS 1668.2 - 2002 and called "The use of ventilation and air-conditioning in buildings – Ventilation design for indoor air contaminant control." "'AS 2001.5.4 – 2005" means the standard published by the Standards Association of Australia as AS 2001.5.4 – 2005 and called "Methods of tests for textiles - Dimensional change – Domestic washing and drying procedures for textile testing (ISO 6330:2000,MOD)."

		<p>“AS/NZS 3666.2: 2002” means the standard published by the Standards Association of Australia as AS/NZS 3666.2: 2002 and called “Air-handling and water systems of buildings – Microbial Control – Operation and maintenance.”</p> <p>“AS/NZS ISO 7171.1:2004” means the standard published by the Standards Association of Australia as AS/NZS ISO 7171.1:2004 and called “Acoustics – Rating of sound insulation in buildings and of building elements – Airborne sound insulation.”</p>
5	1.3(1)	In subsection 1.3(1) delete the definition of “Building Code” and substitute the definition ““Building Code” means the latest edition of the Building Code of Australia published from time to time by, or on behalf of, the Australian Building Codes Board, as amended from time to time, but not including explanatory information published with that Code”.
6	1.3(1) and the complete local laws	In subsection 1.3(1) delete the definition of “Council” and then, except in the definition of “water” in subsection 1.3(1), delete the word “Council” wherever it appears in the Local Laws and substitute “local government” or “the local government” as appropriate.
7	1.3(1)	In subsection 1.3(1) insert in the appropriate alphabetical order, the definition ““local government” means the Shire of Plantagenet”.
8	1.3(1)	In subsection 1.3(1) in the definition of “water” delete the symbol and numbers “-1987” and after the last word “Council” insert “in 2004 and as amended from time to time”.
9	2.1.1	In subparagraph (ii) of section 2.1.1 in the definition “urinal”, delete the word “through” and substitute “trough”.
10	2.1.3(2)(c)(ii)	In subparagraph (ii) of paragraph 2.1.3(2)(c), delete the words “hand basin” and substitute the words “hand wash basin”.
11	2.1.4(1)(c)(ii); 2.1.4(1)(d)(ii); 8.3.9(c); 9.2.4 and twice in Schedule 1	In Schedule 1 both times it appears, subparagraphs (ii) of paragraphs 2.1.4(1)(c) and 2.2.1(1)(d), subsection (c) of section 8.3.9 and section 9.2.4 delete the words “wash hand basin” and substitute the words “hand wash basin”.
12	2.1.5	Delete Section 2.1.5 and substitute: “Toilets on premises other than a dwelling house shall, where more than one toilet is provided on the premises, bear, on the entrance to each toilet, a suitable sign indicating for which sex its use is intended.”
13	2.1.9	In subsection (2) of section 2.1.9, in the first line, delete the

		word “a” before the words “the premises”.
14	2.1.11	In section 2.1.11 delete the word “Country” from the title of the Act and substitute the word “Metropolitan”.
15	2.1.11	In section 2.1.11 after the year “1909” insert the words “and the <i>Health (Treatment of Sewage and Disposal of Effluent and Liquid Waste) Regulations 1974</i> ”.
16	2.2.1	Delete Section 2.2.1 and substitute the following: “2.2.1 (1) A person shall not use or occupy, or permit to be used or occupied, a dwelling house without a bathroom that— (a) is adequately lined with an impervious material and has an adequate ceiling; (b) complies with the <i>Health Act (Laundries and Bathrooms) Regulations</i> ; and (c) is equipped with— (i) a hand wash basin; and (ii) either a shower in a shower recess or a bath. (2) All baths, showers, hand wash basins and similar fittings shall be provided with an adequate supply of hot and cold water.”
17	2.2.2	Delete Section 2.2.2 and substitute the following: “2.2.2 (1) A laundry must conform to the provisions of the Building Code (2) Where, in any building, a laundry is situated adjacent to a kitchen or a room where food is stored or consumed, the laundry shall be separated from the kitchen by a wall extending from the floor to the roof or ceiling. (3) Where there is an opening between a laundry and a kitchen or other room where food is stored or consumed, the opening shall— (a) not be more than 1220 millimetres wide; and (b) have a door which when closed shall completely fill the opening.”
18	2.2.4(2)	In subparagraph (i) of paragraph 2.2.4(2)(c) delete the word “millilitres” before the word “deep” and substitute the word “millimetres”.
19	2.2.4(4)	In paragraph (a) of subsection 2.2.4(4), after the words “requirements of” insert the words “Energy Safety and”.
20	3.1.1	For section 3.1.1 insert the missing section title “Dwelling House Maintenance”.
21	3.1.1(m)	In subsection (m) of section 3.1.1, delete the term “the Office of Energy” and substitute “Energy Safety”.
22	3.2.4(1)	In the first line of subsection 3.2.4(1), delete the word “of” before the word “occupy” and substitute the word “or”.
23	3.2.4(2)	In paragraph (b) of subsection 3.2.4(2) delete “AS1668.2” and substitute “AS1668.2: 2002”
24	3.2.4(3)	In paragraph (a) of subsection 3.2.4(3) delete “AS3666.2 - 1989” and substitute “AS/NZS 3666.2: 2002”
25	3.2.4(3)	In paragraph (b) of subsection 3.2.4(3), after the word “occupied”, insert the comma and words”, if it is a building

		without approved natural ventilation”.
26	3.3.2	In the first line of section 3.3.2, delete the word “for” before the words “a rainwater tank” and substitute the word “from”.
27	3.5.1(2)(c)	In paragraph (c) of subsection 3.5.1(2) delete the words “prescribed in Schedule (12)” where they appear and substitute the words “as fixed by the local government from time to time under Section 344C of the Act”.
28	3.5.1(3)	In subsection (3) of section 3.5.1 delete the words “prescribed in Schedule (12)” where they appear and substitute the words “as fixed by the local government from time to time under Section 344C of the Act”.
29	4.1.3(2)(b)	In the second line of paragraph (b) of subsection 4.1.3(2), delete the word “and” after “Health” and substitute “or”.
30	4.2.1	In section 4.2.1 delete the definition of “approved enclosure”.
31	4.2.1	In section 4.2.1 delete the definition of “building line”.
32	4.2.1	In section 4.2.1 insert in the appropriate alphabetical order the definition ““refuse disposal site” means a waste treatment facility or depot licensed under Part V of the <i>Environmental Protection Act 1986</i> to store, treat, reuse or dispose of rubbish or refuse.”
33	4.2.4(a)	In paragraph (viii) of section 4.2.4(a), after the word “objects” add the words “unless placed in a durable, impervious and leak proof container”.
34	4.2.10(2)	In subparagraph (i) of paragraph 4.2.10(2)(a), delete the last word “or” and substitute the word “and”.
35	4.2.10(2)	In subparagraph (ii) of paragraph 4.2.10(2)(a), delete the word “suitable” and substitute the word “unsuitable”.
36	4.2.10(2)	In paragraph (d) of subsection 4.2.10(2) delete “in AS 1875 – 1976” and substitute “by the local government”.
37	4.2.10(3)	In subsection (3) of section 4.2.10, delete the words “Fire Rules of the Local Fire Brigade issues by the Western Australian Fire Brigades Board” and substitute “local fire rules”.
38	4.3.1	In section 4.3.1, delete the definition of “butchers waste” and substitute the definition ““butchers waste” includes animal skeletons and rib cages from a boning room and the inedible products of an abattoir.”
39	5.1.2	Delete section 5.1.2 and substitute: “5.1.2 An owner or occupier of premises shall maintain any footpath, pavement, area or right of way immediately adjacent to the premises clear of rubbish, matter or other things coming from or belonging to the premises.”
40	5.1.3	In section 5.1.3 insert the word and comma “smoke,” before the word “dust”.
41	5.1.6(2)	In subsection (2) of section 5.1.6, delete the last word “therefrom” and substitute the words “there from”.
42	5.2.4(1)	In subsection (1) of section 5.2.4, delete the words “District of the local government” and substitute the word “district”.
43	5.2.4(5)	In paragraph (b) of subsection 5.2.4(5), delete the words

		“provide a shelter or an enclosure to be” and substitute the words “ensure every shelter and enclosure is”.
44	5.2.4(6)	In subsection (6) of section 5.2.4, delete the word “the” and substitute the word “than”.
45	5.2.6(3)	In subsection (3), of section 5.2.6, delete the word “immediately” in the second line and substitute the words “as soon as possible”.
46	5.3.3(1)(b)	In subparagraph (ii) of paragraph 5.3.3(1)(b), insert the word “a” before the word “minimum”.
47	5.3.3(1)(e)	In subsection (1) of section 5.3.3, delete paragraph (e) and substitute: “(e) subject to subsection (3), have a floor, the upper surface of which shall - (i) be at least 75 millimetres above the surface of the ground; (ii) be constructed of cement, concrete or other similar impervious materials; (iii) have a fall of 1 in 100 to a drain, which shall empty, into a trapped gully situated outside the stable and shall discharge in a manner approved by the local government.”
48	5.3.3(2)(a)	In paragraph (a) of subsection 5.3.3(2), delete the word “to” after the word “Officer” and substitute a comma.
49	5.3.3	In section 5.3.3 insert a new subsection (3) as follows: (3) A stable constructed with a sand floor may be permitted by the local government, subject to the following (a) the site must be well drained with the highest known water table at least 1.5 metres below the sand floor level, which may be achieved artificially; (b) a 300mm thick bed of crushed limestone shall be laid under the sand of the stable (c) sand, whether natural or imported, must be clean, coarse and free from dust; (d) footings to each stable shall be a minimum of 450mm below ground level; (e) the stable design must allow for the access of small earth moving machinery, such as a skid steer loader, into each individual stall, to maintain the correct floor height; (f) the minimum floor area of each stall shall be not less than 28 square metres and walls shall not be less than 3 metres vertically or 4 metres horizontally; (g) the roofed area of each stall shall not be less than 50 percent of the floor area of the stall.”
50	5.4.3(a)	In the first line of subsection (a) of section 5.4.3, delete the word “with” after the word “approach” and substitute the word “within”.
51	5.4.3	In section 5.4.3 change the existing subsection designation “(e)” to “(f)” and then immediately after subsection (d), insert a new subsection (e) as follows:

		“(e) no poultry is able to approach within 1.2 metres of any side or rear boundary of the premises; and” . Then delete the word “and” after the semi-colon at the end of subsection (d).
52	5.4.4(2)	In subsection (2) of section 5.4.4, delete the last three words “of this section” .
53	5.4.6(1)	In subsection (1) of section 5.4.6, delete the words “provision of Section” and substitute the words “provisions of Sections” .
54	5.4.7(2)	In subsection (2) of section 5.4.7, delete the word “the” before the word “local government” and substitute the word “a” and insert the word “made” before the word “under” .
55	5.4.8	After section 5.4.7 insert a new section as follows: “Restrictions on Feeding Wild Birds 5.4.8 A person shall not feed a pigeon, dove, seagull, ibis, raven or other wild bird, so as to cause a nuisance or be injurious or dangerous to health.”
56	5.5.2(1)	In subsection 5.5.2(1), delete the fifth word “approved” and substitute the word “used” .
57	5.5.2(2)	In subsection 5.5.2(2), insert the missing brackets around the number “3” after the word “subsection” .
58	5.5.3(1)(a)	In paragraph (a) of subsection 5.5.3(1), delete the word “sloping” and substitute the word “sloping” .
59	5.5.3(1)(b)	In paragraph (b) of subsection 5.5.3(1), delete the word “composing” and substitute the word “composed” .
60	5.6.2(2)	In subsection 5.6.2(2), insert the missing brackets around the number “3” after the word “subsection” .
61	5.6.4	In section 5.6.4, in Table 3, delete the row heading “50 to 500 pigs” and substitute the heading “50 to 499 pigs” .
62	5.7.2(1)	In paragraph (b) of subsection 5.7.2(1), delete “AS1668.2 Part 2 1991” and substitute “AS 1668.2:-2002” .
63	5.7.3(a)	In paragraph (i) of subsection 5.7.3(a), change the existing sub- subparagraph designations “(a) and (b)” to “(A) and (B)” respectively.
64	5.7.3(a)	In paragraph (i) of subsection 5.7.3(a), in both sub- subparagraphs (A) and (B) delete “AS 1668.2 Part 2 1991” and in both places, substitute “AS 1668.2:-2002” .
65	6.1.2	In section 6.1.2, in the second line, delete the comma between the words “left” and “in” .
66	6.1.3(g)	In the first line of paragraph (g), delete the word “any” before the word “may” and substitute the word “and” .
67	6.1.4	In subsection (c) of section 6.1.4, delete the words “of flies” and insert them on the next line, aligned with the first word of the section.
68	6.1.5(3)	In subsection (3) of section 6.1.5, insert a comma and the words “, except to the extent the person has suffered unreasonable loss or damage because the action taken by the local government was negligent or in breach of its

		duty” after the last word “Section.”
69	6.2.2 (1)(b)	In the second line of paragraph (b) of subsection 6.2.2(1), delete the comma between the words “in” and “or”.
70	6.2.2(4)	In subsection (4) of section 6.2.2, insert the word “to” before the word “be”.
71	6.2.3	In both subsections (2) and (3) of section 6.2.3, delete the references to “Section (1)” and substitute the word “subsection (1)”.
72	6.2.3(3)	In subsection 6.2.3(3), insert the comma and words “, except to the extent the person has suffered unreasonable loss or damage because the action taken by the local government was negligent or in breach of its duty” after the last word “Council” in subsection (3).
73	6.3.3(a)	In the first line of subsection (a) of section 6.3.3, delete the comma between the words “refuse” and “or”.
74	6.3.3	In both subsections (a) and (b) of section 6.3.3, insert the word “stored” before the word “food”.
75	6.8.1	In section 6.8.1, in the definition of “Arthropod vectors of disease” delete paragraph (f). Then delete the semi colon and the word “and” after paragraph (e) and substitute a full stop. After paragraph (d), insert the word “and”.
76	6.8.2	In the title of section 6.8.2, delete the word “to” and substitute the word “or”.
77	7.1.2(4)	In subsection (4) of section 7.1.2, insert a comma and the words “, except to the extent the person has suffered unreasonable loss or damage because the action taken by the local government was negligent or in breach of its duty” after the last word “Section”
78	7.1.4	Delete section 7.1.4, then renumber sections 7.1.5 through to 7.1.10 as sections 7.1.4 through to 7.1.9 respectively.
79	7.1.8(1)	In subsection (1) of section 7.1.8, delete the first word “The” and substitute “An”.
80	7.1.10(3)	In subsection (3) of section 7.1.10, insert a comma and the words “, except to the extent the person has suffered unreasonable loss or damage because the action taken by the local government was negligent or in breach of its duty” after the last word “Section”.
81	7.3.1 and 7.3.2	In PART 7, delete <i>Division 3 - Skin Penetration</i> .
82	8.1.1(1)	In subsection 8.1.1(1), insert, in the appropriate alphabetical order, the definition: ““Food Standards Code” means the Australian New Zealand Food Standards Code as defined in the <i>Commonwealth Food Standards Australia New Zealand Act 1991</i> .”
83	8.1.1 (1)	In subsection 8.1.1(1), in the definition of “keeper”, delete the second last word “lodger” and substitute “lodging”.
84	8.1.3	In section 8.1.3, delete the section title “Application for Registration” and substitute the title “Application for

		Registration” in bold print.
85	8.1.3(c)(i)	In paragraph (i) of subsection 8.1.3(c), delete the words “prescribed in Schedule (12)” and substitute the words “as fixed from time to time by the local government under Section 344C of the Act”.
86	8.1.5(b)	In subsection (b) of section 8.1.5, delete the words “prescribed in Schedule (12)” and substitute the words “as fixed from time to time by the local government under Section 344C of the Act”.
87	8.2.2(a)(i)	In the second line of paragraph (i) of subsection 8.2.2(a), delete the words “flies, or vectors of disease” and substitute the words “flies or other vectors of disease”.
88	8.2.2(b)	In subsection (b) of section 8.2.2, delete the words “the requirements of the <i>Health (Food Hygiene) Regulation 1993</i> ” and substitute the words “any of the requirements of Standard 3.2.3 of the Food Standards Code”.
89	8.2.5(1)(b)	Delete paragraph (b) of subsection 8.2.5(1) and substitute: “(b) bathrooms, each fitted with a hand wash basin and either a shower or a bath.”
90	8.2.5(5)(e)	In subsection (5) of section 8.2.5, delete paragraph (e). Then insert the word “and” after the semi-colon at the end of paragraph (c), then delete the word “and” and the semicolon at the end of paragraph (d) and substitute a full stop.
91	8.2.5	In section 8.2.5 insert a new subsection (6) as follows: “(6) Paragraphs (b) and (c) of subsection (5) do not apply to a serviced apartment.”
92	8.2.7(2)	In subsection (2) of section 8.2.7, delete the words “advised by the Western Australian Fire Brigades Board and approved by the Council” and substitute the words “required by the Building Code”.
93	8.2.10(2)	In subsection (2) of section 8.2.10, add an “s” to the end of the word “year” to change it to the word “years”.
94	8.2.11	Delete section 8.2.11 and substitute the following: “Sleeping Accommodation, Short Term Hostels and Recreational Campsites 8.2.11. (1) A keeper of a short term hostel or recreational campsite shall provide clear floor space of not less than - (a) 4 square metres per person in each dormitory utilising beds; (b) 2.5 square metres per person in dormitories utilising bunks. (2) The calculation of floor space in subsection (1) shall exclude the area occupied by any large items of furniture, such as wardrobes, but may include the area occupied by beds. (3) The minimum height of any ceiling in a short term hostel or recreational campsite shall be 2.4 metres in any dormitory utilising beds, and 2.7 metres in any dormitory utilising bunks.

		<p>(4) The minimum floor area requirements in subsection (1) will only apply if there is ventilation, separation distances, fire egress and other safety requirements in accordance with the Building Code.</p> <p>(5) The keeper of any short term hostel or recreational campsite shall provide -</p> <ul style="list-style-type: none">(a) fixed outlet ventilation at a ratio of 0.15 square metres to each 10 square metres of floor area of the dormitories, and shall ensure that dormitories are provided with direct ventilation to the open air from a point within 230 millimetres of the ceiling level through a fixed open window or vents, carried as direct to the open air as is practicable;(b) mechanical ventilation in lieu of fixed ventilation, subject to the local government's approval. <p>(6) The keeper of any short term hostel or recreational campsite shall provide -</p> <ul style="list-style-type: none">(a) beds with a minimum size of<ul style="list-style-type: none">(i) in short term hostels - 800 millimetres x 1.9 metres; and(ii) in recreational campsites - 750 millimetres x 1.85 metres.(b) storage space for personal effects, including backpacks, so that cleaning operations are not hindered and access spaces are not obstructed. <p>(7) The keeper of any short term hostel or recreational campsite shall -</p> <ul style="list-style-type: none">(a) maintain at all times a minimum distance of 750 millimetres between beds, and a minimum distance of 900 millimetres between bunks;(b) ensure that, where bed or bunk heads are placed against the wall on either side of a dormitory, there is a passageway of at least 1.35 metres between each row of beds and a passageway of at least 2 metres between each row of bunks, and shall ensure that the passageway is kept clear of obstruction at all times; and(c) ensure all doors, windows and ventilators are kept free of obstruction. <p>(8) The keeper of a short term hostel or recreational campsite shall ensure that -</p> <ul style="list-style-type: none">(a) materials used in dormitory areas comply with AS 1530.2-1993 and AS/NZS 1530.3:1999 as follows –<ul style="list-style-type: none">Drapes, curtains, blinds and bed covers<ul style="list-style-type: none">- a maximum Flammability Index of 6;Upholstery & bedding<ul style="list-style-type: none">- a maximum Spread of Flame Index of 6;- a maximum Smoke Developed Index of 5;Floor coverings<ul style="list-style-type: none">- a maximum Spread of Flame Index of 7;- a maximum Smoke Developed Index of 5;
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		<p>Fire retardant coatings used to make a material comply with these indices must be:</p> <p>(i) certified by the manufacturer a approved for use with the fabric to achieve the required indices; and</p> <p>(ii) certified by the manufacturer to retain its fire retardative effect after a minimum of 5 commercial dry cleaning or laundering operations carried out in accordance with AS 200 1.5.4-2005, Procedure 7A, using ECE reference detergent; and</p> <p>(iii) certified by the applicator as having been carried out in accordance with the manufacturer's specification,</p> <p>(b) emergency lighting is provided in accordance with the Building Code;</p> <p>(c) a lodger or other person does not smoke in any dormitory, kitchen, dining room or other enclosed public place, within a short term hostel or recreational campsite;</p> <p>(d) all mattresses in a short term hostel or recreational campsite are fitted with a mattress protector."</p>
95	8.2.12	<p>After subsection (2) of section 8.2.12, insert new subsections (3) and (4) as follows:</p> <p>"(3) The sheets and blankets required to be provided by subsection (1)(b)(ii), shall be deemed to have been provided by the keeper, where the keeper offers them for hire to the lodgers. In such circumstances, each lodger must either provide his own clean sheets or hire them from the keeper.</p> <p>(4) In a short term hostel or recreational campsite, the storage facilities required by subsection (1) (c) may be located in a separate secure storage room or locker room."</p>
96	9.1.1	<p>In section 9.1.1, in the definition of "offensive trade", delete paragraph (d). Then insert the word "and" after the semi-colon at the end of paragraph (b), then delete the word "and" and the semi-colon at the end of paragraph (c) and substitute a fill stop.</p>
97	9.1.4(b)	<p>In subsection (b) of section 9.1.4, delete the title of the regulations and substitute the current title "<i>Health (Offensive Trades Fees) Regulations 1976</i>".</p>
98	9.1.8	<p>Delete section 9.1.8.</p>
99	9.2.4	<p>In the title of section 9.2.4, delete the words "Wash Basin" and substitute the words "Hand Wash Basin".</p>
100	9.2.7	<p>In subsection (d) of section 9.2.7, delete the words "and at such more frequent intervals as may be directed" and substitute the words "or at such other intervals as may be approved or directed".</p>
101	9.4.1	<p>In section 9.4.1, delete the definition of "exempt laundry".</p>

102	9.4.1	In section 9.4.1, in the definition of “laundry”, delete the words “an exempt laundry or”.
103	9.4.1	In section 9.4.1, in paragraph (c) of the definition of “exempt laundromat”, delete the word “therefrom” and substitute the words “there from”.
104	9.4.2	In section 9.4.2, delete the word “withdrawn” and substitute “withdraw”.
105	9.4.3(1)(a)	In paragraph (a) of subsection 9.4.3(1), delete the word “except” from the first line.
106	10.1.1(2)	In subsection (2) of section 10.1.1, delete the words “of this section”.
107	Schedule 1	In Schedule 1, in the table entitled “Laundry Facilities”, delete the entry: “Coppers”.
108	Schedule 2	In Schedule 2, in the title; insert the words “REGISTRATION OF” before the words “A LODGING HOUSE”.
109	Schedules 5,7,8 & 11	In each of Schedules 5, 7, 8 and 11, delete the prefix “19” in the line provided for entering the date of signature.
110	Schedule 12	Delete Schedule 12.

CARRIED (9/0)

NO. 63/08

(ABSOLUTE MAJORITY)

10.4.14 PARKING AND PARKING FACILITIES LOCAL LAW 2008

File No: LE/98/16
Responsible Officer: John Fathers
Deputy Chief Executive Officer
Author: John Gilfellon
Consultant
Proposed Meeting Date: 11 March 2008

Purpose

The purpose of this report is to consider any submissions made on the proposed Parking and Parking Facilities Local Law that was advertised for public comment on the 6 October 2007 and to make the Shire of Plantagenet Parking and Parking Facilities Local law 2008.

Background

The purpose of this local law is to:

- constitute a parking region;
- enable the Shire to regulate the parking of vehicles within the parking region; and
- provide for the management and operation of parking facilities occupied by the Shire.

The effect of this local law is that all persons parking a vehicle within the parking region are to comply with the provisions of this Local Law.

The draft Shire of Plantagenet Parking and Parking Facilities Local Law 2008 adopts the Shire of Boddington's Parking and Parking Facilities Local Law by reference and sets out those amendments required to take into account those matters that have been identified and to make the local law Shire of Plantagenet specific.

In October 2007 when public submissions were invited on the proposed local law a copy was sent to the Minister for Local Government for comment. The Department of Local Government and Regional Development sought a number of extensions to the 42 day submission period and its comments were received on the 5 February 2008.

The Department's comments related to the principles of drafting and wording local laws and the proposed local law adopted by the Council has been amended to include those comments. None of the Department's comments changed the intent of the local law and the local law being presented to the Council is not significantly different to the proposed local law.

Statutory Environment

Section 3.12 of the Local Government Act 1995 sets out the procedures to be followed in making a local law.

Consultation

The Shire of Plantagenet's intention to undertake a review of its local laws was advertised on 12 May 2007 and public submissions were invited within a 42 day submission period. The review was advertised Statewide and locally. No submissions were received.

On 28 August 2007 the Council adopted the proposed Parking and Parking Facilities Local Law and resolved that it be advertised for public comment. On 6 October 2007 the proposed local law was advertised for public comment and public submissions were invited within a 42 day consultation period. The invitation was advertised Statewide and locally. No public submissions were received.

Financial Implications

The Council is required to pay for all advertising and gazetting costs associated with the local law. This is estimated to be one thousand dollars (\$1,000.00).

Policy Implications

There are no policy implications for this report.

Legal Implications

Section 3.18 of the Local Government Act 1995 requires that a local government is to administer its local laws.

Strategic Implications

There are no strategic implications for this report.

Officer Comment

Except for minor drafting amendments suggested by the Department of Local Government and Regional Development the Local Law presented is not significantly different from the proposed Local Law adopted by the Council on the 28 August 2007 and advertised for public comment.

This report recommends that under the powers conferred by the Local Government Act 1995 and under all other powers enabling it, the Council of the Shire of Plantagenet resolve to make the Shire of Plantagenet Parking and Parking Facilities Local Law 2008 in the following form:-.

The Shire of Boddington Local Law Relating to Parking and Parking Facilities 2007 as published in the Government Gazette on 14 March 2007 is adopted as a local law of the Shire of Plantagenet with the modifications as are here set out.

1. Preliminary

(a) On construing the following modifications, where a modification requires the renumbering of a Part, clause, subclause or paragraph, subsequent modifications have been drafted on the basis that the renumbering has been effected.

(b) Where the 'Shire of Boddington' is mentioned in the local law substitute 'Shire of Plantagenet'.

(c) Where the “Local Laws Relating to Parking and Parking Facilities 200” or “Local Laws Relating to Parking and Parking Facilities” is mentioned in the local law substitute “Parking and Parking Facilities Local Law 2008”.

2. Repeal

Add the following new clause –

‘1.2 Repeal

The Shire of Plantagenet Parking and Parking Facilities Local Laws 1998 as published in the Government Gazette of 16 April 1999 are hereby repealed’.

3. Clause 2.2 - Interpretation

In Clause 2.2 – Interpretation, delete the words –

“‘parking region’ means the area within the Boddington townsite boundaries and any subsequent extension of the Boddington townsite boundaries;”

and substitute the words –

“‘parking region’ means the whole of the Shire of Plantagenet excluding any roads which come under the control of the Commissioner of Main Roads;”.

4. Clause 2.4 – Application and Pre-Existing Signs

In subclause (4) of clause 2.4 delete the words “Schedule 4” and substitute “Schedule 3”.

5. Clause 4.1 – Restrictions on parking in particular areas

In Clause 4.1 – Restrictions on parking in particular areas -

(a) delete the whole of paragraph (c) of subclause (3).

(b) delete the “;” at the end of paragraph (b) of subclause (3) and substitute a “.”.

(c) delete the whole of subclause (4).

(c) Renumber “subclause (5)” to “subclause (4)”.

6. Clause 4.3 - General prohibitions on parking –

In Clause 4.3 – General prohibitions on parking –

(a) delete the whole of subclause (3) and substitute –

“(3) A person shall not park a vehicle so that any portion of the vehicle is within 10 metres of the departure side or 20 metres of the approach side of a pedestrian crossing.”

(b) add the new subclause –

“(4) A person shall not park a vehicle so that any portion of the vehicle is within 20 metres of the departure or approach side of the nearest rail of a railway level crossing.”

7. Clause 6.9 - Stopping on a carriageway with motor cycle parking sign

(a) Delete the whole of clause 6.9.

(b) Renumber clause 6.10 to clause 6.9.

8. Schedule 2

(a) In Forms 1, 2, 3, and 4 of Schedule 2, delete
"39 Bannister Road
(PO Box 4)
Boddington 6390",
where it appears and substitute
"Lowood Road
(PO Box 48)
Mt Barker WA 6324"

(b) In Forms 2 and 3 of Schedule 2, delete "39 Bannister Road, Boddington" where it appears and substitute "Lowood Road, Mt Barker".

9. Schedule 3

After Schedule 2 insert the following Schedule 3.

Schedule 3
LOCAL GOVERNMENT ACT 1995
Shire of Plantagenet
Parking and Parking Facilities Local Law 2008
DEEMED PARKING STATIONS

Voting Requirements

Absolute Majority

OFFICER RECOMMENDATION / COUNCIL DECISION

Moved Cr B Hollingworth, seconded Cr K Clements

That the following local law relating to parking and parking facilities be adopted:

'LOCAL GOVERNMENT ACT 1995

Shire of Plantagenet

PARKING AND PARKING FACILITIES LOCAL LAW 2008

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LOCAL GOVERNMENT ACT 1995**Shire of Plantagenet****PARKING AND PARKING FACILITIES LOCAL LAW 2008**

Under the powers conferred by the *Local Government Act 1995*, and under all other powers enabling it, the Council of the Shire of Plantagenet resolved on 25 March 2008 to make the *Shire of Plantagenet Parking and Parking Facilities Local Law 2008*.

PART 1—PRELIMINARY**1.1 Citation**

This local law may be cited as the *Shire of Plantagenet Parking and Parking Facilities Local Law 2008*.

1.2 Repeal

The *Shire of Plantagenet Parking and Parking Facilities Local Laws 1998* as published in the *Government Gazette* of 16 April 1999 are hereby repealed.

PART 2—DEFINITIONS AND OPERATION**2.1 Commencement**

This local law will come into operation on the fourteenth day after the day on which it is published in the *Government Gazette*.

2.2 Interpretation

In this local law, unless the context otherwise requires—

‘ACROD sticker’ has the meaning given to it by the Code;

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

‘Authorised Person’ means a person authorised by the local government under section 9.10 of the Act, to perform any of the functions of an Authorised Person under this local law;

‘authorised vehicle’ means a vehicle authorised by the local government, Chief Executive Officer, Authorised Person or by any written law to park on a thoroughfare or parking facility;

‘bicycle’ has the meaning given to it by the Code;

‘bicycle path’ has the meaning given to it by the Code;

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

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

‘centre’ in relation to a carriageway, means a line or a series of lines, marks or other indications—

(a) for a two-way carriageway—placed so as to delineate vehicular

- traffic travelling in different directions; or
- (b) in the absence of any such lines, marks or other indications—
the middle of the main, travelled portion of the carriageway;
- ‘CEO’** means the Chief Executive Officer of the local government;
- ‘Code’** means the *Road Traffic Code 2000*;
- ‘commercial vehicle’** means a motor vehicle constructed for the conveyance of goods or merchandise, or for the conveyance of materials used in any trade, business, industry or work whatsoever, other than a motor vehicle for the conveyance of passengers, and includes any motor vehicle that is designed primarily for the carriage of persons, but which has been fitted or adapted for the conveyance of the goods, merchandise or materials referred to, and is in fact used for that purpose;
- ‘district’** means the district of the local government;
- ‘driver’** means any person driving or in control of a vehicle;
- ‘edge line’** for a carriageway means a line marked along the carriageway at or near the far left or the far right of the carriageway;
- ‘emergency vehicle’** has the meaning given to it by the Code;
- ‘footpath’** has the meaning given to it by the Code;
- ‘GVM’** (which stands for ‘gross vehicle mass’) has the meaning given to it by the Code;
- ‘local government’** means the Shire of Plantagenet;
- ‘median strip’** has the meaning given to it by the Code;
- ‘motor vehicle’** means a self-propelled vehicle that is not operated on rails; and the expression includes a trailer, semi-trailer or caravan while attached to a motor vehicle but does not include a power assisted pedal cycle;
- ‘no parking area’** has the meaning given to it by the Code;
- ‘no parking signage’** means—
- (a) a sign with the words ‘no parking’ in red letters on a white background;
 - (b) the letter ‘P’ with a red annulus and a red diagonal line across it on a white background; or
 - (c) the stencilling of the words ‘no parking’ in white letters on the thoroughfare pavement; ‘no stopping area’ has the meaning given to it by the Code;
- ‘no stopping signage’** means—
- (a) a sign with the words ‘no stopping’ or ‘no standing’ in red letters on a white background;
 - (b) the ‘S’ within a red annulus and a red diagonal line across it on a white background; or
 - (c) the stencilling of the words ‘no stopping’ or ‘no standing’ in white letters on the thoroughfare pavement;
- ‘occupier’** has the meaning given to it by the Act;
- ‘owner’**
- (a) where used in relation to a vehicle licensed under the Road Traffic Act, means the person in whose name the vehicle has been registered under that Road Traffic Act;
 - (b) where used in relation to any other vehicle, means the person who owns, or is entitled to possession of that vehicle; and

- (c) here used in relation to land, has the meaning given to it by the Act;
- ‘park’ in relation to a vehicle, means to permit a vehicle, whether attended or not by any person, to remain stationary except for the purpose of—
- (a) avoiding conflict with other traffic, or
 - (b) complying with the provisions of any law; or
 - (c) taking up or setting down persons or goods (maximum of 2 minutes);
- ‘parking area’ has the meaning given to it by the Code;
- ‘parking facilities’ includes land, buildings, shelters, parking stalls and other facilities open to the public generally for the parking of vehicles without charge and signs, notices and facilities used in connection with the parking of vehicles;
- ‘parking region’ means the whole of the Shire of Plantagenet excluding any roads which come under the control of the Commissioner of Main Roads;
- ‘parking stall’ means a section or part of a thoroughfare which is marked or defined by painted lines, metallic studs, coloured bricks or pavers or similar devices for the purpose of indicating where a vehicle may be parked;
- ‘pedestrian crossing’ has the meaning given to it by the Code;
- ‘public place’ means any place to which the public has access whether or not that place is on private property;
- ‘reserve’ means any land—
- (a) which belongs to the local government;
 - (b) of which the local government is the management body under the *Land Administration Act 1997*, or
 - (c) which is an ‘otherwise unvested facility’ within section 3.53 of the Act;
- ‘Road Traffic Act’ means the *Road Traffic Act 1974*;
- ‘Schedule’ means a Schedule to this local law;
- ‘sign’ includes a traffic sign, inscription, road marking, mark, structure or device approved by the local government on which may be shown words, numbers, expressions or symbols, and which is placed on or near a thoroughfare or within a reserve for the purpose of prohibiting, regulating, guiding, directing or restricting the parking of vehicles;
- ‘special purpose vehicle’ has the meaning given to it by the Code;
- ‘stop’ in relation to a vehicle means to stop a vehicle and permit it to remain stationary, except for the purposes of avoiding conflict with other traffic or of complying with the provisions of any law;
- ‘symbol’ includes any symbol specified by Australian Standard 1742.11-1999 and any symbol specified from time to time by Standards Australia for use in the regulation of parking and any reference to the wording of any sign in this local law shall be also deemed to include a reference to the corresponding symbol;
- ‘thoroughfare’ has the meaning given to it by the Act;
- ‘traffic island’ has the meaning given to it by the Code;
- ‘trailer’ means any vehicle without motion power of its own, designed for attachment to a motor vehicle for the purpose of being towed, but does

- not include the rear portion of an articulated vehicle, or a side car;
- 'vehicle' has the meaning given to it by the Code;
- 'verge' means the portion of a thoroughfare which lies between the boundary of a carriageway and the adjacent property line but does not include a footpath.

2.3 Application of Particular Definitions

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

2.4 Application and Pre-Existing Signs

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

2.5 Part of thoroughfare to which sign applies

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

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

2.6 Powers of Local Government

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

PART 3—PARKING STALLS

3.1 Determination of parking stalls

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

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

3.2 Vehicles to be within parking stall on thoroughfare

(1) Subject to subclause (2), (3) and (4), a person shall not park a vehicle in a parking stall in a thoroughfare otherwise than—

- (a) parallel to and as close to the kerb as is practical;
- (b) wholly within the stall; and
- (c) headed in the direction of the movement of traffic on the side of the thoroughfare in which the stall is situated.

(2) Subject to subclause (3) where a parking stall in a thoroughfare is set out otherwise than parallel to the kerb, then a person must park a vehicle in that stall wholly within it.

(3) If a vehicle is too long or too wide to fit completely within a single parking stall then the person parking the vehicle shall do so within the minimum number of parking stalls needed to park that vehicle.

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

3.3 Parking prohibitions and restrictions

A driver may park a vehicle in a permissive parking stall (except in a parking area for people with disabilities) for twice the length of time allowed, provided that—

- (a) the driver's vehicle displays an ACROD sticker; and
- (b) a person with disabilities to which that ACROD sticker relates is either the driver of, or a passenger in, the vehicle.

PART 4—PARKING GENERALLY

4.1 Restrictions on parking in particular areas

(1) Subject to subclause (2), a person shall not park a vehicle in a thoroughfare or part of a thoroughfare—

- (a) if by a sign it is set apart for the parking of vehicles of a different class;

- (b) if by a sign it is set apart for the parking of vehicles by persons of a different class; or
 - (c) during any period when the parking of vehicles is prohibited by a sign.
- (2) (a) This subclause applies to a driver if—
- (i) the driver's vehicle displays an ACROD sticker; and
 - (ii) a disabled person to whom the ACROD sticker relates is either the driver of the vehicle or a passenger in the vehicle.
- (b) The driver may park a vehicle in a thoroughfare or a part of a thoroughfare except in a thoroughfare or a part of a thoroughfare to which a disabled parking sign relates for twice the period indicated on the sign.
- (3) A person shall not park a vehicle—
- (a) in a no parking area;
 - (b) in a parking area, except in accordance with both the signs associated with the parking area and with this local law.
- (4) A person shall not, without the prior permission of the local government, the CEO, or an Authorised Person, park a vehicle in an area designated by a sign stating Authorised Vehicles only.

4.2 Parking vehicle on a carriageway

- (1) A person parking a vehicle on a carriageway other than in a parking stall shall park it—
- (a) in the case of a two-way carriageway, so that it is as near as practicable to, and parallel with, the left boundary of the carriageway and headed in the direction of the movement of traffic on the side of the thoroughfare on which the vehicle is parked;
 - (b) so that at least 3 metres of the width of the carriageway lies between the vehicle and the furthest boundary of the carriageway, or any continuous line or median strip, or between the vehicle and a vehicle parked on the furthest side of the carriageway;
 - (c) so that the front and the rear of the vehicle respectively is not less than 1 metre from any other vehicle, except a motorcycle without a trailer, or a bicycle parked in accordance with this local law; and
 - (d) so that it does not obstruct any vehicle on the carriageway, unless otherwise indicated on a parking regulation sign or markings on the roadway.
- (2) In this clause, 'continuous dividing line' means—
- (a) a single continuous dividing line only;
 - (b) a single continuous dividing line to the left or right of a broken dividing line; or
 - (c) 2 parallel continuous dividing lines.

4.3 General prohibitions on parking

- (1) (a) This clause does not apply to a vehicle parked in a parking stall, nor to a bicycle in a bicycle rack.
- (b) Subclauses (2) (c), (e) and (g) do not apply to a vehicle which parks in a bus embayment.

(2) Subject to any law relating to intersections with traffic control signals a person shall not park a vehicle so that any portion of the vehicle is—

- (a) between any other stationary vehicles and the centre of the carriageway;**
- (b) on or adjacent to a median strip;**
- (c) obstructing a right of way, private drive or carriageway or so close as to deny a vehicle reasonable access to or egress from the right of way, private drive or carriageway;**
- (d) alongside or opposite any excavation, works, hoarding, scaffolding or obstruction on the carriageway, if the vehicle would obstruct traffic;**
- (e) on or within 10 metres of any portion of a carriageway bounded by a traffic island;**
- (f) on any footpath or pedestrian crossing;**
- (g) between the boundaries of a carriageway and any double longitudinal line consisting of two continuous lines or between a double longitudinal line consisting of a continuous line and a broken or dotted line and the boundary of a carriageway nearer to the continuous line, unless there is a distance of at least 3 metres clear between the vehicle and the double longitudinal line;**
- (h) on an intersection, except adjacent to a carriageway boundary that is not broken by an intersecting carriageway;**
- (i) within 1 metre of a fire hydrant or of any sign or mark indicating the existence of a fire hydrant;**
- (j) within 3 metres of a public letter pillar box, unless the vehicle is being used for the purposes of collecting postal articles from the pillar box; or**
- (k) within 10 metres of the nearer property line of any thoroughfare intersecting the thoroughfare on the side on which the vehicle is parked; unless a sign or markings on the carriageway indicate otherwise.**

(3) A person shall not park a vehicle so that any portion of the vehicle is within 10 metres of the departure side or 20 metres of the approach side of a pedestrian crossing.

(4) A person shall not park a vehicle so that any portion of the vehicle is within 20 metres of the departure or approach side of the nearest rail of a railway level crossing.

4.4 Authorised person may order vehicle on thoroughfare to be moved

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

4.5 Authorised person may mark tyres

(1) An Authorised Person may mark the tyres of a vehicle parked in a parking stall with chalk or any other non-indelible substance for a purpose connected with or arising out of his or her duties or powers.

(2) A person shall not remove a mark made by an Authorised Person so that the purpose of the affixing of such a mark is defeated or likely to be defeated.

4.6 No movement of vehicles to avoid time limitation

(1) Where the parking of vehicles in a parking facility is permitted for a limited time, a person shall not move a vehicle within the parking stall so that the total time of parking exceeds the maximum time allowed for parking in the parking stall.

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

4.7 No parking of vehicles exposed for sale and in other circumstances

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

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

4.8 Parking on private land

(1) In this clause a reference to 'land' does not include land—

- (a) which belongs to the local government
- (b) of which the local government is the management body under the *Land Administration Act 1997*;
- (c) which is an 'otherwise unvested facility' within section 3.53 of the Act; or
- (d) which is the subject of an agreement referred to in clause 1.5(2);

(2) A person shall not park a vehicle on land without the consent of the owner or occupier of the land on which the vehicle is parked.

(3) Where the owner or occupier of the land, by a sign referable to that land or otherwise, consents to the parking of vehicles of a specified class or classes on the land for a limited period, a person shall not park a vehicle on the land otherwise than in accordance with the consent.

4.9 Parking on reserves

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

4.10 Suspension of parking limitations for urgent, essential or official duties

(1) Where by a sign the parking of vehicles is permitted for a limited time on a portion of a thoroughfare or parking facility, the local government, the CEO or an Authorised Person may, subject to the Code, permit a person to park a vehicle in that portion of the thoroughfare or parking facility for longer than the permitted time in order that the person may carry out urgent, essential or official duties.

(2) Where permission is granted under subclause (1), the local government, the CEO, or an Authorised Person may prohibit the use by any other vehicle of that portion of the thoroughfare or parking facility to which the permission relates, for the duration of that permission.

PART 5—PARKING AND STOPPING GENERALLY

5.1 No stopping

A driver shall not stop on a length of carriageway, or in an area, to which a 'no stopping' sign applies.

5.2 No parking

A driver shall not stop on a length of carriageway or in an area to which a 'no parking' sign applies, unless the driver is—

- (a) dropping off, or picking up, passengers or goods;
 - (b) does not leave the vehicle unattended; and
 - (c) completes the dropping off, or picking up, of the passengers or goods within 2 minutes of stopping and drives on;
- 'unattended', in relation to a vehicle, means that the driver has left the vehicle so that the driver is more than 3 metres from the closest point of the vehicle.

PART 6—OTHER PLACES WHERE STOPPING IS RESTRICTED

6.1 Double Parking

A driver shall not stop a vehicle so that any portion of the vehicle is between any other stopped vehicle and the centre of the carriageway. This clause does not apply to a driver stopped in traffic.

6.2 Stopping near an obstruction

A driver shall not stop on a carriageway near an obstruction on the carriageway in a position that further obstructs traffic on the carriageway.

6.3 Stopping on a bridge, floodway or similar structure

A driver shall not stop a vehicle on a bridge, floodway or similar structure unless—

- (a) the carriageway is at least as wide on the structure as it is on each of the approaches and a traffic sign does not prohibit stopping or parking; or
- (b) the driver stops at a place on a length of carriageway, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under these local laws.

6.4 Stopping on crests, curves, etc.

(1) Subject to subclause (2), a driver shall not stop a vehicle on, or partly on, a carriageway, in any position where it is not visible to the driver of an overtaking vehicle, from a distance of 50 metres within a built-up area, and from a distance of 150 metres outside a built-up area.

(2) A driver may stop on a crest or curve on a carriageway that is not in a built-up area if the driver stops at a place on the carriageway, or in an area,

to which a parking control sign applies and the driver is permitted to stop at that place under these local laws.

6.5 Stopping on a path, median strip or traffic island

The driver of a vehicle (other than a bicycle or an animal) shall not stop so that any portion of the vehicle is on a path, traffic island or median strip, unless the driver stops in an area, to which a parking control sign applies and the driver is permitted to stop at that place under these local laws.

6.6 Stopping on verge

(1) A person shall not—

- (a) stop a vehicle (other than a bicycle);
- (b) stop a commercial vehicle or bus, or a trailer or caravan unattached to a motor vehicle; or
- (c) stop a vehicle during any period when the stopping of vehicles on that verge is prohibited by a sign adjacent and referable to that verge; so that any portion of it is on a verge.

(2) Subclause (1)(a) does not apply to the person if he or she is the owner or occupier of the premises adjacent to that verge, or is a person authorised by the occupier of those premises to stop the vehicle so that any portion of it is on the verge.

(3) Subclause (1)(b) does not apply to a commercial vehicle when it is being loaded or unloaded with reasonable expedition with goods, merchandise or materials collected from or delivered to the premises adjacent to the portion of the verge on which the commercial vehicle is parked, provided no obstruction is caused to the passage of any vehicle or person using a carriageway or a path.

6.7 Obstructing access to and from a path, driveway, etc.

(1) A driver shall not stop a vehicle so that any portion of the vehicle is in front of a path, in a position that obstructs access by vehicles or pedestrians to or from that path, unless—

- (a) the driver is dropping off, or picking up, passengers; or
- (b) the driver stops in a parking stall and the driver is permitted to stop in the parking stall under these local laws.

(2) A driver shall not stop a vehicle on or across a driveway or other way of access for vehicles travelling to or from adjacent land, unless—

- (a) the driver is dropping off, or picking up, passengers; or
- (b) the driver stops in a parking stall and the driver is permitted to stop in the parking stall under these local laws.

6.8 Stopping on a carriageway—heavy and long vehicles

(1) A person shall not park a vehicle or any combination of vehicles that, together with any project on, or load carried by, the vehicle or combination of vehicles, is 7.5 metres or more in length or exceeds a GVM of 4.5 tonnes—

- (a) on a carriageway in a built-up area, for any period exceeding one hour, unless engaged in the picking up of setting down of goods; or
- (b) on a carriageway outside a built-up area, except on the shoulder of the carriageway or in a truck bay or other area set aside for the parking of goods vehicles.

(2) Nothing in this clause mitigates the limitations or condition imposed by any other clause or by any local law or traffic sign relating to the parking or stopping of vehicles.

6.9 Stopping in a parking stall for people with disabilities

(1) A driver shall not stop in a parking area for people with disabilities unless—

- (a) the driver's vehicle displays an ACROD sticker; and
- (b) either the driver or the passenger in that vehicle is a person with disabilities.

(2) In this clause a 'parking area for people with disabilities' is a length or area—

- (a) to which a 'permissive parking' sign displaying a people with disabilities sign symbol applies;
- (b) to which a 'people with disabilities parking' sign applies;
- (c) indicated by a road marking (a 'people with disabilities road marking') that consists of, or includes, a people with disabilities symbol; or
- (d) set aside within the parking region as a 'parking stall for use of a disabled person' under the *Local Government (Parking for Disabled Persons) Regulations 1988*.

PART 7 - MISCELLANEOUS

7.1 Removal of notices on vehicle

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

7.2 Unauthorised signs and defacing of signs

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

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

7.3 Signs must be complied with

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

7.4 General provisions about signs

(1) A sign, marked, erected, set up, established or displayed on or near a thoroughfare is, in the absence of evidence to the contrary presumed to be a sign marked, erected, set up, established or displayed under the authority of this local law.

(2) The first three letters of any day of the week when used on a sign indicate that day of the week.

7.5 Special purpose and emergency vehicles

Notwithstanding anything to the contrary in this local law, the driver of—

(1) a special purpose vehicle may, only in the course of his or her duties and when it is expedient and safe to do so, stop, or park the vehicle in any place, at any time; and

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

7.6 Vehicles not to obstruct a public place

(1) A person shall not leave a vehicle, or any part of a vehicle, in a public place so that it obstructs the use of any part of that public place without the permission of the local government or unless authorised under any written law.

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

PART 8—PENALTIES

8.1 Offences and Penalties

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

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

(3) Any person who commits an offence under this local law shall be liable, upon conviction, to a penalty not exceeding \$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.

(4) The amount appearing in the final column of Schedule 1 directly opposite a clause specified in that Schedule is the modified penalty for an offence against that clause.

8.2 Form of notices

For the purposes of this local law—

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

Schedule 1
Parking and Parking Facilities Local Law 2008
PRESCRIBED OFFENCES

Item No.	Clause No.	Nature of Offence	Modified Penalty \$
1	3.2(1)(b)	Failure to park wholly within parking stall	35
2	4.1(1)(c)	Parking during prohibited period	40
3	4.1(3)(a)	Parking in a no parking area	45
4	4.1(3)(b)	Parking contrary to signs or limitations	35
5	4.2(1)(a)	Parking against the flow of traffic	40
6	4.3(2)(c)	Denying access to private drive or right of way	40
7	4.3(2)(f)	Parking on footpath	45
8	4.3(2)(k)	Parking within 10 metres of intersection	40
9	4.4	Parking contrary to directions of an Authorised Person	45
10	4.5(2)	Removing, defacing or altering the mark of, an Authorised Person	50
11	4.6	Moving vehicle to avoid time limitation	35
12	4.7(a)	Parking in thoroughfare for purpose of sale	35
13	4.7(b)	Parking an unlicensed vehicle on a thoroughfare	35
14	4.7(c)	Parking a trailer/caravan on a thoroughfare	35
15	4.7(d)	Parking in thoroughfare for purpose of repairs	35
16	4.9	Driving or parking on a reserve	35
17	5.1	Stopping contrary to a 'no stopping' sign	35
18	5.2	Parking contrary to a 'no parking' sign	35
19		All other offences not specified	30

Schedule 2
LOCAL GOVERNMENT ACT 1995
 Form 1
 Shire of
 Plantagenet
Parking and Parking Facilities Local Law 2008

Administration Centre
 Lowood Road
 (PO Box 48)
 MT BARKER WA 6324

NOTICE REQUIRING OWNER OF VEHICLE TO IDENTIFY DRIVER

TO:.....
 Serial No.
 Date the owner of vehicle make

.....
 Type:.....Plate No:

You are hereby notified that it is alleged that on theday of
20.....at about

.....
 the driver or person in charge of the above vehicle
 did.....

.....
 In contravention of the provisions of local law.....of the *Shire of
 Plantagenet Parking and Parking Facilities Local Law 2008*.

You are hereby required to identify the person who was the driver or person
 in charge of the above vehicle at the time when the above offence is alleged
 to have been committed.

Unless within twenty-eight days after the date of the service of this notice
 you:—

- (a) inform the Chief Executive officer of the Shire of Plantagenet, or

.....

(designation(s) of authorised officer(s))

as to the identity and address of the person who was the driver or person in
 charge of the above vehicle at the time of the above offence; or

- (b) satisfy the Chief Executive Officer of the Shire of Plantagenet that the
 above vehicle has been stolen or unlawfully taken or was being
 unlawfully used at the time of the above offence, you will, in the
 absence of proof to the contrary, be deemed to have committed the
 above offence and Court proceedings may be instituted against you.

Signature of Authorised Officer

.....

Designation:

.....

LOCAL GOVERNMENT ACT 1995

Form 2

[S9.16]

Shire of Plantagenet

Parking and Parking Facilities Local Law 2008

Administration Centre
Lowood Road
(PO Box 48)
MT BARKER WA 6324

INFRINGEMENT NOTICE

TO:.....

Serial No.

Date

You are hereby notified that it is alleged that on the.....day
of.....

20.....at about

.....

you did

.....

.....

.....

in contravention of the provisions of local law

.....

of the *Shire of Plantagenet Parking and Parking Facilities Local Law 2008*.

The modified penalty prescribed for this offence is \$.

.....

If you do not wish to have a complaint of the above offence heard and determined by a Court you may pay the modified penalty within twenty-eight days of the date of the service of this notice.

Unless payment is made within twenty-eight days of the date of the service of this notice, Court proceedings may be instituted against you.

Payment may be made either by posting this form, together with the amount of

\$..... mentioned above to the Chief Executive Officer of the Shire of Plantagenet, or by delivering this form and paying that amount at the Administration Centre, Lowood Road, Mount Barker, between the hours of 9.00 am and 4.15 pm Mondays to Fridays (except Public Holidays).

Signature of Authorised Officer:

.....

Designation

.....

LOCAL GOVERNMENT ACT 1995

Form 3

[S9.13]

Shire of Plantagenet

Parking and Parking Facilities Local Law 2008

Administration Centre
Lowood Road
(PO Box 48)
MT BARKER WA 6324

INFRINGEMENT NOTICE

TO:.....

...

Serial No. not to be completed where notice
is
attached.....

Date.....

Type:.....Plate No:
.....

You are hereby notified that it is alleged that on
the.....day of20at
about.....you did.....

in contravention of the provision of local
law.....
of the Shire of Plantagenet Parking and Parking Facilities Local Law 2008.

The modified penalty prescribed for this offence is \$.
.....

If you do not wish to have a complaint of the above heard and determined by
a Court, you may pay the modified penalty within twenty-eight days after the
date of the service of this notice.

Unless within twenty-eight days after the date of the service of this notice—

- (a) the modified penalty is paid; or
(b) you
(i) Inform the Chief Executive Officer of the Shire of Plantagenet, or

-
.....
designation(s) of authorised officer(s)
as to the identity and address of the person who was the driver or
person in charge of the above vehicle at the time of the above
offence, or
(ii) satisfy the Chief Executive Officer of the Shire of Plantagenet that
the above vehicle had been stolen or was being unlawfully used at
the time of the above offence, you will, in the absence of proof to
the contrary, be deemed to have committed the above offence and
Court proceedings may be instituted against you.

Payment may be made either by posting this form, together with the amount

of \$..... mentioned above to the Chief Executive Officer, Shire of Plantagenet, or by delivering this form and paying that amount at the Administration Centre, Lowood Road, Mt Barker, between the hours of 9.00 am and 4.15 pm on Mondays to Fridays (excepting Public Holidays).

Signature of Authorised Officer:

.....

Designation:

.....

Name:

.....

Address:.....Postcode.....

....If your name and address do not appear in this Notice, please complete above to enable a receipt to be forwarded.

LOCAL GOVERNMENT ACT 1995

Form 4

Shire of Plantagenet

Parking and Parking Facilities Local Law 2008

Administration Centre

Lowood Road

(PO Box 48)

MT BARKER WA 6324

WITHDRAWAL OF INFRINGEMENT NOTICE

TO:

Date.....Infringement Notice

No:..... Date.....for the alleged

offence of

.....

.....

Modified Penalty: \$

.....

Chief Executive Officer Date:

.....

Schedule 3

LOCAL GOVERNMENT ACT 1995

Shire of Plantagenet

Parking and Parking Facilities Local Law 2008

DEEMED PARKING STATIONS

Dated this day of 2008.

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

K M FORBES, Shire President.
R J STEWART, Chief Executive Officer.'

CARRIED (9/0)

NO. 64/08

(ABSOLUTE MAJORITY)

10.4.15 STANDING ORDERS LOCAL LAW 2008

File No: LE/98/11
Attachments: [Standing Orders Local Law](#)
Responsible Officer: John Fathers
Deputy Chief Executive Officer
Author: John Gilfellon
Consultant
Proposed Meeting Date: 25 March 2008

Purpose

The purpose of this report is consider any submissions made on the proposed Standing Orders Local Law that was advertised for public comment on 6 October 2007 and to make the Shire of Plantagenet Standing Orders Local law 2008.

Background

The purpose of this amendment local law is to correct grammatical errors, remove the setting of the Order of Business of meetings from the Local Law and allow Members, at the discretion of the Person Presiding, to raise matters of interest or relevance at a Council or Committee meeting.

The effect of this amendment local law is to provide greater flexibility to the Council in setting the Order of Business for meetings.

The draft Shire of Plantagenet Standing Orders Local Law 2008 amends the Shire of Plantagenet Standing Orders Local Law as published in the Government Gazette on 11 September 2000. The Amendment Local Law sets out those wording and terminology changes needed to modernise the local law and make it easier to enforce.

In October 2007 when public submissions were invited on the proposed local law a copy was sent to the Minister for Local Government for comment. The Department of Local Government and regional Development sought a number of extensions to the 42 day submission period and its comments were received on 5 February 2008.

The Department's comments related to the principles of drafting and wording local laws and the proposed local law adopted by the Council has been amended to include those comments. None of the Department's comments changed the intent of the local law and the local law being presented to the Council is not significantly different to the proposed local law.

Statutory Environment

Section 3.12 of the Local Government Act 1995 sets out the procedures to be followed in making a local law.

Consultation

The Shire of Plantagenet's intention to undertake a review of its local laws was advertised on 12 May 2007 and public submissions were invited within a 42 day

submission period. The review was advertised Statewide and locally. No submissions were received.

On 11 September 2007 the Council adopted the proposed Standing Orders Local Law and resolved that it be advertised for public comment. On 6 October 2007 the proposed local law was advertised for public comment and public submissions were invited within a 42 day consultation period. The invitation was advertised Statewide and locally. No public submissions were received.

Financial Implications

The Council is required to pay for all advertising and gazetting costs associated with the local law. This is estimated to be one thousand dollars (\$1,000.00).

Policy Implications

There are no policy implications for this report.

Legal Implications

Section 3.18 of the Local Government Act 1995 requires that a local government is to administer its local laws.

Strategic Implications

There are no strategic implications for this report.

Officer Comment

As part of its review the Department of Local Government and Regional Development advised –

“Please note that the Department is shortly intending to commence a review of the Standing Orders Model Local law to ensure its compliance with the Official Conduct legislation, including the Local Government (Rules of Conduct) Regulations 2007.

For your amendment local law, as a consequence of the Official Conduct legislation, you should delete clause 15.2 and clause 15.4 of your principal local law as these appear to be in conflict with the provisions of the legislation. The Official Conduct legislation provides for new disciplinary measures that do not include prosecution.”

Deletion of the clauses as suggested is included in the Amendment Local Law. Except for other minor drafting amendments suggested by the Department the Local Law presented is not significantly different from the proposed Local Law adopted by the Council on the 11 September 2007 and advertised for public comment.

A copy of the principal local law is attached.

Voting Requirements

Absolute Majority

OFFICER RECOMMENDATION / COUNCIL DECISION

Moved Cr M Skinner, seconded Cr J Mark

That under the power conferred by the Local Government Act 1995 and under all other powers enabling it, the Shire of Plantagenet Standing Orders Amendment Local Law 2008 be made in the following form:-

The Shire of Plantagenet Local Law Relating to Standing Orders as published in the Government Gazette on 11 September 2000 is referred to as the principal local law. The principal local law is amended as follows:

1. **Title**
Delete the title "Local Law Relating to Standing Orders" and substitute "Standing Orders Local Law 2008".
2. **Heading**
Delete "PART 1 – PRELEMLINARY" and substitute "PART 1 – PRELIMINARY".
3. **1.5 Interpretation**
In Clause 1.5 delete in its entirety the interpretation "Special majority required".
4. **3.2(1) Order of Business**
Delete Clause 3.2(1) and substitute "3.2(1) The order of business at any ordinary meeting of the Council shall be as determined by Council from time to time".
5. **3.6 Announcements by the Person Presiding Without Discussion**
Delete clause 3.6 and substitute the clause –
"3.6 Announcements by the Person Presiding and Members Without Discussion
(1) At any meeting of the Council or a committee the person presiding and at the discretion of the person presiding, any member, may announce or raise any matter of interest or relevance to the business of the Council or committee.
(2) At any meeting of the Council or a committee the person presiding may propose a change to the order of business.
(3) Any member may move that a change in order of business proposed by the person presiding not be accepted and if carried by a majority of members present, the proposed change in order is not to take place".
6. **8.1 Members to rise**
Delete the word "presented" in the last line of Clause 8.1 and substitute the word "prevented".
7. **15.2 Code of Conduct**
Delete Clause 15.2 in its entirety

8. **15.4 Penalty for Breach of Standing Orders**
Delete Clause 15 4 in its entirety

9. **Renumbering**
Renumber Clause 15.3 as Clause 15.2, Clause 15.5 as Clause 15.3 and
Clause 15.6 as Clause 15.4.

CARRIED (8/1)

NO. 65/08

(ABSOLUTE MAJORITY)

10.5 EXECUTIVE SERVICES REPORTS

Nil

11 MOTIONS OF WHICH PREVIOUS NOTICE HAS BEEN GIVEN

Nil

**12 NEW BUSINESS OF AN URGENT NATURE INTRODUCED BY
DECISION OF THE MEETING**

Nil

13 CONFIDENTIAL

Nil

14 CLOSURE OF MEETING

3.55 pm The Presiding Member declared the meeting closed.

CONFIRMED: CHAIRPERSON _____ **DATE:** ____ / ____ / ____