

SHIRE OF CUE

ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND TRADING LOCAL LAW

Reconstructed historical administrative copy

Historical administrative copy

This document is a consolidated administrative copy prepared for ease of reference. It is not itself the gazetted legislative instrument.

The Shire of Cue local law was published in the Western Australian Government Gazette on 14 May 2002 at pages 2550-2551. It adopted the Shire of Kojonup Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law published in the Government Gazette on 16 May 2000, subject to the modifications made by the Shire of Cue.

This copy incorporates those Cue modifications into the underlying Kojonup text. Forms 1 to 12 have been omitted because the Cue gazettal expressly deleted them.

Where there is any inconsistency between this administrative copy and the relevant Government Gazette publications, the gazetted instruments prevail. Historical statutory references and terminology have been retained and may now be obsolete or superseded.

Source instruments: Government Gazette 16 May 2000 (Kojonup) + Government Gazette 14 May 2002 (Cue modifications)

LOCAL GOVERNMENT ACT 1995

SHIRE OF CUE

ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND TRADING LOCAL LAW

Under the powers conferred by the Local Government Act 1995 and under all other powers enabling it, the Council of the Shire of Cue resolved on 20 March 2002 to make this local law by adopting the Shire of Kojonup Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law published in the Government Gazette on 16 May 2000, with modifications. This administrative copy incorporates those modifications.

PART 1 - PRELIMINARY

1.1 Citation

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

1.2 Definitions

In this local law unless the context otherwise requires -

Act means the Local Government Act 1995;

applicant means a person who applies for a permit;

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

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

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

carriageway means has the meaning given to it in the Road Traffic Code 2000;

CEO means the chief executive officer of the local government;

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

Council means the council of the local government;

crossing means a crossing giving access from a public thoroughfare to - (a) private land; or (b) a private thoroughfare serving private land;

district means the district of the local government;

footpath means has the meaning given to it in the Road Traffic Code 2000;

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

intersection means has the meaning given to it in the Road Traffic Code 2000;

kerb means includes the edge of a carriageway;

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

liquor means has the meaning given to it in section 3 of the Liquor Licensing Act 1988;

local government means the Shire of Cue;

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

lot means has the meaning given to it in the Town Planning and Development Act 1928;

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

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

permit means a permit issued under this local law;

permit holder means a person who holds a valid permit;

person means does not include the local government;

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

public place means includes any thoroughfare or place which the public are allowed to use, whether or not the thoroughfare or place is on private property, but does not include - (a) premises on private property from which trading is lawfully conducted under a written law; and (b) local government property;

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

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

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

town planning scheme means a town-planning scheme of the local government made under the Town Planning and Development Act 1928;

townsite means the townsit of Cue which is - (a) constituted under section 26(2) of the Land Administration Act 1997; or (b) referred to in clause 37 of Schedule 9.3 of the Act;

vehicle means includes - (a) every conveyance and every object capable of being propelled or drawn on wheels, tracks or otherwise; and (b) an animal being ridden or driven, but excludes - (a) a wheel-chair or any device designed for use by a physically impaired person on a footpath; and (b) a pram, stroller or similar device;

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

1.3 Application

This local law applies throughout the district.

1.4 Repeal

(1) The following local laws are repealed -

(a) Hawkers Local Law published in the Government Gazette on 17 January 1919 and amended on 24 December 1931, 11 October 1935 and 6 November 1936.

(b) Trading in Public Places Local Law published in the Government Gazette on 27 January 1989.

(2) Where a policy was made or adopted by the local government under or in relation to a local law repealed by this local law, then the policy is to be taken to no longer have any effect on and from the commencement day.

(3) The Council may resolve that notwithstanding subclause (2) specified policies continue, or are to be taken to have continued, to have effect on and from the commencement day.

PART 2 - ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES

Division 1 - General

2.1 General prohibitions

A person shall not -

(a) plant any plant which exceeds or which may exceed 0.75 metre in height on a thoroughfare so that the plant is within 10 metres of an intersection;

(b) damage a lawn or a garden or remove any plant or part of a plant from a lawn or garden unless - (i) the person is the owner or occupier of the lot abutting that portion of the thoroughfare and the lawn, garden or particular plant has not been installed or planted by the local government; or (ii) the person is acting under the authority of a written law;

(c) plant any plant (except grass or a similar plant) on a thoroughfare so that it is within 2 metres of a carriageway;

(d) place on any footpath any fruit, fruit skins or other substance or fluid (whether vegetable or otherwise, but not water) which may create a hazard for any person using the footpath;

(e) unless at the direction of the local government, damage, remove or interfere with any signpost, direction plate, guidepost, notice, shelter, shed, fence or any structure erected on a thoroughfare by the local government or a person acting under the authority of a written law;

(f) play or participate in any game or sport so as to cause danger to any person or thing or impede the movement of vehicles or persons on a thoroughfare; or

(g) within a mall, arcade or verandah of a shopping centre, ride any bicycle, skateboard, rollerblades or similar device.

2.2 Activities allowed with a permit - general

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

2.3 No possession and consumption of liquor on thoroughfare

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

Division 2 - Vehicle crossing

Subdivision 1 - Temporary crossings

2.4 Permit required

- (1) Where it is likely that works on a lot will involve vehicles leaving a thoroughfare and entering the lot, the person responsible for the works shall obtain a permit for the construction of a temporary crossing to protect the existing carriageway, kerb, drains and footpath where - (a) a crossing does not exist; or (b) a crossing does exist, but the nature of the vehicles and their loads is such that they are likely to cause damage to the crossing.
- (2) The person responsible for the works in subclause (1) is to be taken to be - (a) the builder named on the building licence issued under the Local Government (Miscellaneous Provisions) Act 1960, if one has been issued in relation to the works; or (b) the registered proprietor of the lot, if no building licence has been issued under that Act in relation to the works.
- (3) If the local government approves an application for a permit for the purpose of subclause (1), the permit is taken to be issued on the condition that until the temporary crossing is removed, the permit holder shall keep it in good repair and in a condition which does not create danger or obstruction to persons using the thoroughfare.

Subdivision 2 - Redundant vehicle crossings

2.5 Removal of redundant crossing

- (1) Where works on a lot will result in a crossing no longer giving access to a lot, the crossing is to be removed and the kerb, drain, footpath, verge and any other part of the thoroughfare affected by the removal are to be reinstated to the satisfaction of the local government.
- (2) The local government may give written notice to the owner or occupier of a lot requiring her or him to - (a) remove any part or all of a crossing which does not give access to the lot; and (b) reinstate the kerb, drain, footpath, verge and any other part of the thoroughfare affected by the removal, within the period stated in the notice, and the owner or occupier shall comply with that notice.

Division 3 - Verge treatments

Subdivision 1 - Preliminary

2.6 Interpretation

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

2.7 Application

This Division only applies to the townsite.

Subdivision 2 - Permissible verge treatments

2.8 Permissible verge treatments

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

2.9 Only permissible verge treatments to be installed

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

2.10 Obligations of owner or occupier

An owner or occupier who installs or maintains a permissible verge treatment shall - (a) keep it in a good and tidy condition and ensure that a footpath and adjoining carriageway are not obstructed; (b) not place any obstruction on or around the verge treatment; and (c) not disturb a footpath on the verge.

2.11 Notice to owner or occupier

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

Subdivision 3 - Existing verge treatments

2.12 Transitional provision

- (1) In this clause, former provisions means the local law of the local government which permitted certain types of verge treatments, whether with or without the consent of the local government, and which was repealed by this local law.
- (2) A verge treatment which was installed prior to the commencement day and, on that day, was a type permitted under and complying with the former provisions, is to be taken to be a permissible verge treatment for so long as it remains of the same type and continues to comply with the former provisions.

Subdivision 4 - Public works

2.13 Power to carry out public works on verge

Where the local government or an authority empowered under a written law disturbs a verge, the local government or authority - (a) is not liable to compensate any person for that disturbance; (b) may backfill with sand, if necessary, any garden or lawn; and (c) is not liable to replace or restore any verge treatment, plant, hard surface, sprinklers, pipes or other reticulation equipment.

Division 4 - Property numbers

Subdivision 1 - Preliminary

2.14 Interpretation

In this Division, Number means a number of a lot with or without an alphabetical suffix indicating the address of the lot by reference to a thoroughfare.

Subdivision 2 - Assignment and marking of numbers

2.15 Assignment of numbers

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

Division 5 - Fencing

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

The following places are specified as a public place for the purpose of item 4(1) of Division 1 of Schedule 3.1 of the Act - (a) a public place, as that term is defined in clause 1.2; and (b) local government property.

Division 6 - Signs erected by the local government

2.17 Signs

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

2.18 Transitional

Where a sign erected on a public place was erected under a local law repealed by this local law, then on and from the commencement day it is taken to be a sign erected under clause 2.17 if - (a) it specifies a condition of use relating to the public place which gives notice of the effect of a provision of this local law; and (b) the condition is not inconsistent with any provision of this local law.

Division 7 - Driving on a closed thoroughfare

2.19 No driving on closed thoroughfare

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

PART 3 - ADVERTISING SIGNS ON THOROUGHFARES

Division 1 - Preliminary

3.1 Interpretation

In this Part - advertising sign means a sign used for the purpose of advertisement and includes an election sign; direction sign means a sign which indicates the direction of another place, activity or event, but does not include a sign erected or affixed by the local government or Commissioner of Main Roads; election sign means a sign or poster which advertises any aspect of a forthcoming Federal, State or Local Government election; portable direction sign means a portable free-standing direction sign; and portable sign means a portable free-standing advertising sign.

Division 2 - Permit

3.2 Advertising signs and portable direction signs

- (1) A person shall not, without a permit - (a) erect or place an advertising sign on a thoroughfare; or (b) post any bill or paint, place or affix any advertisement on a thoroughfare.

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

(3) Notwithstanding subclause (1), a person shall not erect or place an advertising sign - (a) on a footpath; (b) over a footpath with less than 2.5 metres vertical clearance; (c) on or within 3 metres of a carriageway; (d) where, in the opinion of the local government, it is likely to obstruct lines of sight or cause danger; or (e) on a natural feature, bridge or structural approach to a bridge.

3.3 Matters to be considered in determining application for permit

In determining an application under clause 3.2(1), the local government is to have regard to - (a) any other written law regulating signs in the district; (b) the dimensions of the sign; (c) other advertising signs in the vicinity; (d) whether the sign will create a hazard; and (e) the amount of public liability insurance cover, if any, to be obtained by the applicant.

Division 3 - Conditions on permit

3.4 Conditions on portable sign

If the local government approves an application for a permit for a portable sign, the application is taken to be approved subject to conditions that the sign - (a) does not exceed one metre in height or one square metre on any side; relates only to the business activity described on the permit; contains letters not less than 200mm high; is erected only immediately adjacent to the business; is removed when the business closes; is secured as required; does not obstruct reasonable use or access; and is maintained in good condition; and (b) no more than one portable sign is erected in relation to one building or business.

3.5 Conditions on election sign

If the local government approves a permit for an election sign on a thoroughfare, the sign is subject to conditions including that it is at least 30 metres from an intersection, free-standing, does not obstruct use or vision, is maintained, is not erected before the election is officially announced, is removed within 24 hours after polls close, is not within 100 metres of works, is securely installed, is not illuminated, does not incorporate reflective or fluorescent materials, and does not display only part of a message intended to be read with separate signs.

PART 4 - OBSTRUCTING ANIMALS, VEHICLES OR SHOPPING TROLLEYS

Division 1 - Animals and vehicles

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

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

(2) Subclause (1) is not contravened where an animal is secured or tethered for no more than one hour.

(3) Subclause (1) is not contravened where a vehicle is left for no more than 24 hours.

4.2 Prohibitions relating to animals

(1) In subclause (2), owner in relation to an animal includes an owner, a person in possession or control of it, and a person who ordinarily occupies the premises where it is permitted to stay.

(2) An owner of an animal shall not - (a) allow it to enter or remain on a thoroughfare except for use as a thoroughfare and unless led, ridden or driven; (b) allow an animal with a contagious or infectious disease to be led, ridden or driven in a public place; or (c) train or race the animal on a thoroughfare.

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

Division 2 - Shopping trolleys

4.3 Interpretation

In this Division, retailer means a proprietor of a shop in respect of which shopping trolleys are provided for customers; and shopping trolley means a wheeled container or receptacle supplied by a retailer to enable a person to transport goods.

4.4 Shopping trolley to be marked

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

4.5 Person not to leave trolley in public place

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

4.6 Retailer to remove abandoned trolley

(1) If a shopping trolley is found in a public place other than a trolley storage area, the local government may advise a retailer whose name is marked on the trolley of its location.

(2) A retailer shall remove the trolley within 24 hours of being advised, unless the retailer requests the local government to collect and deliver it and pays the applicable fee within the specified period.

4.7 Retailer taken to own trolley

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

PART 5 - ROADSIDE CONSERVATION

Division 1 - Preliminary

5.1 Interpretation

In this Part - MRWA means Main Roads Western Australia; protected flora has the meaning given in section 6(1) of the Wildlife Conservation Act 1950; rare flora has the meaning given in section 23F of that Act; Roadside Conservation Committee means the Roadside Conservation Committee established under the Land Resource Policy Council within the Office of Premier and Cabinet; and special environmental area means an area designated under clause 5.7.

5.2 Application

This Part does not apply to the townsites.

Division 2 - Flora roads

5.3 Declaration of flora road

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

5.4 Construction works on flora roads

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

5.5 Signposting of flora roads

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

5.6 Driving only on carriageway of flora roads

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

(2) Subclause (1) does not apply where conditions do not reasonably permit the vehicle to remain on the carriageway, there is no carriageway, or an exemption has been obtained from the local government.

Division 3 - Special environmental areas

5.7 Designation of special environmental areas

The local government may designate a thoroughfare, or any part of a thoroughfare, as a special environmental area which - (a) has protected flora or rare flora; or (b) in the opinion of the local government, has environmental, aesthetic or cultural significance.

5.8 Marking of special environmental areas

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

Division 4 - Planting in thoroughfares

5.9 Permit to plant

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

5.10 Relevant considerations in determining application

In determining an application for a permit under clause 5.9, the local government is to have regard to existing vegetation in the relevant part of the thoroughfare and the diversity and prevalence of the species to be planted or sown.

Division 5 - Clearance of vegetation

5.11 Permit to clear

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

5.12 Application for permit

In addition to clause 7.1(2), an applicant under clause 5.11 shall submit a sketch plan clearly showing the boundary of the person's land and the portions of the adjoining thoroughfare proposed to be cleared.

Division 6 - Fire management

5.13 Permit to burn thoroughfare

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

5.14 Application for permit

In addition to clause 7.1(2), an application under clause 5.13 shall include a sketch plan showing the portions of the thoroughfare proposed to be burned and advise the estimated fire intensity and measures to protect upper-storey vegetation.

5.15 When application for permit can be approved

The local government may approve an application under clause 5.13 only if the burning will reduce a fire hazard and alternative means are not feasible or would be more detrimental to native flora and fauna, or if the burning will, in the local government's opinion, benefit preservation and conservation of native flora and fauna.

5.16 Prohibitions on burning

An application under clause 5.13 is not to be approved - (a) for burning between 31 August and 1 May of the following year where the intensity could damage native flora and fauna; or (b) in any year for any part of a thoroughfare on the opposite side of the carriageway to a portion for which a permit to burn has been approved in the same year.

Division 7 - Firebreaks

5.17 Permit for firebreaks on thoroughfares

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

5.18 When application for permit cannot be approved

(1) The local government is not to approve an application under clause 5.17 where the thoroughfare is less than 20 metres wide.

(2) Subclause (1) does not apply where the firebreak is, in the opinion of the local government, desirable for the protection of roadside vegetation.

Division 8 - Commercial wildflower harvesting on thoroughfares

5.19 General prohibition on commercial wildflower harvesting

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

5.20 Permit for revegetation projects

(1) A person shall not collect seed from native flora on a thoroughfare without first obtaining a permit.

- (2) The local government may approve an application only where the seed is required for a revegetation project in the district and the relevant thoroughfare is not a special environmental area.
- (3) Unless the local government provides otherwise, approval is subject to the conditions that collection is carried out so as not to endanger long-term survival of the native flora and any licence or approval required under another written law is obtained.

PART 6 - TRADING IN THOROUGHFARES AND PUBLIC PLACES

Division 1 - Stallholders and traders

Subdivision 1 - Preliminary

6.1 Interpretation

In this Division - Competition Principles Agreement means the Competition Principles Agreement executed by each State and Territory and the Commonwealth of Australia on 11 April 1995; public place includes any thoroughfare or place which the public are allowed to use whether or not on private property, and local government property, but does not include premises on private property from which trading is lawfully conducted under a written law; stall means a movable or temporarily fixed structure, stand or table in, on or from which goods or services are sold, hired or offered for sale or hire; stallholder means a person in charge of a stall; stallholder's permit means a permit issued to a stallholder; trader means a person who carries on trading; trader's permit means a permit issued to a trader.

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

Subdivision 2 - Permits

6.2 Stallholder's permit

- (1) A person shall not conduct a stall on a public place unless that person is the holder of a valid stallholder's permit or an assistant specified in a valid stallholder's permit.
- (2) An application shall state the applicant's name and address, proposed assistants, proposed location, period/days/hours, proposed goods or services, and be accompanied by an accurate plan and description of the proposed stall.

6.3 Trader's permit

- (1) A person shall not carry on trading unless that person is the holder of a valid trader's permit or an assistant specified in a valid trader's permit.
- (2) An application shall state the applicant's name and address, proposed assistants, proposed locations, period/days/hours, proposed goods or services and include an accurate plan and description of any proposed structure or vehicle.
- (3) Conditions may include that a trader may remain at a particular location while a customer is making a purchase but, if no customer is making a purchase, must move on within a reasonable time of the last purchase.

6.4 No permit required to sell newspaper

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

6.5 Relevant considerations in determining application for permit

- (1) In determining an application, the local government is to have regard to any relevant policies, the desirability and location of the proposed activity, the principles in the Competition Principles Agreement and other relevant matters.
- (2) The local government may refuse an application on grounds including breach of this or other relevant written law, unsuitability of the applicant, bankruptcy/liquidation or insolvency administration, or other relevant grounds.

6.6 Conditions of permit

- (1) Conditions may include the place or area, days and hours, type and construction of structures or vehicles, goods/services, persons permitted, attendance and nominees, transferability, noise/amplifiers/signs/lighting, display of permit details, cleansing and maintenance, vacating the place when not trading, public risk insurance, duration, and designation of places where trading is prohibited.
- (2) Where a permit holder is unable to comply because of illness, accident or other sufficient cause, the local government may authorise another person to be a nominee for a specified period, and this local law and permit conditions apply to the nominee as if he or she were the permit holder.

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

- (1) In this clause, charitable organisation and commercial participant have the meanings given in the gazetted local law.
- (2) The local government may waive or refund a fee for a stallholder's or trader's permit where the activity is on a portion of a public place adjoining the applicant's normal place of business, or is conducted by a charitable organisation without subletting space to or involving commercial participants and with assistants who are members of that organisation.
- (3) The local government may exempt a person or class of persons, whether or not in relation to a specified public place, from the requirements of this Division.

Subdivision 3 - Conduct of stallholders and traders

6.8 Conduct of stallholders and traders

- (1) A stallholder or trader shall display the permit conspicuously on the stall, vehicle or temporary structure, or carry it if there is no such structure; shall not display a permit unless it is valid; and when selling goods by weight shall carry and use scales tested and certified in accordance with the Weights and Measures Act 1915.
- (2) A stallholder or trader shall not deposit or store goods so as to obstruct pedestrians or vehicles, act offensively, use apparatus which increases dimensions beyond those specified in the permit, or, for a trader, trade from a public place unless adequate customer parking is reasonably close.

Division 2 - Street entertainers

Subdivision 1 - Preliminary

6.9 Interpretation

In this Division, perform includes playing a musical instrument, singing, mime, dance, acrobatic or aerobic display or entertaining, but does not include public speaking; permit means a permit issued for clause 6.10; permitted area means the area specified in the permit; and permitted time means the time specified in the permit.

Subdivision 2 - Permits

6.10 Permit required to perform

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

6.11 Variation of permitted area and permitted time

- (1) The local government may by written notice vary the permitted area, permitted time, or both.
- (2) The local government may direct a permit holder to move from one permitted area to another if more than one area is specified in the permit.

6.12 Duration of permit

A permit is valid for 3 months after issue unless sooner cancelled under this local law.

6.13 Cancellation of permit

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

6.14 Obligations of permit holder

A permit holder shall not in a public place - (a) perform wearing dirty, torn or ragged clothing; (b) act in an offensive manner; or (c) place, install, erect, play or use a musical instrument or device which emits music, including a loudspeaker or amplifier, other than in the permitted area and unless specified in the permit.

Division 3 - Outdoor eating facilities on public places

6.15 Interpretation

In this Division, Facility means an outdoor eating facility or establishment on any part of a public place but does not include one on private land; permit holder means the person to whom a permit has been issued for clause 6.16; and public place has the meaning given in clause 6.1.

6.16 Permit required to conduct Facility

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

6.17 Matters to be considered in determining application

In determining an application, the local government may consider whether the Facility is an extension of adjoining food premises and the applicant conducts those premises; whether food premises are registered under the Health Act 1911 and the use is permitted under the town planning scheme; compliance with health local laws; access to sanitary and ablutionary conveniences; whether visibility or pedestrian access would be obstructed; and whether tables, chairs and equipment would impede use of the public place.

6.18 Obligations of permit holder

- (1) The permit holder shall ensure compliance with this local law and applicable health local laws, keep the eating area clean and tidy, maintain chairs/tables/structures in good and serviceable condition, be responsible for costs arising from removal/alteration/repair/reinstatement/reconstruction of the public place arising from the Facility, and be responsible for rates and taxes levied on land occupied by the Facility.
- (2) The local government may give notice requiring work to be carried out to a Facility within the specified time.
- (3) Work includes removal, alteration, repair, reinstatement or reconstruction of any part of a public place arising from or connected with the Facility.

6.19 Removal of Facility unlawfully conducted

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

6.20 Use of Facility by public

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

6.21 Temporary removal of Facility may be requested

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

PART 7 - PERMITS

Division 1 - Applying for a permit

7.1 Application for permit

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

7.2 Decision on application for permit

- (1) The local government may approve an application unconditionally or subject to conditions, or refuse it.

- (2) If approved, the local government is to issue a permit in the form determined by it.
- (3) If refused, the local government is to give written notice to the applicant.
- (4) Clauses specifying conditions do not limit the power to impose other conditions under subclause (1)(a).
- (5) Clauses specifying refusal grounds do not limit the power to refuse on other grounds under subclause (1)(b).

Division 2 - Conditions

7.3 Conditions which may be imposed on a permit

Conditions may relate to payment of a fee; duration and commencement; commencement contingent on an event; rectification or restoration; approval of another permit; the area of the district; deposits or bonds against damage; public risk insurance; and indemnity of the local government in respect of injury or property damage connected with use of the public place.

7.4 Imposing conditions under a policy

- (1) In this clause, policy means a policy of the local government adopted by Council containing conditions subject to which a permit application may be approved under clause 7.2(1)(a).
- (2) The local government may approve an application subject to conditions by reference to a policy.
- (3) A copy of the relevant policy or part is to be given with the permit.
- (4) An application is not taken to have been approved subject to policy conditions until the permit holder is given the relevant policy or part.
- (5) Sections 5.94 and 5.95 of the Act apply to a policy as information within section 5.94(u)(i).

7.5 Compliance with and variation of conditions

- (1) A permit holder shall comply with each condition of a permit.
- (2) The local government may vary permit conditions and the permit holder shall comply with the varied conditions.

Division 3 - General

7.6 Duration of permit

A permit is valid for one year from issue unless otherwise stated in this local law or in the permit, or cancelled under clause 7.10.

7.7 Renewal of permit

- (1) A permit holder may apply in writing before expiry for renewal.
- (2) This Part and any other relevant provisions apply to renewal applications mutatis mutandis.

7.8 Transfer of permit

- (1) An application for transfer is to be in writing, signed by the permit holder and proposed transferee, provide information required by the local government, and be forwarded to the CEO with any applicable fee.
- (2) The local government may approve, refuse or approve subject to conditions.
- (3) An approved transfer may be effected by endorsement on the permit signed by the CEO or by issuing a permit to the transferee.
- (4) The local government need not refund any part of a fee paid by the former permit holder.

7.9 Production of permit

A permit holder is to produce her or his permit immediately when required by an authorized person.

7.10 Cancellation of permit

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

PART 8 - OBJECTIONS AND APPEALS

8.1 Application of Part 9 Division 1 of Act

When the local government makes a decision under clause 7.2(1), or as to whether it will renew, vary or cancel a permit, the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Regulations apply to that decision.

PART 9 - MISCELLANEOUS NOTICES

9.1 Notice to redirect or repair sprinkler

Where a lawn or garden is being watered with a sprinkler in a manner which causes or may cause inconvenience or obstruction to a person using a thoroughfare, the local government may give notice to the owner or occupier of the abutting land requiring the sprinkler or watering equipment to be moved or redirected.

9.2 Hazardous plants

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

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

9.3 Notice to repair damage to thoroughfare

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

9.4 Notice to remove thing unlawfully placed on thoroughfare

Where any thing is placed on a thoroughfare in contravention of this local law, the local government may by written notice to the owner or occupier of the abutting property, or another person responsible, require that person to remove the thing.

PART 10 - ENFORCEMENT

Division 1 - Notices given under this local law

10.1 Offence to fail to comply with notice

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

10.2 Local government may undertake requirements of notice

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

Division 2 - Offences and penalties

Subdivision 1 - General

10.3 Offences

(1) A person who fails to do anything required or directed under this local law, or does anything which this local law prohibits, commits an offence.

(2) A person who commits an offence is liable, upon conviction, to a penalty not exceeding \$5,000 and, for a continuing offence, an additional penalty not exceeding \$500 for each day or part of a day during which the offence continues.

Subdivision 2 - Infringement notices and modified penalties

10.4 Prescribed offences

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

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

(3) For guidance only, before giving an infringement notice an authorized person should be satisfied that the offence is relatively minor and only straightforward issues of law and fact are involved, with facts readily ascertainable.

10.5 Forms

Unless otherwise specified, for the purposes of this local law - (a) where a vehicle is involved in an offence, the notice under section 9.13 of the Act is Form 1 in Schedule 1 of the Regulations; (b) an infringement notice under section 9.16 is Form 2 in Schedule 1 of the Regulations; and (c) a withdrawal notice under section 9.20 is Form 3 in Schedule 1 of the Regulations.

SCHEDULE 1 - PRESCRIBED OFFENCES

Clause	Description	Modified penalty (\$)
2.1(a)	Plant of 0.75m in height on thoroughfare within 10m of intersection	100
2.1(b)	Damaging lawn or garden	100
2.1(c)	Plant (except grass) on thoroughfare within 2m of carriageway	100
2.1(d)	Placing hazardous substance on footpath	100
2.1(e)	Damaging or interfering with signpost or structure on thoroughfare	300
2.1(f)	Playing games so as to impede vehicles or persons on thoroughfare	100
2.1(g)	Riding bicycle, skateboard or similar device on mall, arcade or verandah of shopping centre	100
2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	100
2.2(1)(b)	Throwing or placing anything on a verge without a permit	100
2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	100
2.2(1)(d)	Causing obstruction to water channel on thoroughfare without a permit	200
2.2(1)(e)	Placing or draining offensive fluid on thoroughfare without a permit	200
2.2(1)(g)	Lighting a fire on a thoroughfare without a permit	300
2.2(1)(h)	Felling tree onto thoroughfare without a permit	100
2.2(1)(i)	Installing pipes or material on thoroughfare without a permit	100
2.2(1)(j)	Installing a hoist or other thing for use over a thoroughfare without a permit	300
2.2(1)(k)	Creating a nuisance on a public place without a permit	100
2.2(1)(l)	Placing a bulk rubbish container on a thoroughfare without a permit	100
2.2(1)(m)	Interfering with anything on a thoroughfare without a permit	100
2.3(1)	Consumption or possession of liquor on thoroughfare	100
2.4(1)	Failure to obtain permit for temporary crossing	200
2.5(2)	Failure to comply with notice to remove crossing and reinstate kerb	300
2.9(1)	Installation of verge treatment other than permissible verge treatment	200
2.10	Failure to maintain permissible verge treatment or placement of obstruction on verge	100
2.11	Failure to comply with notice to rectify default	100
2.17(2)	Failure to comply with sign on public place	100
2.19(1)	Driving or taking a vehicle on a closed thoroughfare	300
3.2(1)	Placing advertising sign or affixing advertisement on thoroughfare without permit	100
3.2(3)	Erecting or placing advertising sign in prohibited area	100

SHIRE OF CUE | ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND TRADING LOCAL LAW

4.1(1)	Animal or vehicle obstructing public place or local government property	100
4.2(2)(a)	Animal on thoroughfare when not led, ridden or driven	100
4.2(2)(b)	Animal on public place with infectious disease	100
4.2(2)(c)	Training or racing animal on thoroughfare	100
4.2(3)	Horse led, ridden or driven on thoroughfare in built-up area	100
4.5	Person leaving shopping trolley in public place other than trolley bay	100
4.6(2)	Failure to remove shopping trolley after being advised	100
5.6(1)	Driving vehicle other than on carriageway of flora road	200
5.9	Planting in thoroughfare without permit	200
5.11	Failure to obtain permit to clear thoroughfare	500
5.13	Burning thoroughfare without permit	500
5.17	Construction of firebreak on thoroughfare without permit	500
5.19	Commercial harvesting of native flora on thoroughfare	500
5.20(1)	Collecting seed from native flora on thoroughfare without permit	300
6.2(1)	Conducting stall in public place without permit	300
6.3(1)	Trading without permit	300
6.8(1)(a)	Failure of stallholder or trader to display or carry permit	100
6.8(1)(b)	Stallholder or trader displaying invalid permit	100
6.8(1)(c)	Stallholder or trader not carrying certified scales when selling by weight	100
6.8(2)	Stallholder or trader engaged in prohibited conduct	100
6.10	Performing in public place without permit	100
6.11(2)	Failure of performer to move to another area when directed	100
6.14	Failure of performer to comply with obligations	100
6.16	Establishment or conduct of outdoor eating facility without permit	300
6.18	Failure of permit holder of outdoor eating facility to comply with obligations	100
6.20(1)	Use of equipment of outdoor eating facility without purchase of food or drink	50
6.20(2)	Failure to leave outdoor eating facility when requested by permit holder	50
7.5	Failure to comply with condition of permit	100
7.9	Failure to produce permit on request of authorized person	100
10.1	Failure to comply with notice given under local law	100

EXECUTION OF CUE ADOPTION INSTRUMENT

Dated this 20th March 2002.

The Common Seal of the Shire of Cue was affixed by authority of a decision of Council in the presence of -

C. WYATT, President.

S. HAWKINS, Chief Executive Officer.

ADMINISTRATIVE SOURCE NOTE

This consolidation was prepared from the Shire of Kojonup Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law published in the Government Gazette on 16 May 2000 and the Shire of Cue Activities in Thoroughfares and Public Places and Trading Local Law published in the Government Gazette on 14 May 2002, pages 2550-2551. The Cue instrument deleted Forms 1 to 12, so they do not appear in this consolidated copy.

This document retains historical wording and references. It is not a statement that every clause remains enforceable under current legislation. Legal or compliance use should be checked against the authoritative Gazette instruments and current written law.