

LOCAL GOVERNMENT ACT 1995

SHIRE OF HARVEY

LOCAL LAWS RELATING TO THE CONTROL AND MANAGEMENT OF THE HARVEY COMMONAGE (RESERVE No. 22977) 2008

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LOCAL LAWS RELATING TO THE CONTROL AND MANAGEMENT OF THE HARVEY COMMONAGE (RESERVE No. 22977)

In pursuance of the powers conferred upon it by the abovementioned Act, and of all other powers enabling it the Council of the abovementioned Municipality hereby records having resolved on the 24th August, 1999 to—

Repeal By-laws relating to the control and management of the Harvey Commonage (Reserve No. 22977), published in the *Government Gazette* on the 21st January, 1977, and subsequent amendments to the By-laws; and to introduce a new Local Law for the control and management of the Harvey Commonage (Reserve No. 22977).

1. Interpretation

(1.1) In these Local Laws, unless the contrary intention appears—

“**animal**” means any animal not included within the definition of “livestock”.

“**business Day**” means a day on which the local government offices are open to conduct the business of the Shire.

“**Caretaker**” means the person or persons appointed by the local government to carry out the duties of a caretaker as prescribed by these Local Laws.

“**C.E.O.**” means the Chief Executive Officer of the Shire of Harvey.

“**Common**” means the Harvey Commonage (Reserve 22977) or such other land as Council determines to be set aside for such purpose.

“**Council**” means the Council of the Shire of Harvey.

“**Licence**” means a licence issued pursuant to these Local Laws authorising a person to house livestock on the Common.

“**Licensee**” means a person to whom a licence to graze livestock on the Common has been issued.

“**livestock**” includes both alive and dead animals, including the meaning of “Cattle” described in the 1960 Act.

“**local government**” means the Shire of Harvey.

“**owner**” means the owner of livestock or animals or the person most immediately entitled to their legal possession.

“**person**” shall include natural persons including but not limited to the trustee of a trust, statutory bodies, corporations of all kinds, and any other associations of persons capable of owning or occupying real property within the Shire.

“**the Office**” means the local government office situated at 102 Uduc Road, Harvey, or such other office from time to time prescribed by Council to be used for such purpose.

“**Shire**” means the area of the State of Western Australia within which the Common is situated and currently known as the Shire of Harvey.

“**Shire Ranger**” means a person or persons appointed by the local government to fulfill the duties of a Shire Ranger in the Shire of Harvey.

“**1960 Act**” means the Local Government (Miscellaneous Provisions) Act 1960 as amended.

“**1995 Act**” means the Local Government Act 1995 as amended.

2. Delegation and Powers

The local government, C.E.O. and Delegates Not Generally Bound

(2.1) These Local Laws do not bind the local government, the C.E.O. or the delegate of either except to the extent expressly stated.

(2.2) The C.E.O. may not exercise or delegate any power expressed to be solely exercised by Council.

Council May Exercise Any Power Granted To The C.E.O.

(2.3) Subject to section 5.41 of the 1995 Act, any power granted to the C.E.O. by these Local Laws may be exercised by Council.

(2.4) Where Council exercises any power previously exercised by the C.E.O. the decision of the C.E.O. shall be nullified to the extent that it is inconsistent with Council's subsequent decision and the decision of Council shall prevail.

(2.5) Council may delegate to the C.E.O. any power granted by these Local Laws.

3. Caretaker

Appointment

(3.1) The local government may appoint one or more fit and proper persons as Caretaker of the Common and such number shall include the Shire Ranger within this number.

Notice of Appointment

(3.2) The C.E.O. shall cause public notice to be given of the appointment or removal of the Caretaker and notice so given is evidence that the Caretaker has been lawfully appointed or removed.

Certificate of Authorisation

(3.3) The C.E.O. shall cause to be issued to the Caretaker a certificate stating that he or she is authorised to perform functions under these Local Laws.

Duties

(3.4) The Caretaker shall effect the daily care, control and management of the Common and may exercise such other power as is delegated to him or her by the C.E.O.

4. Use of Common

Common to be a Pound

(4.1) The Common is established as a public pound but such use does not exclude the operation of the Common for any other purpose prescribed by these Local Laws or any other enactment.

Rules and Conditions of Use

(4.2) Council may determine rules and conditions governing the use of the Common and such rules and conditions shall be binding on all Licensees.

(4.3) The Common shall be used for the purposes of—

- (a) housing and grazing livestock;
- (b) operation of a pound; and
- (c) such other purpose as Council lawfully determines.

(4.4) Use of the Common for any purpose other than those prescribed pursuant to clause 4.3 shall be an offence against these Local Laws.

5. Licences and Licensees

Permitted Users

(5.1) Any person who owns land or resides on land situated within the Shire may apply for a licence and such application shall be in a form approved by the C.E.O. and lodged at one of the local government offices.

Licence Format

(5.2) A licence issued under these Local Laws shall be in the form of the First Schedule unless an alternative form is approved by the C.E.O.

(5.3) Licences are issued for such periods as detailed in the application, in the form of the first schedule.

(5.4) Licences are deemed to be reissued at the formation of a licence period unless—

- (a) the C.E.O. makes an order pursuant to these Local Laws terminating a licence;
- (b) the C.E.O. makes an order requiring that the licence not be reissued; or
- (c) the Licensee breaches the conditions of his or her licence whereby it is cancelled pursuant to these Local Laws.

Rules and Conditions of Licences

(5.5) Licences are granted and are deemed to be accepted by Licensees subject to—

- (a) the rules, conditions and uses prescribed by these Local Laws; but not limited to including the keeping of an Agistment Record which shall be in the form of the Second Schedule unless an alternative form is approved by the C.E.O; and
- (b) such other conditions as the C.E.O. may from time to time impose.

(5.6) The C.E.O. may grant or revoke licences and in exercising this power shall have regard to the following—

- (a) compliance with the rules and conditions imposed by and made pursuant to these Local Laws or any other enactment from time to time having application to the Common.
- (b) non-payment of rates or other charges owing to or administered by the local government;
- (c) payment of any fees prescribed pursuant to these Local Laws;
- (d) the carrying capacity, livestock numbers and livestock types housed on the Common at the time;
- (e) the condition of the Common at the time of application and the suitability of the Common for the type of livestock proposed to be housed therein; and
- (f) such other grounds as the C.E.O. considers appropriate.

6. Appeal Procedures

Appeal Procedures for Licensees

(6.1) A person dissatisfied with a decision made by the C.E.O. pursuant to Clause 5.6 may make a written application to Council requesting the reconsideration of the application.

(6.2) When considering an application made under clause 6.1 Council may rely on any of the following for its decision—

- (a) written material placed before it by the applicant;
- (b) written material placed before it by the C.E.O.; and

(c) such other information as Council considers fit.

(6.3) Should any person who is not satisfied with a decision by Council made pursuant to Clause 6.1, they may lodge an appeal in accordance with Part 9 Division 1, of the Local Government Act, 1995.

Refusal of Applications

(6.4) Where an application has been refused on grounds other than the carrying capacity of the Common or its suitability for the livestock proposed to be housed therein no further application may be brought before the C.E.O. within the following periods—

(a) 1 calendar month, following a decision of the C.E.O.; or.

(b) 2 calendar months, following a decision of Council.

except as provided by clause 6.1.

7. Possession of Licence Documents

Requirement to Produce Licence

(7.1) Every Licensee or other person in possession of a document issued by the local government and purporting to be a licence shall produce that document upon being requested to do so by the Caretaker or any person authorised by the C.E.O. to perform such examination.

(7.2) Where a request has been made pursuant to clause 7.1 and that request could not be complied with as the person was not at that time in possession of the licence the person shall produce the licence for inspection at the Office within 24 hours of such request or the first business day following that request.

(7.3) Failure to comply with clause 7.2 shall be an offence against these Local Laws.

8. Introduction, Removal of Livestock and Entry on to the Common

Movement of Livestock

(8.1) The movement of livestock into and from the Common shall occur on a Monday or a Wednesday of each week or the first business day following any Monday or Wednesday on which a public holiday falls.

(8.2) The movement of livestock mentioned in clause 8.1 shall occur between the hours of 9.00 am and 11.00 am or such other time as the C.E.O. may determine.

(8.3) All movements of livestock into and from the Common shall occur only in the presence of the Caretaker or a person appointed by the C.E.O. to witness such movement.

(8.4) A Licensee shall not move livestock into or from the Common unless the following occurs—

(a) an application to change the numbers of livestock housed on the Common has been made and has been lodged for approval at the Office no later than 3 business days prior to the day on which livestock movements are to take place; or

(b) the C.E.O. or such other person authorised by the C.E.O. to make such decision has approved such movement; and

(c) in the event that removal of all livestock is to occur, compliance with clause 12.10 is effected.

Entry to Commonage by Licensees

(8.5) Licensees shall only be entitled to enter onto the Common during the following hours—

- (a) 8.00 am and 5.00 pm each day without the necessity for the Caretaker to be present;
- (b) During any other hours of any day provided that the Caretaker is present and prior approval has been sought and granted by the C.E.O. or Caretaker;
and
- (c) At such other time as the C.E.O. may determine.

9. Removal of Stock from Commonage

C.E.O.'s General Power for Removal of Stock

(9.1) The C.E.O. may order the removal of livestock from the Common in such number and for such reason as he or she considers fit.

(9.2) Where the C.E.O. exercises the power contained in clause 9.1 he or she should, where possible, reduce numbers by the following means—

- (a) firstly, not replacing livestock removed as part of the normal weekly removal of stock;
- (b) secondly, by agreement with Licensees;
- (c) thirdly, where either of the above methods is inappropriate, by a proportional withdrawal of livestock by all Licensees.
- (d) fourthly by directing that all livestock is to be removed.

(9.3) When a Licensee is required to remove livestock pursuant to sections 9.1 or 9.2 he or she shall continue to be bound to observe any rule or condition imposed and applicable pursuant to these Local Laws.

10. Conditions Regarding Livestock

It is an offence against these Local Laws for a Licensee to introduce, seek to introduce or have housed on the Common livestock—

- (a) not bearing appropriate tail or ear tag identification;
- (b) bearing tail or ear tag identification which has not been verified by the Caretaker prior to their introduction;
- (c) bearing tail or ear tag identification which has not been accurately recorded in the appropriate application;
- (d) being male animals of reproductive age and with reproductive capacity;
- (e) being unfit and not free or affected by any disease be that contagious or otherwise;
- (f) being of an age less than 6 months;
- (g) having less than 2 weeks remaining before bearing progeny; or
- (h) that is known by the Licensee to be of danger to any person, other livestock or property.

11. Breach of these Local Laws deems Livestock as Trespassing

Livestock housed on the Common shall be deemed to be trespassing and subject to the operation of the 1960 Act where either—

- (a) such livestock is in breach of these Local Laws; or
- (b) a Licensee or owner of livestock is in breach of these Local Laws.

12. Fees

Fees Payable

(12.1) The fees payable for any livestock held on the Common shall be those as may be determined from time to time by Council under sections 6.16 and 6.19 of the 1995 Act.

Notice

(12.2) The local government shall cause to be erected a notice board bearing upon it such information as the C.E.O. considers appropriate and shall include the following information—

- (a) tables of—
 - (i) Common fees;
 - (ii) pound fees; and
- (b) the holding capacity of the Common as updated on a weekly basis.

Period of Calculation

(12.3) Fees shall be calculated weekly for the period commencing Monday and concluding Sunday.

Fees Due and Payable

(12.4) Fees shall be due and payable within fourteen (14) days from the date on which the account is issued.

Cancellation of Licence—Failure to Pay

(12.5) Failure to pay fees in accordance with Clause 12.4 on three (3) occasions, shall lead to the cancellation of a licence.

Prohibited Licensee

(12.6) Following revocation of a licence pursuant to clause 12.5 a Licensee shall be prohibited from making a further licence application for the following periods:

- (a) For a first breach, one month; or
- (b) For a second and subsequent breach, two months; and cancellation subject to clause 12.5 shall be subject to the clause 6 appeal procedures.

Trespassing Stock—Failure to Pay Fees

(12.7) If a Licensee fails to pay fees due and payable for more than 30 days the livestock housed on the Common by the Licensee shall be deemed to be trespassing.

Impounding Fees

(12.8) Any fees payable pursuant to these Local Laws shall, upon the impounding of livestock, become payable as impounding fees and shall be recoverable, in addition to any other fees as impounding fees charged, pursuant to the 1960 Act.

Value of Stock Equivalent to Outstanding Fees

(12.9) At all times each Licensee shall be required to keep to the satisfaction of the C.E.O. livestock of a monetary value equivalent to that Licensees outstanding fees housed on the Common and a Licensee removing all livestock must first pay all outstanding fees unless the C.E.O. imposes other conditions.

Release of Livestock

(12.10) The Caretaker shall not release livestock to a Licensee or owner unless, either—

- (a) a receipt payable issued by the local government; or
- (b) written authorisation of the C.E.O.;

is produced authorising the Caretaker to do so.

13. Impounding or Removal of Livestock from the Commonage

Powers of the local government and C.E.O

(13.1) The local government or the C.E.O. may do any of the following in relation to livestock the subject of a breach of these Local Laws—

- (a) order a Licensee or owner of any livestock or animal to remove such livestock or animal from the Common.
- (b) where the Licensee or owner of any livestock or animal does not remove the livestock or animal pursuant to an order issued to do so, order the impounding of the livestock or animal pursuant to the 1960 Act.
- (c) order the sale or other disposal of livestock pursuant to the 1960 Act.
- (d) order the release of livestock to the Licensee following payment of all common fees, impounding fees and the other costs of impounding.
- (e) order the release of livestock pursuant to such other condition.

Recovery of Costs

(13.2) The local government may recover all reasonable costs occasioned by the non-compliance of a Licensee or owner with any order made under these Local Laws.

(13.3) Where, monies remain owing pursuant to these Local Laws the C.E.O. may cause proceedings to be commenced in a Magistrates Court against a Licensee in breach of these Local Laws for the outstanding monies.

14. Offences Against this Local Law

Penalties

(14.1) Any act, including but not limited to non-observance or neglect to perform duties, performed in breach of these Local Laws is deemed to be an offence against these Local Laws and is punishable by all or any of the following—

- (a) a fine not exceeding \$1,000.00;
- (b) the cancellation of any licence issued pursuant to these Local Laws; and
- (c) the impounding of livestock or any animal.

(14.2) The revocation of any licence issued pursuant to these Local Laws shall not affect any right of action of the local government for breach of these Local Laws.

(14.3) All penalties and other monies recovered pursuant to the provision of these Local Laws shall be paid to and form part of the ordinary revenue of the local government.

Dated this 9th day of December, 2008.

P. F. MONAGLE, Shire President.
M. A. PARKER, Chief Executive Officer.

First Schedule

Licence No.:

SHIRE OF HARVEY

LICENCE TO HOLD STOCK ON THE HARVEY COMMON

Mr/Mrs/Ms:

of:

is hereby licensed to agist the undermentioned stock at the Harvey Common, subject to the provisions of the Local Laws.

Description of Stock	Number	Tag Identification No.
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Cows

Steers

Heifers

Calves

Mares

Geldings

Colts

Fillies

Foals

TOTAL

PERIOD OF LICENCE

Commencement Date:

Expiry Date:

.....
Signature of Owner

.....
Signature of Authorised
Council Officer

Second Schedule

SHIRE OF HARVEY

FORM No. 2

HARVEY COMMON AGISTMENT RECORD

NAME:

ADDRESS:

LICENCE No.:

COMMENCEMENT DATE:

EXPIRY DATE:

DATE	PERIOD	NUMBER HORSES	CATTLE	CALVES
	*Agisted/Withdrawn Tag Identification			

No.

From

If stock are withdrawn or additional
agisted, state balance remaining.

To

*Strike-out which is not applicable

Signature

.....

Owner or Agent

Authorised Council Officer