

# BENALLA

RURAL CITY COUNCIL

BENALLA RURAL CITY

# COMMUNITY LOCAL LAW

## 2017

# Contents

PART 1 PRELIMINARY .....	5
1. Community Local Law .....	5
2. Purpose .....	5
3. Commencement.....	5
4. Revocation of Local Law .....	5
5. Definitions .....	5
6. Conflict with Other Legislation .....	10
7. Management by Permit .....	11
PART 2 ROADS AND MUNICIPAL PLACES .....	12
8. Behaviour.....	12
9. Council Signs .....	13
10. Consumption and Possession of Liquor .....	13
11. Trading Activities.....	14
12. Appeals and Collections.....	15
13. Busking .....	15
14. Protection of Council Property.....	15
15. Load Limits.....	16
16. B-Double Vehicles.....	16
17. Clothing Bins.....	16
18. Parking of Heavy Vehicles in Residential Areas .....	16
19. Residential and Commercial Parking Permits.....	16
20. Repair of Vehicles .....	17
21. Occupation of a Road for Works .....	17
22. Container Left on a Road .....	17
23. Shipping Containers on Private Land .....	17
24. Street Parties, Street Festivals and Processions .....	17
25. Vehicle Crossings .....	17
26. Shopping Trolleys .....	17
27. Noise.....	18
28. Playing of Golf.....	18
29. Use of Vehicles in Municipal Places .....	18
30. Property Numbers to be displayed .....	18
31. Vehicles Interfering with Council Functions .....	18
32. Abandoned Vehicles .....	18
33. The Location of Trees, Plants, Fences and Signs .....	19
34. Trees and Plants on Roads .....	19
35. Prohibition of Animals in a Public Place .....	19
36. Substances on Roads .....	20
37. Removal of Substances .....	20
PART 3 - THE ENVIRONMENT .....	20
38. Dangerous and Unsightly Land and Nuisances.....	20
39. Nature Strip Maintenance.....	21
40. Fires and Open Air Burning .....	21
41. Interference with Council Drains, Pits or Footpaths .....	21
42. Stormwater Protection.....	22
43. Camping and Caravans.....	22

44. Advertising Material.....	22
45. Building Sites and Building Works.....	23
46. Dilapidated Premises .....	24
47. Motorised Vehicles.....	24
48. Regulation of Household Refuse.....	25
49. Restriction on Use of Council Litter Bins .....	26
50. Depositing of Waste at Benalla Landfill and Resource Recovery Centre.....	26
51. Scavenging at Benalla Landfill and Resource Recovery Centre .....	26
PART 4 – ANIMALS.....	26
52. Keeping Animals in Residential Areas.....	26
53. Accommodation for Animals.....	27
54. Pigeons.....	27
55. Animal Noise.....	27
56. Wandering Animals.....	27
57. Bee Keeping .....	28
58. Keeping of Dogs and Cats on Rural Land .....	28
59. Adequate Fencing .....	28
60. Dog Excrement .....	28
61. Horses .....	28
62. Grazing Livestock on Roads .....	28
63. Livestock Droving.....	29
64. Movement of Livestock.....	29
65. Permanent Livestock Crossing.....	29
66. Prohibited Roads.....	29
PART 5 - ADMINISTRATION.....	30
67. Permits.....	30
68. Direction of Authorised Officer.....	31
69. Notice to Comply.....	31
70. Reasonable time to Comply .....	31
71. Failure to adhere to a Notice to Comply .....	32
72. Power of Authorised Officer – Urgent Circumstances.....	32
73. Impounding .....	32
74. Appeals.....	32
75. Bonds.....	33
76. Delegation.....	33
PART 6 - ENFORCEMENT .....	33
77. Offences .....	33
78. Offences by a Minor .....	34
79. Infringement Notice .....	34
80. Penalties .....	34
81. Additional Penalty .....	34
Schedule1 Noctice to Comply	
Schedule 2 Benalla Restricted Area	
Schedule 3 Erosion and Sediment Control Guide for Building Sites	
Attachment 1 Policy Document Applicable to the Community Local Law 2016	

## Version Control Table

Version number	Date of issue	Author(s)	Brief description of change
Version 1.0	19/06/2014	G. Joyce	First review and amend Community Local Law 2009
Version 2.2	29/04/2016	G. Joyce	Inserted amendments
Version 2.3	13/05/2016	G. Joyce	Inserted amendments agreed to by the Committee
Version 2.4	19/05/2016	T. Beaton	Formatted Document
Version 2.5	28/05/2016	G. Joyce	Inserted amendments
Final Version	06/09/2017	G. Joyce	Final version adopted by Council on 06/09/2017 and Placed in the Victorian Government Gazette 14/09/2017

# COMMUNITY LOCAL LAW 2017

## PART 1 PRELIMINARY

### 1. Community Local Law

This Local Law is a local law made under Section 111 (1) of the *Local Government Act* 1989 and Sections 26 (2) (b), 42 (a) (b) (c) and 44 (1) of the *Domestic Animals Act* 1994.

### 2. Purpose

The purpose of this Local Law is to provide for:

- (1) The peace, order and good governance of the **municipality**;
- (2) A safe and healthy environment so that the community can enjoy a quality of life that meets its expectations;
- (3) The safe and equitable use and enjoyment of **public places**;
- (4) The protection and enhancement of the amenity and environment of the **municipality**;
- (5) The fair and reasonable use and enjoyment of private **land**;
- (6) An environment where activities on and related to **building sites** and **building works** complement the safety and amenity of the public and the community;
- (7) An environment where activity related to waste and recycling complement the safety and amenity of the community;
- (8) Public safety, the protection of **roads** and the conservation of roadside environments; and
- (9) The uniform and fair administration of this Local Law.

### 3. Commencement

This Local Law commences on the day following the notice of its making being published in the Victoria Government Gazette.

### 4. Revocation and Area of Operation

- (1) On the commencement of this Local Law the following local law will be revoked:  
Community Local Law 2009
- (2) This Local Law applies throughout the **municipality**.

### 5. Definitions

In this Local Law:

“**advertising sign**” means any portable sign, notice, structure, banner or other similar device used for the purpose of soliciting **goods** or services or displaying information;

“**animal**” includes a domestic pet and **livestock**;

“**asset**” means any **road**, drain, drainage infrastructure, street sign, street tree or other property vested in or under control of **Council**;

“**Authorised Officer**” means a person appointed by **Council** under Section 224 or Section 224A of the *Local Government Act* 1989;

“**B-Double**” has the same meaning as in the *Road Safety (Vehicles) Regulations* 2009;

**“Benalla Restricted Area”** means any **land** within the boundary of the map contained in Schedule 2;

**“boundary”** means something that indicates bounds or limits, such as a limiting or boundary line or a fence which serves to indicate the limits of a property;

**“building site”** means any **land** prepared for **building works** or on which **building works** are carried out;

**“building works”** includes any activities or practices for or in connection with the construction, alteration, demolition or removal of a building;

**“bulk rubbish container”** includes a waste bin, mini-skip, shipping container and pallet;

**“camp”** means to erect, occupy or use for accommodation a tent, tarpaulin or any similar form of accommodation, shelter or temporary structure, or to occupy or use a swag or sleeping bag;

**“caravan”** includes a mobile home and moveable dwelling;

**“Council”** means Benalla Rural City Council;

**“Code”** means a Code of Practice incorporated into and forming part of this Local Law;

**“designated camping area”** means an area approved by **Council** for the purpose of camping;

**“designated storage area”** means any area within a shop, supermarket, shop car park or supermarket car park set aside for the storage of **shopping trolleys**;

**“dilapidated”** means partially ruined and in need of repair whether through neglect or otherwise;

**“domestic bird”** means small birds such as canaries, finches, budgerigars and the like;

**“driveway”** means the physical surface and the underlying structural material that provides for movement of **vehicles** between the roadway surface and the property boundary;

**“dwelling”** means a place of residence;

**“droving”** means the movement of **livestock** either by driving them into the **municipality** or by driving them along any **road** or **roads** through the **municipality**;

**“Erosion and Sediment Control Guide for Building Sites”** means the Guidelines contained in Schedule 3;

**“event”** means an organised recreational, street art, cultural, commercial or social event or gathering of people which is held on a **road**, and includes a procession, **street festival** and **street party**;

**“footpath”** has the same meaning as in *Road Safety Road Rules 2009* – Victoria;

**“garden waste”** includes all tree branches, leaves, prunings, lawn clippings and weeds;

**“goods”** means merchandise or wares;

“**graffiti**” means write, draw, mark, scratch or otherwise deface property, without the permission of the **owner / occupier**, by any means so that the defacement is not readily removable by wiping with a dry cloth;

“**grazing**” means the holding of **livestock** in one area for the purpose of them feeding off roadside vegetation;

“**gross vehicle mass**” of a **vehicle** has the same meaning as contained in the *Road Safety Act 1986*, namely the maximum loaded mass of the **vehicle**:

- (a) as specified by the **vehicle’s** manufacturer; or
- (b) as specified by the Roads Corporation if:
  - (i) the manufacturer has not specified a maximum loaded mass
  - (ii) the manufacturer cannot be identified or
  - (iii) the **vehicle** has been modified to the extent that the manufacturer’s specification is no longer appropriate;

“**household refuse**” means all refuse and rubbish produced or accumulated in or about a property but does not include bricks, chemicals, hard waste, trade waste, **garden waste**, medical waste, furniture, fittings or machinery;

“**incinerator**” means a structure or device that is not enclosed in a building which is:

- (a) used or is intended, adapted or designed to be used or capable of being used for the purpose of burning any matter, material or substance;
- (b) not licensed or otherwise subject to control under the provisions of any Act; and
- (c) not a barbeque;

“**land**” includes structures permanently fixed to the **land**;

“**large birds**” means any cockatoo, galah, large parrot or other similar sized bird but does not include poultry, pigeons or a domestic bird;

“**livestock**” has the same meaning as in the *Impounding of Livestock Act 1994*, that is an **animal** of any species (including a bird) used in connection with primary production or kept for recreational purposes, other than a dog or a cat;

“**liquor**” has the same meaning as in the *Liquor Control Reform Act 1998*;

“**motorised vehicle**” includes any mini-bike, trail bike, motor bike, motor car, four-wheel drive **vehicle**, motor scooter, go-cart or other **vehicle** which is or is capable of being propelled by a motor or by mechanical means;

“**municipality**” means the municipal district of **Council**;

“**municipal place**” means any **land** and/or building, river, creek, lake or body of water, and includes recreation centres, libraries, shopping malls, reserves and other **Council land** which is owned, occupied, managed or controlled by **Council** but excludes a **road**;

“**Notice to Comply**” means a Notice to Comply issued under this Local Law;

“**occupier**” means the person who is for the time being in charge of **land**;

“**offensive**” means noxious, annoying or injurious to personal comfort;

“**outdoor eating facility**” means any tables and/or chairs or other articles located out-of-doors, at which food or drink is served or intended to be served and may be consumed;

“**owner**” means in the case of:

- (a) a **vehicle** which is registered pursuant to the *Road Safety Act 1986*, the person in whose name the **vehicle** is so registered;
- (b) any other **vehicle**, the person who has the immediate right to the **vehicle’s** possession;
- (c) a building, the **owner** of the **land** on which the building is situated;
- (d) **livestock**, an **owner** as defined in the *Impounding of Animals Act 1994*; or
- (e) any other circumstance, an **owner** as defined in the *Local Government Act 1989*;

“**penalty unit**” has the same meaning as in the *Sentencing Act 1991*;

“**permit**” means a permit issued under this Local Law, and includes an Asset Protection Permit;

“**permit application**” means a **Council** approved document that is submitted to **Council** which states any applicable policies, conditions, standards and guidelines that must be adhered to;

“**permanent livestock crossing**” means a site at which the movement of **livestock** either across or along or across and along a **municipal road** is or is prepared to be carried out more than 52 occasions in any 12 month period;

“**person in charge**” means, in clauses 42 and 45, a person or persons (whether natural or incorporated) who has or have management responsibility for **building works** or a **building site**, and includes the **owner** of **land** on which the **building works** are being carried out or the **building site** is located;

“**premises**” means:

- (a) a building or part of a building;
- (b) a tent, stall or other structure, whether permanent or temporary;
- (c) **land**, whether or not appurtenant to a building;
- (d) a **vehicle**, vessel or aircraft; or
- (e) any other like place;

“**prohibited road**” means a **road** or parts of **road** declared by **Council** as such on which **droving** or **grazing** or moving of **livestock** is not permitted;

“**public place**” has the same meaning as in the *Summary Offences Act 1966*;

“**public reserve**” means a tract of public **land** set apart for recreation;

“**refuse receptacle**” means a wheeled mobile refuse receptacle of the type issued or approved by **Council**;



“**residential area**” means **land** zoned as General Residential, Township or Low Density Residential under the Benalla Planning Scheme;

“**road**” has the same meaning as in the *Local Government Act 1989* namely:

- (a) a street;
- (b) a right of way;
- (c) any **land** reserved or proclaimed as a street or **road** under the *Crown Land (Reserves) Act 1978* or the *Land Act 1958*;
- (d) a passage;
- (e) a cul de sac;
- (f) a by-pass;
- (g) a bridge or ford;
- (h) a **footpath**, bicycle path or nature strip; or
- (i) any culvert or kerbing or other **land** or **works** forming part of the **road**;

“**road reserve**” means all of the area of **land** that is within the boundaries of a **road**;

“**rural land**” means **land** within a Farming Zone or Rural Living Zone under the Benalla Planning Scheme;

“**roadside drainage**” includes any area excavated, or any pipe, culvert, lead wall, channel or natural depression in a **road** reserve that facilitates the flow of drainage water either along or across the roadway;

“**sanitary facilities**” means sanitary facilities provided for the use of persons working on a **building site**, including:

- (a) toilets;
- (b) hand basins; and
- (c) the supply of clean water to toilets and hand basins;

“**shopping trolley**” means a wheeled container supplied by a retailer for enabling a customer to transport **goods**;

“**site fencing**” means a fence around the entire perimeter of a **building site** at the commencement of and for the duration of the **building works**:

- (a) at a height of not less than 1.5 metres;
- (b) so as to be capable of preventing litter from being transported from a **building site** by wind; and
- (c) having not more than one access opening which:
  - (i) has a width not greater than 3 metres;
  - (ii) is fitted with a 1.5 metres high gate or gates which prevents or prevent litter from being transported from a **building site** when closed;
  - (iii) is located to correspond with the **vehicle crossing** referable to the **building site**;

“**site identification**” means a sign which is at least 600 millimetres in height and 400 millimetres in width, is erected at the entrance to the **building site** and is clearly visible from the **road**, and includes:

- (a) the lot number, as described on the Certificate of Title relevant to the **land**;
- (b) the name of the person in charge;
- (c) the postal address of the person in charge;
- (d) the 24 hour contact telephone number or numbers of the person in charge; and
- (e) a prohibition on unauthorised entry in accordance with the *Occupational Health and Safety Act 2004*;

“**street festival**” means an organised recreational, cultural, commercial or social gathering of people which is held on a **road**;

“**street party**” means an organised social gathering of people from one or several adjacent **roads** that is held on a **road**;

“**vehicle**” has the same meaning as in Section 3 of the *Road Safety Act 1986*;

“**vehicle access facility**” means a physical means of entry or exit for **vehicles** between adjoining **land** and a roadway and includes a **driveway** and associated **vehicle crossing**;

“**vehicle crossing**” means the physical means of materials used to transfer longitudinal **roadside drainage** under or over a **driveway** and includes drainage culverts, kerb and channel laybacks and any kerb layback where no longitudinal kerb and channel drainage is provided;

“**wheeled recreational device**” has the same meaning as in *Road Safety Road Rules 2009 – Victoria*;

“**wheeled toy**” has the same meaning as in *Road Safety Road Rules 2009 – Victoria*; and

“**works**” includes any change to the natural or existing condition or topography of **land**, including but not limited to:

- (a) the removal, destruction or lopping of trees;
- (b) the removal of vegetation;
- (c) the removal of topsoil;
- (d) the collection of seed;
- (e) the collection of firewood;
- (f) the preparation and construction of fire breaks;
- (g) drainage works; and
- (h) the construction of an underpass under a **road**.

## 6. Conflict with Other Legislation

This Local Law does not apply where any act or thing is authorised by or under any legislative instrument or Planning Scheme.

## 7. Management by Permit

- (1) The following uses or activities require a **permit** from **Council** as set out in this Local Law:
  - (a) Consumption and Possession of **liquor**;
  - (b) Trading Activities;
  - (c) Appeals, Collections and Fundraising;
  - (d) Busking;
  - (e) Load Limits;
  - (f) Clothing Bins;
  - (g) Residential Parking and Commercial Parking;
  - (h) Occupation of a **road** for **works**;
  - (i) Container left on **road**;
  - (j) Shipping Containers on Private **land**;
  - (k) **Street Parties, Street Festivals, Processions and Events**;
  - (l) **Vehicle Crossings**;
  - (m) Location of Trees, Plants, Fences and Signs;
  - (n) Trees and Plants on **roads**;
  - (o) Open Air Burning;
  - (p) Camping and **caravans**;
  - (q) Advertising Material;
  - (r) **Building site** and **building works** (Asset Protection);
  - (s) **Motorised Vehicles**;
  - (t) Scavenging at Benalla Landfill and Resource Centre;
  - (u) Keeping of **animals** in Residential Areas;
  - (v) Pigeon Keeping;
  - (w) Keeping of Dogs and Cats on **rural land**;
  - (x) **Grazing livestock** on **roads**;
  - (y) **Droving livestock**; and
  - (z) Movement of **livestock**;
  - (aa) Establishment of **permanent livestock crossing**.
- (2) Policy, standards and guidelines applicable to any use or activity described in sub clause (1) are as stated on the appropriate **permit application**, which must be submitted to **Council** for consideration.
- (3) A person must comply with:
  - (a) any conditions of a **permit**; and
  - (b) any additional requirements or limitations that this Local Law applies to the use or activity.

- (4) **Council** may grant exemptions from any other requirements or limitations that this Local Law applies to the use or activity.
- (5) In deciding whether to grant a **permit** for a use or activity, **Council** may take into consideration whether the proposed activity or use will:
- (a) conform to any related policies, guidelines and strategies of the **Council**;
  - (b) cause a danger or hazard to pedestrians or **vehicles**;
  - (c) disturb, annoy or disrupt adjacent **owners** or **occupiers**;
  - (d) be detrimental to the amenity of the area;
  - (e) destroy native vegetation on **roads** or any **municipal place**;
  - (f) cause damage to **assets**;
  - (g) require the consent or should be referred to obtain the opinion of any other public authority or individual;
  - (h) require additional arrangements to be made for waste water disposal, litter and garbage disposal, lighting and security;
  - (i) obstruct a **footpath** so that it will not be possible to maintain a clear walkway of at least 1.8 metres at all times;
  - (j) necessitate the applicant to have insurance against any risk; and
  - (k) necessitate a written indemnification of the **Council** against liability arising from the activities authorised by the **permit**;
- any other matters relevant to the circumstances of the **permit** application.

## PART 2 ROADS AND MUNICIPAL PLACES

### 8. Behaviour

- (1) A person must not, whether by language, actions, or otherwise, behave in a **public place** in such a manner as to:
- (a) interfere with another person's reasonable use and enjoyment of that **public place**; or
  - (b) endanger, or be likely to endanger health, life or property.

Any such behaviour may include:

- (i) fighting;
  - (ii) vomiting;
  - (iii) urinating;
  - (iv) defecating;
  - (v) spitting;
  - (vi) using inappropriate language clearly directed towards any Police or member of **Council** staff; or
  - (vii) engaging in conduct which is **offensive**.
- (2) **Wheeled Recreational Devices and Wheeled Toys**  
A person must not use any **wheeled recreational device**, **wheeled toy** or other similar device in an area or at a time for which that use is prohibited.

(Penalty .5 **Penalty Units**)

(3) **Declaration of Areas**

The purport of any resolution of **Council** declaring an area or a time to be prohibited for the purposes of sub clause (2) must be published in a newspaper generally circulating in the **municipality**.

9. **Council Signs**

A person must comply with any **Council** sign erected in a **public place**.

10. **Consumption and Possession of Liquor**

For the purpose of this clause 10 the following definitions apply:

**unbroken seal** – means an unbroken manufacturer's seal;

**dispose of** – means empty; and

**seize** – means remove from another person's possession or control;

(1) **Permit Required in Benalla Restricted Area**

A person in any **public place** (excluding any **public reserve**) within the **Benalla Restricted Area** must not, without a **permit**, consume any **liquor** or have in his/her possession or control any **liquor** other than in a container with an **unbroken seal**.

(2) **Consumption on Public Reserves**

A person in any **public reserve** must not, without a **permit**, consume any **liquor** or have in his/her possession or control any **liquor** other than in a container with an **unbroken seal**. A person does not commit any offence against this sub clause if:

(a) the consumption, possession or control of **liquor** between noon and 9:00pm occurs while the person is partaking in a substantial meal; or

(b) the **liquor** is supplied at the **public reserve** in accordance with a **liquor** licence or permit issued under the *Liquor Control Reform Act 1998*.

(3) **Prohibition of liquor on Public Reserves or Benalla Restricted Area**

A person must not, without a **permit**, in any **public reserve** or in the **Benalla Restricted Area** have in his/her possession or control any **liquor** between 11:30pm and 9:00am in a container with an **unbroken seal**.

The prohibition in this sub clause (3):

(i) applies to any stationary **vehicle** in a **public reserve** or in the **Benalla Restricted Area** (including an associated **road/s** or car parks); but

(ii) does not apply where the **public reserve** is licensed premises.

(4) **Consumption and Possession of liquor following a direction**

A person must not in a **public place** or in a stationary **vehicle** parked in or at a **public place**:

(a) have in his/her possession or control any **liquor** after a member of the Police Force or an **Authorised Officer** has directed that person to **dispose of** that **liquor**; or

- (b) consume any **liquor**, after a member of the Police Force or an **Authorised Officer** has directed that person not to consume that **liquor**.
- (5) **Power to Direct**
- (a) Where a member of the Police Force or an **Authorised Officer** believes on reasonable grounds that a person is in contravention of or has contravened sub clause (1) or (2), the member of the Police Force or **Authorised Officer** may direct the person to either **dispose of** or surrender the **liquor** to the member of the Police Force or **Authorised Officer**.
- (b) Where a member of the Police Force or an **Authorised Officer** believes on reasonable grounds that a person is in contravention of or has contravened sub clause (3), the member of the Police Force or **Authorised Officer** may direct the person to surrender the **liquor** in a container with an **unbroken seal** to that member of the Police Force or **Authorised Officer**.
- (6) **Compliance with Direction**  
A person to whom a direction is given under sub clause (5) must comply with that direction.
- (7) **Seizure**
- (a) If a person to whom a direction is given under sub clause (5) does not immediately comply with that direction, the member of the Police Force or **Authorised Officer** may **seize** any **liquor** in that person's possession or control.
- (b) Any **liquor seized** under this provision must be dealt with as follows:
- (i) any **liquor** in a container with an **unbroken seal** may be returned to the **owner** the following day after 9:00am from the Benalla Police Station if **seized** by a member of the Police Force or from the Sir Edward Weary Dunlop Learning Centre during normal business hours if **seized** by an **Authorised Officer**. Where **liquor** is not collected from the Benalla Police Station within three days (3) then the Police must deliver the **liquor** to the Benalla Rural City Council Customer Service Centre. On receipt of **liquor** from the Police **Council** must, if practicable, notify the **owner** in writing that the **liquor** must be collected within seven (7) days or the **liquor** will be **disposed of**.
- (ii) any **liquor** in a container with a broken seal may be kept, stored, **disposed of** or otherwise dealt with as the member of the Police Force or **Authorised Officer** sees fit.
- (8) **Permit Exemptions**  
A person who consumes or possesses **liquor** in any licensed premises or authorised **premises** as defined in the *Liquor Control Reform Act 1998* is, while consuming or possessing such **liquor**, exempt from the requirements of sub clauses (1) to (7) of this Local Law.

## 11. Trading Activities

- (1) A person must not, without a **permit**, on any **road** or in any **municipal place**:

- (a) erect or place or cause to be erected or placed any **vehicle, caravan, trailer, table, stall, chair, sign** or other similar structure for the purpose of selling or offering for sale any **goods** or services;
  - (b) sell or offer to sell or cause to be sold or offered for sale **goods** or services;
  - (c) display or cause to be displayed any **goods**;
  - (d) place or caused to be placed any outdoor eating furniture or thing associated with an **outside eating facility**; or
  - (e) place or cause to be placed any **advertising sign**.
- (2) Where a person intends to undertake a trading activity governed by sub clause (1) outside **premises** that the person occupies, the **permit** application must include:
- (a) written permission from the proprietor of the other **premises** where the trading activity is to take place; and
  - (b) confirmation that the person's public liability insurance extends to the location of the trading activity.
- (3) A person must not sell or offer for sale on any **road** or in any **public place** any **goods** carried about on the person or an **animal**.
- (4) Any item that is placed or secured contrary to sub clause (1) may be required to be removed by an **Authorised Officer**. If such removal involves reinstatement of the **footpath**, the person to whom the relevant **permit** was issued must reimburse **Council** for the reinstatement **works**, except where this person no longer operates from the **premises**, in which case the new proprietor of the **premises** is responsible for the reinstatement of the footpath to its original condition to the satisfaction of an **Authorised Officer**.
- (5) If a person fails to comply with any of the requirements of sub clause (1), an **Authorised Officer** may cancel or suspend the **permit** issued to that person in respect of the relevant trading activity.
- (6) A person must not engage in spruiking or promoting **goods** or services or allow another person to engage in spruiking or promoting **goods** or services on any **road** or in any **public place**.

## 12. Appeals, Collections and Fundraising

- (1) A person must not, without a **permit**, solicit or collect any gift of money, materials or subscriptions for any purpose in a **municipal place** or on a **road**.
- (2) A person participating in a highway collection approved under the authority of the *Road Safety Act 1986* does not require a **permit** under sub clause (1).

## 13. Busking

A person must not, without a **permit**, busk with the object of collecting money on any **road** or in any **municipal place**.

## 14. Protection of Council Property

A person must not deface, damage, remove or interfere with any **asset**, including any:

- (1) tree, shrub or other vegetation;

- (2) waste or recycling receptacle;
- (3) sign or its supporting structure;
- (4) drain or culvert;
- (5) **road** guide post;
- (6) fence or gate;
- (7) building;
- (8) monument;
- (9) garden bed;
- (10) water or power supply system;
- (11) security device;
- (12) **footpath**, kerbing or channel;
- (13) water feature;
- (14) public art or art **work** on public display; and
- (15) **Council** property not belonging to any defined class.

#### 15. **Load Limits**

A person must not, without a **permit**, drive a **vehicle** on a **road** when the **vehicle** is over the prescribed weight indicated on a sign pertaining to that **road**.

#### 16. **B-Double Vehicles**

An operator of a **B-Double vehicle** or any **vehicle** longer than a **B-Double vehicle** must only use that **vehicle** on a **municipal road** designated for **B-Double** use, unless the operator's use of the **road** has the written consent of **Council** and a permit has been obtained from the Roads Corporation.

#### 17. **Clothing Bins**

A person must not, without a **permit**, place a clothing bin in a **municipal place** or on a **road**.

#### 18. **Parking of Heavy Vehicles in Residential Areas**

The **owner** or driver of a **vehicle** weighing more than (4.5) tonnes (including any load) must not park or allow the **vehicle** to be parked, kept, stored or repaired on any **land** zoned residential under the Benalla Planning Scheme.

#### 19. **Residential and Commercial Parking Permits**

- (1) **Council** may from time to time by resolution designate any area as an area in which a residential or commercial parking scheme is in operation.
- (2) An **occupier** of **land** in an area in which a residential or commercial parking **permit** is required may make an application to the **Council** for a parking **permit**.
- (3) Any person who has been allocated a parking **permit** must not sell or hire that parking **permit** to any person.
- (4) Any person who purchases, hires, offers to purchase or offers to hire a parking **permit** is guilty of an offence.



- (5) The **owner** or **occupier** of **land** which an advertisement is displayed for the sale, hire, offer for purchase or offer for hire of a parking **permit** is guilty of an offence.
- (6) A person must not:
  - (a) forge or counterfeit parking **permit**;
  - (b) use a forged or counterfeit parking **permit**; or
  - (c) falsely represent themselves to be a member of or an agent of **Council**.

## 20. Repair of Vehicles

A person must not dismantle, paint, carry out maintenance or repair a **vehicle** on a **municipal road** or in any **municipal place** except where it is necessary to enable the **vehicle** to be removed or made roadworthy (such as, but not limited to, changing a tyre).

## 21. Occupation of a Road for Works

A person must not, without a **permit**, carry out any **works** on a **road** or occupy a **road** for the purpose of carrying out **works**.

## 22. Container Left on a Road or in a Municipal Place

A person must not, without a **permit**, leave on a **road** or in a **municipal place** a **bulk rubbish container**, shipping container or any other thing which encroaches on or obstructs the free use of the **road** or **municipal place** or that reduces the breadth, or confines the limits, of the **road** or **municipal place**.

## 23. Shipping Containers on Private Land

- (1) The **owner** or **occupier** of any **premises** must not, without a **permit**, cause or allow a shipping container to be placed on those **premises**;
- (2) Sub clause (1) does not apply to a shipping container located on **land** which is within a Rural Zone under the Benalla Planning Scheme.

## 24. Street Parties, Street Festivals, Processions and Events

A person must not, without a **permit**, hold a **street party**, **street festival** or procession on a **road** or in a **municipal place**.

## 25. Vehicle Crossings

- (1) A person must not, without a **permit**, construct, install, remove or alter a **vehicle crossing** or **driveway**, whether temporarily or permanently.
- (2) An **owner** or **occupier** of **land** must ensure that the **vehicle access facility** pertaining to that **land** is maintained free of risk to any user of the **road**.
- (3) An **owner** or **occupier** of **land** must not access that **land** by driving a **vehicle** over a nature strip, **footpath**, drain or culvert.

## 26. Shopping Trolleys

A person must not be in possession of a **shopping trolley** that has been removed from a **designated storage area** or leave a **shopping trolley** on any **road** or in any **public place** other than a **designated storage area** and

- (a) if a **shopping trolley** is left on any **road** or vacant **land** or in a **public place**, the **owner** of the **shopping trolley**, the person who left the **shopping trolley** and/or any person who caused or authorised another person to do so is guilty of an offence;
- (b) any **shopping trolley** left on any **road** or vacant **land** or in any **public place** in an area which is not a **designated storage area** may be removed by an **Authorised Officer** and impounded; and
- (c) a release fee will apply to the retrieval of a **shopping trolley** so impounded.

## 27. Noise

A person must not in a **municipal place** or on a **road**:

- (1) spruik; or
- (2) emit, or allow to be emitted, any other noise which causes or is calculated to cause interference with a person's use or enjoyment of adjacent or nearby **premises**.

## 28. Playing of Golf

A person must not hit a golf ball in any **municipal place** other than in an area specifically set aside for that purpose.

## 29. Use of Vehicles in Municipal Places

A person must not ride or drive any **motorised vehicle** in any **municipal place** other than in an area set aside for **vehicle** parking or any designated roadway or bicycle pathway.

## 30. Property Numbers to be Displayed

The **owner** or **occupier** of **premises** that have been allocated a street or rural **road** number by **Council** must mark the **premises** with the allocated number. The property number must be:

- (1) at least 90 millimetres in height;
- (2) located on the front **boundary** alignment;
- (3) in a contrasting colour to its background;
- (4) located as near as practical to the **driveway** and / or letterbox of the premises; and
- (5) be visible from occupants of **vehicles** on any adjacent **road**.

## 31. Vehicles Interfering with Council Functions

The **owner** of a **vehicle** parked on a **road** must move the **vehicle** in accordance with a notice from **Council** served on the **owner** if **Council** is of the opinion that the presence of the **vehicle** on the **road** interferes with any **Council** function.

## 32. Abandoned Vehicles

- (1) A person must not, on any **road** or in a **public place** or parking area vested in or under the control of **Council**, place any unregistered **vehicle** or abandon or cause to be abandoned any **vehicle**.

- (2) **Council** may impound any abandoned or unregistered **vehicle** found on any **road** or in any **public place** or parking area vested in or under the control of **Council** in accordance with the provisions of the *Local Government Act 1989*.
- (3) Where a **vehicle** is impounded under sub clause (1) and is claimed by its **owner**:
  - (a) proof of ownership of the **vehicle** must be provided to **Council** or its agent;
  - (b) a fee not exceeding the amount that represents the cost to **Council** of impounding, moving, keeping and releasing the **vehicle** must be paid to **Council**; and
  - (c) in the event that a claim for a **vehicle** is made by a person other than the **owner**, satisfactory evidence must be provided to **Council** of that person's authority from the **owner** to take possession of the **vehicle**.

### 33. The Location of Trees, Plants, Fences and Signs

A person must not, without a **permit**, plant any tree or plant or erect any fence, sign or other similar object on a **road** so that it is located in a way that it obstructs or interferes with pedestrian or vehicular traffic by:

- (1) overhanging any property **boundary** onto any **footpath** or other part of the **road** used by pedestrians or **vehicles** (whichever the case may be) so that it gets in the way of pedestrians or **vehicles** and is likely to cause injury or damage; or
- (2) extending over any part of the **road** in such a way that it:
  - (a) obstructs the use of that **road**;
  - (b) obstructs the view between **vehicles** at an intersection;
  - (c) obstructs the view between **vehicles** and pedestrians;
  - (d) obstructs any **Council assets** (including drains);
  - (e) obscures a traffic control item from an approaching **vehicle** or pedestrian;
  - (f) obscures street lighting; or
  - (g) constitutes a danger to **vehicles** or pedestrians or compromises the safe and convenient use of the **road**.

### 34. Trees and Plants on Roads

A person must not, without a **permit**, plant any tree or other vegetation on any part of a **road**.

### 35. Prohibition of Animals in a Public Place

- (1) **Council** may place restrictions or prohibitions on the presence of all **animals**, or any class of **animals**, in any **public place** during a public **event** or at any other time deemed appropriate by **Council**.
- (2) Any restriction or prohibition must be advertised in a newspaper generally circulating in the **municipality**.
- (3) A person must not act in contravention of any such restriction or prohibition described in sub clause (1).

### 36. Substances on Roads

A person must not cause or allow any grease, oil, mud, clay or other substance to fall from or run off a **vehicle** or **livestock** onto or under a **road** or into any drain, or permit or authorise another person to do so.

### 37. Removal of Substances

- (1) A **person in charge** of a **vehicle** or **livestock** from which any grease, oil, mud, clay or substance has fallen or from which it has run off onto or under any **road** or into any drain, must take all reasonable steps to remove the grease, oil, mud, clay or substance promptly, make good any damage and ensure that no hazard remains.
- (2) If any damage or hazard remains, the person described in sub clause (1) must notify **Council** or a member of the Police Force promptly and detail the location, nature and extent of the damage or hazard.

## PART 3 - THE ENVIRONMENT

### 38. Dangerous and Unsightly Land and Nuisances

- (1) An **owner** or **occupier** of **land** must ensure that the **land**:
  - (a) does not constitute a danger to health or property; and
  - (b) does not constitute a fire hazard, including a fire hazard by reason of containing long or excessive vegetation such as weeds, grass, undergrowth, any other vegetation that is a haven for vermin or insects;
- (2) is not unsightly, or detrimental to the general amenity of adjoining **land** or the neighbourhood, due to:
  - (a) the storage of unregistered motor **vehicles**;
  - (b) the storage of machinery or any parts of them;
  - (c) the storage of scrap metal;
  - (d) the storage of second-hand timber, or building materials;
  - (e) the presence of unconstrained rubbish or waste material;
  - (f) the storage of soil or similar materials; or
  - (g) the presence of **graffiti**; and
- (3) is not being used in any manner that may cause a nuisance by, but not limited to:
  - (a) creating an amount of dust or smoke that is unreasonable in the circumstances, by becoming a nuisance or detrimental to the amenity of adjoining occupiers or land owners; or
  - (b) containing a wasp nest or bee hive; or
  - (c) being used for the purpose of disposing of dead **livestock** or part thereof in a manner that is likely to cause a nuisance, or detrimental to the amenity of adjoining occupiers or land owners; or detrimental to the environment; and
- (4) is not **offensive** to any person.

### 39. Nature Strip Maintenance

An **owner** or **occupier** must not allow a nature strip adjoining his/her **land** to become unsightly or detrimental to the general amenity of adjoining **land** or the neighbourhood due to long or excessive vegetation including weeds, grass, undergrowth, any other vegetation.

### 40. Fires and Open Air Burning

- (1) A person must not light, allow to be lit or remain alight a fire in an **incinerator** in the **Benalla Restricted Area**.
- (2) A person must not light a fire in the open air, without a **permit**, unless the fire is lit:
  - (a) for heating in an appropriately constructed device for this purpose;
  - (b) for cooking in an appropriately constructed device for this purpose; or
  - (c) on private **land** greater than 2 hectares in area and not located in the **Benalla Restricted Area**.
- (3) An **owner** or **occupier** of **land** must not cause or allow any chimney on that **land** to discharge dust, grit, ashes or smoke to such an extent that it is dangerous to health or **offensive** to any person.
- (4) A person must not burn or cause to burn any **offensive** materials in any part of the **municipality**, including any substance which contains:
  - (a) any manufactured chemical;
  - (b) any rubber or plastic;
  - (c) any petroleum or oil;
  - (d) any paint or receptacle which, in turn, contains or contained paint;
  - (e) food waste, fish, or other **offensive** or noxious matter; or
  - (f) any other materials prohibited by **Council**.
- (5) A person to whom a **permit** has been issued under this clause 40 must make the **permit** available to any of the following who request to see it:
  - (a) an **Authorised Officer**;
  - (b) a member of the Police Force;
  - (c) a member of Country Fire Authority who has been called to the property in relation to the fire; or
  - (d) an officer of the Environment Protection Authority.
- (6) A **permit** holder must comply with any reasonable direction given by any of the persons described in sub clause (5).

### 41. Interference with Assets

- (1) An **owner** or **occupier** of **land** must not allow a tree, shrub, bush, vegetation or any other thing on that **land** to hinder, obstruct, or interfere with the use or operation of any asset.
- (2) Where **Council** or an **Authorised Officer** is of the opinion that any tree, shrub, bush, vegetation or any other thing hinders, obstructs or interferes or is likely to hinder, obstruct or interfere with the use or operation of any asset, an **Authorised Officer** may serve a notice on the **owner** or **occupier** of the **land**

- requiring removal of the offending tree, shrub, bush, vegetation or any other thing, or such other action that **Council** or an **Authorised Officer** may require.
- (3) A person on whom a notice is served under sub clause (2) must comply with that notice.
  - (4) A person must not in any manner:
    - (a) interfere with access to any drainage pit; or
    - (b) construct or place any material, dirt, soil or other matter on a drainage pit lid so as to conceal its location or accessibility.

#### 42. Stormwater Protection

- (1) A **person in charge** must comply with any requirements imposed by a provision of the **Erosion and Sediment Control Guide for Building Sites** in respect of any **building works** or a **building site**.
- (2) A **person in charge** must, if requested to do so by an **Authorised Officer**, identify to the **Authorised Officer** any person whom the **person in charge** knows to be responsible for contravening the **Erosion and Sediment Control Guide for Building Sites**.

#### 43. Camping and Caravans

- (1) A person must not, without a **permit**, **camp** in any **municipal place** in a **caravan** or tent unless it is a **designated camping area** or a caravan park licensed under the *Residential Tenancies Act 1997*.
- (2) A person must not, without a **permit**, place for accommodation on any private **land** any **caravan** or tent unless the following conditions are met:
  - (a) there is a **dwelling** on the **land**;
  - (b) the occupation does not exceed 28 days;
  - (c) no rent, licence fee or charge is paid by any person in respect to the occupation;
  - (d) the toilet, bathing and laundry facilities provided in the dwelling are made available without charge to the occupant(s) of the **caravan** or tent;
  - (e) waste water from the **caravan** is contained within the **caravan** and disposed of at an approved waste water disposal point; and
  - (f) the **caravan** or tent is not within a distance of 6 metres of the frontage of the property or within 1.2 metres of any **boundary** of the **dwelling** and not more than 20 metres from the **dwelling**, and no closer than 30 metres to a watercourse.
- (4) A person must not dispose of the contents of any chemical toilet other than at a site approved by **Council**.

#### 44. Advertising Material

- (1) A person must not, without a **permit**, on any **road** or in any **municipal place** distribute to any person any advertising or promotional items or any printed material.
- (2) A person must not, without a **permit**, write, deface, place or affix any letter, figure, device, poster, sign or advertisement on any building, fence, tree or other property under the control of or vested in **Council**.

#### 45. Building Sites and Building Works

- (1) A **person in charge** of a **building site** or **building works** must not, without an Asset Protection Permit, commence or undertake any **building works**.
- (2) A **person in charge** must not damage or cause detriment to or authorise any other person to damage or cause detriment to:
  - (i) any **asset**; or
  - (ii) the natural or built environment in which the **building site** is located.
- (3) A **person in charge** must ensure that a fence is erected around the entire perimeter of the **building site** at the commencement of the **building works** and remains erected for the duration of the **building works**.
- (4) If, as a result of an inspection, **Council** considers that **building works** have damaged an **asset**, **Council** may:
  - (a) direct the builder and **owner** to repair the damage at their cost, in accordance with standards specified by the Council and within a period of not more than 28 days; or
  - (b) repair the damage and recover the cost from a security bond lodged in accordance with an Asset Protection Permit.
- (5) If repair of damaged **assets** is required, the builder or **owner** of the **building site** (as the case may be) must effect the repairs to the standards and within the time specified by the **Council**.
- (6) If repair **work** is completed by **Council** and the cost is greater than the amount of the security bond, then the builder or the **owner** of the **building site** must pay to **Council** the amount of the shortfall, being the difference between the cost of the repair work and the amount of the bond.
- (7) If the repair **work** is completed and the cost is less than the amount of the security bond, **Council** may refund or release the unused portion of the security bond.
- (8) If, after the final inspection has been conducted, **Council** considers that the building **work** has not damaged any **asset**, **Council** must refund or release the entire security bond.
- (9) The **person in charge** of a **building site** must ensure that:
  - (a) **building works** are contained entirely within a **building site**;
  - (b) the **building site** is provided with **site fencing**;
  - (c) the point of entry to the **building site** is by way of a **vehicle crossing**;
  - (d) the **building site** is provided with **site identification**;
  - (e) **sanitary facilities** are provided on the **building site** at the commencement of and for the duration of the **building works**, which:
    - (i) do not cause odours or are detrimental to the amenity of the area in which the **building site** is located; and
    - (ii) are maintained in a clean and sanitary condition at all times;
  - (f) waste produced as a result of the **building works** is:
    - (i) contained entirely within the **building site**;
    - (ii) stored in a manner that does not attract the depositing of waste from sources other than the **building site**;

- (iii) stored in a manner that does not cause detriment to the visual amenity of the area in which the **building site** is located; and
  - (iv) disposed of regularly and to a legal point of waste disposal;
  - (g) litter that is capable of being blown off the **building site** by wind is stored in a **waste container**; and
  - (h) the **building works** do not cause interference to pedestrian or vehicular traffic or are unsafe.
- (10) For the purposes of sub clause (9)(h), interference to pedestrian or vehicular traffic will be caused, or **building works** will be unsafe, if there is or are:
- (a) mud or debris on a **road** (includes washing of equipment, concrete mixers and wheel barrows);
  - (b) materials from **building works** on a **road**;
  - (c) equipment from **building works** or other **works** on a **road**;
  - (d) excavation on or immediately adjacent to a **road**;
  - (e) **building works** on a **road**; or
  - (f) soil that is stripped from a **building site** unless it is stockpiled on the **building site** for re-use or be transported to a legal place of disposal.

(Penalty = 5 **Penalty Units**)

#### 46. Dilapidated Premises

- (1) An **owner** or **occupier** of **land** on which there is a building must not allow or permit the building to be **dilapidated**.
- (2) Where a building is **dilapidated** an **Authorised Officer** may serve a **Notice to Comply** on the **owner** or **occupier** of the land specifying the works required to correct the **dilapidated** state of the building.
- (3) Where a building is **dilapidated** an **Authorised Officer** may serve a **Notice to Comply** on the **owner** that the building be removed or demolished.

(Penalty = 5 **Penalty Units**)

#### 47. Motorised Vehicles

- (1) A person must not, without a **permit**, persistently use a **motorised vehicle** on private **land** within the **Benalla Restricted Area** to the annoyance of others.
- (2) The parent or guardian of a person under the age of 17 years who permits that person to use a **motorised vehicle** for recreational purposes in breach of sub clause (1) without a **permit** is guilty of an offence, unless the **motorised vehicle** was being used without the knowledge or consent of that parent or guardian.
- (3) A person must not:
  - (i) use a **motorised vehicle** so as to cause a nuisance to the **occupiers** of surrounding **land** by emitting dust; or
  - (ii) use a **motorised vehicle** for recreational purposes on a smog alert day or a day of Total Fire Ban.



#### 48. Regulation of Household Refuse

- (1) A person must not place out for collection any recycling or **household refuse** unless it is contained within an approved **refuse receptacle** in accordance with this Local Law.
- (2) A person must not place in any refuse or recycling waste receptacle any material not expressly listed as permitted to be placed in the relevant receptacle by **Council** in its collection information published from time to time.
- (3) A person must not place in a **refuse receptacle** any:
  - (a) slops or liquid waste;
  - (b) moist refuse unless the moist refuse has previously been strained and securely wrapped so as to prevent its escape or leakage;
  - (c) dust from any vacuum cleaner, hair or other similar substances unless the dust, hair or other substance has first been securely wrapped so as to prevent its escape;
  - (d) ash or ashes unless such ash or ashes have been effectively dampened so as to be non combustible and free from any heat generating particles;
  - (e) concrete, masonry or bricks;
  - (f) hazardous chemicals;
  - (g) radioactive material;
  - (h) volatile, explosive or flammable substance;
  - (i) night soil except disposable nappies;
  - (j) the carcass of a deceased **animal** or bird;
  - (k) oil, solvents, flammable liquids or paint;
  - (l) waste of a shape, size or weight that cannot be contained in such a **refuse receptacle**;
  - (m) needles or syringes with an attached needle;
  - (n) medical or infectious waste;
  - (o) recyclable material; or
  - (p) other object or matter which is or may be dangerous to health or likely to cause injury.
- (5) An **occupier** of a property who utilises **Council's** refuse or recycling collection services must:
  - (a) keep and maintain on the property the **refuse receptacle** issued by or **Council**;
  - (b) keep each such **refuse receptacles** in good order and in a clean, sanitary an inoffensive condition;
  - (c) ensure that any damage to **refuse receptacle** is promptly reported to **Council** or an agent appointed by **Council**;
  - (d) if she/he wishes its contents to be collected place the **refuse receptacle**, during such hours and on such days as may be determined by **Council** or an **Authorised Officer** and advertised on **Council's** website, on the nature strip or **road reserve** nearest the **dwelling** or in such other location as may be approved or permitted by **Council** or an **Authorised**

**Officer**, but so as not to interfere with the free movement of pedestrian or vehicular traffic, in accordance with collection information published by **Council** from time to time and in such a manner as to facilitate the mechanical collection of the contents; and

- (e) return or cause to be returned the **refuse receptacle** to his/her property as soon as practicable on the day of collection after its contents have been collected.
- (6) An **Authorised Officer** or **Council** staff or an agent approved by **Council** may inspect the contents of a **refuse receptacle** at any time deemed appropriate.
- (7) Only the **occupier** of the property who placed the **refuse receptacle** out for collection or another person normally residing on the property may add, remove or interfere with the contents of any such **refuse receptacle**.

#### 49. Restriction on Use of Council Litter Bins

A person must not, place or deposit any refuse, rubbish or waste material of any kind that has been generated on or from that **premises** or any other place in a **Council** litter bin.

#### 50. Depositing of Waste at Benalla Landfill and Resource Recovery Centre

- (1) A person must not, without the approval of **Council**, deposit any hazardous, dangerous or infectious materials at the Benalla Landfill and Resource Recovery Centre.
- (2) Any person present at the Benalla Landfill and Resource Recovery Centre must not do anything contrary to any sign or act contrary to any lawful direction given by an **Authorised Officer** or **Council** employee.

#### 51. Scavenging at Benalla Landfill and Resource Recovery Centre

A person must not, without a **permit**, remove material of any kind which has been deposited at the Benalla Landfill and Resource Recovery Centre.

### PART 4 – ANIMALS

#### 52. Keeping Animals in Residential Areas

- (1) An **owner** or **occupier** of **land** must not, without a **permit**, keep, allow to be kept or remain on any **land**, any more **animals** or birds than is stated in the following table:

Type of Animal	Maximum allowed in residential areas.
Dogs	2
Cats	2
Poultry	8 Fowls or 2 Turkeys or 2 Geese or 2 Ducks
Pigs	None Allowed
Large Birds	None allowed
Ferrets	6
Guinea Pigs	6
Domestic Birds	10

Pigeons	<b>Permit</b> Required
Domestic Rabbits	2
Other <b>animal</b> types	None allowed except where otherwise determined by <b>Council</b> in each individual application for a <b>permit</b>
Roosters	None Allowed.

- (2) Sub clause (1) does not apply where a planning permit has been obtained for **land** used for the purposes of animal boarding or breeding.
- (3) For the purpose of calculating the maximum number of dogs or cats kept on any **land**, any progeny may be lawfully kept, without a **permit**, for 12 weeks after birth.
- (4) An **owner** or **occupier** of **land** in a **residential area** may apply to **Council** for a **permit** to keep more than the maximum number of **animals** referred to in sub clause (1).

### 53. Accommodation for Animals

An **owner** or **occupier** of **land** must ensure that all **animals** on that **land** are housed:

- (1) in a clean, inoffensive and sanitary condition;
- (2) so as not to cause nuisance; and
- (3) in an adequate and appropriate manner for the type of **animal** being housed.

### 54. Pigeons

- (1) An **owner** or **occupier** of **land** must not, without a **permit**, keep 100 pigeons or more on that **land**.
- (2) A person permitted to keep pigeons must not, in a **residential area**, exercise pigeons other than during 2 hours after sunrise or 2 hours before sunset.
- (3) An **owner** or **occupier** of **land** on which pigeons are lawfully kept must comply with the requirements of the *Victorian Code of Practice for the Keeping and Racing of Pigeons*.

### 55. Animal Noise

An **owner** or **occupier** of **land** must take all steps necessary to prevent any **animal** noise being emitted from the **land** which is:

- (1) unreasonable; or
- (2) objectionable to or adversely affecting the amenity of a person on other **premises**.

### 56. Wandering Animals

The **owner** or person in charge of any **animal** must not allow that **animal** to wander from the **land** where it is normally kept.

## 57. Bee Keeping

An **owner** or **occupier** of **land** must not keep one or more bee hives on any **land** unless the person is a registered beekeeper in accordance with the *Livestock Disease Control Act* 1994.

## 58. Keeping of Dogs and Cats on Rural Land

An **owner** or **occupier** of **rural land** must not, without a **permit**, keep or allow to be kept on that **rural land** more than:

- (1) five (5) dogs; or
- (2) three (3) cats.

## 59. Adequate Fencing

- (1) An **owner** or **occupier** of **land** on which an **animal** is kept must ensure that the **land** is adequately fenced so as to prevent the **animal's** escape from the **land**.
- (2) An **owner** or **occupier** of **land** must remove any **animal/s** from that **land** if an **Authorised Officer** forms the opinion and advises the **owner** or **occupier** that sub clause (1) is being contravened and that any fencing cannot be effectively repaired as a temporary measure to secure the animal/s prior to full repair or replacement of the fence as deemed by the **Authorised Officer**.
- (3) Where an **owner** or **occupier** of **land** does not remove an **animal** in accordance with sub clause (2) the **Authorised Officer** may, without first serving a written notice, impound the **animal** in accordance with the provisions of clause 73(1).

## 60. Dog Excrement

A **person in charge** of a dog on a **road** or in a **municipal place** must:

- (1) not allow the excrement of the dog to remain on that **road** or in that **municipal place**;
- (2) carry a device suitable for the removal of any excrement that may be deposited by the dog; and
- (3) produce the device on demand by an **Authorised Officer**.

## 61. Horses

A **person** must not ride or lead a horse on a **footpath** or nature strip in a **residential area** or in a **municipal place**.

## 62. Grazing Livestock on Roads

- (1) A **person** must not, without a **permit**, allow any **livestock** to graze on a **road**.
- (2) The **person** to whom a **permit** is granted under sub clause (1) or any agent of that **person** must comply with any direction from an **Authorised Officer** with regard to:
  - (i) the route to be followed; and
  - (ii) the protection from damage likely to be caused by **livestock** to the **road**, native roadside vegetation, any construction on the **road**, **roadside drainage** or private property.

### 63. Livestock Droving

- (1) A **person** must not, without a **permit**, drive **livestock** on a **road**
- (2) The **person** to whom the **permit** is granted under sub clause (1) or any agent of that **person** must comply with any direction from an **Authorised Officer** with regard to:
  - (i) the route to be followed;
  - (ii) the protection from damage likely to be caused by **livestock** to the **road**, native roadside vegetation, any construction on the **road**, **roadside drainage** or private property;

### 64. Movement of Livestock

- (1) A **person** must not, without a **permit**, move **livestock** on a **road**.
- (2) A **person** to whom a **permit** is granted under sub clause (1) and any agent of that **person** must:
  - (a) ensure all **livestock** reach their destination by the most direct route consistent with this Local Law and any direction given by an **Authorised Officer**; and
  - (b) ensure **livestock** are only on the **road** for the time it reasonably takes to move the **livestock** to their destination.
- (3) A person need not obtain a **permit** to move **livestock** on a **road** if the **livestock** are being moved to the adjoining property by the most direct route and if:
  - (a) the person is the holder or has the benefit of a current public liability policy of insurance with cover of not less than \$10 million per event;
  - (b) the person has agreed in writing to indemnify **Council** and its staff and keep them indemnified against any and all liability (including liability in negligence) and claims, damages, losses, expenses and costs in connection with the driving of the **livestock**;
  - (c) the person provides and displays all signs or other warnings and complies with all the requirements of the guidelines prepared by the Roads Corporation and referred to in the *Road Safety Road Rules 2009 - Victoria*;
  - (d) an adult is supervising the **livestock** at all times;
  - (e) it is between the hours of sunrise and sunset; and
  - (f) any delay to vehicular traffic does not exceed five minutes.

### 65. Permanent Livestock Crossing

A person must not, without a **permit**, establish a **permanent livestock crossing** on any **road**.

### 66. Prohibited Roads

- (1) Council may, by resolution, specify **roads** or parts of a **road** which cannot be utilised for the **droving** or **grazing livestock**, and such **roads** and parts thereof will, for the purposes of this Local Law, be known as "**prohibited roads**".

- (2) Notice of any resolution made by **Council** pursuant to sub clause (1) must be available for inspection at **Council** offices during normal business hours and be advertised in a newspaper generally circulating in the **municipality**.
- (3) Despite anything else in this Local Law, any person who is in charge of and any person who owns **livestock** which are being **driven** or **grazed** on any **prohibited road** commits an offence under this Local Law.

## PART 5 - ADMINISTRATION

### 67. Permits

- (1) An application for a **permit** must be lodged using the appropriate **permit application** form containing conditions, standards and guidelines .
- (2) An application for a **permit** under this Local Law must be accompanied by the appropriate fee determined by **Council**.
- (3) **Council** may waive, reduce or alter any such fee.
- (4) **Council** may require an applicant to supply additional information or to give public notice of the application.
- (5) **Council** may issue a **permit**, with or without conditions, and may subsequently revoke a **permit**.
- (6) **Council** may exempt a person from the requirement under this Local Law to obtain a **permit**.
- (7) A **permit** holder must produce the **permit** on request by an **Authorised Officer**.
- (8) **Council** may add any additional conditions, or delete or amend any of the above conditions as it determines from time to time.
- (9) A **permit** is in force until the expiry date indicated on the **permit**, unless it is cancelled before the expiry date. If no expiry date is indicated on the **permit**, the **permit** expires on 30 June next after the day on which it was issued.
- (10) A **permit** register of all **permits** issued must be kept by the relevant Department of **Council**.
- (11) **Council** may cancel or amend any **permit**, if it considers that there has been:
  - (a) a material mis-statement or concealment of facts in relation to the application for a **permit**;
  - (b) any material mistake in relation to the issue of the **permit**;
  - (c) any material change of circumstances which has occurred since the issue of the **permit**;
  - (d) a failure to comply with the conditions under which the **permit** was issued; or
  - (e) a failure to comply with a **Notice to Comply** issued under clause 69 of this Local Law within the time specified in such Notice.
- (12) **Council** or an **Authorised Officer** must notify the **permit** holder of **Council's** intention to amend or cancel the **permit** and give the holder of that **permit** an opportunity to make a submission within 14 days of notification before the **permit** is amended or cancelled;
- (13) If **Council** or an **Authorised Officer**, after considering any submission made by the **permit** holder, determines to cancel or amend the **permit**, **Council** must

note that cancellation or amendment in the register of applications and **permits** if the **permit** contains:

- (a) a clerical mistake or an error arising from any accident, slip or omission;
  - (b) an evident and material miscalculation of figures or any evident and material mistake in the description of any person, thing or property referred to in the **permit**; or
  - (c) is no longer compliant with overarching legislation or **Council** policy;
- (15) **Council** must notify the **permit** holder of its decision in writing by registered post giving the reasons for the decision and provide a reasonable amount of time to the **permit** holder to rectify the situation in accordance with the notification.

#### 68. Direction of Authorised Officer

- (1) An **Authorised Officer** may give any reasonable direction to a person:
  - (a) in respect of any matter under this Local Law; or
  - (b) a person's use of a **municipal place** or a **road**.
- (2) A person to whom a direction is given under sub clause (1) must comply with that direction.

#### 69. Notice to Comply

A **Notice to Comply** served under this Local Law must be in the form or to the effect of Schedule 1 and:

- (1) must specify the act, matter or thing which is required to cease or specify the act, matter or thing which is required to be done;
- (2) must specify the time within which the person receiving the **Notice to Comply** is required to carry out or cease carrying out any such act, matter or thing;
- (3) must be signed by an **Authorised Officer**;
- (4) must be served on the person named therein in accordance with Section 234 of the *Local Government Act 1989* or in person; and
- (5) will remain in force for a period of 12 months after the date of issue.

#### 70. Reasonable time to Comply

The time required by a **Notice to Comply** served under this Local Law must be reasonable in the circumstances, and what will be reasonable will vary depending on the matters to be remedied, but should take the following into account if applicable:

- (1) the amount of work involved;
- (2) the degree of difficulty;
- (3) the availability of necessary materials or other necessary items;
- (4) climatic conditions;
- (5) the degree of risk or potential risk; and
- (6) any other relevant factor.

## 71. Failure to adhere to a Notice to Comply

- (1) If a person on whom a **Notice to Comply** is served fails to comply with the requirements of that **Notice to Comply, Council** or an **Authorised Officer**, or any employee or any other person authorised by **Council**, may enter upon any **land** on which there is any such failure to comply and do all such acts, matters or things that are required to comply with the **Notice to Comply**.
- (2) All costs and expenses incurred by **Council** in carrying out any acts, matters or things described in sub clause (1) are a debt due to **Council** from the person on whom the **Notice to Comply** was served.

## 72. Power of Authorised Officer – Urgent Circumstances

An **Authorised Officer** may act to remedy any circumstance which has the potential to threaten a person's life, health or property, or an **animal**, without serving a **Notice to Comply**, provided that:

- (1) the circumstance arises out of a person's use of a **municipal place** or failure to comply with a provision of this Local Law;
- (2) the action taken is no more than the minimum reasonably necessary to remedy the urgent circumstance; and
- (3) the person on whom a **Notice to Comply** under clause 71 would have otherwise been served is, as soon as possible, notified of the urgent circumstance and the action taken to remedy it.

## 73. Impounding

- (1) An **Authorised Officer** may:
  - (a) impound any item that unlawfully encroaches on or obstructs the free use of a **road** or a **municipal place**, or any **animal** where a breach has been committed under clause 53;
  - (b) release the item to its **owner** on payment of a fee determined by **Council**, which is not to exceed an amount that reasonably represents the cost to **Council** of impounding, keeping and releasing the item; or
  - (c) sell, destroy, dispose of or give away the impounded item if the **owner** of the item has not paid the fee within 14 days of service of a notice under sub clause (2) or having complied with sub clause (3).
- (2) If an **Authorised Officer** impounds an item under this Local Law he or she must serve on the **owner** a notice as soon as possible after the impounding.
- (3) If the identity or whereabouts of the **owner** of an item impounded under this Local Law is or are unknown, **Council** must take reasonable steps to ascertain the **owner's** identity and/or whereabouts prior to exercising its powers under sub clause (1)(c).
- (4) **Council** is entitled to retain from the proceeds of sale of any impounded item its reasonable costs incurred in impounding, keeping and selling the item.

## 74. Appeals

- (1) A person may appeal to **Council** or a **Council** delegate for a review of an order, direction or notice made in relation to her or him under this Local Law within 14 days of the order, direction or notice being made.



- (2) Where an appeal is to be heard under this clause the person appealing must do all that is necessary to cooperate in the prompt and speedy hearing of the appeal.

## 75. Bonds

- (1) In deciding to grant a **permit**, **Council** may require the applicant to lodge with **Council** a bond in such amount and in such a manner as **Council** deems reasonable in the circumstances.
- (2) **Council** may use a **permit** bond to remedy a breach of that **permit** or repair any damage caused by any work under a **permit**.
- (3) On satisfactory completion of any **works** under a **permit**, **Council** must release any applicable bond.
- (4) If after 12 months **Council** cannot locate a person entitled to the release of any bond, **Council** may retain the bond and pay the money into its general revenue.

## 76. Delegation

**Council** delegates to its Chief Executive Officer and any **Authorised Officer** the power under this Local Law to:

- (1) issue, amend, refuse or revoke a **permit**;
- (2) require an applicant for a **permit** to lodge with **Council** a bond for such amount and in such a manner as **Council** deems reasonable in the circumstances;
- (3) exempt a person from the requirement to obtain a **permit**;
- (4) issue, sign, revoke, exempt, require or cancel any notice, order or agreement
- (5) enforce any matter; and
- (6) use a bond to remedy a breach of a **permit** or repair any damage caused by any work carried out under that **permit**.

## PART 6 - ENFORCEMENT

### 77. Offences

- (1) A person is guilty of an offence if the person:
  - (a) does something which a provision of this Local Law prohibits to be done or makes an offence;
  - (b) fails to do something which a provision of this Local Law requires to be done;
  - (c) engages in activity without a current **permit** where a provision of this Local Law requires that person obtain a **permit** before engaging in that activity;
  - (d) breaches or fails to comply with a condition of a **permit** issued under this Local Law; or
  - (e) fails to comply with a notice to comply or a direction of an **Authorised Officer** under this Local Law.

## 78. Offences by a Minor

- (1) Where a person under the age of 18 years is guilty of an offence as described under clause 77, a warning may be issued to that person and a written warning must also be issued to the parent or guardian of the person.
- (2) Where a person under the age of 18 years is guilty of a subsequent offence after the issue of a warning, an infringement notice may be issued to that person in accordance with clause 79, or a prosecution may be initiated.

## 79. Infringement Notice

- (1) Where an **Authorised Officer** reasonably believes that a person has committed an offence against this Local Law, the **Authorised Officer** may issue to that person an infringement notice, as an alternative to a prosecution for the offence.
- (2) To avoid prosecution, the penalty indicated on an infringement notice must be paid within 42 days from the date of the issue of the infringement notice.
- (3) Except as otherwise provided, the penalty in an infringement notice for an offence under this Local Law is 2 penalty units for a first offence and 4 penalty units for a second or subsequent offence within a 12 month period of the first offence.
- (4) The infringement notice must contain the following minimum information:
  - (a) the name and address of the offender;
  - (b) the date of the offence; and
  - (c) details of the offence.

## 80. Penalties

A person found by a Court to be guilty of an offence under this Local Law is subject to the penalty specifically provided for, or if no penalty is specifically provided, for the following penalties:

- (1) First offence – not more than 10 **penalty units**; and
- (2) Second or subsequent offence – not more than 20 **penalty units**.

## 81. Additional Penalty

In addition to any penalty imposed pursuant to this Local Law a penalty not exceeding two (2) **penalty units** shall apply for each day after conviction for an offence during which a contravention of this Local Law continues.

THE COMMON SEAL of BENALLA )  
RURAL CITY COUNCIL was affixed )  
this            day of            )  
2017 in the presence of:            )

.....  
Mayor/Councillor

.....  
Chief Executive Officer

**Schedule 1 – Notice to Comply**

**Schedule 2 – Map of Benalla Restricted Area**

**Schedule 3 – Erosion and Sediment Control Guide for Building Sites**

**Attachment 1 – Policy Document Applicable to the Community Local Law 2009**

**SCHEDULE 1 - NOTICE TO COMPLY**

Any Notice to Comply is to be printed on Benalla Rural City Council letterhead.

To:

Name \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You have, in the opinion of Benalla Rural City Council (**the Council**) or an authorised officer of the Council, committed a breach of clause \_\_\_\_\_ of the Benalla Rural City Council Community Local Law 2017 by

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

At \_\_\_\_\_  
\_\_\_\_\_

To remedy the breach within \_\_\_\_\_ days from the date of this notice you must:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you require further information you may contact \_\_\_\_\_  
at the Council on (03) 5760 2600 between the hours of 8:15am and 5pm.

**Important Information:**

If you fail to comply with this Notice you will be guilty of an offence under clause \_\_\_\_\_ of this Community Local Law and may be subject to penalties of up to \$\_\_\_\_\_. In addition, the Council may undertake such works as specified in the Notice, for the full cost of which you will be liable.

**This Notice remains in force for a period of one (1) year from the date of this Notice.**

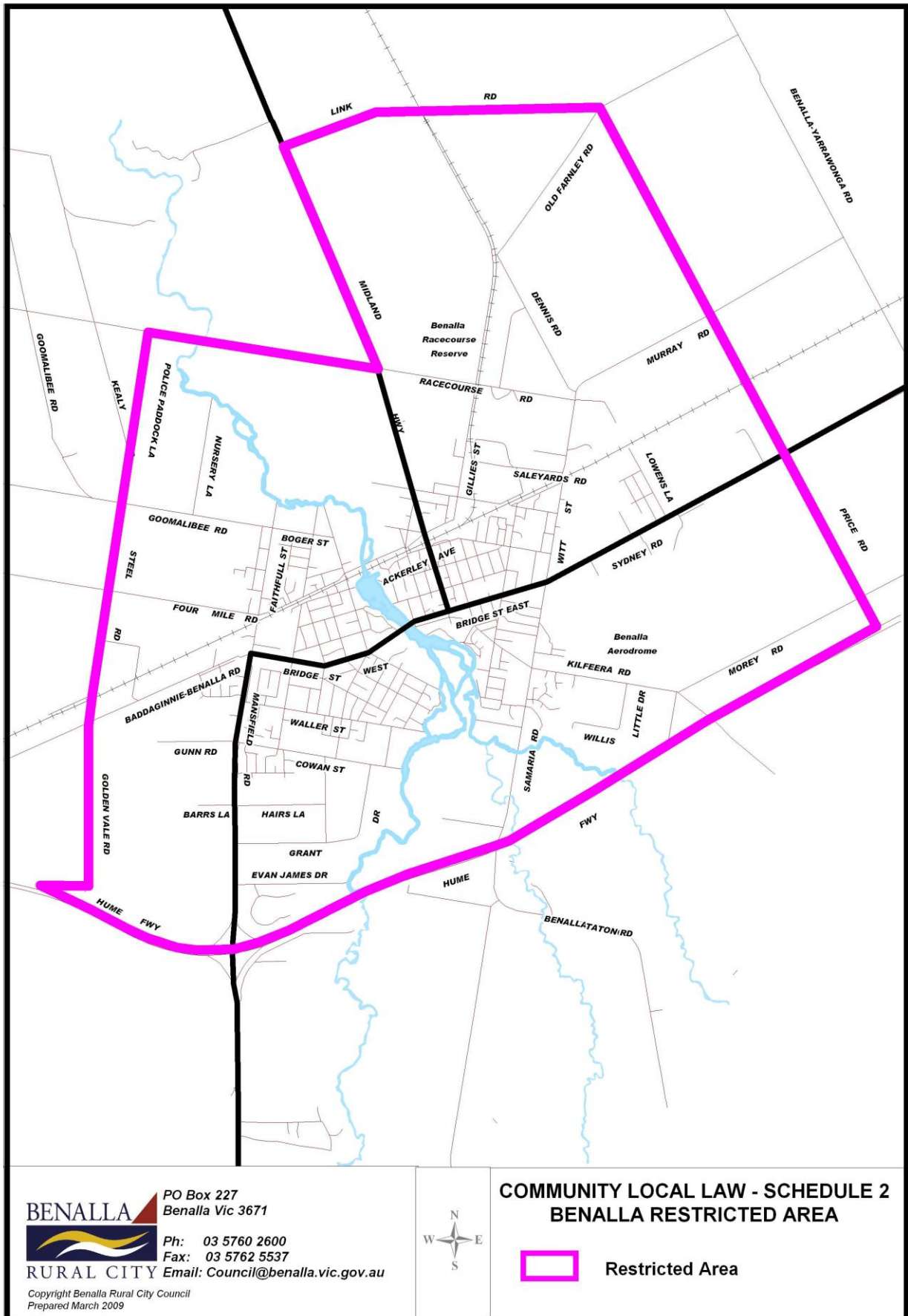
Name of Authorised Officer: \_\_\_\_\_

Signature of Authorised Officer: \_\_\_\_\_

Date: \_\_\_\_\_

*Note: if this Notice relates to a contravention of a permit and you do not comply with the Notice, the permit may be revoked. If you do not wish to have the permit cancelled you should comply with the directions in this Notice or show cause to the Council in writing why the permit should not be cancelled.*

**SCHEDULE 2 - BENALLA RESTRICTED AREA**



**BENALLA**  
  
 PO Box 227  
 Benalla Vic 3671  
 Ph: 03 5760 2600  
 Fax: 03 5762 5537  
 Email: [Council@benalla.vic.gov.au](mailto:Council@benalla.vic.gov.au)  
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 Prepared March 2009

**COMMUNITY LOCAL LAW - SCHEDULE 2  
 BENALLA RESTRICTED AREA**

 Restricted Area











# BENALLA

RURAL CITY COUNCIL

Benalla Rural City Council  
May 2016

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