



Wangaratta Rural City Council

LOCAL LAW NO. 3 of 2009

MURRAY TO THE MOUNTAINS RAIL TRAIL

*Adopted by the Rural City of Wangaratta
Tuesday 16 June 2009*

Note: This Local Law needs to be read in conjunction with the Crown Land Reserves (Murray to the Mountains Rail Trail Reserve) Regulations 2003 any other relevant provisions in Council's Policies and Procedures.

RAIL TRAIL LOCAL LAW NO. 3 of 2009

PART 1 - PRELIMINARY PROVISIONS

1. Title

This Local Law will be known as the Murray to the Mountains Rail Trail Local Law.

2. Purpose

The purpose of this Local Law is to –

- (a) prohibit, regulate and control activities which may be dangerous or unsafe or detrimental to the enjoyment and use of the Rail Trail;
- (b) prohibit, regulate and control access to, behaviour on and use of, the Rail Trail; and
- (c) provide for the peace, order and good governance of the municipal district.

3. Authorising Provision

This Local Law is made under Section 111 (1) of the Local Government Act 1989.

4. Commencement and Area of Operation

This Local Law –

- (a) commences on 1 July 2009, and
- (b) operates throughout the municipal district of Council.

5. Revocation Date

This Local Law ceases to operate on 30 June 2019.

6. Definition of Words Used in this Local Law

Unless inconsistent with the context or subject matter, the following words and phrases are defined to mean or include:

"**alcohol**" means a beverage intended for human consumption with an alcoholic content greater than 0.5 per centum by volume at a temperature of 20 degrees celsius;

"**authority**" means authority given by the Committee of Management of the Murray to the Mountains Rail Trail or its delegate;

“authorised crossing” means a road or other crossing on or over the Rail Trail which has been in existence prior to the construction of the Rail Trail and had previously been authorised by a rail authority as an authorised crossing or the crossing has been “authorised” by the Committee or its delegate;

“authorised officer” – means a person appointed by Council pursuant to Section 224 of the Local Government Act 1989;

“bicycle path” means a way, other than a bicycle lane, defined by a bicycle way sign at its beginning, and at its end by-

- (a) an end bicycle sign; or
- (b) a shared footway sign; or
- (c) a segregated footway sign; or
- (d) a bicycle way sign; or
- (e) a carriageway; or
- (f) a dead end.

the signs being erected adjacent to the way so as to face an approaching rider of a bicycle;

"camp" means–

- (a) to erect, occupy or use a tent or any similar form of accommodation; or
- (b) to erect, park, occupy or use a caravan, camper van or other movable form or temporary structure of accommodation;

"Committee" means the committee of management appointed to manage the Rail Trail Reserve by the Council pursuant to Section 86, Local Government Act 1989;

"Council" means the Wangaratta Rural City Council;

“damage” means to alter, to cut, to destroy, to deface, to soil or to vandalize;

“fauna” means any animal-life which is indigenous to Victoria whether vertebrate or invertebrate and in any stage of biological development and any other living thing generally classified as fauna but does not include humans or fish;

“firearm” has the same meaning as in the *Firearms Act 1996*;

“fireplace” means a facility constructed of stone, metal, concrete or other non-flammable material for the purposes of lighting and maintaining fires;

"flora" means any plant-life which is indigenous to Victoria whether vascular or non-vascular and in any stage of development and includes any other living thing generally classified as flora;

“footway” means a footpath, lane or other place provided solely for the use of pedestrians or habitually used by pedestrians and not by vehicles, but includes a

segregated footway or a shared footway;

"**function**" includes a –

- (a) meeting;
- (b) rally;
- (c) demonstration; and
- (d) sporting or recreational event;

"**Illegal crossing**" means a road, track or path crossing the Rail Trail which has been constructed or created by continued use allowing for the passage of vehicles over the Rail Trail and not previously authorised by rail authorities prior to the construction of the Rail Trail or authorised by the Committee or its delegate;

"**Livestock**" has the meaning ascribed to it by *Section 3 Impounding of Livestock Act 1994* and includes an animal species used in connection with primary production or kept for recreational purposes and includes stallions, mares, fillies, foals, geldings, colts, bulls, bullocks, cows, heifers, steers, calves, asses, donkeys, mules, sheep, ewes, wethers, rams, goats, swine and deer.

"**municipal district**" means the municipal district of Council;

"**permit or license,**" includes any authority, approval, consent, permission, receipt or ticket given granted or issued by the Committee in accordance with this Local Law;

"**Rail Trail**" is a multi use recreational pathway that has been developed on a former railway easement that has been set aside for recreational use including cycling and walking and other activities permit or license under the Crown Land Reserves (Murray to the Mountains Rail Trail Reserve) Regulations 2003. It also refers to those areas of Council owned or managed land that links the above areas of former railway reserve that have been utilised to form sections of the Rail Trail, forming a continuous sealed bike path from Wangaratta to Everton where it splits with a spur up to Beechworth and also continues on to Bright.

"**Reserve**" and "**Rail Trail Reserve**" means the Crown land reserved for Public Purposes (Rail Trail) in the various Parishes in the LGA's of the Rural City of Wangaratta and the Alpine and Indigo Shires:-

- Bright and Porepunkah as shown red on the plan marked LEGL./98-52;
- Barwidgee and Porepunkah as shown red on the plan marked LEGL./97-191;
- Barwidgee as shown red on the plan marked LEGL./97-190;
- Myrtleford as shown red on the three plans marked LEGL./96-461;
- Myrtleford and Murmungee as shown red on the plan marked LEGL./99-41;
- Murmungee as shown red on the plan marked LEGL./99-40;
- Everton and Murmungee as shown red on the plan marked LEGL./99-39;
- Everton and Murmungee as shown red on the plan marked LEGL./99-42;
- Beechworth as shown red on the plan marked LEGL./99-43;
- Tarrawingee and Everton as shown red on the plan marked LEGL./99-38;
- Carraragarmungee as shown red on the plan marked LEGL./99-37;
- Carraragarmungee (Bowser)– additions to Murray to the Mountains Rail Trail 2007421 as shown red on Map C.

lodged in the Land Registry.

"road" has the same meaning as in the *Local Government Act 1989* and includes a road vested in the Crown;

"segregated footway" means a length of footway defined by means of a segregated footway sign at its beginning, and at its end by –

- (a) an end segregated footway sign; or
- (b) a shared footway sign; or
- (c) a bicycle way sign; or
- (d) a no-bicycles sign; or
- (e) a carriageway; or
- (f) a dead end; or
- (g) a segregated footway sign;

"structure" means any building, equipment, device, or other facility made by people and which is fixed to land including fencing, any type of wire, electric fence, temporary fence, star pickets or other posts with any other material used to restrict, occupy or contain areas within the Rail Trail;

"sell" includes –

- (a) selling by means of any machine or mechanical device;
- (b) bartering or exchanging;
- (c) agreeing to sell;
- (d) offering or exposing for sale;
- (e) keeping or having in possession for sale; and
- (f) sending, forwarding, delivering or receiving for or on sale -or directing, causing or attempting any of such acts or things;

"shared footway" means a length of footway defined by means of a shared footway sign at its beginning, and at its end by –

- (a) an end shared footway sign; or
- (b) a segregated footway sign; or
- (c) a bicycle way sign; or
- (d) a no-bicycles sign; or
- (e) a carriageway; or
- (f) a dead end, or
- (g) a shared footway;

"take" means –

- (a) in relation to flora, to kill, injure or disturb any live flora, or to remove or collect the whole or parts thereof whether dead or alive, and
- (b) in relation to fauna, to kill, injure or disturb any animal or remove any dead animal;

"unauthorised crossing" means a road, track or path crossing the Rail Trail which has been constructed or created by continued use allowing for the passage of motor vehicles over the Rail Trail and not previously authorised by a rail authority prior to the construction of the Rail Trail or authorised by the Committee of it's delegate;

“vegetation” means any living plant material including trees, shrubs, herbs or grasses either native or exotic.

"vehicle" has the same meaning as defined in Section 3 (1) Road Safety Act 1986 *i.e.* a conveyance that is designed to be propelled or drawn by any means, whether or not capable of being so propelled or drawn, and includes bicycle or other pedal-powered vehicle, trailer, tram-car and air-cushion vehicle but does not include railway locomotive or railway rolling stock;" and

"weapon" has the same meaning as in the Control of Weapons Act 1990.

7. Application of Local Law

- (1) This Local Law does not apply to any of the following persons when acting in the course of that person's duties –
 - (a) a member of the Committee or Council; and
 - (b) any other "authorised officer" or employee of the Committee or Council acting in an official capacity.
- (2) A person acting in accordance with a lease, license, tenancy or permit, granted or issued under an Act that is not subject to this Local Law to the extent that the activities authorised by that lease, license, tenancy or permit, are inconsistent with this Local Law.
- (3) The Committee may exempt any person from the operation of this Local Law (or any provision contained in this Local Law) whether in whole or in part.

PART 2 – POWERS OF THE COMMITTEE

8. Committee May Set Aside Areas for Particular Uses

- (1) The Committee may determine that a specified area or areas in the Rail Trail Reserve be set aside and permitted to be used for one or more of the following uses –
 - (a) protection or management of flora, fauna, geological or geomorphological features or cultural values;
 - (b) re-establishment or planting of vegetation;
 - (c) amenities or facilities for public use;
 - (d) camping;
 - (e) the playing of games or sport;
 - (f) the lighting or maintaining of fires;
 - (g) the riding, driving or leading of a horse or a mule or a donkey or a camel or the drawing of a vehicle by any of those animals;
 - (h) the parking of any vehicle or vehicles of a particular class or classes;
 - (i) the passage of any vehicle or vehicles of a particular class or classes;
 - (j) a bicycle path;
 - (k) a footway;
 - (l) a segregated footway;
 - (m) a shared footway;
 - (n) the conducting of a community event;
 - (o) the approval of use of the Rail Trail Reserve trail for a commercial venture;
 - (p) for the passage and/or grazing of livestock;
 - (q) to cut and bale grass for hay; and
 - (r) to conduct fuel reduction burns.
- (2) A determination under sub-clause 8 (1) must specify the times or periods during which areas set aside under sub-clause 8 (1) may be used, the use for which the area has, or areas have, been set aside and any conditions of use.
- (3) If the Committee has determined that an area be set aside under sub-clause 8 (1), the Committee may cause notices to be displayed in such a place and manner that the particulars are reasonably likely to be seen by the persons about to enter the areas, indicating –
 - (a) the area(s) so set aside;
 - (b) the use for which the area has, or the areas have, been set aside; and
 - (c) the conditions, times or periods during which the use is permitted.

9. Committee May Set Aside Areas Where Entry or Access is Prohibited or Restricted

- (1) The Committee may determine that a specified area or areas in the Rail Trail Reserve be set aside as an area where access or entry is prohibited or restricted:
 - (a) by a person who is in possession of alcohol;
 - (b) by a person with glass bottles, glass containers or glass utensils in their possession;
 - (c) for reasons of public safety;
 - (d) for the protection of flora, fauna, geological or geomorphological features or cultural values;
 - (e) by a person who is control of an animal including horses, camels, donkeys and other animals; and
 - (f) for the passage of livestock.
- (2) A determination under sub-clause 9(1) must specify –
 - (a) the times or periods during which entry or access is prohibited or restricted to an area or the conditions of entry to that area; and
 - (b) the reasons why entry or access is prohibited or restricted.
- (3) If the Committee has determined that an area be set aside under sub-clause 9(1), the Committee may cause notices to be displayed in such a place and manner that the particulars are reasonably likely to be seen by the persons about to enter the areas, indicating –
 - (a) the areas so set aside; and
 - (b) any conditions of entry to the areas; and
 - (c) the times or periods during which entry or access is prohibited or restricted.

10. Fees and Charges

- (1) The Rail Trail Reserve is open to the public free of charge except as otherwise determined by the Committee in accordance with sub-clause 10(2).
- (2) The Committee may set fees as determined by Council from time to time that it considers necessary for entry to any part of the Rail Trail Reserve or use of improvements, services or facilities in the Rail Trail Reserve.
- (3) If the Committee has determined that a fee is payable for entry to the Rail Trail Reserve or use of improvements, services or facilities in the reserve under sub-clause 10(2), the Committee may cause notices to be displayed in such a place and manner that the particulars are reasonably likely to be seen by persons about to enter the Rail Trail Reserve or use the improvements, services or facilities in the Rail Trail Reserve, indicating the fee payable for entry to the reserve or use of the improvements, services or facilities in the Rail Trail Reserve.

- (4) A person must not enter any part of the Rail Trail Reserve or use the improvements, services or facilities within the Rail Trail Reserve without paying the appropriate fee, if any, determined by the Committee under sub-clause 10(2).

PART 3 – USE AND CONTROL OF THE RESERVE

Division 1 Permitted Activities

11. Prohibited or Restricted Entry or Access

A person must not, without a permit, enter or remain in an area of the Rail Trail Reserve to which entry or access has been prohibited or restricted in accordance with clause 9.

12. Driving and Parking Vehicles

- (1) A person must not within the Rail Trail Reserve:
- (a) use, control or drive a vehicle; or
 - (b) park or leave a vehicle standing,
- unless in an area set aside for that use under clause 8 or where a permit has been issued under this Local Law for a specified purpose.
- (2) Sub-clause 12(1) does not apply to –
- a) a bicycle, unicycle, tricycle or scooter;
 - b) a battery powered bicycle or scooter with a power source of less than 200 watts;
 - c) a disabled person using a 4 wheel motor bike or motorised wheel chair, provided the maximum speed travelled by that vehicle does not exceed 20km/per hour; or
 - d) any motorised vehicle for that section of the Rail Trail Reserve signed as a shared zone or between Wobonga Lane and Fleming Lane when controlled under the direction of the Roads Corporation (VicRoads) or Alpine Shire Council during periods of floods over the Great Alpine Road, provided the maximum speed travelled by that vehicle does not exceed 20km/per hour and all flagmen or traffic signals are obeyed.

13. Aircraft, Helicopters and Airborne Craft

A person must not, without a permit or license, launch, fly, land, control or operate any model aircraft, model helicopter, aircraft, helicopter, glider, hang glider or similar flying machine, kite, hot air balloon or parachute within the Rail Trail Reserve.

14. Camping

A person must not camp within the Rail Trail Reserve unless in accordance with a permit or license and in an area set aside for that use under clause 8.

15. Fire

- (1) A person must not light or maintain a fire in the Rail Trail Reserve unless –
 - (a) at a time and during a period when the lighting of fires is not prohibited under any Act;
 - (b) in a fireplace provided by the Committee; and
 - (c) in an area set aside for that use under clause 8.
- (2) A person must not leave unextinguished or unattended a fire which that person has lit or maintained in the manner referred to in clause 15(1).

16. Erecting or Using Buildings and Structures

A person must not, without the authority, a permit or license, within the Rail Trail Reserve –

- (a) erect or place any building or structure, including a fence; or
- (b) enter, occupy or use the whole or any part of any building or structure unless it is set aside as an amenity or facility for public use under clause 8.

17. Games or Sports

A person must not, without a permit, engage in any game or sport within the Rail Trail Reserve unless in an area set aside for that use under clause 8.

18. Organised Function, Fete or Public Meeting

A person must not participate in an organised function, concert, festival, tour, fete or public meeting or similar event within the Rail Trail Reserve unless in accordance with a permit and in an area set aside for that use under clause 8.

19. Public Address

A person must not, without a permit, preach or deliver an address or use any amplifier, public address system, loud hailer or similar device within the Rail Trail Reserve.

20. Commercial Activities

A person must not within the Rail Trail Reserve –

- (a) sell or offer any article for sale;
- (b) ply any vehicle for hire or carry any passengers for fee or reward;
- (c) conduct any school or provide any form of instruction for gain;

- (d) display, advertise for sale or trade or hire any article, device, service or thing;
- (e) solicit or collect money or orders for goods or services or other purposes;
- (f) take part in or advertise any entertainment for gain;
- (g) give out, distribute, erect, leave set up or display any handbill, placard, notice, pamphlet, book, paper, advertising matter or any like thing;
- (h) offer for hire any article, device or thing;
- (i) conduct a tour for gain or for commercial purposes; or
- (j) cultivation and/or planting of crops for harvest

unless in accordance with a permit or approval, and in an area set aside for that use under clause 8.

21. Machinery and Power Tools

A person must not, without a permit or license, operate any portable or stationary generator, air-compressor, chainsaw, oxy-acetylene or electrical cutting or welding apparatus or other machinery within the Rail Trail Reserve.

22. Bike Paths and Footways

A person must not enter or use a bicycle path, footway, segregated footway or shared footway in the Rail Trail Reserve unless in an area set aside for that use under clause 8.

23. Horses

A person must not ride, drive or lead a horse, mule, donkey or camel, whether in a vehicle or not, within the Rail Trail Reserve unless in an area set aside for that use under clause 8.

24. Livestock

A person must not, without a permit or license, drove, allow to be driven, allow to stand, or graze any livestock on the Rail Trail Reserve.

25. Hay Making

A person must not, without a permit, cut and bale hay.

26. Fire Minimisation

Fuel reduction burns must not be carried out without a permit.

Division 2 Prohibited Activities

25. Natural, Cultural and Other Assets

- (1) A person must not within the Rail Trail Reserve –

- (a) take, cut, damage, displace, deface or interfere with any timber, tree, shrub, plant, wildflower or other vegetation;
 - (b) enter any area which is set aside under clause 8 –
 - (i) for the re-establishment or planting of trees, shrubs, grass or other vegetation; or
 - (ii) for the protection of flora or fauna, geological or geomorphological features or cultural values;
 - (c) plant or knowingly introduce any seed, tree, shrub, fern or other vegetation or any part of any tree, shrub or other vegetation;
 - (d) take, destroy or damage any lair or nest or take any fauna or its lair or nest or take any skeletal remains;
 - (e) move or interfere with any sign, notice-board, equipment, seat, table, gate, post, fence, bridge, facility, building or structure;
 - (f) take any stone including any soil, sand or gravel or bricks from bridge or drainage structures; or
 - (g) disturb the soil for activities such as cropping.
- (2) Sub-clause 25(1) does not apply to a person acting in accordance with a lease, license, permit or other authority under the **Extractive Industries Development Act 1995**, the **Mineral Resources Development Act 1990** or the **Petroleum Act 1958**.

26. Use of Amenity or Facility

A person must not enter or use an amenity or facility set aside for use of persons of the opposite sex within the Rail Trail Reserve unless the person is a child under the age of 6 years who is accompanied by an adult.

27. Gates

A person must not within the Rail Trail Reserve leave any gate open except where the gate is already open, or in accordance with a sign authorised by the Committee.

28. Firearms and Traps

A person must not within the Rail Trail Reserve possess or carry or use any firearm, trap or snare.

PART 4 – ADMINISTRATION AND ENFORCEMENT

29. Obstruction

A person must not within the Rail Trail Reserve obstruct, hinder or interfere with a member of the Committee, authorised officer, or any other officer or employee of the Committee or Council in the execution of his or her duties in the Rail Trail Reserve.

30. Direction

- (1) An authorised officer may direct a person in charge of a vehicle to move the vehicle or remove the vehicle from the Rail Trail Reserve if –
 - (a) the vehicle is parked or standing contrary to any determination made under this Local Law;
 - (b) in the opinion of the authorized officer the vehicle is obstructing or likely to obstruct the passage of people or other vehicles in the Rail Trail Reserve;
 - (c) the vehicle is a danger or likely to be a danger to people using the Rail Trail Reserve or is likely to cause injury or damage to property in the Rail Trail Reserve; or
 - (d) the vehicle is being driven in a manner which is likely to prejudice the safety of persons or cause injury or damage to property in the Rail Trail Reserve.
- (2) An authorised person may direct any person whom that person believes on reasonable grounds has contravened this Local Law to leave the Rail Trail Reserve or any part of the Rail Trail Reserve.
- (3) When directed to do so by an authorised officer, a person must immediately –
 - (a) move a vehicle as directed within the Rail Trail Reserve; or
 - (b) remove a vehicle from the Rail Trail Reserve; or
 - (c) leave the Rail Trail Reserve or the part of the Rail Trail Reserve.

31. Grant of Permit, License or Lease

- (1) The Committee may issue a permit, license or lease, for any purpose for which a permit, license or lease is required, under this Local Law and in accordance with the Crown Land (Reserves) Act 1978, Crown Land Reserves, (Murray to the Mountains Rail Trail Reserve) Regulations 2003.
- (2) A permit, license or lease, issued under sub-clause 31(1) authorises the holder to enter and use the Rail Trail Reserve –
 - (a) for the purpose specified in the permit, license or lease; and
 - (b) for the period specified in the permit, license or lease; and
 - (b) subject to any terms and conditions in respect of the entry or use determined by the Committee and specified in the permit, license or lease.
- (3) A person who holds a permit, license or lease, issued under this Local Law must –
 - (a) comply with the terms and conditions of that permit, license or lease; and
 - (b) produce the permit, license or lease, for inspection when requested to do so by the Committee or authorised person.

32. Applications for Permit, Licenses or Leases

- (1) Unless otherwise provided in this Local Law, any person applying for a permit, license or lease, under this Local Law or the Crown Land (Reserves) Act 1978, Crown Land Reserves (Murray to the Mountains Rail Trail Reserve) Regulations 2003, must lodge with the Committee –
 - (a) an application in a form approved by the Committee; and
 - (b) any application fee required by the Committee.
- (2) Before considering any such application, the Committee may require the applicant to –
 - (a) give notice of the application to any persons whom the Committee considers may be detrimentally affected by the grant of the permit, license or lease;
 - (b) publish notice of the application in a newspaper generally circulating in the municipal district; and
 - (c) provide evidence of Public Liability Insurance for the amount of no less than \$10M.
- (3) Every notice given or published must consist of –
 - (a) a true copy or summary of the application;
 - (b) an indication that the Committee will consider the application after the expiry of 14 days following the giving or publication of the notice;
 - (c) an indication that all persons affected by the grant of a permit, license or lease, may send to the Committee any written submissions they wish to make in relation to the application; and
 - (d) an indication that all written submissions received within 14 days of the date of the notice will be taken into account in the determination of the application.
- (4) Where the Committee has required the giving or publication of a notice it must not further consider the application until –
 - (a) it is satisfied that the applicant has given and/or published the notice in the required manner; and
 - (b) at least 14 days have elapsed since the giving or publication of the notice.
- (5) All written submissions received within the 14 day period must be considered by the Committee.
- (6) In determining whether to grant a permit, license or lease, the matters to which the Committee may have regard include whether the application complies with any policy/s adopted by the Committee and the Crown Land (Reserves) Act 1978 (Murray to the Mountains Rail Trail Reserve) Regulations 2003.
- (7) The Committee may in its discretion –
 - (a) grant a permit, license or lease;
 - (b) grant a permit, license or lease, with conditions; or
 - (c) refuse to grant a permit, license or lease.

33. Form and Operation of Permit, License or Lease

Unless otherwise provided in this Local Law, any permit, licence or lease, granted by the Committee shall –

- (a) be in a form approved by the Committee; and
- (b) not be operative until the applicant pays any permit, licence or lease fee required by the Committee.

34. Currency of Permit, License or Lease

(1) Unless it is sooner revoked or renewed, any permit, license or lease, will continue in force for the period specified in the permit, license or lease, or, if no period is specified, for a period of:

- a. 12 months from the date of its issue or renewal for a permit; or
- b. 3 years from the date of its issue or renewal for a license.

(2) A permit, license or lease holder must not assign, transfer or encumber his or her permit, license or lease.

35. Correction of Permits, Licenses or Leases

(1) The Committee may correct any permit, license or lease, issued under this Local Law if the permit, license or lease, contains –

- (a) a clerical error or an error arising from an accidental slip or omission; or
- (b) an evident and material miscalculation of figures or a material mistake in the description of a person, thing or property referred to in the permit, license or lease.

(2) The Committee must give notice of the correction to the permit, license or lease holder.

36. Revocation of Permit, License or Lease

If, in the opinion of the Committee –

- (a) the holder of a permit, licence or lease has failed to comply with any conditions of the permit, license or lease;
- (b) there has been a material misstatement or concealment of fact in relation to the grant of the permit, license or lease; or
- (c) there has been a material change of circumstances since the grant of the permit, license or lease;

the Committee may revoke the permit, license or lease.

37. Register of Permit, Licenses or Leases

(1) The Committee must keep a register of all permits, licences or leases issued under this Local Law.

(2) The Committee must note any –
(a) corrections;

- (b) revocations,
of any permit, licenses or leases, in the register.

38. Infringement Notices

- (1) An authorised person may serve an infringement notice (Schedule 2) carrying a penalty of one (1) penalty unit) on a person who –
 - (a) has contravened; or
 - (b) is reasonably suspected of having contravened,
this Local Law..
- (2) A person served with an infringement notice may pay the penalty specified in the notice to the Committee within 28 days of service, failing which legal proceedings can be instituted against that person.
- (3) Any person served with an infringement notice is entitled to:
 - (a) disregard the notice and defend any subsequent prosecution in Court;
 - (b) correspond with the Committee within 28 days of service of the infringement notice.
- (4) The Committee may waive the notice following consideration of correspondence received and any penalty paid for the infringement prior to the waiver must be refunded.
- (5) If the penalty shown on the infringement notice is paid in the manner described in sub-clause 38 (2) or before the service of a Charge and Summons in respect of the offence –
 - (a) the person served with the infringement notice has expiated the offence by payment of the penalty; and
 - (b) no further proceedings may be taken in respect of the offence; and
 - (c) no conviction for the offence may be regarded as having been recorded.

39. Offences and Penalties

A person who contravenes or fails to comply with this Local Law is guilty of an offence, and liable to a penalty –

- (a) for an initial offence, not exceeding 5 penalty units; and
- (b) for a subsequent offence, not exceeding 10 penalty units.

40. Notice to Comply.

- (1) Where an authorised person is of the opinion that an owner, user or occupier has failed to comply with any requirement under this Local Law they may serve a “Notice to Comply” in the form of Schedule 1 to this Local Law on the owner, user or occupier.
- (2) A “Notice to Comply” issued in accordance with this clause must state the time and date the situation must be remedied.

- (3) If a person fails to cause to be carried out any work stipulated in a “Notice to Comply”, the Committee or an authorised person may in accordance with Section 225 of the *Local Government Act 1989* enter onto the land which is subject of the “Notice to Comply” and carry out the work stipulated in the “Notice to Comply”.
- (4) If the Committee or an authorised person carries out the work in accordance with this Local Law, the Committee may recover the cost of carrying out the work from the person who failed to do it in any Court of competent jurisdiction as a debt.

41. Power of authorised officer to act in urgent circumstances

- (1) In urgent circumstances arising as a result of a failure to comply with this Local Law, an authorised officer may take action to remove, remedy or rectify a situation without first serving a notice to comply if:
 - (a) the authorised officer considers the circumstances or situation to be sufficiently urgent and that the time involved or difficulties associated with the serving of a notice, may place a person, animal, property or thing at risk or in danger; and
 - (b) wherever practicable, the Committee is given prior notice of the proposed action.
- (2) In deciding whether circumstances are urgent, an authorised officer must take into consideration, to the extent relevant:
 - (a) whether it is practicable to contact:-
 - (i) the person by whose default, permission or sufferance the situation has arisen; or
 - (ii) the owner or the occupier of the premises or property affected; and
 - (b) whether there is an urgent risk or threat to public health; public safety, the environment or animal welfare.
- (3) The action taken by an authorised officer under sub clause 41(1) must not extend beyond what is necessary to cause the immediate abatement of or minimize the risk or danger involved.
- (4) An authorised officer who takes action under sub-clause 41(1) must ensure that, as soon as practicable:
 - (a) details of the circumstances and remedying action are forwarded to the person on whose behalf the action was taken; and
 - (b) a report of the action taken is submitted to the Committee.

42. Power of authorised officer to impound

- (1) Where any items, goods and equipment are used in contravention of this Local Law an authorised officer may remove and impound them.

- (2) If an authorised officer has impounded anything in accordance with this Local Law, the Committee may refuse to release it until the appropriate fee or charge for its release has been paid to the Committee.
- (3) The Committee may, by resolution, fix charges (generally or specifically) for the purposes of this clause.
- (4) As soon as it is reasonably practicable to do so, the authorised officer must serve written notice on the owner or person responsible for the item which has been impounded setting out the fees and charges payable and time by which the item must be retrieved.
- (5) If after the time required in a notice of impounding an impounded item is not retrieved, an authorised officer may take action to dispose of the impounded item according to the following principles:
 - (a) where the item has no saleable value, it may be disposed of in the most economical way; and
 - (b) where the item has some saleable value the item may be disposed of either by tender, public auction or private sale but failing sale may be treated as in sub-clause 42(5)(a).
- (6) When the identity or whereabouts of the owner or person responsible for the impounded item is unknown, the authorised officer must take reasonable steps to ascertain the identity or whereabouts of that person and may proceed to dispose of the impounded item in accordance with sub-clause 42(5) once he or she is satisfied that all reasonable efforts have been made to contact the owner or person responsible for the impounded item.
- (7) Any proceeds from the disposal of impounded items under this Local Law must be paid to the owner or to the person who, in the opinion of the Committee, appears to be authorised to receive the money except for the reasonable costs incurred by the Committee in the administration of this Local Law.
- (8) If a person described in sub-clause 42(7) cannot be identified or located within six (6) months after the date of the notice of impounding, any proceeds of the sale cease to be payable to that person and may be retained by the Committee.
- (9) The authority to impound livestock is in accordance with the Impounding of Livestock Act 1994 No. 89 (Vic).
- (10) The authority to impound motor vehicles is in accordance with the Road Safety (General) Regulations 1999 No. 27 (Vic), Part 3A, Vehicle Impoundment, Immobilisation and Forfeiture.

43. Interest

Interest shall be payable on any monies which are due but unpaid under this Local Law in accordance with *Section 172 of the Local Government Act 1989* as if those moneys were a rate or charge.

WANGARATTA RURAL CITY COUNCIL

MURRAY TO THE MOUNTAINS RAIL TRAIL LOCAL LAW No.31/2009

SCHEDULE 1

NOTICE TO COMPLY

To:.....
(Name)

.....
(Address)

The following constituted a breach under the provision(s).....of the **Rail Trail Local Law 3 of 2009**. To remedy this breach you must carry out the following work within days from the date of this Notice.

Breach:.....

Work to be carried out:

.....
.....
.....
.....

You should contact (contact officer) at the
between the hours of and for further information about this Notice.

If you fail to comply with this Notice you will be guilty of an offence and liable for the payment of \$.....for the offence. If you do not remedy the breach the authorised officer may carry out the work and you will be liable for the cost of the work in addition to the above penalty.

Authorised officer :Signature:.....

Contact Details of Authorised officer:

Date:

Note: If this Notice relates to a contravention of a permit or license, or a condition of the permit ,license or lease, and there is a failure to comply with this Notice, the permit, license or lease, may be cancelled. If you do not wish to have the permit, license or lease, cancelled you should comply with this Notice or write to the Committee about why the permit, license or lease should not be cancelled.

WANGARATTA RURAL CITY COUNCIL

MURRAY TO THE MOUNTAINS RAIL TRAIL LOCAL LAW NO. 3 of 2009

SCHEDULE 2

INFRINGEMENT NOTICE

Date:.....

To: (name and address)

I,(name of authorised officer) have reason to believe that you have committed an offence against the **Murray to the Mountains Rail Trail Local Law No 3 of 2009** as indicated below:

Date	Time	Clause of Local Law	Penalty
Description of Offence			
Location of Offence			

You are entitled to disregard this notice and defend the prosecution for an offence in Court.

Name of Authorised officer: _____

Contact Details of Authorised officer:

WANGARATTA RURAL CITY COUNCIL**MURRAY TO THE MOUNTAINS RAIL TRAIL LOCAL LAW NO. 3 of 2009**

I certify that this is a true copy of a Local Law made by the Wangaratta Rural City Council on 16 June 2009 in accordance with the requirements of section 119 of the Local Government Act 1989 (the Act).

The notices required to be given by Section 119(2) of the Act were given in The Chronicle on Friday 1 May 2009 and in the Government Gazette No G 18 on 30 April 2009 at page No 992.

The notices required to be given by Section 119 (3) of the Act were given in The Chronicle on Friday 26 June 2009 and in the Government Gazette No. G 27 on Thursday 2 July 2009 at Page No 1731.

A copy of the Local Law was sent to the Minister for Local Government on 8 July 2009.

The Local Law is operative from 1 July 2009 and will expire on 30 June 2019 being the day 10 years after the day on which it came into operation.

.....
Name
CHIEF EXECUTIVE OFFICER