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SHIRE OF CAPEL

LOCAL GOVERNMENT ACT 1995

LOCAL GOVERNMENT PROPERTY LOCAL LAW

**ACTIVITIES ON THOROUGHFARES AND TRADING IN
THOROUGHFARES AND PUBLIC PLACES LOCAL LAW**

PARKING AND PARKING FACILITIES LOCAL LAW

EXTRACTIVE INDUSTRIES LOCAL LAW

REPEAL LOCAL LAW

CEMETERIES ACT 1986

**LOCAL LAWS RELATING TO THE CAPEL AND BOYANUP
LOCAL CEMETERIES**

LOCAL GOVERNMENT ACT 1995

SHIRE OF CAPEL

LOCAL GOVERNMENT PROPERTY LOCAL LAW

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Capel resolved on the 13th December 2000, to make the following local law: The Shire of Moora Local Government Property Local Law as published in the *Government Gazette* of 29 November 1999, is adopted as a local law of the Shire of Capel, with the modifications which follow:

1 Preliminary

Wherever "Shire of Moora" is mentioned in the local law substitute "Shire of Capel".

2 Clause 1.2—Definitions

2.1 In the appropriate alphabetical position insert—

"boat" means any ship, vessel or structure capable of being used in navigation by water, however propelled or moved, and includes a jet ski ;".

2.2 In the definition of "vehicle", add a new paragraph—

"(e) a boat."

3 Clause 1.4—Application

In clause 1.4(1) after "**district**" insert "and in the sea adjoining the district for a distance of 200 metres seawards from the low water mark at ordinary spring tides."

4 Clause 1.5—Repeal

Delete clause 1.5(1) and substitute—

"1.5(1) The following local laws are repealed—

- (a) Saleyards By-laws, published in the *Government Gazette* of 23 September 1949;
- (b) Relating to Safety, Decency, Convenience and Comfort of Persons in Respect of Bathing, published in the *Government Gazette* of 19 November 1982 and amended in the *Government Gazette* 12 September 1986;
- (c) Relating to Reserves and Foreshores, published in the *Government Gazette* of 29 November 1985 and amended in the *Government Gazette* of 12 September 1986."

5 Clause 2.7—Activities which may be pursued on specified Local Government property

5.1 In clause 2.7(1), renumber paragraphs (e) to (h) inclusive to (g) to (j) respectively and insert the following two paragraphs—

- "(e) launch, beach or leave a boat;
- (f) take or use a boat, or a particular class of boat;".

5.2 In clause 2.7(2)(d), insert "boats," after "vehicles," in both places where this occurs.

6 Clause 2.8—Activities which may be prohibited on specified Local Government property

6.1 In clause 2.8(1)—

- (a) delete paragraph (g);
- (b) renumber paragraphs (e) and (f) to (f) and (g) respectively; and
- (c) insert the following paragraph—
"(e) taking or using a boat or a particular class of boat;".

6.2 In clause 2.8(2)(c), insert "boats," after "vehicles," in both places where this occurs.

7 Part 5—Clauses renumbered, Division replaced

7.1 Renumber Clauses 5.2 and 5.3 to 5.4 and 5.5 respectively.

7.2 Delete Division 1 and substitute—

"Division 1 – Beaches"

Powers of surf life saving club members

5.1 (1) Subject to subclause (2), the local government may authorize under section 9.10 of the Act the members of a surf life saving club to perform all or any of the following functions in relation to a beach—

- (a) patrol any beach;
- (b) carry out any activity on any beach;

- (c) erect signs designating bathing areas and signs regulating, prohibiting or restricting specified activities on the whole or any part of a beach or in or on the water adjacent to the beach and to direct persons on the beach or in or on the water to comply with such signs;
 - (d) temporarily enclose any area with rope, hessian, wire or any other means for the conduct of surf life saving club activities; and
 - (e) direct persons to leave the water adjacent to a beach during dangerous conditions or if a shark is suspected of being in the vicinity of a beach.
- (2) Under subclause (1), the local government shall authorize only those members who have been recommended by the surf life saving club as competent to perform the functions referred to in that subclause in respect of which they are authorized.
- (3) Under subclause (1), the local government may authorize members generally, or in relation to particular times, days or months.

Authorizing other persons

5.2 (1) A local government may authorize, under section 9.10 of the Act, a person to perform all or any of the functions referred to in clause 5.1(1) in relation to a beach.

(2) Under subclause (1), the local government shall authorize only those persons who, in the reasonable opinion of the local government, are competent to perform the functions referred to in clause 5.1(1) in respect of which they are authorized.

(3) Under subclause (1), the local government may authorize a person generally, or in relation to particular times, days or months.

(4) Where the local government has authorized members of a surf life saving club under clause 5.1(1) and a person under subclause (1) in relation to the same beach, so that they can perform all or any of the functions referred to in clause 5.1(1) contemporaneously, the local government is to specify which authorization is rendered ineffective when both are exercised.

Persons to comply with signs and directions

5.3 A person shall—

- (a) not act in contravention of any sign erected on a beach under clause 5.1(1)(c);
- (b) not enter an area which has been temporarily closed with rope, hessian, wire or any other means for the conduct of surf life saving club activities, unless he or she is a member of the club or has obtained permission to enter from the club; and
- (c) comply with any direction given under clause 5.1(1)(c) or 5.1(1)(e), notwithstanding that the sign or the direction was erected or given, as the case may be, by a person referred to in clause 5.2(1)."

8 Schedule 1—Prescribed offences

In schedule 1, under the headings "Clause" "Description" and "Modified Penalty \$"

- (a) renumber clause numbers 5.2 and 5.3 to 5.4 and 5.5 respectively; and
- (b) insert the following prescribed offence in clause number order—

"5.3 Failure to comply with sign or direction on beach 100.00".

9 Schedule 2—Determinations

After Part 1, Preliminary, insert the following—

"

PART 2—ANIMALS ON FORESHORE

Foreshore area where animals allowed

2.1 In this Part reference to an "animal" does not include a dog.

2.2 Notwithstanding clause 3.13 (1) (g) the following area of the foreshore is set aside as an area on which a person may bring, ride or drive an animal, without having to obtain a permit—

- a) southwest of the prolongation of Rich Road to the mouth of the Capel River;
- b) southwest of the Hardey Terrace beach access ramp to the prolongation of Forrest Beach Road; and
- c) 300 metres southwest of the prolongation of Forrest Beach Road to the southernmost boundary of the Shire of Capel.

2.3 A person shall not ride, drive, exercise, train or race an animal on any part of the foreshore set aside under determination 2.2 so as to interfere with the enjoyment of any person or create or become a danger to any person or animal."

PART 3—USE OF SANDBOARDS

Areas where sandboarding is prohibited

3.1 A person shall not, on any foreshore or sand dune ride or use a sandboard or a similar device.

Dated 30th December 2000.

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

L. P. STRUGNELL, President.
R. G. BONE, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF CAPEL

ACTIVITIES ON THOROUGHFARES AND TRADING IN THOROUGHFARES AND PUBLIC PLACES LOCAL LAW

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LOCAL GOVERNMENT ACT 1995

SHIRE OF CAPEL

ACTIVITIES ON THOROUGHFARES AND TRADING IN THOROUGHFARES AND PUBLIC PLACES LOCAL LAW

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Capel resolved on 13th December 2000 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

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

1.2 Definitions

In this local law unless the context otherwise requires—

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

“**applicant**” means a person who applies for a permit;

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

“**built-up area**” has the meaning given to it in the *Road Traffic Code 1975*;

“**carriageway**” means the paved or made portion of a thoroughfare used or intended for use by vehicles;

“**CEO**” means the chief executive officer of the local government;

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

“**Council**” means the council of the local government;

“**district**” means the district of the local government;

“**footpath**” means the paved or made portion of a thoroughfare used or intended for use by pedestrians and cyclists;

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

“**intersection**” has the meaning given to it in the *Road Traffic Code 2000*;

“**kerb**” includes the edge of a carriageway;

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

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

“**local government**” means the *Shire of Capel*;

“**local government property**” means anything except a thoroughfare—

(a) which belongs to the local government;

(b) of which the local government is the management body under the *Land Administration Act 1997*; or

(c) which is an ‘otherwise unvested facility’ within section 3.53 of the Act;

“**lot**” has the meaning given to it in the *Town Planning and Development Act 1928*;

“**owner**” or “**occupier**” in relation to land does not include the local government;

“**permissible verge treatment**” means any one of the 4 treatments described in clause 2.6(2), and includes any reticulation pipes and sprinklers;

“**permit**” means a permit issued under this local law;

“**permit holder**” means a person who holds a valid permit;

“**person**” does not include the local government;

“**premises**” for the purpose of the definition of “public place” in both this clause and clause 5.1, means a building or similar structure, but does not include a carpark or a similar place;

“**public place**” includes any thoroughfare or place which the public are allowed to use, whether or not the thoroughfare or place is on private property, but does not include—

(a) premises on private property from which trading is lawfully conducted under a written law; and

(b) local government property;

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

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

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

“**urban area thoroughfare**” means a thoroughfare that is included within the Residential, Town Centre or Light Industry Zone, under the town planning scheme.

“**vehicle**” includes—

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

but excludes—

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

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

1.3 Application

This local law applies throughout the district.

1.4 Repeal

(1) The following local laws are repealed—

Local Laws Relating to—

- (a) Hawkers, published in the *Government Gazette* of 22 August 1941, as amended in the *Government Gazette* of 16 March 1955; and
- (b) Removal and Disposal of Obstructing Animals and Vehicles, published in the *Government Gazette* of 10 June 1994.

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

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

PART 2—ACTIVITIES ON THOROUGHFARES AND PUBLIC PLACES

Division 1—General

2.1 General prohibitions

A person shall not—

- (a) plant any plant which exceeds or which may exceed 0.75m in height on a thoroughfare so that the plant is within 10m of an intersection;
- (b) damage a lawn or a garden or remove any plant or part of a plant from a lawn or a garden unless—
 - (i) the person is the owner or the occupier of the lot abutting that portion of the thoroughfare and the lawn or the garden or the particular plant has not been installed or planted by the local government; or
 - (ii) the person is acting under the authority of a written law;
- (c) plant any plant (except grass or a similar plant) on a thoroughfare so that it is within 2m of a carriageway;
- (d) unless at the direction of the local government, damage, remove or interfere with any signpost, direction plate, guidepost, notice, shelter, shed, fence or any structure erected on a thoroughfare by the local government or a person acting under the authority of a written law; or
- (e) play or participate in any game or sport so as to cause danger to any person or thing or impede the movement of vehicles or persons on a thoroughfare.

2.2 Activities allowed with a permit—general

(1) A person shall not, without a permit—

- (a) dig or otherwise create a trench through or under a kerb or footpath;
- (b) damage a thoroughfare;
- (c) light any fire or burn any thing on a thoroughfare other than in a stove or fireplace provided for that purpose or under a permit issued under clause 4.13;
- (d) fell any tree onto a thoroughfare;
- (e) unless installing a permissible verge treatment—
 - (i) lay pipes under or provide taps on any verge; or
 - (ii) place or install any thing on any part of a thoroughfare, and without limiting the generality of the foregoing, any gravel, stone, flagstone, cement, concrete slabs, blocks, bricks, pebbles, plastic sheeting, kerbing, wood chips, bark or sawdust; or
- (f) interfere with the soil of, or anything in a thoroughfare or take anything from a thoroughfare.

(2) The local government may exempt a person from compliance with subclause (1) on the application of that person.

2.3 No possession and consumption of liquor on thoroughfare

(1) A person shall not consume any liquor or have in her or his possession or under her or his control any liquor on a thoroughfare unless—

- (a) that is permitted under the *Liquor Licensing Act 1988* or under another written law; or
- (b) the person is doing so in accordance with a permit.

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

Division 2—Verge treatments

Subdivision 1—Preliminary

2.4 Interpretation

In this Division, unless the context otherwise requires—

“**acceptable material**” means any material which will create a hard surface, and which appears on a list of acceptable materials maintained by the local government.

2.5 Application

This Division only applies to an urban area thoroughfare.

Subdivision 2—Permissible verge treatments

2.6 Permissible verge treatments

(1) An owner or occupier of land which abuts on a verge may on that part of the verge directly in front of her or his land install a permissible verge treatment.

(2) The permissible verge treatments are—

- (a) the planting and maintenance of a lawn;
- (b) the planting and maintenance of a garden provided that -
 - (i) clear sight visibility is maintained at all times for a person using the abutting thoroughfare in the vicinity of an intersection or bend in the thoroughfare; and
 - (ii) where there is no footpath, a pedestrian has safe and clear access of a minimum width of 2m along that part of the verge immediately adjacent to the kerb;
- (c) the installation of an acceptable material; or
- (d) the installation over no more than one third of the area of the verge (excluding any vehicle crossing) of an acceptable material in accordance with paragraph (c), and the planting and maintenance of either a lawn or a garden on the balance of the verge in accordance with paragraph (a) or (b).

2.7 Only permissible verge treatments to be installed

(1) A person shall not install or maintain a verge treatment which is not a permissible verge treatment.

(2) The owner and occupier of the lot abutting a verge treatment referred to in subclause (1) are each to be taken to have installed and maintained that verge treatment for the purposes of this clause and clause 2.8.

2.8 Obligations of owner or occupier

An owner or occupier who installs or maintains a permissible verge treatment shall—

- (a) keep the permissible verge treatment in a good and tidy condition and ensure, where the verge treatment is a garden or lawn, that a footpath on the verge and a carriageway adjoining the verge is not obstructed by the verge treatment;
- (b) not place any obstruction on or around the verge treatment; and
- (c) not disturb a footpath on the verge.

2.9 Notice to owner or occupier

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

Subdivision 3—Existing verge treatments

2.10 Transitional provision

(1) In this clause—

“**former provisions**” means the local law of the local government which permitted certain types of verge treatments, whether with or without the consent of the local government, and which was repealed by this local law.

(2) A verge treatment which—

- (a) was installed prior to the commencement day; and
- (b) on the commencement day is a type of verge treatment which was permitted under and complied with the former provisions,

is to be taken to be a permissible verge treatment for so long as the verge treatment remains of the same type and continues to comply with the former provisions.

Subdivision 4—Public works

2.11 Power to carry out public works on verge

Where the local government or an authority empowered to do so under a written law disturbs a verge, the local government or the authority—

- (a) is not liable to compensate any person for that disturbance;
- (b) may backfill with sand, if necessary, any garden or lawn; and
- (c) is not liable to replace or restore any—
 - (i) verge treatment and, in particular, any plant or any acceptable material or other hard surface; or
 - (ii) sprinklers, pipes or other reticulation equipment.

*Division 3—Driving on a closed thoroughfare***2.12 No driving on closed thoroughfare**

(1) A person shall not drive or take a vehicle on a closed thoroughfare unless—

- (a) that is in accordance with any limits or exceptions specified in the order made under section 3.50 of the Act; or
- (b) the person has first obtained a permit.

(2) In this clause—

“**closed thoroughfare**” means a thoroughfare wholly or partially closed under section 3.50 or 3.50A of the Act.

PART 3—OBSTRUCTING ANIMALS, VEHICLES OR SHOPPING TROLLEYS*Division 1—Animals and vehicles***3.1 Leaving animal or vehicle in public place or on local government property**

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

(2) A person will not contravene subclause (1) where the animal is secured or tethered for a period not exceeding 1 hour.

(3) A person will not contravene subclause (1) where the vehicle is left for a period not exceeding 24 hours.

3.2 Prohibitions relating to animals

(1) In subclause (2), “owner” in relation to an animal includes—

- (a) an owner of it;
- (b) a person in possession of it;
- (c) a person who has control of it; and
- (d) a person who ordinarily occupies the premises where the animal is permitted to stay.

(2) An owner of an animal shall not—

- (a) allow the animal to enter or remain for any time on any thoroughfare except for the use of the thoroughfare as a thoroughfare and unless it is led, ridden or driven;
- (b) allow an animal which has a contagious or infectious disease to be led, ridden or driven in a public place; or
- (c) train or race the animal on a thoroughfare.

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

PART 4—ROADSIDE CONSERVATION*Division 1—Preliminary***4.1 Interpretation**

In this Part—

“**MRWA**” means Main Roads Western Australia;

“**protected flora**” has the meaning given to it in section 6(1) of the *Wildlife Conservation Act 1950*;

“**rare flora**” has the meaning given to it in section 23F of the *Wildlife Conservation Act 1950*;

“**Roadside Conservation Committee**” means the Roadside Conservation Committee established under the Land Resource Policy Council within the Office of Premier and Cabinet; and

“**special environmental area**” means an area designated as such under clause 4.7.

4.2 Application

This Part does not apply to an urban area thoroughfare.

*Division 2—Flora roads***4.3 Declaration of flora road**

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

4.4 Construction works on flora roads

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

4.5 Signposting of flora roads

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

4.6 Driving only on carriageway of flora roads

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

(2) Subclause (1) does not apply where—

- (a) conditions on the thoroughfare do not reasonably permit a vehicle to remain on the carriageway;
- (b) there is no carriageway; or
- (c) an exemption from the application of subclause (1) has been obtained from the local government.

*Division 3—Special environmental areas***4.7 Designation of special environmental areas**

The local government may designate a thoroughfare, or any part of a thoroughfare, as a special environmental area which—

- (a) as protected flora or rare flora; or
- (b) in the opinion of the local government, has environmental, aesthetic or cultural significance.

4.8 Marking of special environmental areas

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

*Division 4—Planting in thoroughfares***4.9 Permit to plant**

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

4.10 Relevant considerations in determining application

In determining an application for a permit for the purpose of clause 4.9, the local government is to have regard to—

- (a) existing vegetation within that part of the thoroughfare in which the planting is to take place; and
- (b) the diversity of species and the prevalence of the species which are to be planted or sown.

*Division 5—Clearance of vegetation***4.11 Permit to clear**

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

4.12 Application for permit

In addition to the requirements of clause 6.1(2), a person making an application for a permit for the purpose of clause 4.11 shall submit a sketch plan clearly showing the boundary of the person's land and the portions of the thoroughfare joining that person's land which are to be cleared.

*Division 6—Fire management***4.13 Permit to burn thoroughfare**

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

4.14 Application for permit

In addition to the requirements of clause 6.1(2), an application for a permit for the purposes of clause 4.13 shall—

- (a) include a sketch plan showing the portions of a thoroughfare which are proposed to be burned; and
- (b) advise of the estimated fire intensity and the measures to be taken to protect upper storey vegetation from the burn.

4.15 When application for permit can be approved

The local government may approve an application for a permit for the purpose of clause 4.13 only if the burning of the particular part of the thoroughfare will—

- (a) reduce a fire hazard and alternative means of reducing that hazard, such as slashing or the use of herbicides, are considered by the local government to be not feasible or more detrimental to native flora and fauna than burning; or
- (b) in the opinion of the local government, be beneficial for the preservation and conservation of native flora and fauna.

4.16 Prohibitions on burning

Notwithstanding anything to the contrary in this local law, an application for a permit for the purpose of clause 4.13 is not to be approved by the local government—

- (a) for burning between 31 August and 1 May of the following year where the intensity of the burn could damage native flora and fauna; or
- (b) in any year to any person for any part of a thoroughfare which is on the opposite side of the carriageway to that portion of the thoroughfare for which a permit to burn has been approved in the same year.

*Division 7—Firebreaks***4.17 Permit for firebreaks on thoroughfares**

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

4.18 When application for permit cannot be approved

- (1) The local government is not to approve an application for a permit for the purpose of clause 4.17 where the thoroughfare is less than 20m wide.
- (2) Subclause (1) does not apply where the firebreak is, in the opinion of the local government, desirable for the protection of roadside vegetation.

*Division 8—Commercial wildflower harvesting on thoroughfares***4.19 General prohibition on commercial wildflower harvesting**

Subject to clause 4.20, a person shall not commercially harvest native flora on a thoroughfare.

4.20 Permit for revegetation projects

- (1) A person shall not collect seed from native flora on a thoroughfare without first obtaining a permit.
- (2) The local government may approve an application for a permit under subclause (1) only where—
 - (a) the seed is required for a revegetation project in any part of the district; and
 - (b) the thoroughfare, or the relevant part of it, is not a special environmental area.
- (3) Unless the local government specifically provides to the contrary on a permit, if the local government approves an application for a permit for the purpose of subclause (1) it is to be taken to be approved subject to the following conditions—
 - (a) the collection of the seed is to be carried out so as not to endanger the long time survival of the native flora on the thoroughfare; and
 - (b) any licence or approval which may be required under any other written law is to be obtained by the applicant.

PART 5—TRADING IN THOROUGHFARES AND PUBLIC PLACES*Division 1—Stallholders and traders**Subdivision 1—Preliminary***5.1 Interpretation**

In this Division, unless the context otherwise requires—

“**Competition Principles Agreement**” means the Competition Principles Agreement executed by each State and Territory of the Commonwealth and the Commonwealth of Australia on 11 April 1995;

“**public place**” includes—

- (a) any thoroughfare or place which the public are allowed to use whether or not the thoroughfare or place is on private property; and
- (b) local government property,

but does not include premises on private property from which trading is lawfully conducted under a written law.

“**stall**” means a movable or temporarily fixed structure, stand or table in, on or from which goods or services are sold, hired or offered for sale or hire;

“**stallholder**” means a person in charge of a stall;

“**stallholder’s permit**” means a permit issued to a stallholder;

“**trader**” means a person who carries on trading;

“**trader’s permit**” means a permit issued to a trader; and

“trading” includes—

- (a) the selling or hiring of, the offering for sale or hire of or the soliciting of orders for goods or services in a public place;
- (b) displaying goods in any public place for the purpose of—
 - (i) offering them for sale or hire;
 - (ii) inviting offers for their sale or hire;
 - (iii) soliciting orders for them; or
 - (iv) carrying out any other transaction in relation to them; and
- (c) the going from place to place, whether or not public places, and—
 - (i) offering goods or services for sale or hire;
 - (ii) inviting offers or soliciting orders for the sale or the hire of goods or services; or
 - (iii) carrying out any other transaction in relation to goods or services,

but does not include—

- (d) the setting up of a stall or the conducting of a business at a stall under the authority of a stallholder's permit;
- (e) the selling or the offering for sale of goods and services to, or the soliciting of orders for goods and services from a person who sells those goods or services;
- (f) the selling or the offering for sale or hire by a person of goods of her or his own manufacture or services which he or she provides; and
- (g) the selling or hiring or the offering for sale or hire of—
 - (i) goods by a person who represents a manufacturer of the goods; or
 - (ii) services by a person who represents a provider of the services, which are sold directly to consumers and not through a shop.

Subdivision 2—Permits

5.2 Stallholder's permit

- (1) A person shall not conduct a stall on a public place unless that person is—
 - (a) the holder of a valid stallholder's permit; or
 - (b) an assistant specified in a valid stallholder's permit.
- (2) Every application for a stallholder's permit shall—
 - (a) state the full name and address of the applicant;
 - (b) specify the proposed number of assistants to be engaged by the applicant in conducting the stall, as well as their names and addresses if already engaged;
 - (c) specify the proposed location of the stall;
 - (d) specify the period of time for which the permit is sought, together with the proposed days and hours of operation;
 - (e) specify the proposed goods or services to be sold or hired or offered for sale or hire from the stall; and
 - (f) be accompanied by an accurate plan and description of the proposed stall.

5.3 Trader's permit

- (1) A person shall not carry on trading unless that person is—
 - (a) the holder of a valid trader's permit; or
 - (b) an assistant specified in a valid trader's permit.
- (2) Every application for a trader's permit shall—
 - (a) state the full name and address of the applicant;
 - (b) specify the proposed number of assistants, if any, to be engaged by the applicant in trading, as well as their names and addresses if already engaged;
 - (c) specify the location or locations in which the applicant proposes to trade;
 - (d) specify the period of time for which the permit is sought, together with the proposed days and hours of trading;
 - (e) specify the proposed goods or services which will be traded; and
 - (f) be accompanied by an accurate plan and description of any proposed structure or vehicle which may be used by the applicant in trading.
- (3) The conditions subject to which the local government may approve an application for a trader's permit include that the permit holder is permitted to remain at a particular location for as long as there is a customer making a purchase, but if there is no customer making a purchase the permit holder must move on from that location within a reasonable time of the last purchase having been made.

5.4 No permit required to sell newspaper

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

5.5 Relevant considerations in determining application for permit

(1) In determining an application for a permit for the purposes of this Division, the local government is to have regard to—

- (a) any relevant policies of the local government;
- (b) the desirability of the proposed activity;
- (c) the location of the proposed activity;
- (d) the principles set out in the Competition Principles Agreement; and
- (e) such other matters as the local government may consider to be relevant in the circumstances of the case.

(2) The local government may refuse to approve an application for a permit under this Division on any one or more of the following grounds—

- (a) that the applicant has committed a breach of any provision of this local law or of any written law relevant to the activity in respect of which the permit is sought;
- (b) that the applicant is not a desirable or suitable person to hold a permit;
- (c) that—
 - (i) the applicant is an undischarged bankrupt or is in liquidation;
 - (ii) the applicant has entered into any composition or arrangement with creditors; or
 - (iii) a manager, an administrator, a trustee, a receiver, or a receiver and manager has been appointed in relation to any part of the applicant's undertakings or property;
- (d) that the needs of the district, or the part for which the permit is sought, are adequately catered for by established shops or by persons who have valid permits to carry on trading or to conduct a stall; or
- (e) such other grounds as the local government may consider to be relevant in the circumstances of the case.

5.6 Conditions of permit

(1) If the local government approves an application for a permit under this Division subject to conditions, those conditions may include—

- (a) the place, the part of the district, or the thoroughfare to which the permit applies;
- (b) the days and hours during which a permit holder may conduct a stall or trade;
- (c) the number, type, form and construction, as the case may be, of any stand, table, structure or vehicle which may be used in conducting a stall or in trading;
- (d) the goods or services in respect of which a permit holder may conduct a stall or trade;
- (e) the number of persons and the names of persons permitted to conduct a stall or trade;
- (f) the requirement for personal attendance at the stall or the place of trading by the permit holder and the nomination of assistants, nominees or substitutes for the permit holder;
- (g) whether and under what terms the permit is transferable;
- (h) any prohibitions or restrictions concerning the—
 - (i) causing or making of any noise or disturbance which is likely to be a nuisance to persons in the vicinity of the permit holder;
 - (ii) the use of amplifiers, sound equipment and sound instruments;
 - (iii) the use of signs; and
 - (iv) the use of any lighting apparatus or device;
- (i) the manner in which the permit holder's name and other details of a valid permit are to be displayed;
- (j) the care, maintenance and cleansing of the stall or any structure used for trading and the place of the stall or any structure;
- (k) the vacating of the place of a stall or trading when the stall is not being conducted or trading is not being carried on;
 - (l) the acquisition by the stallholder or trader of public risk insurance;
- (m) the period for which the permit is valid; and
- (n) the designation of any place or places where trading is wholly or from time to time prohibited by the local government.

(2) Where a permit holder by reason of illness, accident or other sufficient cause is unable to comply with this local law, the local government may at the request of that permit holder authorize another person to be a nominee of the permit holder for a specified period, and this local law and the conditions of the permit shall apply to the nominee as if he or she was the permit holder.

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

(1) In this clause—

“charitable organisation” means an institution, association, club, society or body whether incorporated or not, the objects of which are of a charitable, benevolent, religious, cultural, educational, recreational, sporting or other like nature and from which any member does not receive any pecuniary profit except where the member is an employee or the profit is an honorarium; and

“**commercial participant**” means any person who is involved in operating a stall or in conducting any trading activity for personal gain or profit.

(2) The local government may waive any fee required to be paid by an applicant for a stallholder’s permit or a trader’s permit on making an application for or on the issue of a permit, or may return any such fee which has been paid, if the stall is conducted or the trading is carried on—

- (a) on a portion of a public place adjoining the normal place of business of the applicant; or
- (b) by a charitable organisation that does not sublet space to, or involve commercial participants in the conduct of a stall or trading, and any assistants that may be specified in the permit are members of that charitable organisation.

(3) The local government may exempt a person or a class of persons, whether or not in relation to a specified public place, from the requirements of this Division.

Subdivision 3—Conduct of stallholders and traders

5.8 Conduct of stallholders and traders

(1) A stallholder while conducting a stall or a trader while trading shall—

- (a) display her or his permit to do so in a conspicuous place on the stall, vehicle or temporary structure or if there is no stall, vehicle or temporary structure, carry the permit with her or him while conducting a stall or trading;
- (b) not display a permit unless it is a valid permit; and
- (c) when selling goods by weight, carry and use for that purpose, scales tested and certified in accordance with the provisions of the *Weights and Measures Act 1915*.

(2) A stallholder or trader shall not—

- (a) attempt to conduct a business within a distance of 300m of any shop or permanent place of business that is open for business and has for sale any goods or services of the kind being offered for sale by the stall holder or trader;
- (b) deposit or store any box or basket containing goods on any part of a thoroughfare so as to obstruct the movement of pedestrians or vehicles;
- (c) act in an offensive manner;
- (d) use or cause to be used any apparatus or device including any flap or shelf, whereby the dimensions of a stall, vehicle or structure are increased beyond those specified in the permit; or
- (e) in the case of a trader, carry on trading from a public place, unless there is adequate parking for customers’ vehicles reasonably close to the place of trading.

PART 6—PERMITS

Division 1—Applying for a permit

6.1 Application for permit

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

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

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

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

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

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

6.2 Decision on application for permit

(1) The local government may—

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

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

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

(4) Where a clause of this local law refers to conditions which may be imposed on a permit or which are to be taken to be imposed on a permit, the clause does not limit the power of the local government to impose other conditions on the permit under subclause (1)(a).

(5) Where a clause of this local law refers to the grounds on which an application for a permit may be or is to be refused, the clause does not limit the power of the local government to refuse the application for a permit on other grounds under subclause (1)(b).

*Division 2—Conditions***6.3 Conditions which may be imposed on a permit**

The local government may approve an application for a permit subject to conditions relating to—

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

6.4 Imposing conditions under a policy

(1) In this clause—

“**policy**” means a policy of the local government adopted by the Council containing conditions subject to which an application for a permit may be approved under clause 6.2(1)(a).

(2) Under clause 6.2(1)(a) the local government may approve an application subject to conditions by reference to a policy.

(3) The local government is to give a copy of the policy, or the part of the policy which is relevant to the application for a permit, with the form of permit referred to in clause 6.2(2).

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

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

6.5 Compliance with and variation of conditions

(1) Where an application for a permit has been approved subject to conditions, or where a permit is to be taken to be subject to conditions under this local law, the permit holder shall comply with each of those conditions.

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

*Division 3—General***6.6 Duration of permit**

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

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 6.10.

6.7 Renewal of permit

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

(2) The provisions of—

- (a) this Part; and
- (b) any other provision of this local law relevant to the permit which is to be renewed,

shall apply to an application for the renewal of a permit *mutatis mutandis*.

6.8 Transfer of permit

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

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

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

(3) Where the local government approves an application for the transfer of a permit, the transfer may be effected by—

- (a) an endorsement on the permit signed by the CEO; or
- (b) issuing to the transferee a permit in the form determined by the local government.

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

6.9 Production of permit

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

6.10 Cancellation of permit

(1) Subject to clause 7.1, a permit may be cancelled by the local government on any one or more of the following grounds—

- (a) the permit holder has not complied with a—
 - (i) condition of the permit; or
 - (ii) provision of any written law which may relate to the activity regulated by the permit; or
- (b) if it is relevant to the activity regulated by the permit—
 - (i) the permit holder has become bankrupt, or gone into liquidation;
 - (ii) the permit holder has entered into any composition or arrangement with creditors; or
 - (iii) a manager, an administrator, a trustee, a receiver, or a receiver and manager is appointed in relation to any part of the permit holder's undertakings or property.

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

- (a) shall return the permit as soon as practicable to the local government; and
- (b) is to be taken to have forfeited any fees paid in respect of the permit.

PART 7—OBJECTIONS AND APPEALS

7.1 Application of Part 9 Division 1 of Act

When the local government makes a decision—

- (a) under clause 6.2(1); or
- (b) as to whether it will renew, vary, or cancel a permit,

the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Regulations apply to that decision.

PART 8—MISCELLANEOUS NOTICES

8.1 Notice to redirect or repair sprinkler

Where a lawn or a garden is being watered with a sprinkler which is on the lawn or the garden, in a manner which causes or may cause an inconvenience or obstruction to any person using a thoroughfare, the local government may give a notice to the owner or the occupier of the land abutting on the lawn or the garden, requiring the owner or the occupier or both to move or alter the direction of the sprinkler or other watering equipment.

8.2 Hazardous plants

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

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

8.3 Notice to repair damage to thoroughfare

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

8.4 Notice to remove thing unlawfully placed on thoroughfare

Where any thing is placed on a thoroughfare in contravention of this local law, the local government may by notice in writing to the owner or the occupier of the property which abuts on that portion of the thoroughfare where the thing has been placed, or such other person who may be responsible for the thing being so placed, require the relevant person to remove the thing.

PART 9—ENFORCEMENT

Division 1—Notices given under this local law

9.1 Offence to fail to comply with notice

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

9.2 Local government may undertake requirements of notice

Where a person fails to comply with a notice referred to in clause 9.1, the local government may do the thing specified in the notice and recover from that person, as a debt, the costs incurred in so doing.

Division 2—Offences and penalties

Subdivision 1—General

9.3 Offences

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

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

Subdivision 2—Infringement notices and modified penalties

9.4 Prescribed offences

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

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

(3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorized person should be satisfied that—

- (a) commission of the prescribed offence is a relatively minor matter; and
- (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

9.5 Forms

Unless otherwise specified, for the purposes of this local law—

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

SCHEDULE 1

PRESCRIBED OFFENCES

| Clause | Description | Modified Penalty \$ |
|-----------|--|------------------------|
| 2.1(a) | Plant of 0.75m in height on thoroughfare within 10m of intersection | 100 |
| 2.1(b) | Damaging lawn or garden | 100 |
| 2.1(c) | Plant (except grass) on thoroughfare within 2m of carriageway | 100 |
| 2.1(d) | Damaging or interfering with signpost or structure on thoroughfare | 300 |
| 2.1(e) | Playing games so as to impede vehicles or persons on thoroughfare | 100 |
| 2.2(1)(a) | Digging a trench through a kerb or footpath without a permit | 100 |
| 2.2(1)(c) | Lighting a fire on a thoroughfare without a permit | 300 |
| 2.2(1)(d) | Felling tree onto thoroughfare without a permit | 100 |
| 2.2(1)(e) | Installing pipes or stone on thoroughfare without a permit | 100 |
| 2.2(1)(f) | Interfering with anything on a thoroughfare without a permit | 100 |
| 2.3(1) | Consumption or possession of liquor on thoroughfare | 100 |
| 2.7(1) | Installation of verge treatment other than permissible verge treatment | 200 |
| 2.8 | Failure to maintain permissible verge treatment or placement of obstruction on verge | 100 |
| 2.9 | Failure to comply with notice to rectify default | 100 |
| 2.12(1) | Driving or taking a vehicle on a closed thoroughfare | 300 |
| 3.1(1) | Animal or vehicle obstructing a public place or local government property | 100 |
| 3.2(2)(a) | Animal on thoroughfare when not led, ridden or driven | 100 |
| 3.2(2)(b) | Animal on public place with infectious disease | 100 |
| 3.2(2)(c) | Training or racing animal on thoroughfare in built-up area | 100 |
| 3.2(3) | Horse led, ridden or driven on thoroughfare in built-up area | 100 |
| 4.6(1) | Driving a vehicle on other than the carriageway of a flora road | 200 |
| 4.9 | Planting in thoroughfare without a permit | 200 |
| 4.11 | Failure to obtain permit to clear a thoroughfare | 500 |
| 4.13 | Burning of thoroughfare without a permit | 500 |
| 4.17 | Construction of firebreak on thoroughfare without a permit | 500 |

| Clause | Description | Modified Penalty § |
|-----------|---|--------------------------|
| 4.19 | Commercial harvesting of native flora on thoroughfare | 500 |
| 4.20(1) | Collecting seed from native flora on thoroughfare without a permit | 300 |
| 5.2(1) | Conducting of stall in public place without a permit | 300 |
| 5.3(1) | Trading without a permit | 300 |
| 5.8(1)(a) | Failure of stallholder or trader to display or carry permit | 100 |
| 5.8(1)(b) | Stallholder or trader not displaying valid permit | 100 |
| 5.8(1)(c) | Stallholder or trader not carrying certified scales when selling goods by weight | 100 |
| 5.8(2) | Stallholder or trader engaged in prohibited conduct | 100 |
| 6.5 | Failure to comply with a condition of a permit | 100 |
| 6.9 | Failure to produce permit on request of authorized person | 100 |
| 9.1 | Failure to comply with notice given under local law | 100 |

Dated 30th December 2000.

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

L. P. STRUGNELL, President.
R. G. BONE, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF CAPEL

PARKING AND PARKING FACILITIES LOCAL LAW

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Capel resolved on the 13th December 2000 to make the following local law—
The Shire of Coorow Parking and Parking Facilities Local Law published in the *Government Gazette* of 4 October 1999, is adopted as a local law of the Shire of Capel with the modifications which follow—

1 Preliminary

Wherever the “Shire of Coorow” is mentioned in the local law substitute “Shire of Capel”.

2 Clause 1.2—Repeal

Delete clause 1.2 and substitute “the Shire of Capel Parking Facilities Local Law published in the *Government Gazette* on 10 July 1987, is repealed.

3 Second Schedule, Prescribed Offences

3.1 In item 28, delete “3.8 (2) (a)” and substitute “3.8 (1)(a) or (b)” and after “Parking” delete “commercial vehicle, bus” and substitute “vehicle or unattached trailer”.

3.2 In item 29, delete “3.8 (2) (b)” and substitute “3.8 (1) (c)”.

Dated 30th December 2000.

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

L. P. STRUGNELL, President.

R. G. BONE, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF CAPEL

EXTRACTIVE INDUSTRIES LOCAL LAW

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LOCAL GOVERNMENT ACT 1995

SHIRE OF CAPEL

EXTRACTIVE INDUSTRIES LOCAL LAW

Under the powers conferred by the Local Government Act 1995 and by all other powers, the local government of the Shire of Capel resolved to make the following local laws on 13th December 2000.

PART 1—PRELIMINARY**Definitions**

1.1 In this local law, unless the context otherwise requires—

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

“**carry on an extractive industry**” means quarrying and excavating for stone, gravel, sand and other material;

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

“**district**” means the district of the local government;

“**excavation**” includes quarry;

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

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

“**local government**” means the Shire of Capel;

“**person**” does not include the local government;

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

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

Application

1.2 (1) The provisions of this local law—

(a) subject to paragraphs (b), (c), (d) and (e);

(i) apply and have force and effect throughout the whole of the district; and

(ii) apply to every excavation whether commenced prior to or following the coming into operation of this local law;

(b) do not apply to the extraction of minerals under the *Mining Act 1978*;

(c) do not apply to the carrying on of an extractive industry on Crown land;

(d) do not apply to the carrying on of an extractive industry on land by the owner or occupier of that land for use on that land;

(e) do not affect the validity of any licence issued under the local law repealed by clause 1.3 of this local law if that licence is currently in force at the date of gazettal of this local law; and

(f) do not apply to land alienated in fee simple from the Crown before 1 January, 1899.

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

Repeal

1.3 The Shire of Capel Extractive Industries Local Law published in the *Government Gazette* of 18 March 1994, as amended by publication in the *Government Gazette* of 29 March 1996, is repealed.

PART 2—LICENSING REQUIREMENTS FOR AN EXTRACTIVE INDUSTRY**Extractive Industries Prohibited Without Licence**

2.1 A person must not carry on an extractive industry—

(a) unless the person is the holder of a valid and current licence; and

(b) otherwise than in accordance with any terms and conditions set out in, or applying in respect of, the licence.

Applicant To Advertise Proposal

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

- (a) forward by registered mail a notice in the form determined by the local government from time to time to—
 - (i) the owners and occupiers of all land adjoining the land upon which it is proposed to excavate, or within an area determined by the local government as likely to be affected by the granting of a licence, advising of the application and specifying that they may, within twenty-one days from the date of service of the letter, object to or make representations in writing in respect of the issue of a licence by the local government.
 - (ii) every authority or person having control or jurisdiction over any of the things referred to in clause 2.3(1)(a)(vii) and (viii) within 500 metres from the boundaries of the land, or within an area determined by the local government as likely to be affected by the granting of a licence; and
- (b) as soon as practicable after complying with the requirements of paragraph (a)—
 - (i) forward a copy of the notice to the CEO; and
 - (ii) publish the notice in a newspaper circulating in the area in which the proposed excavation is located.

(2) The local government may, within 14 days after receiving a copy of a notice referred to in sub-clause (1), cause to be displayed, or require the proposed applicant to display, in a prominent position on the land one or more notices—

- (a) in the form determined by the local government from time to time;
- (b) the content, size and construction of which have been approved by the CEO;
- (c) specifying particulars of the proposed excavation; and
- (d) inviting objections or comments within 21 days from the placement of the notice.

Application for Licence

2.3 (1) Subject to subclause (3), a person seeking the issue of a licence in respect of any land shall apply in the form determined by the local government from time to time and shall forward the application duly completed and signed by both the applicant and the owner of the land to the CEO together with—

- (a) 3 copies of a plan of the excavation site to a scale of between 1:500 and 1:2000 showing—
 - (i) the existing and proposed land contours based on the Australian Height Datum and plotted at 1 metre contour intervals;
 - (ii) the land on which the excavation site is to be located;
 - (iii) the external surface dimensions of the land;
 - (iv) the location and depth of the existing and proposed excavation of the land;
 - (v) the location of existing and proposed thoroughfares or other means of vehicle access to and egress from the land and to public thoroughfares in the vicinity of the land;
 - (vi) the location of buildings, treatment plant, tanks and other improvements and developments existing on, approved for or proposed in respect of the land;
 - (vii) the location of existing power lines, telephone cables and any associated poles or pylons, sewers, pipelines, reserves, bridges, railway lines and registered grants of easement or other encumbrances over, on, under or adjacent to or in the vicinity of the land;
 - (viii) the location of all existing dams, watercourses, drains or sumps on or adjacent to the land;
 - (ix) the location and description of existing and proposed fences, gates and warning signs around the land; and
 - (x) the location of the areas proposed to be used for stockpiling excavated material, treated material, overburden and soil storage on the land and elsewhere;
- (b) 3 copies of a works and excavation programme containing—
 - (i) the nature and estimated duration of the proposed excavation for which the licence is applied;
 - (ii) the stages and the timing of the stages in which it is proposed to carry out the excavation;
 - (iii) details of the methods to be employed in the proposed excavation and a description of any on-site processing works;
 - (iv) details of the depth and extent of the existing and proposed excavation of the site;
 - (v) an estimate of the depth of and description of the nature and quantity of the overburden to be removed;
 - (vi) a description of the methods by which existing vegetation is to be cleared and topsoil and overburden removed or stockpiled;
 - (vii) a description of the means of access to the excavation site and the types of thoroughfares to be constructed;
 - (viii) details of the proposed number and size of trucks entering and leaving the site each day and the route or routes to be taken by those vehicles;
 - (ix) a description of any proposed buildings, water supply, treatment plant, tanks and other improvements;

- (x) details of drainage conditions applicable to the land and methods by which the excavation site is to be kept drained;
 - (xi) a description of the measures to be taken to minimise sand drift, dust nuisance, erosion, watercourse siltation and dangers to the general public;
 - (xii) a description of the measures to be taken to comply with the Environmental Protection (Noise) Regulations 1997;
 - (xiii) a description of the existing site environment and a report on the anticipated effect that the proposed excavation will have on the environment in the vicinity of the land;
 - (xiv) details of the nature of existing vegetation, shrubs and trees and a description of measures to be taken to minimise the destruction of existing vegetation; and
 - (xv) a description of the measures to be taken in screening the excavation site, or otherwise minimising adverse visual impacts, from nearby thoroughfares or other areas;
- (c) 3 copies of a rehabilitation and decommissioning programme indicating -
- (i) the objectives of the programme, having due regard to the nature of the surrounding area and the proposed end-use of the excavation site;
 - (ii) whether restoration and reinstatement of the excavation site is to be undertaken progressively or upon completion of excavation operations;
 - (iii) how any face is to be made safe and batters sloped;
 - (iv) the method by which topsoil is to be replaced and revegetated;
 - (v) the numbers and types of trees and shrubs to be planted and other landscaping features to be developed;
 - (vi) how rehabilitated areas are to be maintained; and
 - (vii) the programme for the removal of buildings, plant, waste and final site clean up;
- (d) evidence that a datum peg has been established on the land related to a point approved by the local government on the surface of a constructed public thoroughfare or such other land in the vicinity;
- (e) a certificate from a licensed surveyor certifying the correctness of—
- (i) the plan referred to in paragraph (a); and
 - (ii) the datum peg and related point referred to in paragraph (d);
- (f) evidence that the requirements of clause 2.2(1) and (2) have been carried out;
- (g) copies of all land use planning approvals required under any planning legislation;
- (h) copies of any environmental approval required under any environmental legislation;
- (i) copies of any geotechnical information relating to the excavation site;
- (j) the consent in writing to the application from the owner of the excavation site;
- (k) evidence that a notice of clearing has been given to the Commissioner of Soil and Land Conservation if that is required under regulation 4 of the *Soil and Land Conservation Regulations 1992*;
- (l) any other information that the local government may reasonably require; and
- (m) the licence application fee specified by the local government from time to time.
- (2) All survey data supplied by an applicant for the purpose of sub clause (1) shall comply with Australian Height Datum and Australian Map Grid standards.
- (3) The local government may exempt a person making application for a licence under subclause (1) from providing any of the data otherwise required under subclause (1), if, in the opinion of the local government, the location and size of the proposed excavation are such that no significant adverse environmental affects will result therefrom.

PART 3—DETERMINATION OF APPLICATION

Determination of Application

- 3.1 (1) The local government may refuse to consider an application for a licence that does not comply with the requirements of clause 2.3, and in any event shall refuse an application for a licence where planning approval for an extractive industry use of the land has not first been obtained.
- (2) The local government may, in respect of an application for a licence—
- (a) refuse the application; or
 - (b) approve the application—
 - (i) over the whole or part of the land in respect of which the application is made; and
 - (ii) on such terms and conditions, if any, as it sees fit.
- (3) Where the local government approves an application for a licence, it shall -
- (a) determine the licence period, not exceeding 21 years from the date of issue; and
 - (b) approve the issue of a licence in the form determined by the local government from time to time.
- (4) Where the local government approves the issue of a licence, the CEO upon receipt by the local government of—
- (a) payment of the annual licence fee, or the relevant proportion of the annual licence fee to 31st December next, determined by the local government from time to time;

- (b) payment of the secured sum if any, imposed under clause 5.1;
 - (c) the documents, if any, executed to the satisfaction of the CEO, under clause 5.1; and
 - (d) a copy of the public liability insurance policy required under clause 7.1(1), shall issue the licence to the applicant.
- (5) Without limiting subclause (2), the local government may impose conditions in respect of the following matters—
- (a) the orientation of the excavation to reduce visibility from other land;
 - (b) the appropriate siting of access thoroughfares, buildings and plant;
 - (c) the stockpiling of material;
 - (d) the hours during which any excavation work may be carried out;
 - (e) the hours during which any processing plant associated with, or located on, the site may be operated;
 - (f) requiring all crushing and treatment plant to be enclosed within suitable buildings to minimise the emission of noise, dust, vapour and general nuisance to the satisfaction of the local government;
 - (g) the depths below which a person shall not excavate;
 - (h) distances from adjoining land or roads within which a person must not excavate;
 - (i) the safety of persons employed at or visiting the excavation site;
 - (j) the control of dust and wind-blown material;
 - (k) the planting, care and maintenance of trees, shrubs and other landscaping features during the time in which the extractive industry is carried out in order to effectively screen the area to be excavated and to provide for progressive rehabilitation;
 - (l) the prevention of the spread of dieback or other disease;
 - (m) the drainage of the excavation site and the disposal of water;
 - (n) the restoration and reinstatement of the excavation site, the staging of such works, and the minimising of the destruction of vegetation;
 - (o) the provision of retaining walls to prevent subsidence of any portion of the excavation or of land abutting the excavation;
 - (p) requiring the licensee to furnish to the local government a surveyor's certificate each year, prior to the renewal fee being payable, to certify the quantity of material extracted and that material has not been excavated below the final contour levels outlined within the approved excavation programme;
 - (q) requiring the licensee to enter into an agreement with the local government by which it agrees to pay any extraordinary expenses incurred by the local government in repairing damage caused to thoroughfares in the district by heavy or extraordinary traffic conducted by or on behalf of the licensee under the licence;
 - (r) requiring the licensee to enter into an agreement with the local government in respect of any condition or conditions imposed under this local law; and
 - (s) any other matter for properly regulating the carrying on of an extractive industry.

Payment of Annual Licence Fee

3.2 On or before 31 December in each year, a licensee shall pay to the local government the annual licence fee determined by the local government from time to time.

PART 4—TRANSFER, CANCELLATION AND RENEWAL OF LICENCE

Transfer of Licence

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

Cancellation of Licence

4.2 (1) The local government may cancel a licence where the licensee has—

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

Renewal of Licence

4.3 (1) A licensee who wishes to renew a licence must apply in writing to the local government at least 45 days before the date of expiry of the licence and shall submit with the application for renewal—

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

PART 5—SECURED SUM AND APPLICATION THEREOF**Security For Restoration And Reinstatement**

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

- (a) as a condition of a licence; or
- (b) before the issue of a licence,

the licensee shall give to the local government a bond, bank guarantee or other security, of a kind and in a form acceptable to the local government, in or for a sum determined by the local government from time to time.

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

Use By The Local Government Of Secured Sum

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

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

- (2) The local government may apply the proceeds of any bond, bank guarantee or other security provided by the licensee under clause 5.1 towards its costs under this clause.
- (3) The liability of a licensee to pay the local government's costs under this clause is not limited to the amount, if any, secured under clause 5.1.

PART 6—LIMITATIONS, OBLIGATIONS OF THE LICENSEE AND PROHIBITIONS

Limits On Excavation Near Boundary

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

- (a) 20 metres of the boundary of any land on which the excavation site is located;
- (b) 20 metres of any land affected by a registered grant of easement;
- (c) 40 metres of any thoroughfare;
- (d) 50 metres of any watercourse, wetland, swamp or other water reserve; or
- (e) 2 metres of the estimated water table level as determined from time to time by the Waters and Rivers Commission or otherwise as adopted by the local government.

Obligations Of The Licensee

6.2 A licensee shall—

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

Prohibitions

6.3 A licensee shall not—

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

Blasting

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

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

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

PART 7—MISCELLANEOUS PROVISIONS**Public Liability**

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

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

Mines Safety And Inspection Act And Environmental Protection Act

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

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

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

Notice of Cessation of Operations

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

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

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

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

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

Works To Be Carried Out On Cessation Of Operations

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

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

PART 8—OBJECTIONS AND APPEALS

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

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

the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Local Government (Functions and General) Regulations 1996 shall apply to that decision.

PART 9—OFFENCES AND PENALTIES*Division 1—General***OFFENCES**

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

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

*Division 2—Infringement notices and modified penalties***PRESCRIBED OFFENCES**

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

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

(3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorised person should be satisfied that—

- (a) commission of the prescribed offence is a relatively minor matter; and
- (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issues are readily ascertainable.

FORMS

3.3 For the purposes of this local law—

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

SCHEDULE**PRESCRIBED OFFENCES**

| Clause | Description | Modified Penalty \$ |
|-----------|--|---------------------------|
| 2.1(a) | Excavate without a licence | 500 |
| 2.1(b) | Carry on an extractive industry not in accordance with conditions | 500 |
| 6.1(a) | Excavate without approval, within 20 metres of the boundary of any land on which the excavation is located | 400 |
| 6.1(b) | Excavate without approval, within 20 metres of any land affected by a registered grant of easement | 400 |
| 6.1(c) | Excavate without approval, within 40 metres of any thoroughfare | 400 |
| 6.1(d) | Excavate without approval within 50 metres of any watercourse, wetland, swamp or other water reserve | 400 |
| 6.1(e) | Excavate without approval, within 2 metres of the estimated water table level | 400 |
| 6.2(a) | Failure to securely fence and/or keep gateways locked where required | 400 |
| 6.2(b) | Failure to erect and maintain warning signs as required | 400 |
| 6.2(c) | Failure to drain and keep drained any excavation to which the licence applies | 400 |
| 6.2(d) | Failure to restore and reinstate the excavation site in accordance with conditions of the licence | 400 |
| 6.2(f) | Failure to comply with conditions of licence imposed by the local government .. | 400 |
| 6.3(a) | Removal of trees or shrubs within 40 metres of the boundary of any thoroughfare reserve | 400 |
| 6.3(b) | Store or permit to store explosives or explosive devices without approval | 400 |
| 6.3(c) | Not fill or excavate, contrary to the terms and conditions of the licence | 400 |
| 6.4(1)(a) | Carry out or permit to be carried out blasting without approval | 400 |
| 6.4(1)(b) | Carry out or permit to be carried out blasting outside hours approved by the local government | 400 |
| 6.4(1)(d) | Failure to comply with conditions imposed by the local government relating to blasting | 400 |
| 6.4(2) | Carry out or permit to be carried out any blasting on Saturday, Sunday or Public Holiday, without approval | 400 |

| Clause | Description | Modified Penalty \$ |
|--------|--|---------------------------|
| 7.4(a) | Failure to cease excavating and undertake restoration and reinstatement as required | 500 |
| | Other offences not specified | 200 |

Dated 30th December 2000.

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

L. P. STRUGNELL, President.
R. G. BONE, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF CAPEL

REPEAL LOCAL LAW**(Local Law Relating to Repeal of Defunct and Obsolete Local Laws Made Under the Local Government Act 1960 and Earlier Legislation)**

Under the powers conferred by the Local Government Act 1995 and by all other powers, the local government of the Shire of Capel resolved to repeal local laws relating to the matters listed below and gazetted on the dates shown, on the 13th day of December 2000.

Poundage Fees, published in the *Government Gazettes* of 13 July 1928 and 19 June 1931;

Pasting-in of the Minutes in Minute Book, published in the *Government Gazette* of 12 January 1934;

Buildings, published in the *Government Gazettes* of 18 November 1938, 18 August 1950, and 16 March 1955;

Discount on Rates, published in the *Government Gazette* of 6 September 1946;

Flow of Poisonous or Offensive Waters from Factories and other Works and Undertakings, published in the *Government Gazette* of 2 April 1953;

Long Service Leave, published in the *Government Gazette* of 27 November 1956;

Motels, published in the *Government Gazette* of 15 November 1960;

Petrol Pumps, published in the *Government Gazette* of 16 November 1966;

Old Refrigerators and Cabinets, published in the *Government Gazette* of 5 February 1971;

Caravan Parks and Camping Grounds, published in the *Government Gazette* of 15 October 1976;

Signs, Hoardings and Billposting, published in the *Government Gazette* of 25 January 1991;

Holiday Accommodation, published in the *Government Gazette* of 15 October 1976;

Clearing of Land and Removal of Refuse, Rubbish and Disused Material, published in the *Government Gazette* of 6 August 1993.

Dated 30th December 2000.

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

L. P. STRUGNELL, President.

R. G. BONE, Chief Executive Officer.

CEMETERIES ACT 1986

SHIRE OF CAPEL

**LOCAL LAWS RELATING TO THE CAPEL AND BOYANUP
PUBLIC CEMETERIES**

Under the powers conferred by the Cemeteries Act 1986, the Shire of Capel resolved on the 13th December 2000, to adopt the Model Local Law (Cemeteries) 1998 published in the *Government Gazette* on 12 May 1998, in relation to the Capel and Boyanup Public Cemeteries, with such modifications as are here set out.

Clause 1.3

Insert after "The following Local Laws are repealed: - " - "The Shire of Capel Public Cemetery By-laws, published in the *Government Gazette* of 30 September 1955, as amended."

Clause 3.2

Delete

Clause 3.4 (1)

Delete " or crematorium within the cemetery"

Clause 4.2

Delete ", or crematorium"

Clause 4.3

Delete " or crematorium,"

Clause 5.1, para (a)

Delete " or cremation"

Clause 5.2

Delete "or cremation" and "or clause 3.2"

Clause 5.6, para (d)

Delete

Part 5, Division 2

Delete

Clause 5.12

In subclause (1), delete—

- "Memorial Wall
- Garden of Remembrance
- Ground Niche
- Memorial Rose, Tree or Shrub
- Family Shrub
- Memorial Desk
- Granite Seat
- Book of Remembrance
- Memorial Gardens"

Clause 5.13

Delete

Clause 5.14

Delete

Clause 6.1.1

In paragraph (a) of subclause (1), delete "750mm" and insert "900mm".

In paragraph (b) of subclause (1), delete "600mm" and insert "750mm".

Clause 7.12

Delete and substitute—

"7.12 A person shall not place glass domes, vases or other grave ornaments outside the perimeter of a grave in the cemetery as defined in the plans kept and maintained under section 40 (2) of the Act"

Part 7, Division 2

Delete

Part 7, Division 3

Delete

Dated 30th December 2000.

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

L. P. STRUGNELL, President.

R. G. BONE, Chief Executive Officer.



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