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SHIRE OF CAPEL

LOCAL LAWS

**ACTIVITIES IN THOROUGHFARES AND PUBLIC
PLACES AND TRADING LOCAL LAW 2016**

BUSH FIRE BRIGADES AMENDMENT LOCAL LAW 2016

CEMETERIES LOCAL LAW 2016

FENCING LOCAL LAW 2016

PARKING AND PARKING FACILITIES LOCAL LAW 2016

SIGNS REPEAL LOCAL LAW 2016

STANDING ORDERS LOCAL LAW 2016

LOCAL GOVERNMENT ACT 1995

SHIRE OF CAPEL

**ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND
TRADING LOCAL LAW 2016**

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LOCAL GOVERNMENT ACT 1995

SHIRE OF CAPEL

ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES AND
TRADING LOCAL LAW 2016

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 22nd June 2016 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Capel Activities in Thoroughfares and Public Places and Trading Local Law 2016*.

1.2 Definitions

In this local law unless the context otherwise requires—

Act means the *Local Government Act 1995*;

animal means any living thing that is not a human being or plant;

applicant means a person who applies for a permit;

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

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

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

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

CEO means the chief executive officer of the local government;

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

Council means the council of the local government;

crossing means a crossing giving access from a public thoroughfare to—

- (a) private land; or
- (b) a private thoroughfare serving private land;

district means the district of the local government;

fauna means any animal indigenous to or which periodically migrates to any State or Territory of the Commonwealth or the territorial waters of the Commonwealth and includes in relation to any such animal—

- (a) any class of animal or individual member;
- (b) the eggs or larvae; and
- (c) the carcass, skin, plumage or fur;

flora means all vascular plants, seeds and other flora, whether living or dead;

footpath means an area that is open to the public that is designated for, or has as one of its main uses, use by pedestrians;

garden means any part of a thoroughfare planted, developed or treated, other 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 Control 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 *Planning and Development Act 2005*;

nuisance means—

- (a) any thing, condition, circumstance or state of affairs which is injurious or dangerous to the health of a reasonable person, or which has a disturbing effect on the state of reasonable physical, mental or social wellbeing of a person; or
- (b) any thing a person does or permits or causes to be done which interferes with or is likely to interfere with the enjoyment or safe use by another person of any public place;

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

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

permit means a permit issued under this local law;

permit holder means a person who holds a valid permit;

person does not include the local government;

planning scheme means a planning scheme of the local government made under the *Planning and Development Act 2005*;

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

public place includes—

- (a) a street, way or place which the public are allowed to use, whether the street, way or place is or is not on private property;
- (b) parklands, squares, reserves and other lands set apart for the use and enjoyment of the public; and
- (c) all lands vested in or under the care, control or management of the Shire of Capel;

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;

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

tree means a woody perennial plant generally having a single stem or trunk which will grow to a height of approximately 2m or higher;

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;

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

written law has the same meaning given to it by section 5 of the *Interpretation Act 1984* and includes this local law.

1.3 Application

This local law applies throughout the district.

1.4 Repeal

(1) The following local law is repealed—

Shire of Capel Activities on Thoroughfares and Trading in Thoroughfares and Public Places Local Law as published in the *Government Gazette* of 21 February 2001 and amended in the *Government Gazette* of 14 December 2001.

(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.

1.5 Commencement

This local law commences 14 days after the date on which it is published in the *Government Gazette*.

PART 2—ACTIVITIES IN THOROUGHFARES AND PUBLIC PLACES*Division 1—General***2.1 General prohibitions**

- (1) A person shall not—
- (a) plant any plant (except grasses or similar plant) within 6m of an intersection;
 - (b) remove or damage a lawn, garden, plant or part of a plant that is not a tree from or on a thoroughfare unless—
 - (i) the person is the owner or occupier of the lot abutting that portion of the thoroughfare;
 - (ii) the lawn garden or plant was installed by that person or an earlier owner or occupier of the lot; and
 - (iii) the removal or damage to the lawn, garden or plant is done pursuant to Division 3 of this Part in order to install a permissible verge treatment;
 - (c) plant any plant (except grass or a similar plant) on a thoroughfare so that it is within 1.2m of a carriageway where there is no footpath;
 - (d) take, injure or kill any fauna that is on or above any thoroughfare;
 - (e) place, or allow to be placed or remain, on a thoroughfare any thing (except water) that—
 - (i) obstructs the thoroughfare; or
 - (ii) results in a hazard for any person using the thoroughfare;
 - (f) 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;
 - (g) 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;
 - (h) within a mall, arcade or veranda of a shopping centre, ride any bicycle, skateboard, rollerblades or similar device;
 - (i) on a public place use anything or do anything so as to create a nuisance; or
 - (j) throw, place or drain offensive, noxious or dangerous fluid onto a thoroughfare.
- (2) Clause 2.1 (1) does not apply to an activity being undertaken by a person who—
- (a) is an employee or contractor of the local government and is authorised or engaged to undertake that activity; or
 - (b) is otherwise lawfully authorised to undertake that activity.

2.2 Activities allowed with a permit—general

- (1) A person shall not, without a permit—
- (a) dig or otherwise create a trench through or under a kerb or footpath;
 - (b) subject to Division 3 of this Part, throw, place or deposit anything on a verge except for removal by the local government under a bulk rubbish collection, and then only in accordance with the terms and conditions and during the period of time advertised in connection with that collection by the local government;
 - (c) cause any obstruction to a vehicle or a person using a thoroughfare as a thoroughfare;
 - (d) cause any obstruction to a water channel or a water course in a thoroughfare;
 - (e) deposit or discharge any material including dust, sand, wastewater, waste, mud, concrete, paint, oil or chemicals (but excluding water) in or on a thoroughfare whether by hand, vehicle or otherwise;
 - (f) damage a thoroughfare;
 - (g) light any fire or burn any thing on a thoroughfare other than in a stove or fireplace provided for that purpose or under a permit issued under clause 5.12;
 - (h) fell any tree onto a thoroughfare;
 - (i) remove or damage a tree or part of a tree on a thoroughfare, irrespective of whether the tree was planted by the owner or occupier of the lot abutting that portion of the thoroughfare;
 - (j) 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;
 - (k) provide, erect, install or use in or on any building, structure or land abutting on a thoroughfare any hoist or other thing for use over the thoroughfare;
 - (l) place or cause to be placed on a thoroughfare a bulk rubbish container; or
 - (m) interfere with the soil of, or anything in a thoroughfare or take anything from a thoroughfare.
- (2) The local government may exempt a person from compliance with subclause (1) on the application of that person.

2.3 No possession and consumption of liquor on thoroughfare

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

- (a) that is permitted under the *Liquor Control 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 an unopened container.

Division 2—Vehicle crossing

Subdivision 1—Temporary crossings

2.4 Permit required

(1) Where it is likely that works on a lot will involve vehicles leaving a thoroughfare and entering the lot, the person responsible for the works shall obtain a permit for the construction of a temporary crossing to protect the existing carriageway, kerb, drains and footpath, where—

- (a) a crossing does not exist; or
- (b) a crossing does exist, but the nature of the vehicles and their loads is such that they are likely to cause damage to the crossing.

(2) The “person responsible for the works” in subclause (1) is to be taken to be—

- (a) The person named on the building permit issued under the *Building Act 2011*, if one has been issued in relation to the works; or
- (b) the registered proprietor of the lot, if no building permit has been issued under the *Building Act 2011* in relation to the works.

(3) If the local government approves an application for a permit for the purpose of subclause (1), the permit is taken to be issued on the condition that until such time as the temporary crossing is removed, the permit holder shall keep the temporary crossing in good repair and in such a condition so as not to create any danger or obstruction to persons using the thoroughfare.

Subdivision 2—Redundant vehicle crossings

2.5 Removal of redundant crossing

(1) Where works on a lot will result in a crossing no longer giving access to a lot, the crossing is to be removed and the kerb, drain, footpath, verge and any other part of the thoroughfare affected by the removal are to be reinstated to the satisfaction of the local government.

(2) The local government may give written notice to the owner or occupier of a lot requiring her or him to—

- (a) remove any part of or all of a crossing which does not give access to the lot; and
- (b) reinstate the kerb, drain, footpath, verge and any other part of the thoroughfare, which may be affected by the removal;

within the period of time stated in the notice, and the owner or occupier of the lot shall comply with that notice.

Division 3—Verge treatments

Subdivision 1—Preliminary

2.6 Interpretation

In this Division, unless the context otherwise requires—

acceptable material means any material which will create a hard surface, and which appears in Schedule 2.

2.7 Application

This Division does not apply to areas zoned ‘rural’ or ‘special rural’ under the planning scheme.

Subdivision 2—Permissible verge treatments

2.8 Permissible verge treatments

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

- (a) a permissible verge treatment; or
- (b) irrigation pursuant to clause 2.10(f).

(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 or using a driveway on land adjacent to the thoroughfare for access to or from the thoroughfare;
 - (ii) where there is no footpath, a pedestrian has safe and clear access of a minimum width of 1.2m along that part of the verge immediately adjacent to the kerb;

- (iii) it does not include a wall or built structure;
 - (iv) it is not of a thorny, poisonous or hazardous nature; and
 - (v) no plant (except grasses or similar plant) is within 10m of an intersection or within 1.2m of a carriageway where there is no footpath;
- (c) the installation of an acceptable material; or
 - (d) the installation over no more than one third of the area of the verge (excluding any vehicle crossing) of an acceptable material in accordance with paragraph (c), and the planting and maintenance of either a lawn or a garden on the balance of the verge in accordance with paragraph (a) or (b).

2.9 Only permissible verge treatments to be installed

(1) A person shall not install or maintain a verge treatment which is not a permissible verge treatment, except under the authority of a permit.

(2) The owner and occupier of the lot abutting a verge treatment referred to in subclause (1) are each to be taken to have installed and maintained that verge treatment for the purposes of this clause and clause 2.10.

2.10 Obligations of owner or occupier

An owner or occupier who installs or maintains a permissible verge treatment or who installs or maintains a verge treatment under the authority of a permit 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) ensure that the verge treatment does not cause a sight distance obstruction to any person using a path on the verge or carriageway or crossing adjoining the verge or in proximity to it;
- (c) not place any obstruction on or around the verge treatment;
- (d) not disturb a footpath on the verge;
- (e) ensure that the verge treatment does not damage or obstruct a drain, manhole, gully, pit, pipe, channel, kerb, public utility service or tree planted by the local government; and
- (f) ensure that any sprinklers or pipes installed to irrigate a verge treatment—
 - (i) do not protrude above the level of lawn when not in use;
 - (ii) are not used at such times as to cause unreasonable inconvenience to pedestrians or other persons; and
 - (iii) do not otherwise present a hazard to pedestrians or other persons.

2.11 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

2.12 Transitional provision

(1) In this clause—

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

(2) A verge treatment which—

- (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

2.13 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 4—Property numbers

Subdivision 1—Preliminary

2.14 Interpretation

In this Division, unless the context requires otherwise—

number means a number of a lot with or without an alphabetical suffix indicating the address of the lot by reference to a thoroughfare.

Subdivision 2—Assignment and marking of numbers

2.15 Assignment of numbers

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

*Division 5—Fencing***2.16 Public place—Item 4(1) of Division 1, Schedule 3.1 of Act**

The following places are specified as a public place for the purpose of item 4(1) of Division 1 of Schedule 3.1 of the Act—

- (a) a public place, as that term is defined in clause 1.2; and
- (b) local government property.

*Division 6—Signs erected by the local government***2.17 Signs**

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

2.18 Transitional

Where a sign erected on a public place has been erected under a local law of the local government repealed by this local law, then on and from the commencement day, it is to be taken to be a sign erected under clause 2.17 if—

- (a) the sign specifies a condition of use relating to the public place which gives notice of the effect of a provision of this local law; and
- (b) the condition of use specified is not inconsistent with any provision of this local law.

*Division 7—Driving on a closed thoroughfare***2.19 No driving on closed thoroughfare**

(1) In this clause—

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

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

- (a) it 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.

PART 3—ADVERTISING SIGNS ON THOROUGHFARES*Division 1—Preliminary***3.1 Interpretation**

In this Part, unless the context otherwise requires—

advertising sign means a sign used for the purpose of advertisement or to draw attention to a product, business, person or event and includes a home open sign, display home sign and a garage sale sign;

direction sign means a sign which indicates the direction of another place, activity or event, but does not include any such sign erected or affixed by the local government or the Commissioner of Main Roads;

display home sign means a portable free standing sign used to direct people to a display home that is open for inspection by the public;

garage sale sign means a portable free standing sign used to direct persons to a garage sale at a residential premises;

home open sign means a portable free standing sign used to direct persons to a home for sale that is open for inspection by the public;

portable direction sign means a portable free standing directional sign; and

portable sign means a portable free standing advertising sign.

*Division 2—Permit***3.2 Advertising signs and portable direction signs**

(1) A person shall not, without a permit, erect, place or maintain an advertising sign or portable direction sign—

- (a) on or above a thoroughfare;
- (b) on a footpath;
- (c) over any footpath where the resulting vertical clearance between the sign and the path is less than 2.5m;
- (d) on or within 1m of a carriageway;
- (e) on any roundabout or centre median strip of a thoroughfare;
- (f) in any other location where in the opinion of the local government the sign is likely to obstruct lines of sight along a thoroughfare or cause any danger to persons using the thoroughfare; or
- (g) on any natural feature, including a rock or tree, on a thoroughfare, or on any bridge or the structural approaches to a bridge.

(2) Notwithstanding subclause (1) a permit is not required in respect of a home open sign, garage sale sign or display home sign, provided that—

- (a) the sign neither exceeds 500mm in height nor 0.5m² in area;
- (b) the sign is placed or erected on a thoroughfare no more than 24 hours prior to the garage sale or home open and is removed within half an hour of the close of the garage sale or home open;
- (c) there is no more than one home open sign or garage sale sign at any road intersection and no more than six separate signs which delineate no more than 2 alternative routes to the home open or garage sale; and
- (d) in the case of a display home sign, the sign is placed or erected on the thoroughfare which forms the primary street frontage of the display home at a distance not greater than 100m from the display home.

3.3 Matters to be considered in determining application for permit

In determining an application for a permit for the purpose of clause 3.2(1), the local government is to have regard to—

- (a) any other written law regulating the erection or placement of signs within the district;
- (b) the dimensions of the sign;
- (c) whether or not the sign will create a hazard to persons using a thoroughfare;
- (d) the amount of the public liability insurance cover, if any, to be obtained by the applicant; and
- (e) any other matters it considers relevant.

3.4 Exemptions

(1) The local government may exempt the holder of a valid stall holder's permit, trader's permit, facility permit, or any other event authorisation issued by the local government, from all or part of the prohibitions in clause 3.2 in relation to an advertisement that directly relates to the goods or services which are the subject of the permit or authorisation.

(2) Signs erected by the local government or an authority empowered to do so under a written law are exempted from the requirement to obtain a permit.

3.5 Impounding of advertising signs

Any sign which contravenes clause 3.2 may be removed, impounded, or disposed of in accordance with Subdivision 4 of Division 3 of Part 3 of the Act and regulation 29 of the Regulations.

*Division 3—Conditions on a permit***3.6 Conditions on portable sign**

If the local government approves an application for a permit for a portable sign, the application is taken to be approved subject to the following conditions—

- (a) the portable sign shall—
 - (i) not exceed 1m in height
 - (ii) not exceed an area of 1m² on any side
 - (iii) relate only to the business activity described on the permit;
 - (iv) not be erected in any position other than immediately adjacent to the building or business to which the sign relates;
 - (v) be removed each day at the close of the business to which it relates and not be erected again until the business next opens for trading;
 - (vi) be secured in position in accordance with any requirements of the local government;
 - (vii) be placed so as not to obstruct or impede the reasonable use of a thoroughfare or access to a place by any person;

- (viii) be placed so as not to obstruct or impede the vision of a driver of a vehicle entering or leaving a thoroughfare or crossing; and
- (ix) be maintained in good condition;
- (b) no more than one portable sign shall be erected in relation to the one building or business.

PART 4—OBSTRUCTING ANIMALS, VEHICLES OR SHOPPING TROLLEYS

Division 1—Animals and vehicles

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

- (1) A person shall not leave an animal or 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 authorised 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.
- (4) Subclause 1 does not apply to a person with a disability where the animal is a guide dog or assistance animal as defined in the *Disability Discrimination Act 1992* (Commonwealth) s9(2).

4.2 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.

4.3 Fouling of public places in built-up areas

Any person liable for the control of a horse, who permits the horse to excrete in any public place or on any land within the district without the consent of the occupier commits an offence unless the excreta is removed as soon as is practicably possible within the same day and disposed of either on private land with the consent of the occupier or in such other manner as the local government may approve.

4.4 Removal of vehicle or animal

Any animal or vehicle left in contravention of Clause 4.1 may be removed, impounded or disposed of in accordance with Subdivision 4 of Division 3 of Part 3 of the Act and regulation 29 of the Regulations.

Division 2—Shopping trolleys

4.5 Interpretation

In this Division—

- retailer** means a proprietor of a shop in respect of which shopping trolleys are provided for the use of customers of the shop; and
- shopping trolley** means a wheeled container or receptacle supplied by a retailer to enable a person to transport goods.

4.6 Shopping trolley to be marked

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

4.7 Person not to leave trolley in public place

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

4.8 Retailer to remove abandoned trolley

- (1) If a shopping trolley is found in a public place, other than in an area set aside for the storage of shopping trolleys, the local government may advise (verbally or in writing) a retailer whose name is marked on the trolley of the location of the shopping trolley.
- (2) A retailer shall remove a shopping trolley within 24 hours of being so advised under subclause (1) unless the retailer—
 - (a) requests the local government to collect and deliver the shopping trolley to the retailer; and
 - (b) pays any fee for that collection and delivery (imposed and determined under and in accordance with sections 6.16 to 6.19 of the Act) within the period specified by the local government.

4.9 Retailer taken to own trolley

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

4.10 Impounding of abandoned trolley

Any shopping trolley that is—

- (a) left on a thoroughfare or public place that is not marked in accordance with clause 4.6; or
- (b) not removed by a retailer after having been so advised under clause 4.8(1),

may be removed, impounded or disposed of in accordance with Subdivision 4 of Division 3 of Part 3 of the Act and regulation 29 of the Regulations.

PART 5—ROADSIDE CONSERVATION

Division 1—Preliminary

5.1 Interpretation

In this Part—

MRWA means Main Roads Western Australia;

protected flora has the meaning given 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 reporting to the Minister for Environment and chaired by a Department of Parks and Wildlife nominee; and

special environmental area means an area designated as such under clause 5.6.

Division 2—Flora roads

5.2 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.

5.3 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 *Handbook of Environmental Practice for Road Construction and Maintenance Works* prepared by the Roadside Conservation Committee and Main Roads.

5.4 Signposting of flora roads

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

5.5 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

5.6 Designation of special environmental areas

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

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

5.7 Marking of special environmental areas

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

Division 4—Planting in thoroughfares

5.8 Permit to plant

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

5.9 Relevant considerations in determining application

In determining an application for a permit for the purpose of clause 5.8, 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***5.10 Permit to clear**

A person shall not clear or 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.

5.11 Application for permit

In addition to the requirements of clause 7.1(2), a person making an application for a permit for the purpose of clause 5.10 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***5.12 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.

5.13 Application for permit

In addition to the requirements of clause 7.1(2), an application for a permit for the purposes of clause 5.12 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.

5.14 When application for permit can be approved

The local government may approve an application for a permit for the purpose of clause 5.12 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.

*Division 7—Firebreaks***5.15 Permit for firebreaks on thoroughfares**

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

5.16 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 5.16 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***5.17 General prohibition on commercial wildflower harvesting**

Subject to clause 5.18, a person shall not commercially harvest native flora on a thoroughfare.

5.18 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 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 license or approval which may be required under any other written law is to be obtained by the applicant.

PART 6—TRADING IN THOROUGHFARES AND PUBLIC PLACES

Division 1—Stallholders and traders

Subdivision 1—Preliminary

6.1 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) a street, way or place which the public are allowed to use, whether the street, way or place is or is not on private property;
- (b) parklands, squares, reserves and other lands set apart for the use and enjoyment of the public; and
- (c) all lands vested in or under the care, control or management of the Shire of Capel;

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

6.2 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.

6.3 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.

6.4 No permit required to sell newspaper

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

6.5 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.

6.6 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;
 - (n) the designation of any place or places where trading is wholly or from time to time prohibited by the local government; and
 - (o) any other conditions as the local government may apply.
- (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.

6.7 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.

(4) Notwithstanding any other provisions of this local law, a requirement to obtain a permit under this local law does not apply to—

- (a) a special event or trading authorised by the local government under another written law or agreement; or
- (b) a person trading in a street market authorised by the local government.

Subdivision 3—Conduct of stallholders and traders

6.8 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 or create a nuisance;
- (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.

Division 2—Street entertainers

Subdivision 1—Preliminary

6.9 Interpretation

In this Division, unless the context otherwise requires—

perform includes to play a musical instrument, sing, mime, dance, give an acrobatic or aerobic display or entertain, but does not include public speaking;

permit means a permit issued for the purpose of clause 6.10;

permitted area means the area or areas, specified in a permit, in which the permit holder may perform; and

permitted time means the time or times, specified in a permit, during which the permit holder may perform.

Subdivision 2—Permits

6.10 Permit required to perform

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

6.11 Variation of permitted area and permitted time

(1) The local government may by notice in writing to a permit holder vary—

- (a) the permitted area;
- (b) the permitted time; or
- (c) both the permitted area and the permitted time;
shown on a permit.

(2) The local government may direct a permit holder to move from one permitted area to another permitted area if more than one area is specified in a permit, and the permit holder must comply with this direction.

6.12 Duration of permit

A permit is valid for a period of 3 months after the date on which it is issued unless it is sooner cancelled under this local law.

6.13 Cancellation of permit

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

6.14 Obligations of permit holder

A permit holder shall not in a public place—

- (a) act in an offensive manner or create a nuisance; or
- (b) place, install, erect, play or use any musical instrument or any device which emits music, including a loud speaker or an amplifier—
 - (i) other than in the permitted area; and
 - (ii) unless the musical instrument or device is specified in the permit.

Division 3—Outdoor eating facilities on public places

6.15 Interpretation

In this Division—

facility means an outdoor eating facility or establishment on any part of a public place, but does not include such a facility or establishment on private land;

permit holder means the person to whom a permit has been issued for the purpose of clause 6.16; and

public place has the meaning given to it in clause 6.1.

6.16 Permit required to conduct facility

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

6.17 Matters to be considered in determining application

In determining an application for a permit for the purpose of clause 6.16, the local government may consider in addition to any other matter it considers relevant, whether or not—

- (a) the facility is conducted in conjunction with and as an extension of a food business which abut on the facility, and whether the applicant is the person conducting such food business;
- (b) any abutting food business premises is registered in accordance with the *Food Act 2008* and whether the use of the business premises is permitted under the local planning scheme;
- (c) the facility will comply with any other local law made by the local government;
- (d) users of the facility will have access to proper and sufficient sanitary and ablutionary conveniences;
- (e) the facility would—
 - (i) obstruct the visibility or clear sight lines at an intersection of thoroughfares of any person; or
 - (ii) impede pedestrian access; and
- (f) the tables, chairs and other equipment to be used may obstruct or impede the use of the public place for the purpose for which it was designed.

6.18 Obligations of permit holder

- (1) The permit holder for a facility shall—
 - (a) comply with the terms and conditions of the permit to establish and conduct the facility;
 - (b) ensure that the facility is conducted at all times in accordance with the provisions of this local law and any other local law made by the local government;
 - (c) ensure that the eating area is kept in a clean and tidy condition at all times;
 - (d) maintain the chairs, tables and other structures in the eating area in a good, clean and serviceable condition at all times;
 - (e) be solely responsible for all rates and taxes levied upon the land occupied by the facility.
- (2) Whenever, in the opinion of the local government, any work is required to be carried out to a facility, the local government may give a notice to the permit holder for the facility to carry out that work within the time limited by the notice.
- (3) In subclause (2), 'work' includes the removal, alteration, repair, reinstatement or reconstruction of any part of a public place arising from or in connection with the setting up or conduct of a facility.

6.19 Removal of facility unlawfully conducted

Where a facility is conducted without a permit, or in contravention of a condition of a permit, any tables, chairs, umbrellas or other equipment may be removed by, impounded or disposed of in accordance with Subdivision 4 of Division 3 of Part 3 of the Act and regulation 29 of the Regulations.

6.20 Use of facility by public

- (1) A person shall not occupy a chair or otherwise use the equipment in a facility the subject of a permit unless the person uses them for the purpose of consuming food or drinks provided by the facility.
- (2) A person shall leave a facility when requested to do so by the permit holder.

6.21 Temporary removal of facility may be requested

- (1) The permit holder for a facility is to temporarily remove the facility when requested to do so on reasonable grounds by an authorised person or a member of the Police Service or an emergency service.
- (2) The permit holder may replace the facility removed under subclause (1) as soon as the person who directed her or him to remove it allows it to be replaced.

PART 7—PERMITS*Division 1—Applying for a permit***7.1 Application for permit**

- (1) Where a person is required to obtain a permit under this local law, that person shall apply 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).

7.2 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***7.3 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;
- (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; and
- (j) any other matters it considers relevant.

7.4 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 7.2(1)(a).

(2) Under clause 7.2(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 7.2(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.

7.5 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 by written notice and the variation will be effective from the point the written notice is issued to the permit holder, and the permit holder shall comply with those conditions as varied.

*Division 3—General***7.6 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 7.10.

7.7 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.

7.8 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.

7.9 Production of permit

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

7.10 Cancellation of permit

(1) Subject to clause 8.1, 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 8—OBJECTIONS AND APPEALS

8.1 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 regulation 33 of the Regulations apply to that decision.

PART 9—MISCELLANEOUS NOTICES

9.1 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.

9.2 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.

9.3 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.

9.4 Notice to remove thing unlawfully placed on thoroughfare

Where any thing is placed on, under, over or in 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 10—ENFORCEMENT

Division 1—Notices given under this local law

10.1 Offence to fail to comply with notice

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

10.2 Local government may undertake requirements of notice

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

Division 2—Offences and penalties
Subdivision 1—General

10.3 Offences

- (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 has continued.

Subdivision 2—Infringement notices and modified penalties

10.4 Prescribed offences

- (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty 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 committing a prescribed offence, an authorised person should be satisfied that—
 - (a) 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.

10.5 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 10.4]

Clause	Description	Modified Penalty \$
2.1(a)	Plant of 0.75m in height on thoroughfare within 10 m of intersection	200
2.1(b)	Remove or damage lawn, garden or plant	300
2.1(c)	Plant (except grass) on thoroughfare within 1.2m of carriageway	100
2.1(d)	Take, injure or kill fauna	300
2.1(e)	Place any thing on a thoroughfare	200
2.1(f)	Damaging or interfering with signpost or structure on thoroughfare	300
2.1(g)	Play sport so as to cause danger	200
2.1(h)	Riding of skateboard or similar device on mall or veranda of shopping centre	200
2.1(i)	Create a nuisance on a thoroughfare	250
2.1(j)	Placing or draining offensive fluid on thoroughfare	300
2.2(1)(a)	Digging a trench through a kerb or footpath without a permit	300
2.2(1)(b)	Deposit or place any thing on a verge without a permit	250
2.2(1)(c)	Causing obstruction to vehicle or person on thoroughfare without a permit	250
2.2(1)(d)	Causing obstruction to water channel on thoroughfare without a permit	300
2.2(1)(e)	Allow material to be blown, conveyed, deposited etc	300
2.2(1)(f)	Damage a thoroughfare without a permit	300
2.2(1)(g)	Lighting a fire on a thoroughfare without a permit	400
2.2(1)(h)	Felling tree onto thoroughfare without a permit	300

Clause	Description	Modified Penalty \$
2.2(1)(i)	Remove or damage tree or part of tree without a permit	300
2.2(1)(j)	Installing pipes or stone on thoroughfare without a permit	300
2.2(1)(k)	Installing a hoist or other thing on a structure or land for use over a thoroughfare without a permit	300
2.2(1)(l)	Placing a bulk rubbish container on a thoroughfare without a permit	250
2.2(1)(m)	Interfering with anything on a thoroughfare without a permit	300
2.3(1)	Consumption or possession of liquor on thoroughfare	200
2.4(1)	Failure to obtain permit for temporary crossing	250
2.5(1)	Failure to comply with notice to remove crossing and reinstate kerb	350
2.9	Installation of verge treatment other than permissible verge treatment	300
2.10	Failure to comply with obligations regarding verge treatment	250
2.11	Failure to comply with notice to rectify fault	100
2.17(2)	Failure to comply with sign on public place	200
2.19	Driving or taking a vehicle on a closed thoroughfare	300
3.2 (1)	Placing advertising sign or affixing any advertisement on a thoroughfare without a permit	300
4.1	Animal or vehicle obstructing a public place or local government property	200
4.2(2)(a)	Animal on thoroughfare when not led, ridden or driven	200
4.2(2)(b)	Animal on public place with infectious disease	200
4.2(2)(c)	Training or racing animal on thoroughfare	200
4.3	Fouling of public places in built-up area	100
4.7	Person leaving shopping trolley in public place other than trolley bay	200
4.8(2)	Failure to remove shopping trolley upon being advised of location	200
5.5	Driving a vehicle on other than the carriageway of a flora road	200
5.8	Planting in thoroughfare without a permit	200
5.10	Failure to obtain permit to clear a thoroughfare	500
5.12	Burning of thoroughfare without a permit	500
5.16	Construction of firebreak on thoroughfare without a permit	500
5.18	Commercial harvesting of native flora on thoroughfare	500
5.19(1)	Collecting seed from native flora on thoroughfare without a permit	300
6.2(1)	Conducting of stall in public place without a permit	350
6.3(1)	Trading without a permit	350
6.8(1)(a)	Failure of stallholder or trader to display or carry permit	200
6.8(1)(b)	Stallholder or trader not displaying valid permit	200
6.8(1)(c)	Stallholder or trader not carrying certified scales when selling goods by weight	200
6.8(2)	Stallholder or trader engaged in prohibited conduct	200
6.10	Performing in a public place without a permit	200
6.11(2)	Failure of performer to move onto another area when directed	200
6.14	Failure of performer to comply with obligations	200
6.16	Establishment or conduct of outdoor eating facility without a permit	350
6.18	Failure of permit holder of outdoor eating facility to comply with obligations	200
6.20(1)	Use of equipment of outdoor eating facility without purchase of food or drink from facility	80
6.20(2)	Failure to leave outdoor eating facility when requested to do so by permit holder	80
6.21(1)	Failure of permit holder to temporarily remove facility	150
7.5	Failure to comply with a condition of a permit	200
7.9	Failure to produce permit on request of authorised person	200
10.1	Failure to comply with notice given under local law	300
	Any other offence not listed	150

Schedule 2
ACCEPTABLE MATERIALS

[2.8(2)(c)]

1. Pavers, asphalt or concrete professionally laid non-slip with no trip points and bedded flush with surrounding infrastructure.
2. Materials that can be, and are, water bound and compacted.
3. Compacted crushed limestone, gravel or crushed aggregate with no individual stone greater than 20mm in diameter.

Dated 22nd June 2016.

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

M. T. SCOTT, President.
P. F. SHEEDY, Chief Executive Officer.

**BUSH FIRES ACT 1954
LOCAL GOVERNMENT ACT 1995**

SHIRE OF CAPEL

BUSH FIRE BRIGADES AMENDMENT LOCAL LAW 2016

Under the powers conferred on it by the *Bush Fires Act 1954*, the *Local Government Act 1995* and all other relevant powers, the Council of the Shire of Capel resolved on June 22nd 2016 to make this local law.

1. Title

This local law may be cited as the *Shire of Capel Bush Fire Brigades Amendment Local Law 2016*.

2. Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

3. Principal local law

This local law amends the *Shire of Capel Bush Fire Brigades Local Law* as published in the *Government Gazette* on 23 May 2001.

4. Table of contents amended

- (1) The title of the contents page is amended by inserting “*LOCAL GOVERNMENT ACT 1995*” above “*BUSH FIRES ACT 1954*”.
- (2) The number “2016” is added at the end of the title line “Bush Fire Brigades Local Law”.
- (3) Item 3.8 in the Table of Contents section is amended by—
 - (a) Replacing the capital “L” on “Local” with a lower case “l”; and
 - (b) replacing the word “Authority” with the word “government”.
- (4) Replace “Bush Fire Brigade” with “bush fire brigade” throughout the Table of Contents.
- (5) The following text is added at the end of the existing Table of Contents—

“First Schedule—Rules governing the operation of bush fire brigades

[2.4]

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1.1 Interpretation

PART 2—OBJECTS AND MEMBERSHIP OF THE BUSHFIRE BRIGADE

- 2.1 Objects of bush fire brigade
- 2.2 Committee to determine applications
- 2.3 Conditions of membership
- 2.4 Applications for membership
- 2.5 Decision on application for membership
- 2.6 Department to be notified of registrations
- 2.7 Termination of membership
- 2.8 Suspension of membership
- 2.9 Existing liabilities to continue
- 2.10 Member has right of defence
- 2.11 Objection rights

PART 3—FUNCTIONS OF BRIGADE OFFICERS

- 3.1 Chain of command during fire fighting activities
- 3.2 President
- 3.3 Secretary
- 3.4 Treasurer
- 3.5 Equipment Officer
- 3.6 Storage of equipment
- 3.7 Equipment Officer to report
- 3.8 Incident Controller to report

PART 4—COMMITTEE

- 4.1 Management of bush fire brigade
- 4.2 Constitution of Committee

PART 5—MEETINGS OF BUSH FIRE BRIGADE

- 5.1 Ordinary meetings
- 5.2 Special meetings
- 5.3 Annual General Meeting
- 5.4 Quorum
- 5.5 Voting
- 5.6 Auditor

PART 6—MEETINGS OF COMMITTEE

- 6.1 Meetings of Committee
- 6.2 Quorum
- 6.3 Voting

PART 7—GENERAL ADMINISTRATION MATTERS

- 7.1 Fees
- 7.2 Funds
- 7.3 Financial year
- 7.4 Banking
- 7.5 Disclosure of interests
- 7.6 Disagreements

PART 8—NOTICES AND PROXIES

- 8.1 Notices
- 8.2 Proxies

5. Title amended

(1) The title of the local law is amended by inserting “*LOCAL GOVERNMENT ACT 1995*” above “*BUSH FIRES ACT 1954*”.

(2) The number “2016” is added to the end of the title line “BUSH FIRE BRIGADES LOCAL LAW”.

6. Enacting clause amended

In the enacting clause of the local law, after “*Bush Fires Act 1954*” insert “and the *Local Government Act 1995*”.

7. Clause 1.2 amended

In clause 1.2(1)—

- (a) delete the definitions for “*Authority*” and “*Council*”; and
- (b) insert the following new definition after CEO—

“*Department* means the Department of Fire and Emergency Services, Western Australia;”.

8. Clause 2.6 amended

Remove the capital letters from “Bush Fire Brigades” in the subject line and replace with lower case letters.

9. Clause 3.1 amended

In clause 3.1, delete “Council” and replace with “local government”.

10. Clause 3.5 amended

Insert the word “and” at the end of 3.5(c).

11. Clause 3.6 amended

Delete the words “during the month of March” and replace with “prior to June 30”.

12. Clause 4.4 amended

- (a) Insert the word “and” at the end of 4.4(e); and
- (b) in 4.4(f), delete “Authority’s” and replace with “Department’s”.

13. Clause 4.6 amended

Delete “March” and replace with “January”.

14. Clause 6.2 amended

Delete “31 March” and replace with “30 June”.

15. Clause 6.3 amended

Delete “March” and replace with “January”.

16. First Schedule amended

(1) In clause 2.3, add the word “and” at the end of 2.3(c).

- (2) In clause 2.6—
- (a) delete FESA from the subject line and replace with “Department”;
 - (b) delete the number (1) indicating the first paragraph;
 - (c) delete “local government” and replace with “Department”;
 - (d) delete “seven” and replace with “fourteen”;
 - (e) delete “Authority” and replace with “Department”; and
 - (f) delete paragraph 2—
 “(2) The local government is to notify the Authority within seven days of the receipt of a person being admitted to membership in the forms required by the Authority from time to time.”.
- (3) In clause 3.2, delete the words “Duties of” from the subject line.
- (4) In clause 3.3—
- (a) add the word “and” at the end of 3.3(e); and
 - (b) in 3.3(f) delete “31 May” and insert “30 June”.
- (5) In clause 3.7, replace “31 March” with “30 June”.
- (6) In clause 3.8, renumber the paragraphs by—
- (a) removing the “(a)” from “1(a)”;
 - (b) replacing “(b)” with “(2)”;
 - (c) replacing the original “(2)” with “(3)”.
- (7) In the newly renumbered clause 3.8—
- (a) replace “Authority” with “Department” in (1);
 - (b) in (2), delete the “(a)” from “(1)(a)”;
 - (c) in (3), delete the word “forward” and replace with the words “ensure the Department has”;
 - (d) in (3), delete the words “form to the Authority”; and
 - (e) in 3, capitalise “incident controller”.
- (8) In clause 7.4—
- (a) insert “(1)” at the beginning of the first paragraph;
 - (b) delete the words “members of the Bush Fire Brigade appointed to do so” and insert the words “of the President, Secretary or Treasurer.”; and
 - (c) add the following sub clause—
 “(2) If the Secretary/Treasurer is a combined position, both the President and Secretary/Treasurer are to sign the cheques referred to in subclause (1).”.
- (9) In clause 8.1(4)(c)—
- (a) delete “or” at the end of paragraph (c)(ii);
 - (b) insert “or” at the end of paragraph (c)(iii); and
 - (c) after paragraph (c)(iii) insert—
 “(iv) email;”.
- (10) In clause 8.1(4)(d)—
- (a) delete “or” at the end of paragraph (d)(ii);
 - (b) delete the full stop at the end of paragraph (d)(iii) and substitute “; or”; and
 - (c) after paragraph (d)(iii) insert—
 “(iv) “if no notification is received by the sender to indicate that an email is undeliverable.”.
- (11) In the signatory section, delete the word “Acting” found between the words “Sheedy” and “Chief”.

Dated 22nd June 2016.

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

M. T. SCOTT, President.
P. F. SHEEDY, Chief Executive Officer.

**CEMETERIES ACT 1986
LOCAL GOVERNMENT ACT 1995**

SHIRE OF CAPEL

CEMETERIES LOCAL LAW 2016

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**CEMETERIES ACT 1986
LOCAL GOVERNMENT ACT 1995**

SHIRE OF CAPEL

CEMETERIES LOCAL LAW 2016

Under the powers conferred by the *Cemeteries Act 1986* and the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Capel resolved on June 22nd 2016 to adopt the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Capel Cemeteries Local Law 2016*.

1.2 Application

This local law applies to the Capel (Reserve 6433), Carmelite Monastery (66 Gelorup Rise, Gelorup) and Boyanup (R6742) Cemeteries located in the district.

1.3 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.4 Repeal

The *Local Laws Relating to the Capel and Boyanup Public Cemeteries* published in the *Government Gazette* on 21 February 2001 as amended is repealed.

1.5 Interpretation

In this local law, unless the context otherwise requires—

Act means the *Cemeteries Act 1986*;

ashes means so much of the remains of a dead body after the due processes of cremation as may be contained in a standard sized cremation urn;

authorised officer means an employee of the Board authorised by the Board for the purposes of performing any function or exercising any power conferred upon an authorised officer by this local law;

Board means the Shire of Capel;

CEO means the chief executive officer, for the time being, of the Board;

crypt has the same meaning as vault;

district means the district of the local government;

funeral director means a person holding a current funeral director's licence;

local government means the Shire of Capel;

mausoleum means a building or construction wholly above or partially above and below ground level, so constructed as to allow the deposition of dead bodies into a compartment in the wall or floor and being sealed from view;

memorial includes headstone, plaque, tombstone, monumental work, inscription, kerbing, enclosure and any other fixture or thing commemorating a grave or placement of ashes;

monument includes a tombstone, vault, enclosure or approved form of memorial;

monumental mason's licence means a licence issued under clause 7.13;

monumental work when the term is used as an abstract noun shall include the erection, alteration or removal of or other working upon a monument on a grave;

personal representative means—

- (a) the administrator or executor of an estate of a deceased person;
- (b) the person who, by law of practice has the right to apply for administration of the estate of the deceased person; or
- (c) a person having lawful custody of a dead body;

set fee refers to fees and charges set by a resolution of the Board and published in the *Government Gazette*, under section 53 of the Act;

single funeral permit means a permit issued by the Board under section 20 or 21 of the Act which entitles the holder to conduct at the cemetery a funeral of a person named in the permit;

vault means a below ground lined grave with one or more sealed compartments constructed to specifications approved from time to time by the Board; and

vehicle has the same meaning as is given to that word in the *Road Traffic (Administration) Act 2008* (as amended from time to time), and includes trail bikes, beach buggies and other recreational vehicles licenced or unlicensed, but excludes a wheelchair being used by a physically impaired person.

PART 2—ADMINISTRATION

2.1 Powers and functions of CEO

Subject to any directions given by the Board, the CEO shall exercise all the powers and functions of the Board in respect of the cemetery.

PART 3—APPLICATION FOR FUNERALS

3.1 Application for burial

(1) A person may apply for approval to bury a dead body in the cemetery in the form determined by the Board from time to time.

(2) An application under subclause (1) is to be accompanied by the set fee.

3.2 Applications to be accompanied by certificates etc

All applications referred to in clause 3.1 shall be accompanied by either a medical certificate of death or a Coroner's order of burial, and a certificate issued under clause 3.3, in respect of the body.

3.3 Certificate of identification

(1) After a dead body is placed in a coffin and prior to a dead body being removed to the cemetery, a person who personally knew the deceased shall identify the dead body and shall complete a certificate of identification in the form determined by the Board from time to time, unless—

- (a) in the opinion of a funeral director, the dead body is not in a fit state to be viewed; or
- (b) after reasonable effort the funeral director is unable to arrange for a person to identify the dead body.

(2) A funeral director shall complete a certificate in the form determined by the Board from time to time, where—

- (a) in the opinion of the funeral director, the dead body is not in a fit state to be viewed; or
- (b) after reasonable effort the funeral director is unable to arrange for a person to identify the dead body.

3.4 Minimum notice required

All bookings to hold a funeral shall be made with the Board at least 24 hours prior to the time proposed for burial on the application, otherwise an extra charge may be made.

PART 4—FUNERAL DIRECTORS

4.1 Funeral director's licence expiry

A funeral director's licence shall expire on 30 June of each year.

4.2 Single funeral permits

Every application for a single funeral permit made under section 20 or 21 of the Act shall include coffin specifications and details of the vehicle transporting the dead body to the gravesite.

4.3 Application refusal

The Board may refuse an application for a single funeral permit if, in the opinion of the Board, either the coffin specifications or the details of the vehicle transporting the dead body to the gravesite or crematorium are not structurally sound or are otherwise inadequate or inappropriate, or on any other grounds.

PART 5—FUNERALS

Division 1—General

5.1 Requirements for funerals and coffins

A person shall not bring a dead body into the cemetery unless—

- (a) the Board has approved an application for the burial of that dead body in accordance with Part 3 of this local law; and

- (b) it is enclosed in a coffin which in the opinion of the Board is structurally sound and bears the name of the deceased person indelibly inscribed in legible characters on a plate on the coffin's lid.

5.2 Funeral processions

The time fixed by the Board for any burial shall be the time at which the funeral procession is to arrive at the cemetery gates, and, if not punctually observed, then the applicant who applied to hold the funeral under clause 3.1 shall pay the set fee for being late.

5.3 Vehicle entry restricted

- (1) Subject to clause 5.3(2), every funeral procession shall enter by the principal entrance, and no vehicle except the hearse, and official mourning coaches, shall be permitted to enter the cemetery.
- (2) This clause shall not apply to persons using wheelchairs or motorised wheelchairs.

5.4 Vehicle access and speed limitation

- (1) A person shall drive a vehicle on a vehicular access way or the constructed roadway or other areas designated for the use of vehicles within the cemetery, unless otherwise authorised by the CEO.
- (2) A person driving a vehicle within a cemetery, shall not exceed the speed limit of 25 km per hour, and shall comply with the signs and directions in the cemetery.

5.5 Offenders may be ordered to leave

- (1) A person committing an offence under clause 5.4 may be ordered to leave the cemetery by the CEO or an authorised officer.
- (2) A person who has been ordered to leave the cemetery by the CEO or an authorised officer is to leave immediately in a peaceful manner and not cause a disruption or be a nuisance to the funeral congregation or ceremony or procession.

5.6 Conduct of funeral by Board

When conducting a funeral under section 22 of the Act the Board may—

- (a) require a written request for it to conduct a funeral to be lodged with it;
- (b) in its absolute discretion, charge any person requesting it to conduct a funeral the set fee for the conduct of that funeral by it;
- (c) where no fee or a reduced fee has been charged by it for the conduct of the funeral, determine the manner in which the funeral shall be conducted;
- (d) specify an area in the cemetery where the dead body is to be buried or the ashes placed;
- (e) conduct the funeral notwithstanding the failure of a person to make any application or to obtain any consent required under this local law; and
- (f) do or require anything which it considers is necessary or convenient for the conduct of a funeral by it.

Division 2—Placement of ashes

5.7 Disposal of ashes

- (1) The personal representative of a deceased person whose body has been cremated may apply, in an application under clause 3.1 or otherwise, for permission to dispose of the ashes in the cemetery and upon payment of the set fee, the Board may grant permission for the ashes to be disposed of by one of the following methods—
- (a) Niche wall;
- (b) Family grave;
- (c) Scattering to the winds; or
- (d) Other memorials approved by the Board.
- (2) Subject to subclauses (3) and (4), a person shall not place the ashes of a deceased person in the cemetery.
- (3) An authorised officer may place the ashes of a deceased person in a cemetery in accordance with the Board approval provided—
- (a) the person requesting the placement of the ashes has the permission of the Board; and
- (b) the ashes are placed within an area set aside for that purpose by the Board.
- (4) An authorised officer may place the ashes of a deceased person within a grave in accordance with the Board approval, provided the person requesting the placement of the ashes has the written permission of the Board and the approval of the holder of the right of burial of the grave.

PART 6—BURIALS

6.1 Depth of graves

- (1) A person shall bury a coffin within the cemetery so that the distance from the top of the coffin to the original surface of the ground is—
- (a) subject to (b) not less than 900 mm unless the person has the permission of an authorised officer, or
- (b) in any circumstances, not less than 750 mm.

(2) The permission of the authorised officer will only be granted where, in the opinion of the authorised officer, exceptional circumstances require granting of that permission.

6.2 Mausoleum, etc

(1) A person other than the Board shall not construct a brick grave, crypt, vault or mausoleum within the cemetery.

(2) A person may request the Board to construct a vault or mausoleum within the cemetery which vault or mausoleum shall at all times remain the property of the Board.

(3) An application under subclause (2) shall be in writing and shall be accompanied by payment of the set fee.

(4) A person shall not place a dead body in a mausoleum except in—

- (a) a closed coffin;
- (b) a soundly constructed chamber; and
- (c) in accordance with subclause (5).

(5) The number of burials in a chamber must not exceed the number for which the chamber was designed.

PART 7—MEMORIALS AND OTHER WORK

Division 1—General

7.1 Application for monumental work

A Board may require the written consent of the holder of the right of burial of the grave to accompany an application under section 30 of the Act.

7.2 Placement of monumental work

Every memorial shall be placed on proper and substantial foundations.

7.3 Removal of rubbish

All refuse, rubbish or surplus material remaining after memorial works are completed under a permit issued under section 30 of the Act shall be immediately removed from the cemetery by the person carrying out the same.

7.4 Operation of work

All material required in the erection and completion of any work shall, as far as possible, be prepared before being taken to the cemetery, and all materials required by tradesmen shall be admitted at such entrance as the CEO or an authorised officer shall direct.

7.5 Removal of sand, soil or loam

No sand, earth or other material shall be taken from any part of the cemetery for use in the erection of any memorial or work except with the written approval of the Board.

7.6 Hours of work

Persons shall not be permitted to carry out memorial or other work on graves within the cemetery other than between the hours of 8.00am and 6.00pm on weekdays, and 8.00am and noon on Saturdays, without the written permission of the Board.

7.7 Unfinished work

Should any work by masons or others be not completed before 6 p.m. on weekdays and noon on Saturdays, they shall be required to leave the work in a neat and safe condition to the satisfaction of the CEO or an authorised officer.

7.8 Use of wood

No wooden fence, railing, cross or other wooden erection shall be allowed on or around any grave, other than as a temporary marker and with the prior approval of the Board.

7.9 Plants and Trees

No trees or shrubs shall be planted on any grave or within the cemetery except such as shall be approved by an authorised officer.

7.10 Supervision

All workers, whether employed by the Board or by any other person, shall at all times whilst within the boundaries of the cemetery be subject to the supervision of the CEO or an authorised officer and shall obey such directions as the CEO or an authorised officer may give.

7.11 Australian War Graves

Notwithstanding anything in this local law to the contrary, the Office of Australian War Graves—

- (a) may place a memorial on a military grave; and
- (b) is not required to pay the set fee for any memorial that is placed upon a military grave.

7.12 Placing of glass domes and vases

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.

*Division 2—Licensing of Monumental Masons***7.13 Monumental mason's licence**

(1) The Board may upon receipt of an application in writing by any person and upon payment of the set fee issue to the applicant a monumental mason's licence.

(2) A licence issued under subclause (1) authorises the holder to carry out monumental works within the cemetery subject to the provisions of this local law and such conditions as the Board shall specify upon the issue of that licence.

7.14 Expiry date, non-transferability

A monumental mason's licence—

- (a) shall be valid from the date specified therein until 30 June next following; and
- (b) is not transferable.

7.15 Carrying out monumental work

A person shall not carry out monumental work within the cemetery unless that person—

- (a) is the holder of a current monumental mason's licence issued pursuant to clause 7.13; or
- (b) is an employee of a person who holds such a licence; and
- (c) is authorised by the Board to do so.

7.16 Responsibilities of the holder of a monumental mason's licence

The holder of a monumental mason's licence shall be responsible for the compliance by every person purporting to be authorised to carry out monumental works within the cemetery pursuant to that licence with all the requirements and conditions of the licence, this local law, the Act and any other written law which may affect the carrying out of monumental works.

7.17 Cancellation of a monumental mason's licence

(1) The Board may by notice in writing to the holder of a monumental mason's licence terminate the licence on any of the following grounds—

- (a) that the holder of the licence has committed a breach of the requirements and conditions of the licence, this local law, the Act or any other written law which may affect the carrying out of monumental works;
- (b) that, in the opinion of the Board, the conduct of the holder of the licence or any person in the employ of that holder in carrying out or attempting to carry out any works within the cemetery, is inappropriate or unbecoming; or
- (c) that the holder of the licence has purported to transfer the licence issued to that holder.

(2) Upon the termination of a monumental mason's licence under this clause no part of any fee paid for the issue of that licence is refundable by the Board.

PART 8—GENERAL**8.1 Animals**

A person shall not bring an animal into or permit an animal to enter or remain in the cemetery, other than an 'assistance animal' as defined in section 9(2) of the *Disability Discrimination Act 1992* (Cth) or with the approval of the CEO or an authorised officer.

8.2 Damaging and removing of objects

Subject to clause 8.3, a person shall not damage, remove or pick any tree, plant, shrub or flower in the cemetery or any other object or thing on any grave or memorial or which is the property of the Board without the permission of the Board.

8.3 Withered flowers

A person may remove withered flowers from a grave or memorial and these are to be placed in a receptacle provided by the Board for that purpose.

8.4 Littering and vandalism

A person shall not—

- (a) break or cause to be broken any glass, ceramic or other material in or upon the cemetery; or
- (b) discard, deposit, leave or cause to be discarded, deposited or left any refuse or litter in or upon the cemetery other than in a receptacle provided for that purpose.

8.5 Advertising

(1) A person shall not advertise or carry on any trade, business or profession within the cemetery without the prior written approval of the Board.

(2) The Board may consider and grant approval subject to such conditions as the Board thinks fit.

8.6 Obeying signs and directions

A person shall obey all signs displayed, marked, placed or erected by the Board within the cemetery and any other lawful direction by the CEO or an authorised officer.

8.7 Removal from the cemetery

Any person failing to comply with any provisions of this local law or behaving in a manner that in the opinion of the Board, the CEO or an authorised officer is inappropriate in the cemetery may in

addition to any penalty provided by this local law be ordered to leave the cemetery by the Board, the CEO or an authorised officer.

PART 9—OFFENCES AND MODIFIED PENALTIES

9.1 General

A person who commits a breach of any provisions of this local law commits an offence and shall on conviction be liable to a penalty not exceeding \$500.00 and if the offence is a continuing one to a further penalty not exceeding \$20.00 for every day or part of a day during which the offence has continued.

9.2 Modified penalties

- (1) The offences specified in Schedule 1 are offences which may be dealt with under section 63 of the Act.
- (2) The modified penalty payable in respect of an offence specified in Schedule 1 is set out in the fourth column of Schedule 1.
- (3) The prescribed form of the infringement notice referred to in section 63(1) of the Act is set out in Schedule 2.
- (4) The prescribed form of the notice withdrawing an infringement notice referred to in section 63(3) of the Act is set out in Schedule 3.

Schedule 1

OFFENCES AND MODIFIED PENALTIES

[Clause 9.2(1)]

Item No.	Clause	Nature of offence	Modified penalty
1	5.4(1)	Not driving vehicle on vehicular access way or constructed roadways or within designated areas	\$50.00
2	5.4(2)	Exceeding speed limit	\$50.00
3	7.3	Not removing rubbish and surplus materials	\$50.00
4	7.5	Unauthorised use of sand, earth or other material taken from another part of the cemetery	\$50.00
5	7.7	Leaving uncompleted works in an untidy or unsafe condition	\$50.00
6	8.1	Unauthorised bringing in of animal into cemetery or permitting animal to remain in cemetery	\$50.00
7	8.2	Damaging and removing of objects	\$50.00
8	8.4	Littering and vandalism	\$50.00
9	8.5	Unauthorised advertising and/or trading	\$50.00
10	8.6	Disobeying sign or lawful direction	\$50.00

Schedule 2

INFRINGEMENT NOTICE

[Clause 9.2(2)]

To:
(Name)

.....
(Address)

It is alleged that at : hours on day of.....20.....

at

you committed the offence indicated below by an (x) in breach of clause of the *Shire of Capel Cemeteries Local Law 2016*.

.....
(Authorised Person)

Offence

- Not driving vehicle on vehicular access way or designated areas—[5.4(1)]
- Exceeding speed limit—[5.4(2)]

- Not removing rubbish and surplus materials—[7.3]
- Unauthorised use of sand, earth or other materials taken from another part of the cemetery—[7.5]
- Leaving uncompleted works in an untidy or unsafe condition [7.7]
- Unauthorised animal in cemetery—[8.1]
- Damaging and removing of objects—[8.2]
- Littering and vandalism—[8.4]
- Unauthorised advertising and/or trading [8.5]
- Disobeying sign or lawful direction—[8.6]
- Other Offence:\$.....

You may dispose of this matter by payment of the penalty as shown within 21 days of the date of this notice (or the date of the giving of this notice if that is a different date) to the Chief Executive Officer of the Shire of Capel at Forrest Road, Capel between the hours of 8.30 a.m. to 4.30 p.m., Monday to Friday.

Please make cheques payable to the Shire of Capel. Payments by mail should be addressed to—

The Chief Executive Officer
 Shire of Capel
 PO Box 369
 CAPEL WA 6271

If the penalty is not paid within the time specified, then a complaint of the alleged offence may be made and heard and determined by a court.

Schedule 3
INFRINGEMENT WITHDRAWAL NOTICE

[Clause 9.2(3)]

No..... Date...../...../.....

To: ^[1].....

Infringement Notice No dated/...../..... for the alleged offence of ^[2].....

Penalty ^[3] \$..... is withdrawn.

(Delete whichever does not apply)

- * No further action will be taken.
- * It is proposed to institute court proceedings for the alleged offence.

.....
 (Authorised Person)

^[1] Insert name and address of alleged offender.

^[2] Insert short particulars of offence alleged.

^[3] Insert amount of penalty prescribed.

Dated 22nd June 2016.

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

M. T. SCOTT, President.
 P. F. SHEEDY, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF CAPEL

FENCING LOCAL LAW 2016

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LOCAL GOVERNMENT ACT 1995

SHIRE OF CAPEL

FENCING LOCAL LAW 2016

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 22nd June 2016 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Capel Fencing Local Law 2016*.

1.2 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.3 Repeal

The *Shire of Capel Local Laws Relating to Fencing* published in the *Government Gazette* of 04 July 2001 is repealed.

1.4 Application of local laws

This local law applies throughout the district.

1.5 Interpretation

In this Local Law, unless the context requires otherwise—

Act means the *Local Government Act 1995*;

applicant means a person who applies for an approval;

application means the completed form and associated documents, if any, that is lodged by a person seeking an approval as required by this local law;

application fee means the fee determined by the local government under section 6.16—6.19 of the Act and payable upon lodgement of an application for an approval and which relates to the lodgement, assessment and determination of the application;

approval means a favourable decision in respect of an application which is in writing, may be subject to conditions and which allows a proposal to proceed;

AS or AS/NZS means an Australian Standard or an Australian/New Zealand Standard published by Standards Australia and available for viewing free of charge at the Shire of Capel Administration office;

building line means a theoretical line created by the forward most wall of the dominant building facing a street frontage;

boundary fence means a fence constructed on the boundary of a lot which abuts a thoroughfare;

CEO means the Chief Executive Officer of the local government;

Commercial Lot means a lot where a commercial use—

- (a) is or may be permitted under the planning scheme; and
- (b) is or will be the predominant use of the lot;

dangerous in relation to any fence means—

- (a) an electrified fence which does not comply with Part 6 of this local law;
- (b) a fence containing barbed wire other than a fence erected and maintained in accordance with this local law;
- (c) a fence containing exposed broken glass, asbestos fibre, razor wire or any other potentially harmful projection or material; or
- (d) a fence which is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause;

district means the district of the local government;

dividing fence means a fence that separates the lands of different owners whether the fence is on the common boundary of adjoining lands or on a line other than the common boundary;

electrified fence means a fence carrying or designed to carry an electric charge;

fence means any structure used or functioning as a barrier, irrespective of where it is located and includes any affixed gate or screening;

height in relation to a fence means the vertical distance between the top of the fence at any point and—

- (a) the ground level; or
- (b) where the ground levels on each side of the fence are not the same, the higher ground level, immediately below that point; or
- (c) where the fence is erected on a retaining wall approved by the local government, from the top of the retaining wall immediately below that point;

hours of business operations means the hours of the day during which business is usually conducted;

Industrial Lot means a lot where an industrial use—

- (a) is or may be permitted under the planning scheme; and
- (b) is or will be the predominant use of the lot;

Large Residential Lot means a lot having a density code less than or equal to R5 in the planning scheme;

local government means the Shire of Capel;

lot has the meaning given to it in and for the purposes of the *Planning and Development Act 2005*;

occupier has the meaning given to it in and for the purposes of the *Local Government Act 1995*;

owner has the meaning given to it in and for the purposes of the *Dividing Fences Act 1961*;

planning approval means an approval issued by the local government under a planning scheme;

Planning Scheme means a town or local planning scheme made in accordance with the *Planning and Development Act 2005* and operational in the district;

primary street setback area means the area between the building line of a lot and the front boundary of that lot;

public place includes—

- (a) a street, way or place which the public are allowed to use, whether the street, way or place is or is not on private property;
- (b) parklands, squares, reserves and other lands set apart for the use and enjoyment of the public; and
- (c) all lands vested in or under the care, control or management of the local government;

retaining wall means any structure approved by the local government which prevents the movement of soil in order to allow ground levels of different elevations to exist adjacent to one another;

road reserve means land reserved for the purpose of a road;

Rural Lot means a lot zoned 'rural' in the planning scheme;

screening means any perforated panels or trellises composed of solid or obscured translucent panels;

Small Residential Lot means a lot having a density code greater or equal to R10 in the Planning Scheme;

Schedule means a Schedule to this local law;

Special Rural Lot means a lot zoned 'special rural' or 'rural residential' in the planning scheme;

sufficient fence means a fence described in clause 2.1;

uniform fence means a fence erected by a developer or subdivider in accordance with a subdivision or development approval which divides a lot from a public place such as pedestrian access way, public open space or road reserve;

thoroughfare has the meaning given to it in the Act; and

visually permeable means the surface of a fence which has—

- (a) continuous vertical or horizontal gaps of at least 50mm width occupying not less than one third of its face in aggregate of the entire surface or where gaps are narrower than 50mm, occupying not less than one half of its face in aggregate of the entire surface, as viewed directly from the street; or
- (b) a surface offering equal or lesser obstruction to view.

1.6 Relationship with other laws

(1) In the event of any inconsistency between the provisions of a local planning scheme and the provisions of this local law, the provisions of the planning scheme are to prevail.

(2) Nothing in this local law effects a provision in any written law in respect of a building permit for a fence.

PART 2—SUFFICIENT FENCE**2.1 Sufficient fence**

- (1) A person shall not erect a dividing fence or fence that is not a sufficient fence, unless otherwise approved or required by the local government.
- (2) A dividing fence or fence lawfully erected prior to this local law coming into operation constitutes a sufficient fence.
- (3) Subject to subclause (4) and (5), a sufficient fence—
 - (a) on a Small Residential Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 1 and located behind the specified building line;
 - (b) on a Large Residential Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 2 and located behind the specified building line;
 - (c) on a Commercial Lot and on an Industrial Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 3; and
 - (d) on a Rural Lot and on a Special Rural Lot is a dividing fence or a boundary fence constructed and maintained in accordance with the specifications and requirements of Schedule 4.
- (4) Where a fence is erected on or near the boundary between a—
 - (a) Small Residential Lot or a Large Residential Lot and an Industrial Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 1;
 - (b) Small Residential Lot or a Large Residential Lot and a Commercial Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 3;
 - (c) Small Residential Lot or a Large Residential Lot and a Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 1 or 2 respectively;
 - (d) Small Residential Lot or a Large Residential Lot and a Special Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 1 or 2 respectively; and
 - (e) Special Rural Lot and a Rural Lot, a sufficient fence is a dividing fence constructed and maintained in accordance with the specifications and requirements of Schedule 4.
- (5) Unless otherwise approved or required by the local government a sufficient fence on a boundary between lots other than those specified in subclause (4) is a dividing fence constructed in accordance with the specifications and requirements of Schedule 3.

PART 3—FENCING WITHIN THE PRIMARY STREET (FRONT) SETBACK**3.1 Fences within primary street (front) setback area**

- (1) On a Small Residential Lot a fence erected within the primary street setback area shall—
 - (a) with the exception of piers, be visually permeable above 0.75m;
 - (b) not exceed a height of 1.8m; and
 - (c) be constructed of aluminium tubular pool style fencing, face finished brick, render, brushwood, stone or timber palings, or a combination of the aforementioned materials, or similar, that complement the dwelling and do not detract from the streetscape.

Fibre cement sheets or sheet metal are not considered suitable.

- (2) On a Large Residential Lot a fence erected within the primary street setback area shall—
 - (a) not exceed a height of 1.2m; and
 - (b) be constructed of posts and wire.
- (3) On a Commercial Lot, no fence shall be erected forward of the building line.
- (4) On an Industrial Lot, a fence erected within the primary street setback area shall be visually permeable above 1.2m and not exceed a height of 2.4m.
- (5) All fences shall be truncated or reduced to no higher than 0.75m within 1.5m adjoining a vehicle access point where a driveway meets a public street and where 2 streets intersect.
- (6) Subclause (5) shall not apply to a visually permeable fence that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare.

PART 4—FENCING MATERIALS, SCREENING AND MAINTENANCE**4.1 Fencing materials**

- (1) Subject to clause 2.1, a person shall only construct a fence from materials specified in the Schedules of this local law, unless otherwise approved or required by the local government.
- (2) Uniform fencing shall be constructed predominantly from new materials as described in the Schedules and where required by the local government, incorporate visually permeable sections above 1.2m to the satisfaction of the local government.

(3) Pre-used materials shall not be permitted in the construction of a fence, unless the pre-used materials are structurally fit for the purpose, painted, treated and/or upgraded to the satisfaction of the local government.

(4) No person shall erect a fence of impervious material in any place, position or location where it will, or is likely to, act as a barrier to or restrict the flow of a natural watercourse.

4.2 Screening

(1) Any screening affixed to a fence shall be designed to integrate with the colours, materials and specifications of that sufficient fence to the satisfaction of the local government.

(2) On a Rural Lot or Special Rural Lot, no person shall affix any screening to a fence.

(3) Screening affixed to a fence shall be installed and maintained in accordance with the manufacturers specifications and not compromise the structural integrity of a fence.

4.3 Barbed wire or other material with spiked or jagged projections

(1) A person shall not erect or affix to any fence any barbed or razor wire or other material with spiked or jagged projections except in accordance with this clause.

(2) An owner or occupier of a Commercial or Industrial Lot shall not erect or affix on any fence bounding that lot any barbed wire or other materials with spiked or jagged projections unless the wire or materials are carried on posts vertically or at an angle of 45 degrees, and unless the bottom row of wire or other materials is not less than 2m from the ground level.

(3) If the posts which carry the barbed wire or other materials referred to in subclause (2) are angled towards the outside of the lot bounded by the fence the face of the fence must be set back from the lot boundary a sufficient distance to ensure that the angled posts, barbed wire or other materials do not encroach on adjoining land.

(4) An owner or occupier of a lot shall not affix or allow to remain as part of any fence or wall on that lot, whether internal or external, any broken glass or razor wire.

(5) An owner or occupier of a Rural Lot or Special Rural Lot shall not place or affix barbed wire upon a fence on that lot where the fence is adjacent to a thoroughfare or other public place unless the barbed wire is fixed to the side of the fence posts furthest from the thoroughfare or other public place.

4.4 Maintenance of fences

(1) An owner or occupier of a lot on which a fence is erected shall maintain the fence in good condition and prevent it from becoming damaged, dangerous, dilapidated, unsightly or detrimental to the amenity of the locality.

(2) An owner or occupier of a lot on which a uniform fence is erected shall not alter the fence in any way, or enclose or screen any visually permeable sections of the fence.

4.5 Gates in fences

Any gate or door must not encroach into or over any other property.

PART 5—RIGHT-OF-WAYS, PUBLIC ACCESS WAYS OR ROAD RESERVES

5.1 Fences across right-of-ways, public access ways or road reserves

A person must not, without the written consent of the local government, erect or maintain a fence or obstruction of a temporary or permanent nature across any right-of-way, public access way or road reserve so as to impede or prevent use of those facilities in the manner for which they are intended and constructed.

PART 6—ELECTRIFIED FENCES

6.1 Electrified fencing

(1) On a Rural Lot electrified fencing shall comply with *AS/NZS 3014:2003 Electrical Installations—Electric Fences* (as amended from time to time).

(2) On an Industrial Lot, an electrified fence shall—

(a) comply with *AS/NZS 3016:2002 Electrical Installations—Electric Security Fences* (as amended from time to time);

(b) comply with any requirements of Western Power;

(c) be capable of being rendered inoperable during the hours of business operations, if any, on the lot where it is erected; and

(d) be designed to integrate with the colours, materials and specification of a sufficient fence.

Australia/New Zealand Standards *AS/NZS 3014:2003 Electrical installations—Electric fences* and *AS/NZS 3016:2002 Electrical Installations—Electric Security Fences* are available for viewing free of charge at the Shire of Capel Administration office.

PART 7—APPLICATION REQUIREMENTS

7.1 Requirements for an approval from local government

(1) Where approval is required from the local government under this local law and approval is not required in the form of planning approval or a building permit, then a written application to the local government to seek an approval under this local law will apply.

- (2) An owner or occupier of a lot, other than a Rural Lot or Industrial Lot, must not—
- (a) have or use an electrified fence on that lot—
 - (i) without first obtaining a building permit or written approval of the local government and
 - (ii) except in accordance with that permit or approval; or
 - (b) construct a fence wholly or partly of barbed wire or other material with jagged or spiked projections on that lot—
 - (i) without first obtaining a building permit or written approval of the local government; and
 - (ii) except in accordance with that permit or approval.
- (3) Approval to install an electrified fence on a fence will not be given—
- (a) if the lot abuts a Residential Lot; and
 - (b) unless provision is made so as to enable the fence to be rendered inoperable during the hours of business operations, if any, on the lot where it is erected.

7.2 Application for approval

- (1) An owner of a lot may apply to the local government for any discretionary matter contained within this local law.
- (2) An application must be—
- (a) in writing in a form approved by the local government;
 - (b) accompanied by any document or information that is required by the local government; and
 - (c) accompanied by an application fee.

7.3 Determination of applications

- (1) The local government may approve the erection of a fence that does not comply with the requirements of this local law.
- (2) In determining whether to grant its consent to the erection, the local government may consider, in addition to any other matter that it is authorised to consider, whether the erection or retention of the fence would have an adverse impact on—
- (a) the safe or convenient use of any land;
 - (b) the safety or convenience of any person; or
 - (c) the visual amenity of the streetscape or neighbouring properties.
- (3) All fees and charges applicable under this local law shall be determined by the local government from time to time in accordance with section 6.16 to 6.19 of the *Local Government Act 1995*.
- (4) An application submitted to the local government under this local law may be—
- (a) approved by the local government;
 - (b) approved by the local government subject to conditions as the local government sees fit; or
 - (c) rejected by the local government.
- (5) Where the local government approves an application subject to conditions, the applicant must comply with those conditions.
- (6) Where the local government approves an application under this clause, it shall issue an approval in the form determined by the local government.
- (7) The local government may by written notice amend a condition imposed under subclause (4)(b).
- (8) An amendment under subclause (7) is effective from the date specified in the notice.

7.4 Transfer of an approval under this local law

- (1) An approval which is provided by the local government under this local law is deemed to transfer to each successive owner or occupier of the lot to which the approval applies.
- (2) Where an approval is transferred under this clause, the successive owner or occupier may apply to the local government for a written confirmation of this transfer.
- (3) If the local government approves an application under this clause, it may issue a written confirmation to the applicant in the form determined by the local government.

7.5 Cancellation of an approval

The local government may cancel an approval if—

- (a) the owner or occupier requests the local government to do so;
- (b) the fence to which the approval applies has been demolished and is not rebuilt for a period of 6 months;
- (c) the circumstances have changed in such a way that an approval for the fence could no longer be granted under the local law;
- (d) the owner or occupier fails to comply with a condition of the permit or breaches a provision of this local law in respect of the fence; or
- (e) the owner or occupier fails to comply with a notice of breach issued under clause 8.1.

7.6 Objections and appeals

Division 1 of Part 9 of the *Local Government Act 1995* applies to a decision under this local law to—

- (a) refuse an application for an approval;
- (b) impose or vary an approval condition;
- (c) cancel an approval; or
- (d) give a person a notice under clause 8.1.

PART 8—OFFENCES AND ENFORCEMENT

8.1 Notice of breach

(1) Where a breach of any provision of this local law has occurred in relation to a fence on a lot, the local government may give a notice in writing to the owner or occupier of that lot.

(2) A notice shall specify—

- (a) the provision of this local law that has been breached;
- (b) the particulars of the breach; and
- (c) state that the owner or occupier of the lot is required to remedy the breach within 28 days from the giving of the notice.

(3) Should an owner or occupier fail to comply with a notice, the local government may by its employees, agents or contractors enter upon the lot to which the notice relates and remedy the breach, and may recover the expenses of so doing from the owner or occupier of the lot, as the case may be, in a court of competent jurisdiction.

(4) The provisions of subclause (3) are subject to section 3.25 and item 12 of Division 1 of Schedule 3.1 of the *Local Government Act 1995* and any entry onto land will be in accordance with Part 3, Division 3 of that Act.

8.2 Offences

(1) A 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) An offence against a clause specified in Schedule 5 is a prescribed offence for the purposes of section 9.16(1) of the *Local Government Act 1995*.

(3) 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.

8.3 Modified penalties

Unless otherwise specified, the amount of the modified penalty for an offence against any provision of this local law is \$200.

8.4 Infringement notices

For the purposes of this local law—

- (a) the form of the infringement notice referred to in section 9.17 of the *Local Government Act 1995* is to be in the form of Form 2 of Schedule 1 of the *Local Government (Functions and General) Regulations 1996*; and
- (b) the form of the withdrawal of infringement notice referred to in section 9.20 of the *Local Government Act 1995* is to be in the form of Form 3 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*.

Schedule 1

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A SMALL RESIDENTIAL LOT

[Clause 2.1(3)(a)]

(1) Refer to clause 3.1 for fences within the primary street setback area.

(2) Each of the following is a sufficient fence on a Small Residential Lot—

- (a) A timber fence which satisfies the following specifications—
 - (i) an average height of 1.8m;
 - (ii) construction to be in accordance with the manufacturers specifications;
 - (iii) timber paneling to provide a solid cover to provide a solid screen except where the fence is located within the primary street setback area; and
 - (iv) susceptible timber is to be treated for protection from termite attack in accordance with *AS 3660.1-2014 Termite management—Part 1: New building work* (as amended from time to time).

Australian Standard *AS 3660.1-2014 Termite management—Part 1: New building work* is available for viewing free of charge at the Shire of Capel Administration office.

- (b) Fibre reinforced pressed cement sheeting which satisfies the following specifications—
 - (i) an average height of 1.8m; and
 - (ii) construction to be in accordance with the manufacturers specifications.
- (c) Masonry (including brick, stone or concrete), which satisfies the following specifications—
 - (i) an average height of 1.8m except where located within the primary street setback area (refer to Part 3 of this local law); and
 - (ii) construction to be in accordance with *AS3700-2014 Masonry structures* (as amended from time to time).

Australian Standard *AS3700-2014 Masonry Structures* is available for viewing free of charge at the Shire of Capel Administration office.
- (d) Metal panel (eg Colourbond) or PVC panel (eg Duralok) fencing systems that satisfy the following specifications—
 - (i) an average height of 1.8m, except where located within the primary street setback area (refer to Part 3 of this local law); and
 - (ii) construction to be in accordance with the manufacturers specifications.
- (e) A composite of the above fences such as timber posts with solid sheet metal infill and height as specified above.

Schedule 2

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A LARGE RESIDENTIAL LOT.

[Clause 2.1(3)(b)]

- (1) Refer to clause 3.1 for fences within the primary street setback area.
- (2) A sufficient fence on a Large Residential Lot is a fence of posts and wire construction, the specifications for which are—
 - (a) have an average height of 1.2m;
 - (b) pine timber posts shall be impregnated with a termite and fungicidal preservative;
 - (c) wire shall be high tensile galvanised wire and not less than 2.5mm in diameter;
 - (d) a minimum of 5 wires shall be used;
 - (e) galvanised iron posts may be used; and
 - (f) construction shall be in accordance with manufacturers specifications.
- (3) No boundary fence on a Large Residential Lot shall be constructed of the following materials—
 - (a) fibro cement;
 - (b) metal sheeting; or
 - (c) wooden pickets.

Schedule 3

SPECIFICATIONS FOR A SUFFICIENT FENCE ON A COMMERCIAL LOT AND INDUSTRIAL LOT.

[Clause 2.1(3)(c)]

Each of the following is a sufficient fence on a Commercial Lot and an Industrial Lot—

- (1) A fence constructed of galvanised or PVC coated rail-less link mesh, chain mesh or steel mesh which satisfies the following specifications—
 - (a) generally a height of 2m with posts up to a maximum height of 2.4m with barbed wire mesh where permitted by this local law; and
 - (b) construction to be in accordance with the manufacturers specifications.
- (2) A fence of fibre reinforced cement sheet or steel sheeting constructed to the minimum specifications referred to in Schedule 1.
- (3) A fence constructed of aluminium sheeting when supported on posts and rails provided that it is used behind a building line and is of a minimum height of 1.8m but no greater than 2.4m.
- (4) Fences of timber, brick, stone or concrete constructed to the minimum specifications referred to in Schedule 1.

Schedule 4
SPECIFICATIONS FOR A SUFFICIENT FENCE ON A RURAL LOT AND SPECIAL RURAL LOT

[Clause 2.1(3)(d)]

In the case of a non-electrified fence, a sufficient fence on a Rural Lot and a Special Rural Lot is a fence of post and wire construction, the minimum specifications for the following purposes which are—

- (1) A fence to contain cattle and horses which satisfies the following specifications—
 - (a) have an average height of 1.2m;
 - (b) pine timber posts shall be impregnated with a termite and fungicidal preservative;
 - (c) wire shall be high tensile galvanised wire and not less than 2.5mm;
 - (d) a minimum of 5 wires shall be used, generally with the lower wires spaced closer together than the higher wires so as to prevent smaller stock passing through, and connected to posts in all cases;
 - (e) galvanised iron posts may be used;
 - (f) star pickets may be used for intermediate posts; and
 - (g) construction shall be in accordance with manufacturers specifications.
- (2) A mesh fence to contain sheep and goats shall satisfy the specifications of subclause (1) with the further requirement—
 - (a) wire shall be hinge joint or ring lock with 2 plain high tensile wires of not less than 2.5mm located above the mesh and connected to posts in all cases; and
 - (b) the mesh wire shall be clipped to the lower of the 2 plain wires at 3m centres.
- (3) Star pickets used for intermediate posts on Special Rural Lots shall have a PVC safety cap on the top of each picket.
- (4) An electrified fence having 4 wires only is a sufficient fence if constructed generally in accordance with subclause (1).

Schedule 5
OFFENCES FOR WHICH MODIFIED PENALTIES APPLY

[Clause 8.2(2)]

Shire of Capel
FENCING LOCAL LAW 2016

Offence No.	Clause No.	Nature of offence	Modified penalty
1	2.1	Erect a dividing fence or boundary fence on a lot that does not meet the minimum requirements for a sufficient fence	\$200
2	4.1(3)	Use pre-used materials in the construction of a fence without approval	\$200
3	4.4(1)	Failure to maintain a fence in good condition / prevent fence from becoming dangerous or dilapidated	\$200
4	4.5	Erect or maintain a gate in a fence that encroaches into or over any other property	\$200
5	5.1	Erect or maintain a fence/obstruction temporary or permanent across a right-of-way, public access way or road reserve without consent	\$200
6	7.1(2)	Construct or use an electrified fence or a fence wholly or partly of barbed wire or other material with spiked or jagged projections without a building permit or approval	\$200
7	8.3	Other offences not specified	\$200

Dated 22nd June 2016.

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

M. T. SCOTT, President.
P. F. SHEEDY, Chief Executive Officer.

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LOCAL GOVERNMENT ACT 1995

SHIRE OF CAPEL

PARKING AND PARKING FACILITIES LOCAL LAW 2016

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 22nd June 2016 to make the following local law.

PART 1—DEFINITIONS AND OPERATION

1.1 Citation

This local law may be cited as the *Shire of Capel Parking and Parking Facilities Local Law 2016*.

1.2 Commencement

This local law will come into operation on the fourteenth day after the day on which it is published in the *Government Gazette*.

1.3 Repeal

The *Shire of Capel Parking and Parking Facilities Local Law 2007* published in the *Government Gazette* on 13 March 2007 is repealed.

1.4 Interpretation

In this local law unless the context otherwise requires—

ACROD sticker has the meaning given to it by the *Local Government (Parking for People with Disabilities) Regulations 2014*;

Act means the *Local Government Act 1995*;

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

authorised vehicle means a vehicle authorised by the local government, Chief Executive Officer, authorised person or by any written law to park on a thoroughfare or parking facility;

bicycle has the meaning given to it by the Code;

bicycle path has the meaning given to it by the Code;

bus has the meaning given to it by the Code;

bus embayment has the meaning given to it by the Code;

bus stop has the meaning given to it by the Code;

bus zone has the meaning given to it by the Code;

caravan means a vehicle that is fitted or designed to allow human habitation and which is drawn by another vehicle, or which is capable of self-propulsion;

carriageway means a portion of thoroughfare that is improved, designed or ordinarily used for vehicular traffic and includes the shoulders, and areas, including embayments, at the side or centre of the carriageway, used for the stopping or parking of vehicles; and where a thoroughfare has two or more of those portions divided by a median strip, the expression means each of those portions, separately;

centre in relation to a carriageway, means a line or a series of lines, marks or other indications—

(a) for a two-way carriageway—placed so as to delineate vehicular traffic travelling in different directions; or

(b) in the absence of any such lines, marks or other indications—the middle of the main, travelled portion of the carriageway;

children's crossing has the meaning given to it by the Code;

Code means the *Road Traffic Code 2000*;

commercial vehicle means a motor vehicle constructed for the conveyance of goods or merchandise, or for the conveyance of materials used in any trade, business, industry or work whatsoever, other than a motor vehicle for the conveyance of passengers, and includes any motor vehicle that is designed primarily for the carriage of persons, but which has been fitted or adapted for the conveyance of the goods, merchandise or materials referred to, and is in fact used for that purpose;

detection device means an electronic detection device placed in any position to detect the parking time of vehicles left on any road, in a parking station or any other public place and includes any instruments, display panels or transmitting apparatus associated with the device;

Disability Parking Permit means a current document issued by the National Disability Service (ACN 008 445 485) consisting of—

- (a) an Australian Disability Parking Permit; and
- (b) an ACROD Parking Program Card;

district means the district of the local government;

driver means any person driving or in control of a vehicle;

edge line for a carriageway means a line marked along the carriageway at or near the far left or the far right of the carriageway;

emergency vehicle has the meaning given to it by the Code;

footpath has the meaning given to it by the Code;

GVM (which stands for 'gross vehicle mass') has the meaning given to it by the *Road Traffic (Vehicles) Act 2012*;

loading zone means a parking stall which is set aside for use by commercial vehicles if there is a sign referable to that stall marked 'Loading Zone';

local government means the Shire of Capel;

mail zone has the meaning given to it by the Code;

median strip has the meaning given to it by the Code;

motorcycle has the meaning given to it by the Code;

motor vehicle has the meaning given to it by the *Road Traffic (Administration) Act 2008* and includes—

- (a) in relation to authorisation to drive, means a vehicle that is built to be propelled by a motor that forms part of the vehicle;
- (b) otherwise, means a self-propelled vehicle that is not operated on rails and—
 - (i) includes a trailer, semi trailer or caravan while attached to a vehicle; but
 - (ii) does not include a power assisted pedal cycle;

no parking area has the meaning given to it by the Code;

no parking sign means a sign with the words 'no parking' in red letters on a white background, or the letter 'P' within a red annulus and a red diagonal line across it on a white background;

no stopping area has the meaning given to it by the Code;

no stopping sign means a sign with the words 'no stopping' or 'no standing' in red letters on a white background or the letter 'S' within a red annulus and a red diagonal line across it on a white background;

occupier has the meaning given to it by the Act;

owner

- (a) where used in relation to a vehicle licensed under the *Road Traffic Act 1974*, means the person in whose name the vehicle has been registered under that *Road Traffic Act 1974*;
- (b) where used in relation to any other vehicle, means the person who owns, or is entitled to possession of that vehicle; and
- (c) where used in relation to land, has the meaning given to it by the Act;

park has the meaning given to it by the Code;

parking area has the meaning given to it by the Code;

parking facilities includes land, buildings, shelters, parking stalls and other facilities open to the public generally for the parking of vehicles and signs, notices and facilities used in connection with the parking of vehicles;

parking region means the area described in Schedule 1;

parking stall means a section or part of a thoroughfare or of a parking station which is marked or defined by painted lines, metallic studs, coloured bricks or pavers or similar devices for the purpose of indicating where a vehicle may be parked;

parking station means any land, or structure provided for the purpose of accommodating vehicles;

pedestrian crossing has the meaning given to it by the Code;

public place means any place to which the public has access whether or not that place is on private property;

reserve means any land—

- (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;

Road Traffic Act means the *Road Traffic Act 1974*;

Schedule means a Schedule to this local law;

shared zone has the meaning given to it by the Code;

sign includes a traffic sign, inscription, road marking, mark, structure or device approved by the local government on which may be shown words, numbers, expressions or symbols, and which is placed on or near a thoroughfare or within a parking station or reserve for the purpose of prohibiting, regulating, guiding, directing or restricting the parking of vehicles;

special purpose vehicle has the meaning given to it by the Code;

stop in relation to a vehicle means to stop a vehicle and permit it to remain stationary, except for the purposes of avoiding conflict with other traffic or of complying with the provisions of any law;

symbol has the meaning given to it by the Code;

taxi means a taxi within the meaning of the *Taxi Act 1994* or a taxi-car in section 47Z of the *Transport Co-ordination Act 1966*;

taxi zone has the meaning given to it by the Code;

thoroughfare has the meaning given to it by the Act;

traffic island has the meaning given to it by the Code;

trailer means any vehicle without motive power of its own, designed for attachment to a motor vehicle for the purpose of being towed, but does not include the rear portion of an articulated vehicle, or a side car;

vehicle has the meaning given to it by the *Road Traffic (Administration) Act 2008*; and

verge means the portion of a thoroughfare which lies between the boundary of a carriageway and the adjacent property line but does not include a footpath.

1.5 Application of Particular Definitions

(1) For the purposes of the application of the definitions ‘no parking area’ and ‘parking area’ an arrow inscribed on a traffic sign erected at an angle to the boundary of the carriageway is deemed to be pointing in the direction in which it would point, if the signs were turned at an angle of less than 90 degrees until parallel with the boundary.

(2) Unless the context otherwise requires, where a term is used, but not defined, in this local law, and that term is defined in the *Road Traffic (Administration) Act 2008* or in the Code, then the term shall have the meaning given to it in that Act or the Code.

1.6 Application and pre-existing signs

(1) Subject to subclause (2), this local law applies to the parking region.

(2) This local law does not apply to a parking facility or a parking station that is not occupied by the local government, unless the local government and the owner or occupier of that facility or station have agreed in writing that this local law will apply to that facility or station.

(3) The agreement referred to in subclause (2) may be made on such terms and conditions as the parties may agree.

(4) A sign that—

(a) was erected by the local government or the Commissioner of Main Roads prior to the coming into operation of this local law; and

(b) relates to the parking of vehicles within the parking region;

shall be deemed for the purposes of this local law to have been erected by the local government under the authority of this local law.

(5) An inscription or symbol on a sign referred to in subclause (4) operates and has effect according to its tenor, and where the inscription or symbol relates to the stopping of vehicles, it shall be deemed for the purposes of this local law to operate and have effect as if it related to the parking of vehicles.

(6) The provisions of Parts (2), (3), (4) and (5) do not apply to a bicycle parked at a bicycle rail or bicycle rack.

1.7 Classes of vehicles

For the purpose of this local law, vehicles are divided into classes as follows—

(a) buses;

(b) commercial vehicles;

(c) motorcycles and bicycles;

(d) taxis; and

(e) all other vehicles.

1.8 Part of thoroughfare to which sign applies

Where under this local law the parking of vehicles in a thoroughfare is controlled by a sign, the sign shall be read as applying to that part of the thoroughfare which—

(a) lies beyond the sign;

(b) lies between the sign and the next sign beyond that sign; and

(c) is on that side of the thoroughfare nearest to the sign.

1.9 Powers of the local government

The local government may, by resolution, prohibit or regulate by signs or otherwise, the stopping or parking of any vehicle or any class of vehicles in any part of the parking region but must do so consistently with the provisions of this local law.

PART 2—PARKING STALLS AND PARKING STATIONS

2.1 Determination of parking stalls and parking stations

(1) The local government may by resolution constitute, determine and vary and also indicate by signs—

- (a) parking stalls;
- (b) parking stations;
- (c) permitted time and conditions of parking in parking stalls and parking stations which may vary with the locality;
- (d) permitted classes of vehicles which may park in parking stalls and parking stations;
- (e) permitted classes of persons who may park in specified parking stalls or parking stations; and
- (f) the manner of parking in parking stalls and parking stations.

(2) Where the local government makes a resolution under this clause, it shall erect signs to give effect to the resolution.

2.2 Vehicles to be within parking stall on thoroughfare

(1) Subject to subclause (2), (3) and (4), a person shall not park a vehicle in a parking stall in a thoroughfare otherwise than—

- (a) parallel to and as close to the kerb as is practicable;
- (b) wholly within the stall; and
- (c) headed in the direction of the movement of traffic on the side of the thoroughfare in which the stall is situated.

(2) Subject to subclause (3) where a parking stall in a thoroughfare is set out otherwise than parallel to the kerb, then a person must park a vehicle in that stall wholly within it.

(3) If a vehicle is too long or too wide to fit completely within a single parking stall then the person parking the vehicle shall do so within the minimum number of parking stalls needed to park that vehicle.

(4) A person shall not park a vehicle partly within and partly outside a parking area.

2.3 Parking prohibitions and restrictions

(1) A person shall not—

- (a) park a vehicle so as to obstruct an entrance to, or an exit from a parking station, or an access way within a parking station;
- (b) except with the permission of the local government or an authorised person park a vehicle on any part of a parking station contrary to a sign referable to that part;
- (c) permit a vehicle to park on any part of a parking station, if an authorised person directs the driver of such vehicle to move the vehicle; or
- (d) park or attempt to park a vehicle in a parking stall in which another vehicle is parked but this paragraph does not prevent the parking of a motorcycle and a bicycle together in a stall marked 'M/C', if the bicycle is parked in accordance with subclause (2).

(2) No person shall park any bicycle—

- (a) in a parking stall other than in a stall marked 'M/C'; and
- (b) in such stall other than against the kerb.

(3) Notwithstanding the provisions of subclause (1)(b) a driver may park a vehicle in a permissive parking stall or station (except in a parking area for people with disabilities) for twice the length of time allowed, provided that—

- (a) the driver's vehicle displays a Disability Parking Permit; and
- (b) a person with disabilities to which that Disability Parking Permit relates is either the driver of or a passenger in the vehicle.

PART 3—PARKING GENERALLY

3.1 Restrictions on parking in particular areas

(1) Subject to subclause (2), a person shall not park a vehicle in a thoroughfare or part of a thoroughfare, or part of a parking station—

- (a) if by a sign it is set apart for the parking of vehicles of a different class;
- (b) if by a sign it is set apart for the parking of vehicles by persons of a different class; or
- (c) during any period when the parking of vehicles is prohibited by a sign.

(2) (a) This subclause applies to a driver if—

- (i) the driver's vehicle displays a Disability Parking Permit; and

- (ii) a person with a disability to which the Disability Parking Permit relates is either the driver of the vehicle or a passenger in the vehicle.
 - (b) The driver may park a vehicle in a thoroughfare or a part of a thoroughfare or part of a parking station, except in a thoroughfare or a part of a thoroughfare or part of a parking station to which a disabled parking sign relates for twice the period indicated on the sign.
- (3) A person shall not park a vehicle—
- (a) in a no parking area;
 - (b) in a parking area, except in accordance with both the signs associated with the parking area and with this local law; or
 - (c) in a stall marked 'M/C' unless it is a motorcycle without a sidecar or a trailer, or it is a bicycle.
- (4) A person shall not park a motorcycle without a sidecar or a trailer, or a bicycle in a parking stall unless the stall is marked 'M/C'.
- (5) A person shall not, without the prior permission of the local government, the CEO, or an authorised person, park a vehicle in an area designated by a sign stating 'Authorised Vehicles Only'.

3.2 Parking vehicle on a carriageway

- (1) A person parking a vehicle on a carriageway other than in a parking stall shall park it—
- (a) in the case of a two-way carriageway, so that it is as near as practicable to and parallel with, the left boundary of the carriageway and headed in the direction of the movement of traffic on the side of the thoroughfare on which the vehicle is parked;
 - (b) in the case of a one-way carriageway, so that it is as near as practicable to and parallel with either boundary of the carriageway and headed in the direction of the movement of traffic on the side of the thoroughfare on which the vehicle is parked;
 - (c) so that at least 3 metres of the width of the carriageway lies between the vehicle and the farther boundary of the carriageway, or any continuous line or median strip, or between the vehicle and a vehicle parked on the farther side of the carriageway;
 - (d) so that the front and the rear of the vehicle respectively is not less than 1 metre from any other vehicle, except a motorcycle without a trailer, or a bicycle parked in accordance with this local law; and
 - (e) so that it does not obstruct any vehicle on the carriageway;

unless otherwise indicated on a parking regulation sign or markings on the roadway.

- (2) In this clause, 'continuous dividing line' means—

- (a) a single continuous dividing line only;
- (b) a single continuous dividing line to the left or right of a broken dividing line; or
- (c) 2 parallel continuous dividing lines.

3.3 When parallel and right-angled parking apply

Where a traffic sign associated with a parking area is not inscribed with the words 'angle parking' (or with an equivalent symbol depicting this purpose), then unless a sign associated with the parking area indicates, or marks on the carriageway indicate, that vehicles have to park in a different position, where the parking area is—

- (a) adjacent to the boundary of a carriageway, a person parking a vehicle in the parking area shall park it as near as practicable to and parallel with that boundary; and
- (b) at or near the centre of the carriageway, a person parking a vehicle in that parking area shall park it at approximately right angles to the centre of the carriageway.

3.4 When angle parking applies

- (1) This clause does not apply to—

- (a) a passenger vehicle or a commercial vehicle with a mass including any load, of over three tonnes; or
- (b) a person parking either a motor cycle without a trailer or a bicycle.

(2) Where a sign associated with a parking area is inscribed with the words 'angle parking' (or with an equivalent symbol depicting this purpose), a person parking a vehicle in the area shall park the vehicle at an angle of approximately 45 degrees to the centre of the carriageway unless otherwise indicated by the inscription on the parking sign or by marks on the carriageway.

3.5 General prohibitions on parking

- (1) (a) This clause does not apply to a vehicle parked in a parking stall nor to a bicycle in a bicycle rack.
- (b) Subclauses (2)(c), (e) and (g) do not apply to a vehicle which parks in a bus embayment.
- (2) Subject to any law relating to intersections with traffic control signals a person shall not park a vehicle so that any portion of the vehicle is—
- (a) between any other stationary vehicles and the centre of the carriageway;
 - (b) on or adjacent to a median strip;
 - (c) obstructing a right of way, private drive or carriageway or so close as to deny a vehicle reasonable access to or egress from the right of way, private drive or carriageway;

- (d) alongside or opposite any excavation, works, hoarding, scaffolding or obstruction on the carriageway, if the vehicle would obstruct traffic;
- (e) on or within 20 metres of any portion of a carriageway bounded by a traffic island;
- (f) on any footpath or pedestrian crossing;
- (g) between the boundaries of a carriageway and any double longitudinal line consisting of two continuous lines or between a double longitudinal line consisting of a continuous line and a broken or dotted line and the boundary of a carriageway nearer to the continuous line, unless there is a distance of at least 3 metres clear between the vehicle and the double longitudinal line;
- (h) on an intersection, except adjacent to a carriageway boundary that is not broken by an intersecting carriageway;
- (i) within 1 metre of a fire hydrant or fire plug, or of any sign or mark indicating the existence of a fire hydrant or fire plug;
- (j) within 3 metres of a public letter pillar box, unless the vehicle is being used for the purposes of collecting postal articles from the pillar box; or
- (k) within 20 metres of the nearer property line of any thoroughfare intersecting the thoroughfare on the side on which the vehicle is parked,

unless a sign or markings on the carriageway indicate otherwise.

(3) A person shall not park a vehicle so that any portion of the vehicle is within 10 metres of the departure side of—

- (a) a sign inscribed with the words 'Bus Stop' or 'Hail Bus Here' (or with equivalent symbols depicting these purposes) unless the vehicle is a bus stopped to take up or set down passengers; or
- (b) a children's crossing or pedestrian crossing.

(4) A person shall not park a vehicle so that any portion of the vehicle is within 20 metres of the approach side of—

- (a) a sign inscribed with the words 'Bus Stop' or 'Hail Bus Here' (or with equivalent symbols depicting these purposes) unless the vehicle is a bus stopped to take up or set down passengers; or
- (b) a children's crossing or pedestrian crossing.

(5) A person shall not park a vehicle so that any portion of the vehicle is within 20 metres of either the approach side or the departure side of the nearest rail of a railway level crossing.

3.6 Authorised person may order vehicle on thoroughfare to be moved

The driver of a vehicle shall not park that vehicle on any part of a thoroughfare in contravention of this local law after an authorised person has directed the driver to move it.

3.7 Authorised person may mark tyres

(1) An authorised person may in a parking area or other parking facility—

- (a) mark the tyres of a vehicle with chalk or any other non-indelible substance;
- (b) record the position of a vehicle;
- (c) take a valve stem reading of a vehicle; or
- (d) record vehicle details, vehicle registration numbers and photograph the vehicle;

for any purpose connected with or arising out of his or her duties or powers.

(2) A person shall not remove a mark made by an authorised person so that the purpose of the affixing of such a mark is defeated or likely to be defeated.

3.8 No movement of vehicles to avoid time limitation

(1) Where the parking of vehicles in a parking facility is permitted for a limited time, a person shall not move a vehicle within the parking facility so that the total time of parking exceeds the maximum time allowed for parking in the parking facility.

(2) Where the parking of vehicles in a thoroughfare is permitted for a limited time, a person shall not move a vehicle along that thoroughfare so that the total time of parking exceeds the maximum time permitted, unless the vehicle has first been removed from the thoroughfare for at least two hours.

3.9 No parking of vehicles exposed for sale and in other circumstances

A person shall not park a vehicle on any portion of a thoroughfare—

- (a) for the purpose of exposing it for sale;
- (b) if that vehicle is not licensed under the *Road Traffic Act 1974*;
- (c) if that vehicle is a trailer or a caravan unattached to a motor vehicle; or
- (d) for the purpose of effecting repairs to it, other than the minimum repairs necessary to enable the vehicle to be moved to a place other than a thoroughfare.

3.10 Parking on private land

(1) In this clause a reference to 'land' does not include land—

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*;

- (c) which is an 'otherwise unvested facility' within section 3.53 of the Act; or
 - (d) which is the subject of an agreement referred to in clause 1.6(2).
- (2) A person shall not park a vehicle on land without the consent of the owner or occupier of the land on which the vehicle is parked.
- (3) Where the owner or occupier of the land, by a sign referable to that land or otherwise, consents to the parking of vehicles of a specified class or classes on the land for a limited period, a person shall not park a vehicle on the land otherwise than in accordance with the consent.

3.11 Parking on reserves

No person other than an employee of the local government in the course of his or her duties or a person authorised by the local government shall drive or park a vehicle upon or over any portion of a reserve other than upon an area specifically set aside for that purpose.

3.12 Suspension of parking limitations for urgent, essential or official duties

- (1) Where by a sign the parking of vehicles is permitted for a limited time on a portion of a thoroughfare or parking facility, the local government, the CEO or an authorised person may, subject to the Code, permit a person to park a vehicle in that portion of the thoroughfare or parking facility for longer than the permitted time in order that the person may carry out urgent, essential or official duties.
- (2) Where permission is granted under subclause (1), the local government, the CEO or an authorised person may prohibit the use by any other vehicle of that portion of the thoroughfare or parking facility to which the permission relates, for the duration of that permission.

PART 4—PARKING AND STOPPING GENERALLY

4.1 No stopping and no parking signs, and yellow edge lines

- (1) A driver shall not stop on a length of carriageway, or in an area, to which a 'no stopping' sign applies.
- (2) A driver shall not stop on a length of carriageway or in an area to which a 'no parking' sign applies, unless the driver—
- (a) is dropping off, or picking up, passengers or goods;
 - (b) does not leave the vehicle unattended; and
 - (c) completes the dropping off, or picking up, of the passengers or goods within 2 minutes of stopping and drives on.

Unattended. in relation to a vehicle, means that the driver has left the vehicle so that the driver is more than 3 metres from the closest point of the vehicle.

- (3) A driver shall not stop at the side of a carriageway marked with a continuous yellow edge line.

PART 5—STOPPING IN ZONES FOR PARTICULAR VEHICLES

5.1 Stopping in a loading zone

A person shall not stop a vehicle in a loading zone unless it is—

- (a) a motor vehicle used for commercial or trade purposes engaged in the picking up or setting down of goods; or
 - (b) a motor vehicle taking up or setting down passengers,
- but, in any event, shall not remain in that loading zone—
- (c) for longer than a time indicated on the 'loading zone' sign; or
 - (d) longer than 30 minutes (if no time is indicated on the sign).

5.2 Stopping in a taxi zone or a bus zone

- (1) A driver shall not stop in a taxi zone, unless the driver is driving a taxi.
- (2) A driver shall not stop in a bus zone unless the driver is driving a public bus, or a bus of a type that is permitted to stop at the bus zone by information on or with the 'bus zone' sign applying to the bus zone.

5.3 Stopping in a mail zone

A person shall not stop a vehicle in a mail zone.

5.4 Other limitations in zones

A person shall not stop a vehicle in a zone to which a traffic sign applies if stopping the vehicle would be contrary to any limitation in respect to classes of persons or vehicles, or specific activities allowed, as indicated by additional words on a traffic sign that applies to the zone.

PART 6—OTHER PLACES WHERE STOPPING IS RESTRICTED

6.1 Stopping in a shared zone

A driver shall not stop in a shared zone unless—

- (a) the driver stops at a place on a length of carriageway, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law;

- (b) the driver stops in a parking bay and the driver is permitted to stop in the parking bay under this local law;
- (c) the driver is dropping off, or picking up, passengers or goods; or
- (d) the driver is engaged in door-to-door delivery or collection of goods, or in the collection of waste or garbage.

6.2 Double parking

- (1) A driver shall not stop a vehicle so that any portion of the vehicle is between any other stopped vehicle and the centre of the carriageway.
- (2) This clause does not apply to—
 - (a) a driver stopped in traffic; or
 - (b) a driver angle parking on the side of the carriageway or in a median strip parking area, in accordance with this local law.

6.3 Stopping near an obstruction

A driver shall not stop on a carriageway near an obstruction on the carriageway in a position that further obstructs traffic on the carriageway.

6.4 Stopping on a bridge or in a tunnel, etc.

- (1) A driver shall not stop a vehicle on a bridge, causeway, ramp or similar structure unless—
 - (a) the carriageway is at least as wide on the structure as it is on each of the approaches and a traffic sign does not prohibit stopping or parking; or
 - (b) the driver stops at a place on a length of carriageway, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law.
- (2) A driver shall not stop a vehicle in a tunnel or underpass unless—
 - (a) the carriageway is at least as wide in the tunnel or underpass as it is on each of the approaches and a traffic sign does not prohibit stopping or parking; or
 - (b) the driver of a motor vehicle stops at a bus stop, or in a bus zone or parking area marked on the carriageway, for the purpose of setting down or taking up passengers.

6.5 Stopping on crests, curves, etc.

- (1) Subject to subclause (2), a driver shall not stop a vehicle on, or partly on, a carriageway, in any position where it is not visible to the driver of an overtaking vehicle, from a distance of 50 metres within a built-up area, and from a distance of 150 metres outside a built-up area.
- (2) A driver may stop on a crest or curve on a carriageway that is not in a built-up area if the driver stops at a place on the carriageway, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law.

6.6 Stopping near a fire hydrant etc

- (1) A driver shall not stop a vehicle so that any portion of the vehicle is within one metre of a fire hydrant or fire plug, or of any sign or mark indicating the existence of a fire hydrant or fire plug, unless the driver is driving a—
 - (a) public bus, and the driver stops in a bus zone or at a bus stop and does not leave the bus unattended; or
 - (b) a taxi, and the driver stops in a taxi zone and does not leave the taxi unattended.
- (2) In this clause a driver leaves the vehicle 'unattended' if the driver leaves the vehicle so the driver is over 3 metres from the closest point of the vehicle.

6.7 Stopping at or near a bus stop

- (1) A driver shall not stop a vehicle so that any portion of the vehicle is within 20 metres of the approach side of a bus stop, or within 10m of the departure side of a bus stop, unless—
 - (a) the vehicle is a public bus stopped to take up or set down passengers; or
 - (b) the driver stops at a place on a length of carriageway, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law.
- (2) In this clause—
 - (a) distances are measured in the direction in which the driver is driving; and
 - (b) a trailer attached to a public bus is deemed to be a part of the public bus.

6.8 Stopping on a path, median strip, or traffic island

The driver of a vehicle (other than a bicycle or an animal) shall not stop so that any portion of the vehicle is on a path, traffic island or median strip, unless the driver stops in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law.

6.9 Stopping on verge

- (1) A person shall not—
 - (a) stop a vehicle (other than a bicycle);
 - (b) stop a commercial vehicle or bus, or a trailer or caravan unattached to a motor vehicle; or
 - (c) stop a vehicle during any period when the stopping of vehicles on that verge is prohibited by a sign adjacent and referable to that verge,
- so that any portion of it is on a verge.

(2) Subclause (1)(a) does not apply to the person if he or she is the owner or occupier of the premises adjacent to that verge, or is a person authorised by the occupier of those premises to stop the vehicle so that any portion of it is on the verge.

(3) Subclause (1)(b) does not apply to a commercial vehicle when it is being loaded or unloaded with reasonable expedition with goods, merchandise or materials collected from or delivered to the premises adjacent to the portion of the verge on which the commercial vehicle is parked, provided no obstruction is caused to the passage of any vehicle or person using a carriageway or a path.

6.10 Obstructing access to and from a path, driveway, etc.

(1) A driver shall not stop a vehicle so that any portion of the vehicle is in front of a path, in a position that obstructs access by vehicles or pedestrians to or from that path, unless—

- (a) the driver is dropping off, or picking up, passengers; or
- (b) the driver stops in a parking stall and the driver is permitted to stop in the parking stall under this local law.

(2) A driver shall not stop a vehicle on or across a driveway or other way of access for vehicles travelling to or from adjacent land, unless—

- (a) the driver is dropping off, or picking up, passengers; or
- (b) the driver stops in a parking stall and the driver is permitted to stop in the parking stall under this local law.

6.11 Stopping near a letter box

A driver shall not stop a vehicle so that any portion of the vehicle is within 3 metres of a public letter box, unless the driver—

- (a) is dropping off, or picking up, passengers or mail; or
- (b) stops at a place on a length of carriageway, or in an area, to which a parking control sign applies and the driver is permitted to stop at that place under this local law.

6.12 Stopping on a carriageway—heavy and long vehicles

(1) A person shall not park a vehicle or any combination of vehicles, that, together with any projection on, or load carried by, the vehicle or combination of vehicles, is 7.5 metres or more in length or exceeds a GVM of 4.5 tonnes—

- (a) on a carriageway in a built-up area, for any period exceeding one hour, unless engaged in the picking up or setting down of goods; or
- (b) on a carriageway outside a built-up area, except on the shoulder of the carriageway, or in a truck bay or other area set aside for the parking of goods vehicles.

(2) Nothing in this clause mitigates the limitations or condition imposed by any other clause or by any local law or traffic sign relating to the parking or stopping of vehicles.

6.13 Stopping on a carriageway with a bicycle parking sign

The driver of a vehicle (other than a bicycle) shall not stop on a length of carriageway to which a 'bicycle parking' sign applies, unless the driver is dropping off, or picking up, passengers.

6.14 Stopping on a carriageway with motor cycle parking sign

The driver of a vehicle shall not stop on a length of carriageway, or in an area, to which a 'motor cycle parking' sign applies, or an area marked 'M/C' unless—

- (a) the vehicle is a motor cycle; or
- (b) the driver is dropping off, or picking up, passengers.

PART 7—MISCELLANEOUS

7.1 Removal of notices on vehicle

A person, other than the driver of the vehicle or a person acting under the direction of the driver of the vehicle, shall not remove from the vehicle any notice put on the vehicle by an authorised person.

7.2 Unauthorised signs and defacing of signs

A person shall not without the authority of the local government—

- (a) mark, set up or exhibit a sign purporting to be or resembling a sign marked, set up or exhibited by the local government under this local law;
- (b) remove, deface or misuse a sign or property, set up or exhibited by the local government under this local law or attempt to do any such act; or
- (c) affix a board, sign, placard, notice or other thing to or paint or write upon any part of a sign set up or exhibited by the local government under this local law.

7.3 Signs must be complied with

An inscription or symbol on a sign operates and has effect according to its tenor and a person contravening the direction on a sign commits an offence under this local law.

7.4 General provisions about signs

(1) A sign marked, erected, set up, established or displayed on or near a thoroughfare is, in the absence of evidence to the contrary presumed to be a sign marked, erected, set up, established or displayed under the authority of this local law.

(2) The first three letters of any day of the week when used on a sign indicate that day of the week.

7.5 Special purpose and emergency vehicles

Notwithstanding anything to the contrary in this local law, the driver of—

- (a) a special purpose vehicle may, only in the course of his or her duties and when it is expedient and safe to do so, stop, or park the vehicle in any place, at any time; and
- (b) an emergency vehicle may, in the course of his or her duties and when it is expedient and safe to do so or where he or she honestly and reasonably believes that it is expedient and safe to do so, stop, or park the vehicle at any place, at any time.

7.6 Vehicles not to obstruct a public place

(1) A person shall not leave a vehicle, or any part of a vehicle, in a public place so that it obstructs the use of any part of that public place without the permission of the local government or unless authorised under any written law.

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

7.7 Hindrance of an authorised person

A person shall not in any way obstruct or hinder an authorised person in the execution of his or her duties.

PART 8—PENALTIES**8.1 Offences and penalties**

(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) An offence against any provision of this local law is a prescribed offence for the purposes of section 9.16(1) of the Act.

(3) Any person who commits an offence under this local law shall be 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.

(4) The amount appearing in the final column of Schedule 2 directly opposite a clause specified in that Schedule is the modified penalty for an offence against that clause.

8.2 Form of notices

For the purposes of this local law—

- (a) the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 3;
- (b) the form of the infringement notice referred to in section 9.17 of the Act is that of Form 2 in Schedule 3;
- (c) the form of the infringement notice referred to in section 9.17 of the Act which incorporates the notice referred to in section 9.13 of the Act, is that of Form 3 in Schedule 3; and
- (d) the form of the notice referred to in section 9.20 of the Act is that of Form 4 in Schedule 3.

Schedule 1**PARKING REGION**

The parking region is the whole of the district, but excludes the following portions of the district—

1. the approach and departure prohibition areas of all existing and future traffic control signal installations as determined by the Commissioner of Main Roads;
2. prohibition areas applicable to all existing and future bridges and subways as determined by the Commissioner of Main Roads; and
3. any road which comes under the control of the Commissioner of Main Roads unless the control of parking and parking facilities on that road is carried out subject to the control and direction of the Commissioner of Main Roads or has been delegated by the Commissioner to the local government.

Schedule 2**PRESCRIBED OFFENCES****PARKING AND PARKING FACILITIES LOCAL LAW 2016**

[8.1(4)]

Item No.	Clause No.	Nature of Offence	Modified Penalty \$
1	2.2	Failure to park wholly within parking stall	55
2	2.2(4)	Failure to park wholly within parking area	55

Item No.	Clause No.	Nature of Offence	Modified Penalty \$
3	2.3(1)(a)	Causing obstruction in parking station	55
4	2.3(1)(b)	Parking contrary to sign in parking station	55
5	2.3(1)(c)	Parking contrary to directions of Authorised Person	100
6	2.3(1)(d)	Parking or attempting to park a vehicle in a parking stall occupied by another vehicle	55
7	3.1(1)(a)	Parking wrong class of vehicle	55
8	3.1(1)(b)	Parking by persons of a different class	55
9	3.1(1)(c)	Parking during prohibited period	60
10	3.1(3)(a)	Parking in no parking area	55
11	3.1(3)(b)	Parking contrary to signs or limitations	55
12	3.1(3)(c)	Parking vehicle in motor cycle only area	55
13	3.1(4)	Parking motor cycle in stall not marked 'M/C'	55
14	3.1(5)	Parking without permission in an area designated for 'Authorised Vehicles Only'	55
15	3.2(1)(a)	Failure to park on the left of two-way carriageway	55
16	3.2(1)(b)	Failure to park on boundary of one-way carriageway	55
17	3.2(1)(a) or 3.2(1)(b)	Parking against the flow of traffic	100
18	3.2(1)(c)	Parking when distance from farther boundary less than 3 metres	55
19	3.2(1)(d)	Parking closer than 1 metre from another vehicle	55
20	3.2(1)(e)	Causing obstruction	100
21	3.3(b)	Failure to park at approximate right angle	55
22	3.4(2)	Failure to park at an appropriate angle	55
23	3.5(2)(a) and 6.2	Double parking	100
24	3.5(2)(b)	Parking on or adjacent to a median strip	55
25	3.5(2)(c)	Denying access to private drive or right of way	55
26	3.5(2)(d)	Parking beside excavation or obstruction so as to obstruct traffic	100
27	3.5(2)(e)	Parking within 20 metres of traffic island	55
28	3.5(2)(f)	Parking on footpath/pedestrian crossing	100
29	3.5(2)(g)	Parking contrary to continuous line markings	55
30	3.5(2)(h)	Parking on intersection	55
31	3.5(2)(i)	Parking within 1 metre of fire hydrant or fire plug	55
32	3.5(2)(j)	Parking within 3 metres of public letter box	55
33	3.5(2)(k)	Parking within 20 metres of intersection	55
34	3.5(3)(a) or (b)	Parking vehicle within 10 metres of departure side of bus stop, children's crossing or pedestrian crossing	55
35	3.5(4)(a) or (b)	Parking vehicle within 20 metres of approach side of bus stop, children's crossing or pedestrian crossing	55
36	3.5(5)	Parking vehicle within 20 metres of approach side or departure side of railway level crossing	55
37	3.6	Parking contrary to direction of Authorised Person	100
38	3.7(2)	Removing mark of Authorised Person	55
39	3.8	Moving vehicle to avoid time limitation	55
40	3.9(a)	Parking in thoroughfare for purpose of sale	55
41	3.9(b)	Parking unlicensed vehicle in thoroughfare	55
42	3.9(c)	Parking a trailer/caravan on a thoroughfare	55
43	3.9(d)	Parking in thoroughfare for purpose of repairs	55
44	3.10(1) or (2)	Parking on land that is not a parking facility without consent	55
45	3.10(3)	Parking on land not in accordance with consent	55
46	3.11	Driving or parking on reserve	100
47	4.1(1)	Stopping contrary to a 'no stopping' sign	100

Item No.	Clause No.	Nature of Offence	Modified Penalty \$
48	4.1(2)	Parking contrary to a 'no parking' sign	60
49	4.1(3)	Stopping within continuous yellow lines	100
50	5.1	Stopping unlawfully in a loading zone	55
51	5.2	Stopping unlawfully in a taxi zone or bus zone	55
52	5.3	Stopping unlawfully in a mail zone	55
53	5.4	Stopping in a zone contrary to a sign	55
54	6.1	Stopping in a shared zone	55
55	6.3	Stopping near an obstruction	55
56	6.4	Stopping on a bridge or tunnel	55
57	6.5	Stopping on crests/curves etc	55
58	6.6	Stopping near fire hydrant	55
59	6.7	Stopping near bus stop	55
60	6.8	Stopping on path, median strip or traffic island	55
61	6.9	Stopping on verge	55
62	6.10	Obstructing path, a driveway etc	55
63	6.11	Stopping near letter box	55
64	6.12	Stopping heavy or long vehicles on carriageway	55
65	6.13	Stopping in bicycle parking area	55
66	6.14	Stopping in motorcycle parking area	55
67	7.6	Leaving vehicle so as to obstruct a public place	55
68	7.7	Hindrance of an authorised officer	200
69		All other offences not specified	55

Schedule 3

FORMS

LOCAL GOVERNMENT ACT 1995

Form 1

PARKING AND PARKING FACILITIES LOCAL LAW 2016

NOTICE TO OWNER OF VEHICLE INVOLVED IN OFFENCE

[8.2]

Date / /

To: ⁽¹⁾

of: ⁽²⁾

It is alleged that on / / at ⁽³⁾

at ⁽⁴⁾ your vehicle—

make:

model:

registration:

was involved in the commission of the following offence—

.....

.....

.....

contrary to clause of the *Parking and Parking Facilities Local Law 2016*.

You are required under section 9.13 of the *Local Government Act 1995* to identify the person who was the driver or person in charge of the vehicle at the time when the offence is alleged to have been committed.

If you do not prove otherwise, you will be deemed to have committed the offence unless—

(a) within 28 days after being served with this notice;

(i) you inform the Chief Executive Officer or another authorised officer of the local government as to the identity and address of the person who was the driver or person in charge of the vehicle at the time the offence is alleged to have been committed; and

(ii) you satisfy the Chief Executive Officer that the vehicle had been stolen, or was being unlawfully used, at the time the offence is alleged to have been committed;

or

(b) you were given an infringement notice for the alleged offence and the modified penalty specified in it is paid within 28 days after the notice was given or such further time as is allowed.

(5)
(6)

Insert—

- (1) Name of owner or 'the owner'
- (2) Address of owner (not required if owner not named)
- (3) Time of alleged offence
- (4) Location of alleged offence
- (5) Signature of authorised person
- (6) Name and title of authorised person giving notice



Schedule 3
LOCAL GOVERNMENT ACT 1995
Form 2
PARKING AND PARKING FACILITIES LOCAL LAW 2016
INFRINGEMENT NOTICE

Serial No
 Date / /
 To: (1)
 of: (2)

It is alleged that on / / at (3)
 at (4)
 in respect of vehicle—
 make: ;
 model: ;
 registration: ,
 you committed the following offence—

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

contrary to clause of the *Parking and Parking Facilities Local Law 2016*.

The modified penalty for the offence is \$

If you do not wish to have a complaint of the alleged offence heard and determined by a court, the amount of the modified penalty may be paid to an authorised person at (5) within a period of 28 days after the giving of this notice.

If you take no action this infringement notice may be registered with the Fines Enforcement Registry after which your driver's licence or any vehicle licence held by you may be suspended. If the matter is registered with the Registry additional costs will also be payable.

If the above address is not your current address, or if you change your address, it is important that you advise us immediately. Failure to do so may result in your driver's licence or any vehicle licence you hold being suspended without your knowledge.

(6)
(7)

Insert—

- (1) Name of alleged offender or 'the owner'
- (2) Address of alleged offender
- (3) Time of alleged offence
- (4) Location of alleged offence
- (5) Place where modified penalty may be paid
- (6) Signature of authorised person
- (7) Name and title of authorised person giving notice



Schedule 3
LOCAL GOVERNMENT ACT 1995
Form 3
PARKING AND PARKING FACILITIES LOCAL LAW 2016
INFRINGEMENT NOTICE

Serial No

Date / /

To: ⁽¹⁾

of: ⁽²⁾

It is alleged that on / / at ⁽³⁾
at ⁽⁴⁾

in respect of vehicle—

make: ;

model: ;

registration: ,

you committed the following offence—

.....
.....

contrary to clause of the *Parking and Parking Facilities Local Law 2016*.

The modified penalty for the offence is \$

If you do not wish to have a complaint of the alleged offence heard and determined by a court, the amount of the modified penalty may be paid to an authorised person at ⁽⁵⁾ within a period of 28 days after the giving of this notice.

Unless within 28 days after being served with this notice—

(a) you pay the modified penalty; or

(b) you—

(i) inform the Chief Executive Officer or another authorised officer of the local government as to the identity and address of the person who was the driver or person in charge of the above vehicle at the time the offence is alleged to have been committed; or

(ii) satisfy the Chief Executive Officer that the above vehicle had been stolen or was being unlawfully used at the time the offence is alleged to have been committed,

you will, in the absence of proof to the contrary, be deemed to have committed the above offence and court proceedings may be instituted against you.

If you take no action this infringement notice may be registered with the Fines Enforcement Registry after which your driver's licence or any vehicle licence held by you may be suspended. If the matter is registered with the Registry additional costs will also be payable.

If the above address is not your current address, or if you change your address, it is important that you advise us immediately. Failure to do so may result in your driver's licence or any vehicle licence you hold being suspended without your knowledge.

⁽⁶⁾

⁽⁷⁾

Insert—

⁽¹⁾ Name of owner or 'the owner'

⁽²⁾ Address of owner (not required if owner not named)

⁽³⁾ Time of alleged offence

⁽⁴⁾ Location of alleged offence

⁽⁵⁾ Place where modified penalty may be paid

⁽⁶⁾ Signature of authorised person

⁽⁷⁾ Name and title of authorised person giving notice

Schedule 3

LOCAL GOVERNMENT ACT 1995

Form 4

PARKING AND PARKING FACILITIES LOCAL LAW 2016

WITHDRAWAL OF INFRINGEMENT NOTICE

Serial No

Date / /

To: ⁽¹⁾

of: ⁽²⁾

Infringement Notice No. dated / /

in respect of vehicle—

make:

model:

registration:

for the alleged offence of

.....

.....

.....

has been withdrawn.

The modified penalty of \$

- has been paid and a refund is enclosed.
- has not been paid and should not be paid.
- delete as appropriate.

⁽³⁾

⁽⁴⁾

Insert—

⁽¹⁾ Name of alleged offender to whom infringement notice was given or 'the owner'.

⁽²⁾ Address of alleged offender.

⁽³⁾ Signature of authorised person

⁽⁴⁾ Name and title of authorised person giving notice

Dated 22nd June 2016.

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

M. T. SCOTT, President.
P. F. SHEEDY, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF CAPEL

SIGNS REPEAL LOCAL LAW 2016**1 Citation**

This local law may be cited as the *Shire of Capel Signs Repeal Local Law 2016*.

2 Commencement

This local law will come into operation 14 days after the day on which it is published in the *Government Gazette*.

3 Repeal

The *Shire of Capel Signs Local Law 2001* published in the *Government Gazette* on 23 May 2001 is repealed.

Dated 22nd June 2016.

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

M. T. SCOTT, President.
P. F. SHEEDY, Chief Executive Officer.

LOCAL GOVERNMENT ACT 1995

SHIRE OF CAPEL

STANDING ORDERS LOCAL LAW 2016

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LOCAL GOVERNMENT ACT 1995

SHIRE OF CAPEL

STANDING ORDERS LOCAL LAW 2016

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 22nd June 2016 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law is to be cited as the *Shire of Capel Standing Orders Local Law 2016*.

1.2 Commencement

This local law comes into operation 14 days after the date of its publication in the *Government Gazette*.

1.3 Application

All meetings of the Council, Committees and the electors are to be conducted in accordance with the Act, the Regulations and this local law.

1.4 Interpretation

(1) In this local law, unless the contrary otherwise requires—

absolute majority has the meaning given to it in the Act;

Act means the *Local Government Act 1995*;

CEO means the Chief Executive Officer of the local government;

Committee means a Committee of the Council established under the Act;

Common Seal means the Common Seal of the local government;

Council means the Council of the local government;

Councillor has the same meaning as is given to it in the Act;

deputation means a verbal submission at a Council or Committee meeting on an agenda item made by a person who has a direct interest in the agenda item;

Deputy President means the Deputy President of the local government;

employee means an employee of the local government;

external body includes—

- (a) a Regional Council;
- (b) an incorporated or unincorporated association;
- (c) a trust;
- (d) a tribunal;
- (e) a government agency, instrumentality, board or committee; and
- (f) any other external body

to which the local government is entitled, or has been invited, to provide a representative;

implement, in relation to a decision, includes—

- (a) communicate notice of the decision to a person affected by, or with an interest in, the decision; and
- (b) take other action to give effect to the decision;

local government means the Shire of Capel;

member—

- (a) in relation to the Council, means the President or a Councillor; and
- (b) in relation to a Committee, means a member of the Committee;

Minister means the Minister responsible for administering the Act;

officer means an officer of the local government;

original motion means the motion that first introduces a proposal to be considered at a meeting;

President means the President of the local government;

Presiding Member means—

- (a) in respect of the Council, the person presiding under section 5.6 of the Act; and
- (b) in respect of a Committee, the person presiding under sections 5.12, 5.13 and 5.14 of the Act;

primary motion means an original motion or an original motion as amended, but does not include an amendment motion or a procedural motion;

procedural motion means a motion employed to control the conduct of a meeting;

simple majority means more than 50% of the members present and voting at meetings;

Regulations means the *Local Government (Administration) Regulations 1996*;

Rules of Conduct Regulations means the *Local Government (Rules of Conduct) Regulations 2007*;

revocation motion means a motion to revoke or change a decision made at a Council or Committee meeting;

schedule means a schedule of this local law;

special majority is dealt with in the Act;

standing orders means the meeting procedures and/or rules on the conduct and behaviour of persons at a meeting of the Council, Committee or electors; and

urgent business means business dealt with in accordance with clause 4.14.

(2) Unless otherwise defined, the terms used in this local law have the meaning given to them in the Act and Regulations.

1.5 Repeal

The *Shire of Capel Standing Orders Local Law 2007* published in the *Government Gazette* 30 April 2007 is repealed.

PART 2—CALLING AND CONVENING MEETINGS

2.1 Ordinary and Special Council meetings

- (1) Ordinary and special Council meetings are dealt with in the Act.
- (2) An ordinary meeting of the Council held on a monthly basis or otherwise as determined by the Council, is for the purpose of considering and dealing with the ordinary business of the Council.
- (3) A special meeting of the Council is held for the purpose of considering and dealing with Council business that is urgent, complex in nature, for a particular purpose or confidential.

2.2 Calling Council meetings

The calling of Council meetings is dealt with in the Act.

2.3 Calling Committee meetings

A meeting of a Committee is to be held—

- (a) in the case of a special meeting, if called for in a verbal or written notice to the CEO by the Presiding Member, setting out the date and purpose of the proposed meeting;
- (b) in the case of a special meeting, if called for by at least one third of the members of the Committee in a written notice to the CEO, setting out the date and purpose of the proposed meeting; or
- (c) in the case of an ordinary or special meeting, if so decided by the Council or the Committee.

2.4 Convening ordinary and special Council meetings

The convening of ordinary and special Council meetings is dealt with in the Act.

2.5 Convening ordinary and special Committee meetings

- (1) The CEO is to convene an ordinary meeting of a Committee by giving each member at least 72 hours' notice of the date, time, place and an agenda for the meeting.
- (2) The CEO is to convene a special meeting of a Committee by giving each member notice, before the meeting, of the date, time, place and an agenda for the meeting.
- (3) The CEO is to give notice of meetings referred to in subclauses (1) and (2) to every member of the Council.
- (4) In convening a special meeting of a committee, there is no minimum period of notice to be given and notice can be given by telephone, facsimile, letter, electronic mail or orally in person.

2.6 Failure to receive notice not to invalidate proceedings

Failure to receive a notice of meeting shall not affect the validity of any meeting provided reasonable steps have been taken to serve such notice.

PART 3—PRESIDING MEMBER AND QUORUM**3.1 Who presides at Council meetings**

Who presides at a Council meeting is dealt with in the Act.

3.2 When Deputy President can preside

When the Deputy President can preside is dealt with in the Act.

3.3 Who presides if no President or Deputy President

Who presides if the President or Deputy President are absent or unavailable is dealt with in the Act.

3.4 Election of Presiding Members and Deputy Presiding Members of Committees

The election of Presiding Members and Deputy Presiding Member is dealt with in the Act.

3.5 Functions of Deputy Presiding Members

The functions of Deputy Presiding Members are dealt with in the Act

3.6 Who acts if no Presiding Member

Who acts if there is no Presiding Member is dealt with in the Act.

3.7 Quorum for meetings

The quorum for meetings is dealt with in the Act and Regulations.

3.8 Quorum to be present

The Council or a Committee is not to transact business at a meeting unless a quorum is present.

3.9 Procedure if quorum not present

The procedure if a quorum is not present to begin a meeting is dealt with in the Regulations.

3.10 Loss of quorum during a meeting

(1) If at any time during a meeting a quorum is not present, the Presiding Member upon becoming aware of that fact is to suspend the proceedings of the meeting for up to 15 minutes.

(2) If a quorum is not present at the expiration of the period in subclause (1), the Presiding Member may suspend the proceedings of the meeting for a further period of up to 15 minutes or adjourn the meeting to a future time and date.

(3) A record is to be taken of all those who have spoken on the subject under consideration at the time of the adjournment.

3.11 Debate on motion to be resumed

(1) Where the debate on any motion is interrupted at a Council or Committee meeting which is adjourned under clause 3.10, that debate is to be resumed at the next meeting at the point where it was so interrupted.

(2) Where the interruption in subclause (1) occurs at an ordinary meeting the resumption is to be at the next ordinary meeting unless a special meeting is called earlier for the purpose.

(3) Where the interruption in subclause (1) is at a special meeting, the resumption is to be at the next special meeting called to consider the same business or at the next ordinary meeting if it occurs before a special meeting can be called.

3.12 Names to be recorded

At any meeting—

- (a) at which there is not a quorum of members present; or
- (b) which is adjourned under clause 3.10;

the names of the members then present are to be recorded in the minutes of the meeting.

PART 4—BUSINESS OF THE MEETING**4.1 Business to be specified in agenda**

(1) No business is to be transacted at any ordinary meeting of the Council or Committee other than that specified in the agenda without the approval of the Presiding Member or a decision of the Council or Committee, except matters which the Act or this local law permits to be dealt with without notice.

(2) No business is to be transacted at a special meeting of the Council or Committee other than that specified in the agenda, and to which notice as to the purpose of the meeting has been given.

(3) No business is to be transacted at an adjourned meeting of the Council or a Committee other than that—

- (a) specified in the agenda of the meeting which had been adjourned; and
- (b) which remains unresolved,

except in the case of an adjournment to the next ordinary meeting of the Council or the Committee, when the business unresolved at the adjourned meeting is to be the first business to be considered at that ordinary meeting.

(4) Despite subclauses (1) to (3), the CEO may include on the agenda of a Council or Committee meeting in an appropriate place within the order of business any matter which must be decided, or which he or she considers is appropriate to be decided, by that meeting.

4.2 Meeting to proceed to business

A meeting is to proceed to business as soon after the time stated in the notice as a quorum is constituted.

4.3 Order of business

(1) Unless otherwise decided by the Council the order of business at an ordinary meeting of the Council is to be as follows—

1. Declaration of Opening/Announcement of Visitors;
2. Record of Attendance/Apologies /Leave of Absence (Previously Approved);
3. Response to previous Public Questions taken on notice;
4. Public Question Time;
5. Applications for leave of absence;
6. Declarations of interest;
7. Notice of items to be discussed behind closed doors;
8. Confirmation of Minutes;
9. Announcements by Person Presiding without discussion;
10. Petitions/Deputations/Presentations;
11. Motions of which previous notice has been given;
12. Questions by members of which due notice has been given;
13. Chief Executive Officer Reports;
14. Engineering and Development Services Reports;
15. Corporate Services Reports;
16. Community Services Reports;
17. New business of an urgent nature—
 - (a) Members,
 - (b) Employees;
18. Public Question Time—second period of public question time;
19. Motions without notice by absolute majority of the Council;
20. Notices of Motion for consideration at the next ordinary meeting of the Council;
21. Items for consideration behind closed doors; and
22. Closure.

(2) Unless otherwise decided by the members present, the order of business at any special meeting of the Council or at a committee meeting is to be the order in which that business stands in the agenda of the meeting.

(3) Notwithstanding subclauses (1) and (2) in the order of business for any meeting of the Council or a Committee, the provisions of the Act and Regulations relating to the time at which public question time is to be held are to be observed.

(4) Notwithstanding subclause (1), the CEO may include on the agenda of a Council or committee meeting in an appropriate place within the order of business any matter which must be decided, or which he or she considers is appropriately decided, by that meeting.

4.4 Leave of absence

The grant of leave of absence is dealt with in the Act.

4.5 Confirmation of minutes

(1) Confirmation of minutes is dealt with in the Act.

(2) When minutes are being confirmed, discussion is not to be permitted other than discussion as to their accuracy as a record of the proceedings.

4.6 Announcements by the President

(1) At any meeting of the Council the President may announce or raise any matter of interest or relevance to the business of the Council.

(2) Any member may move that a change in order of business proposed by the person presiding not be accepted and if carried by a majority of members present, the proposed change in order is not to take place.

4.7 Questions by members of which due notice has been given

(1) A member who wishes to ask a question at a meeting of the Council is to give to the CEO written notice of the text of the question at least 5 working days before the meeting of the Council, and the question is to, as far as practicable, be answered in writing at that meeting.

(2) As far as practicable, the CEO is to ensure that a written answer to a question under subclause (1) is to be given at the meeting.

(3) If the CEO considers that the question breaches or may breach this local law or any other law—

- (a) the CEO is to refer the question to the President;
- (b) the President is to exclude the question if he or she concurs with the view of the CEO; and

- (c) if the question is excluded, the CEO is to give all members, as soon as practicable but not later than the next ordinary meeting, the reasons for the exclusion.
- (4) Notice of a question that is not excluded is to be included, if practicable, in the agenda, or is otherwise to be tabled at the meeting.
- (5) Every question and answer is to be submitted as briefly and concisely as possible, and no discussion is to be allowed thereon, unless with the consent of the President.

4.8 Correspondence

- (1) Correspondence placed before a meeting of the Council or a Committee must relate to a matter on the agenda of the meeting.
- (2) Correspondence may be placed before the Council or a Committee in the form of a summary that contains all relevant and material facts.
- (3) Where correspondence contains a matter to be decided by the Council or the Committee, the CEO is, if the circumstances permit, to recommend a course of action to the Council or the Committee, or state the alternative.
- (4) Correspondence placed before a meeting of the Council or a Committee is not to be the subject of discussion or questions from members.

4.9 Petitions

- (1) A petition received by a member or the CEO is to be presented to the next ordinary Council meeting.
- (2) A petition to the Council is—
 - (a) as far as practicable to be prepared in the form prescribed in the Schedule;
 - (b) to be addressed to the Council and forwarded to a member or the CEO;
 - (c) to state the name and address of the person to whom correspondence in respect of the petition may be served; and
 - (d) to be respectful and temperate in its language.
- (3) The presentation of a petition is to be confined to the reading of the petition.
- (4) The only motions in respect of a petition that are in order are that—
 - (a) the petition be received;
 - (b) a report on the petition be prepared; or
 - (c) that the petition be acknowledged and be dealt with by the Council in conjunction with a similar item on the same agenda paper.

4.10 Matters for which the meeting may be closed

For the convenience of members of the public, the Council or a Committee may identify by decision, early in the meeting, any matter on the agenda of the meeting the discussion of which is to be closed to members of the public, and that matter may be deferred as the last item of the meeting.

4.11 Reports

- (1) The functions of the CEO, including advising the Council and Committees and implementing decisions, are dealt with in the Act.
- (2) The CEO may prepare or cause to be prepared a report on an item that in the CEO's opinion requires consideration by the Council or the Committee, including any report of a late or urgent nature.
- (3) Where a report has been prepared in accordance with subclause (2), the CEO is to deliver the report to members of the Council or the Committee (as the case may be) or, in the case of urgency or other special circumstances, table the report at the meeting.
- (4) The CEO may, with the consent of the Presiding Member, withdraw an item or report listed in the agenda.

4.12 Motions of which previous notice has been given

- (1) Unless the Act, Regulations or this local law otherwise provide, a member may raise at a meeting such business as he or she considers appropriate, in the form of a motion, of which notice has been given in writing to the CEO.
- (2) A notice of motion under subclause (1) is to be signed by the member and given to the CEO at least five clear working days before the meeting at which the motion is to be moved.
- (3) A notice of motion must relate to a matter for which the Council is responsible unless, in the opinion of the Presiding Member, the matter is one of significant public interest or importance.
- (4) The CEO—
 - (a) may with the concurrence of the Presiding Member, exclude from the agenda any notice of motion that they consider to be out of order; or
 - (b) may after consultation with the member who gave notice of the motion, make such amendments to the form but not the substance to bring the notice of motion into due form; and
 - (c) must provide relevant and material facts and circumstances pertaining to the notice of motion on matters such as policy, financial and legal implications.
- (5) If a notice of motion is excluded under subclause (4)(a), the CEO is to provide the reason for its exclusion to all members as soon as practicable.

(6) A notice of motion is not to be out of order merely because the proposal involved is considered to be objectionable by a member of Council.

(7) A motion of which notice has been given is to lapse unless—

- (a) the member who gave notice, or another member authorised by him or her in writing, moves the motion when called on; or
- (b) the Council or Committee on a motion agrees to defer consideration of the motion to a later stage or date.

(8) If a notice of motion is given and lapses, a notice of motion in the same terms or to the same effect may be given for consideration at a subsequent meeting of the Council or Committee, but if the motion again lapses, the Council or Committee is not to consider a motion in the same terms or to the same effect at a subsequent meeting until at least 3 months have elapsed from the date of the meeting at which the motion last lapsed.

(9) For the purposes of clarification, where a notice of motion is moved and seconded at a meeting of the Council or Committee, it is to be treated as a primary motion.

4.13 Representation on external bodies

(1) Correspondence inviting the Council to submit a nomination for appointment to an external body is to be referred by the CEO to the Council or an appropriate Committee.

(2) When speaking or voting on any item or business at a meeting of an external body, a member appointed to that body is to have regard to the decisions, policies and practices of the local government.

4.14 Urgent business

(1) A member, at an ordinary meeting of the Council, may move a motion involving business that is not included in the agenda for that meeting if the Presiding Member has first consented to the business being raised because the Presiding Member considers that either—

- (a) the nature of the business is such that the business cannot await inclusion in the agenda for the next meeting; or
- (b) the delay in referring the business to the next meeting could have adverse legal or financial implications for the local government.

(2) If a member objects to a motion moved under subclause (1), the motion is to be of no effect unless it is agreed to by an absolute majority.

(3) Subclauses (1) and (2) do not apply to a revocation motion being considered as urgent business in accordance with clause 11.2.

4.15 Content of Minutes

In addition to the matters contained in the Regulations, the content of minutes of a meeting of the Council or a Committee is to include, where an application for approval is declined or the authorisation of a license, permit or certificate is otherwise withheld or cancelled, the reason for the decision.

4.16 Closure

At the conclusion of all business or when otherwise determined by the meeting, the Presiding Member is to declare the meeting closed and the closing time is to be recorded in the minutes of the meeting.

PART 5—PUBLIC PARTICIPATION

5.1 Meetings generally open to the public

Meetings being generally open to the public is dealt with in the Act.

5.2 Procedure to close meetings to the public

(1) The CEO may, at any time, recommend that a meeting or part of a meeting be closed to members of the public.

(2) The Council or a Committee, in one or more of the circumstances dealt with in the Act, may at any time, by resolution, decide to close a meeting or part of a meeting.

(3) If a resolution under subclause (2) is carried—

- (a) the Presiding Member is to direct everyone to leave the meeting except—
 - (i) the members;
 - (ii) the CEO; and
 - (iii) any officer specified by the Presiding Member; and
- (b) the meeting is to be closed to the public until, at the conclusion of the matter justifying the closure of the meeting to the public, the Council or the Committee, by resolution, decides otherwise.

(4) A person who fails to comply with a direction under subclause (3) may, by order of the Presiding Member, be removed from the meeting.

(5) A resolution under this clause may be made without notice of the relevant motion.

(6) Unless the Council or Committee resolves otherwise, once the meeting is reopened to members of the public the Presiding Member is to ensure that any resolution of the Council or Committee made while the meeting was closed is to be read out including the details of any voting recorded.

5.3 Question time for the public

Question time for the public at meetings is dealt with in the Act.

5.4 Question time for the public at certain meetings

Question time for the public at certain meetings is dealt with in the Regulations.

5.5 Minimum question time for the public

Minimum question time for the public is dealt with in the Regulations.

5.6 Procedures for question time for the public

Procedures for question time for the public is dealt with in the Regulations.

5.7 Other procedures for question time for the public

- (1) Questions asked by the public are to relate to the business of the Council and are not to be in the form of a statement or a personal opinion.
- (2) Unless determined otherwise under the Regulations, the procedure for the asking of and responding to questions raised by members of the public at a meeting shall be as follows—
 - (a) a member of the public who raises a question during question time is to state their name and address;
 - (b) it is preferred that questions be submitted in writing in which case they will be read out by the CEO but questions may be asked orally;
 - (c) questions are to be answered by the Presiding Member or employee nominated by the Presiding Member;
 - (d) questions may be taken on notice, at the determination of the Presiding Member, and the Presiding Member may determine that any complex question requiring research be answered only in writing;
 - (e) no discussion of a question or answer is to take place by Council unless the Presiding Member has given permission to do so; and
 - (f) when a question is taken on notice under subclause (d) a response is to be given to the member of the public in writing, and a copy is to be included in the agenda of the next meeting of the Council or Committee as the case requires.
- (3) The Presiding Member may reject any question that may be deemed offensive towards, or reflect adversely upon, the character of any member of the Council or employee of the local government.
- (4) Where a response to a question is given at a meeting, a summary of the question and the response is to be included in the minutes of the meeting.
- (5) There is to be no public question time in meetings of Committees other than a Committee to which the Council has delegated a power or duty, or which is open to the public.

5.8 Distinguished visitors

If a distinguished visitor is present at a meeting of the Council or a Committee, the Presiding Member may—

- (a) invite the person to sit beside the Presiding Member or at the meeting table;
- (b) acknowledge the presence of the distinguished visitor at an appropriate time during the meeting; and
- (c) direct that the presence of the distinguished visitor be recorded in the minutes.

5.9 Deputations

- (1) A person or person wishing to be received as a deputation by the Council or a Committee is to apply, in writing, to the CEO, not less than seven (7) working days prior to the meeting at which the deputation wishes to be received, setting out in concise terms the matter to be raised. The CEO, is to forward the written request to the President, or the presiding member as the case may be.
- (2) The President if the request is to attend a Council meeting, or the Presiding Member of the Committee, if the request is to attend a meeting of a Committee, may either approve the request, in which event the CEO is to invite the deputation to attend a meeting of the Council or Committee as the case may be, or may instruct the CEO to refer the request to the Council or Committee to decide by simple majority whether or not to receive the deputation.
- (3) A deputation invited to attend a Council or Committee meeting is not to exceed three persons, only two of which are at liberty to address the Council, for a maximum of five (5) minutes each or a collective maximum of ten (10) minutes, except in reply to questions from Councillors, and the matter shall not be further considered by the Council, until all other business of the meeting has been finalised.

Any matter which is the subject of a deputation to the Council or a Committee is not to be decided by the Council or that Committee until the deputation has completed its presentation.

5.10 Presentations

- (1) Any member of the public may during the presentations segment of the ordinary meeting, with the consent of the Presiding Member, speak on any matter on the agenda paper provided that—
 - (a) the person has requested the right to do so in writing addressed to the CEO by noon on the day of the meeting;
 - (b) the person's speaking right is to be exercised before Council debates the particular agenda paper item;

- (c) the person speaking will be limited to a maximum period of five (5) minutes; and
- (d) persons addressing Council on an agenda item are not entitled to table documents as part of the meeting proceedings.

(2) Any member of the public making a presentation shall not also be afforded a deputation during that meeting or an adjourned meeting on the same matter.

5.11 Attending Committee meetings as an observer

(1) The President or a Councillor may attend any meeting of a Committee as an observer, even if the President or Councillor is not a member of that Committee.

(2) A deputy to a member of a Committee appointed under clause 14.4 may attend a meeting of that Committee as an observer, even if the deputy is not acting in the capacity of the member.

(3) The President or Councillor in the case of subclause (1), or deputy to a member attending a Committee meeting as an observer in the case of subclause (2)—

- (a) may, with the consent of the Presiding Member, speak, but cannot vote, on any motion before the Committee; and
- (b) must sit in the area set aside for observers separated from the Committee members.

5.12 Public inspection of agenda materials

Public inspection of agenda materials is dealt with in the Regulations.

5.13 Public access to unconfirmed minutes of meetings

Public access to unconfirmed minutes of Council and Committee meetings is dealt with in the Regulations.

5.14 Confidentiality of information withheld

(1) Information withheld by the CEO from members of the public under the Regulations, is to be—

- (a) identified in the agenda of a Council or Committee meeting under the item “Matters for which the meeting may be closed”;
- (b) marked “confidential” in the agenda; and
- (c) kept confidential by members and employees until the Council or Committee resolves otherwise.

(2) A member or an employee who has—

- (a) confidential information under subclause (1); or
- (b) information that is provided or disclosed for the purposes of or during a meeting, or part of a meeting, that is closed to the public,

is not to disclose any of that information to any person other than another member or an employee to the extent necessary for the purpose of carrying out his or her duties.

(3) Subclause (2) does not prevent a member or employee from disclosing information—

- (a) at a closed meeting;
- (b) to the extent specified by the Council and subject to such other conditions as the Council determines;
- (c) that is already in the public domain;
- (d) to an officer of the Department;
- (e) to the Minister;
- (f) to a legal practitioner for the purpose of obtaining legal advice; or
- (g) if the disclosure is required or permitted by law.

5.15 Media attendance

Media persons are to be permitted to attend meetings of the Council or Committees that are open to the public, in such part of the Council Chamber or meeting room as may be set aside for their accommodation, but must withdraw during any period when the meeting is closed to the public.

5.16 Recording of meeting prohibited

(1) A person must not use any electronic, visual or audio recording device or instrument to record the proceedings of the Council or Committee unless the Presiding Member or CEO has given permission to do so.

(2) If the Presiding Member or CEO gives permission under subclause (1), he or she is to advise the meeting, immediately before the recording is commenced, that such permission has been given and the nature and extent of that permission.

5.17 Prevention of disturbance

(1) A reference in this clause to a “person” is to a person other than a member.

(2) A person addressing the Council or a Committee must extend due courtesy and respect to the Council or Committee and the processes under which it operates and must comply with any direction from the Presiding Member.

(3) A person must not interrupt or interfere with the proceedings of any meeting of the Council or a Committee, whether by expressing approval or dissent, by conversing or by any other means.

(4) The Presiding Member may warn a person who fails to comply with this clause.

(5) If—

- (a) after being warned, the person again acts contrary to this clause, or to the direction; or
- (b) a person refuses or fails to comply with a direction by the Presiding Member;

the Presiding Member may expel the person from the meeting by ordering him or her to leave the meeting room.

(6) A person who is ordered to leave the meeting room and fails to do so may, by order of the Presiding Member be removed from the meeting room and, if the Presiding Member orders, from the premises.

PART 6—DISCLOSURE OF INTERESTS

6.1 Disclosure of members' financial and proximity interests

The disclosure of direct and indirect financial interests and proximity interests by members and employees is dealt with in the Act.

6.2 Meeting to be informed of financial and proximity interests

Procedures for informing the meeting of disclosures in clause 6.1 are dealt with in the Act.

6.3 Disclosing member not to participate

The participation at meetings of a member that has disclosed an interest in clause 6.1 is dealt with in the Act.

6.4 When disclosing members can participate

The procedures for allowing participation in meetings of members disclosing an interest in clause 6.1 are dealt with in the Act.

6.5 Invitation to return to provide information

(1) Where a member has disclosed an interest in clause 6.1, and has departed from the Council Chamber or meeting room, the meeting may invite the member to return to provide information in respect of the matter or in respect of the member's interest in the matter.

(2) A member invited to return under subclause (1) must withdraw after providing the information.

6.6 Substitution of deputy at Committee meetings

Where a member discloses an interest on an item under clause 6.1 and withdraws from a meeting of a Committee, the Presiding Member may invite the disclosing member's deputy, if present, to participate as a member of the Committee in place of the disclosing member during the consideration of that item only.

6.7 Disclosure by members who are observers at Committee meetings

The obligation to disclose an interest in clause 6.1 is to apply to all members present at Committee meetings including a member attending a Committee meeting in the capacity of an observer.

6.8 Disclosure of impartiality interests

The disclosure of impartiality interests at meetings by the President and Councillors is dealt with in the *Rules of Conduct Regulations*.

6.9 Other persons to disclose impartiality interests

(1) In this clause, a reference to—

- (a) **person** means an employee or a member of a Committee that is not either the President or a Councillor; and
- (b) **interest** means an interest that could, or could reasonably be perceived to, adversely affect the impartiality of the person having the interest and includes an interest arising from kinship, friendship or membership of an association.

(2) A person who has an interest in any matter to be discussed at a meeting attended by the person must disclose the nature of the interest—

- (a) in a written notice given to the CEO before the meeting; or
- (b) at the meeting immediately before the matter is discussed.

(3) Subclause (2) does not apply to an interest referred to in section 5.60 of the Act.

(4) Subclause (2) does not apply if—

- (a) a person fails to disclose an interest because the person did not know he or she had an interest in the matter; or
- (b) a person fails to disclose an interest because the person did not know the matter in which he or she had an interest would be discussed at the meeting and the person disclosed the interest as soon as possible after the discussion began.

(5) If, under subclause (2)(a), a person discloses an interest in a written notice given to the CEO before a meeting then—

- (a) before the meeting the CEO is to cause the notice to be given to the Presiding Member of the meeting; and
- (b) at the meeting the Presiding Member is to bring the notice and its contents to the attention of the persons present immediately before a matter to which the disclosure relates is discussed.

(6) If—

- (a) under subclause (2)(b) or (4)(b) a person's interest in a matter is disclosed at a meeting; or
- (b) under subclause (5)(b) notice of a person's interest in a matter is brought to the attention of the persons present at a meeting;

the nature of the interest is to be recorded in the minutes of the meeting.

6.10 On-going disclosure required

The obligation to disclose an interest under this Part applies in regard to each meeting at which the matter the subject of the interest arises.

6.11 Approval by Minister to be recorded

If the Minister approves of the participation in a meeting of a disclosing member, the conditions of the approval are to be recorded in the minutes of the meeting and the register of financial interest.

6.12 Separation of Committee recommendations

Where a member of the Council has disclosed an interest in a matter at a committee meeting under clauses 6.1 to 6.4, and the matter is contained—

- (a) in the recommendations of the committee to an ordinary meeting of Council or
- (b) to another committee meeting that will be attended by the member;

the recommendation concerned is to be separated from other recommendations of the committee on the agenda of that ordinary meeting or other committee meeting to enable the member concerned to declare the interest and leave the room prior to consideration of that matter only.

PART 7—CONDUCT OF MEMBERS

7.1 Official titles to be used

A speaker, when speaking or referring to the President or Deputy President, or to a Councillor or employee, must use the title of that person's office.

7.2 Members to occupy own seats

(1) At meetings of the Council each member is to occupy the place assigned to that member within the Council Chamber.

(2) At the first meeting held after each ordinary elections day, the CEO is to allot by random draw, a position at the Council table to each Councillor and the Councillor is to occupy that position when present at meetings of the Council until such time as there is a call by a majority of Councillors for a re-allotment of positions.

7.3 Members not to interrupt

A member must not interrupt another member while speaking unless—

- (a) to raise a point of order under clause 8.3;
- (b) to call attention to the absence of a quorum;
- (c) to make a personal explanation under clause 10.4; or
- (d) to move a procedural motion that the member be no longer heard under clause 12.1(i) and 13.9.

7.4 No adverse reflection on decision

(1) A member must not reflect adversely on a decision of the Council or a Committee except on a motion that the decision be revoked or changed.

(2) A member must not—

- (a) reflect adversely on the character or actions of another member or employee; or
- (b) impute any motive to a member or employee;

unless the Council or Committee resolves, without debate, that the motion then before the Council or Committee cannot otherwise be adequately considered.

7.5 Offensive language

(1) A member must not use offensive or objectionable expressions in reference to any member, employee, or other person.

(2) If a member specifically requests, immediately after their use, that any particular words used by a member be recorded in the minutes, the Presiding Member is to cause the words used to be taken down and read to the meeting for verification and then to be recorded in the minutes.

7.6 Direction to withdraw

A member who, in the opinion of the Presiding Member and in the absence of a resolution under clause 7.4(2)—

- (a) reflects adversely on the character or actions of another member or employee;
- (b) imputes any motive to a member or employee; or
- (c) uses an expression that is offensive or objectionable;

must, when directed by the Presiding Member, withdraw the reflection, imputation or expression and make a satisfactory apology.

7.7 Members who wish to speak

A member who wishes to speak—

- (a) is to indicate his or her intention to speak by the method determined by the Council or Committee; and
- (b) when invited by the Presiding Member to speak, must address the meeting through the Presiding Member.

7.8 Priority of speaking

If two or more members of the Council or a Committee indicate, at the same time, their intention to speak, the Presiding Member is to decide which member is to be heard first.

7.9 The Presiding Member may take part in debates

The Presiding Member may take part in a discussion of any matter before the Council or Committee as the case may be.

7.10 Relevance

A member must restrict his or her remarks to the motion or amendment under discussion, or to a personal explanation or point of order.

7.11 Limitation on members speaking

- (1) Only the mover of a motion or an amendment may speak twice on the same motion or the same amendment, unless permitted by the meeting (on a majority vote).
- (2) The mover of a motion or an amendment—
 - (a) is to speak to that motion or amendment first, after it has been seconded; and
 - (b) has the right of reply and in exercising that right must confine the reply to previous speakers' comments and not introduce any new matters.
- (3) A member must not speak on any motion or an amendment after the mover has replied and the motion or amendment is to be immediately put to the vote by the Presiding Member.
- (4) A member may speak on a motion or an amendment, or reply, for a period of only 5 minutes, unless an extension of time is granted by the Council without debate, but a member's total speaking time must not exceed 10 minutes.

7.12 Questions during debate

- (1) A member may ask a question at any time during the debate on a motion or an amendment before the mover of the motion or amendment has replied.
- (2) A member who asks one or more questions will not be taken to have spoken on the matter.

7.13 Re-opening discussion on decisions

A member must not re-open discussion on any decision of the Council or Committee, except for the purpose of moving a revocation motion under clause 11.2

PART 8—PRESERVING ORDER**8.1 Presiding Member to preserve order**

- (1) The Presiding Member is to preserve order and, whenever he or she considers it necessary, may call any member or other person to order.
- (2) When the Presiding Member, during the progress of a debate, is to raise or rule on a point of order, any member or person then speaking, or offering to speak, is to be silent so that the Presiding Member may be heard without interruption.

8.2 Points of order

Without limitation, the following acts are to be taken as being out of order—

- (a) discussion of a matter not before the meeting;
- (b) the use of offensive or objectionable language; or
- (c) the violation of any written law, including this local law, provided that the member making the point of order states the written law believed to be breached.

8.3 Procedures on a point of order

- (1) Upon a matter of order arising during the progress of a debate, any member may raise a point of order with the Presiding Member including interrupting the speaker.
- (2) Any member who is speaking when a point of order is raised in subclause (1) is to immediately stop speaking while the Presiding Member listens to the point of order.
- (3) A member raising a point of order is to specify one of the grounds of the breach of order before speaking further on the matter.
- (4) A member who is expressing a difference of opinion or contradicting a speaker is not to be taken as raising a point of order.

8.4 Continued breach of order

If a member—

- (a) persists in any conduct that the Presiding Member had ruled is out of order; or

(b) fails or refuses to comply with a direction from the Presiding Member; the Presiding Member may direct the member to refrain from taking any further part in the debate of the item, other than by voting, and the member must comply with that direction.

8.5 Presiding Member may adjourn meeting

- (1) For the purpose of preserving or regaining order, the Presiding Member may adjourn the meeting for a period of up to 15 minutes.
- (2) On resumption, the debate is to continue at the point at which the meeting was adjourned.
- (3) If, at any one meeting, the Presiding Member adjourns the meeting more than once for the purpose of preserving or regaining order, the second or subsequent adjournment may be to a later time on the same day or to another day.
- (4) If there is an adjournment under this clause, the names of the members who have spoken on the matter before the adjournment are to be recorded.

PART 9—MOTIONS AND AMENDMENTS

9.1 Recommendations in reports

- (1) Where the Council or a Committee adopts a recommendation contained in a report, either with or without amendment, the recommendation so adopted is taken to be a decision of the Council or the Committee (as the case may be).
- (2) Where a motion, if carried, would be significantly different from the relevant written recommendation of an employee or Committee, the reason for the decision is to be recorded in the minutes of the meeting in accordance with the Regulations.
- (3) A Committee may make a recommendation to the Council which—
 - (a) is relevant to the purpose for which the Committee is established by the Council; and
 - (b) the Committee considers requires consideration by the Council.
- (4) Where a Committee makes a recommendation for consideration by the Council, the CEO must prepare or cause to be prepared a report to the Council with respect to the recommendation.

9.2 Adoption of recommendations

A member may move a motion to adopt by one resolution, all the recommendations or a group of recommendations from a Committee or several reports, without amendment or qualification after having first identified those recommendations, if any—

- (a) which require adoption by an absolute or special majority vote;
- (b) in which an interest has been disclosed;
- (c) that has been subject of a petition or deputation;
- (d) which any member has indicated the wish to debate; and
- (e) in which any member has indicated the wish to ask a question or to raise a point of clarification,

and, each of those recommendations referred to in paragraphs (a), (b), (c), (d) and (e) must be considered separately.

9.3 Motions

- (1) A member who wishes to move a primary motion, or an amendment to a primary motion—
 - (a) is to state the substance of the motion before speaking to it; and
 - (b) is to put the motion or amendment in writing if—
 - (i) in the opinion of the Presiding Member, the motion or amendment is significantly different to the relevant written recommendation of a Committee or an employee (including a person who, under a contract for services with the local government, provides advice or a report on the matter); or
 - (ii) the member is otherwise required to do so by the Presiding Member.
- (2) The written terms of the motion or amendment are to be given to the CEO who is to ensure that they are recorded in the minutes.
- (3) The Presiding Member may require that a complex primary motion, or a complex amendment to a primary motion, is to be broken down and put in the form of more than one motion, each of which is to be put in sequence.

9.4 Motions to be seconded

- (1) A motion, or an amendment to a motion, is not open to debate until it has been seconded.
- (2) A motion to revoke or change a decision made at a Council or Committee meeting is not open to debate unless the motion has the support required under the Regulations.
- (3) A member seconding a motion has the right to speak on the motion later in the debate.
- (4) A motion is not to be amended by the mover without the consent of the seconder.

9.5 Unopposed motions

- (1) Immediately after a motion has been moved and seconded, the Presiding Member may ask the meeting if any member opposes it.

(2) If no member opposes the motion, the Presiding Member may declare it carried without debate and without taking a vote.

(3) A motion carried under subclause (2) is to be recorded in the minutes as a unanimous decision of the Council or Committee.

(4) If a member opposes a motion, the motion is to be dealt with under this Part.

9.6 Withdrawing motions

(1) A motion or amendment may be withdrawn by the mover, with the consent of the seconder, and no member is to speak on it after it has been withdrawn.

(2) If an amendment has been proposed to a primary motion, the primary motion cannot be withdrawn, except by consent of the majority of members, until the amendment proposed has been withdrawn or lost.

9.7 One motion at a time

The Council or a Committee—

(a) is not to accept a substantive motion while another substantive motion is being debated; and

(b) is not to consider more than one substantive motion at any time.

9.8 Permissible motions on recommendation from Committee

A recommendation made by a Committee may be—

(a) adopted by the Council without amendment;

(b) rejected by the Council and replaced by an alternative decision;

(c) subject to clause 9.9(2), amended, and adopted as amended by the Council; or

(d) referred back to the Committee for further consideration.

9.9 Amendments

(1) A member may move an amendment to a primary motion at any time during debate on the motion, except—

(a) if the mover has been called by the Presiding Member to exercise the right of reply; or

(b) if the member has already spoken to the primary motion;

(c) if another amendment is being debated, or has not been withdrawn, carried or lost; or

(d) during debate on a procedural motion.

(2) An amendment must be relevant to the primary motion to which it is moved and must not have the effect of negating the primary motion.

(3) An amendment to a primary motion is to take only one of the following forms—

(a) that certain words be omitted;

(b) that certain parts be omitted and others substituted or added; or

(c) that certain words be added.

(4) Only one amendment is to be debated at a time, but as often as an amendment is withdrawn, carried or lost, another amendment may be moved before the primary motion is put to the vote.

(5) Where an amendment is carried, the primary motion as amended is, for all purposes of subsequent debate, to be treated as a primary motion.

(6) An amendment must be read by the mover before being seconded.

9.10 Foreshadowed motion

During the course of debate as an amendment to a motion, a Member may give notice of intention to move a motion or amendment when the question before the meeting is decided.

PART 10—DEBATE OF MOTIONS

10.1 Order of call in debate

The Presiding Member is to call speakers to a motion or amendment in the following order—

(a) the mover to state the motion;

(b) a seconder to the motion;

(c) the mover to speak to the motion;

(d) the seconder to speak to the motion;

(e) other speakers against and for the motion, alternating in view, if any; and

(f) the mover takes right of reply which closes debate.

10.2 Limit of debate

The Presiding Member may offer the right of reply and put the motion to the vote if he or she believes sufficient discussion has taken place even though all members may not have spoken.

10.3 Member may require motion to be read

A member may require the motion under discussion to be read at any time during a debate, but not so as to interrupt any other member who is speaking.

10.4 Personal explanation

(1) A member who wishes to make a personal explanation relating to a matter referred to by another member who is then speaking must indicate to the Presiding Member his or her intention to make a personal explanation.

(2) The Presiding Member is to determine whether the personal explanation is to be heard immediately or at the conclusion of the speech by the other member.

10.5 Crossing council chambers or meeting room

(1) When the Presiding Member is putting any motion to the vote, a member must not leave or cross the Council Chamber or meeting room.

(2) A member must not, while any other member is speaking, pass between the speaker and the Presiding Member.

10.6 Voting

Voting at meetings is dealt with in the Act and Regulations.

10.7 Motion—when put

Immediately after the debate on any question is concluded and the right of reply has been exercised, the Presiding Member—

- (a) is to put the motion to the meeting; and
- (b) if requested by a member, is again to state the terms of the motion.

10.8 Method of taking vote

(1) The Presiding Member, in taking the vote on any motion, is to—

- (a) put the motion, first in the affirmative and then in the negative;
- (b) determine whether the affirmative or the negative has the majority of votes; and
- (c) declare the result of the vote.

(2) The motion put under subclause (1) may be put as often as is necessary to enable the Presiding Member to determine whether the affirmative or the negative has the majority of votes.

(3) The result of voting is to be determined on the count of raised hands but it may be determined on the voices unless a member calls for a show of hands.

PART 11—REVOCATION MOTIONS**11.1 Requirements to revoke or change decisions**

The requirements to revoke or change a decision made at a meeting are dealt with in the Regulations.

11.2 Revocation motion at the same meeting—procedures

(1) A member who moves a revocation motion at the same meeting where the decision is made must—

- (a) clearly identify the decision to be revoked or changed; and
- (b) clearly state the reason for the decision to be revoked or changed.

(2) If the CEO receives a notice of a revocation motion to revoke a decision made at a meeting before the close of that meeting, the CEO must immediately advise the Presiding Member of the substance of the revocation motion and raise it as an item of urgent business under clause 4.14.

(3) Where the Presiding Member is advised of a revocation motion under subclause (2), he or she is to—

- (a) advise the meeting of the notice;
- (b) state the substance of the revocation motion;
- (c) determine whether there is sufficient support under clause 11.1; and
- (d) if there is sufficient support, deal with the revocation motion.

11.3 Revocation motion after meeting—procedures

(1) A member wishing to move a revocation motion at a future meeting of the Council or a Committee must give to the CEO notice of the revocation motion, which is to—

- (a) be in writing;
- (b) specify the decision proposed to be revoked or changed;
- (c) include a reason or reasons for the revocation motion;
- (d) be supported by the number of members required under the Regulations;
- (e) specify the date of the ordinary or special meeting of the Council or the Committee where it is to be presented, as the case may be; and
- (f) be given to the CEO in accordance with the notice of motion provisions in clause 4.12.

(2) Any notice of revocation motion given to the CEO must be dealt with in accordance with 4.12.

11.4 Implementation of a decision

No steps are to be taken to implement or give effect to a decision if—

- (a) there is a valid notice of revocation motion that has the support of members required by the Regulations; and
- (b) the notice of revocation motion was received before any action was taken to implement the decision.

PART 12—PROCEDURAL MOTIONS

12.1 Permissible procedural motions

In addition to the right to move an amendment to a primary motion, a member may move any of the following procedural motions—

- (a) that the motion be deferred;
- (b) that the meeting now adjourn;
- (c) that the debate be adjourned;
- (d) that the motion be now put;
- (e) that the motion lie on the table;
- (f) that the meeting proceed to the next item of business
- (g) that the meeting be closed to members of the public;
- (h) that the ruling of the Presiding Member be overruled;
- (i) that the member be no longer heard; or
- (j) that the item be referred back to the (appropriate) Committee.

12.2 No debate on procedural motions

(1) The mover of a motion stated in each of paragraphs (a), (b), (c), (e), (f), (g), (i) and (j) of clause 12.1 may speak to the motion for not more than 5 minutes, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.

(2) The mover of a motion stated in each of paragraphs (d) and (h) of clause 12.1 may not speak to the motion, the seconder is not to speak other than to formally second the motion, and there is to be no debate on the motion.

12.3 Who may move

With the exception of subclause 12.1(h), a member who has moved, seconded, or spoken for or against the primary motion, or any amendment to the primary motion, cannot move any procedural motion which, if carried, would close the debate on the primary motion or amendment.

12.4 Procedural motions—right of reply on primary motion

The carrying of a procedural motion which closes debate on the primary motion or amendment and forces a decision on the primary motion or amendment does not deny the right of reply to the mover of the primary motion.

PART 13—EFFECT OF PROCEDURAL MOTIONS

13.1 The motion be deferred—effect of motion

(1) If a motion “that the motion be deferred”, is carried, then all debate on the primary motion and any amendment is to cease and the motion or amendment is to be resubmitted for consideration at a time and date specified in the motion.

(2) A motion “that the motion be deferred” must not be moved in respect of the election of a Presiding Member or the Deputy President.

(3) A member must not, at the same meeting, move or second more than one motion “that the motion be deferred” in respect of the same item.

13.2 The meeting now adjourn—effect of motion

(1) If a motion “that the meeting now adjourn”, is carried then the meeting is to be adjourned to a time and date specified in the motion, or where no time and date is specified, to such time and date as the Presiding Member declares, or to the next ordinary meeting.

(2) Where debate on a motion is interrupted by an adjournment under subclause (1)—

- (a) the debate is to be resumed at the date and time specified as required in subclause (1) and at the point where it was so interrupted; and
- (b) the names of members who have spoken on the matter prior to the adjournment are to be recorded in the minutes; and
- (c) the provisions of clause 7.11 apply when the debate is resumed.

(3) If a motion “that the meeting now adjourn” is lost, no similar motion is to be moved until—

- (a) after the conclusion of the business under discussion at the time the motion was moved; or
- (b) if the motion was moved on the conclusion of an item of business, after the conclusion of the next item of business; or
- (c) after the conclusion of any other business allowed precedence by the meeting.

(4) A member must not, at the same meeting, move or second more than one motion for the adjournment of the meeting.

13.3 The debate be adjourned—effect of motion

(1) If a motion “that the debate be adjourned”, is carried—

- (a) all debate on the primary motion or amendment is to cease and is to continue at a time and date specified in the motion;
- (b) the names of members who have spoken on the matter are to be recorded in the minutes; and
- (c) the provisions of clause 7.11 apply when the debate is resumed.

(2) A motion “that the debate be adjourned” must not be moved in respect of the election of a Presiding Member or the Deputy President.

(3) A member must not, at the same meeting, move or second more than one motion “that the debate be adjourned” in respect of the same item.

13.4 The motion be now put—effect of motion

(1) If a motion “that the motion be now put”, is carried during discussion of a primary motion, the Presiding Member is to offer the right of reply and then immediately put the motion to the vote without further debate.

(2) If the motion “that the motion be now put” is carried during debate of an amendment, the Presiding Member is to put the amendment to the vote without further debate.

(3) If the motion “that the motion be now put” is lost, debate is to continue.

13.5 The motion lie on the table—effect of motion

(1) If a motion “that the motion lie on the table”, is carried, debate on the primary motion and any amendment must cease and the meeting is to proceed to the next item of business.

(2) Debate on the motion laid on the table is to be adjourned until such time (if any) as the meeting resolves to take the motion from the table.

(3) Where debate on a motion is interrupted by laying a motion on the table under subclause (1)—

(a) the names of members who have spoken on the matter are to be recorded in the minutes; and

(b) the provisions of clause 7.11 apply when the debate is resumed.

(4) A motion “that the motion lie on the table” must not be moved in respect of the election of a Presiding Member or the Deputy President.

(5) A member moving the taking of the motion from the table is entitled to speak first on the resumption of the debate.

13.6 Meeting to proceed to the next business—effect of motion

(1) The motion “that the meeting proceed to the next item of business”, if carried has the effect that—

(a) the debate on the substantive motion or amendment ceases immediately;

(b) no decision is made on the substantive motion;

(c) the meeting moves to the next item of business; and

(d) there is no requirement for the matter to be raised again for consideration.

(2) A motion that “the meeting proceed to the next item of business” must not be moved in respect of the election of a Presiding Member or the Deputy President.

13.7 Meeting be closed to members of the public—effect of motion

If a motion “that the meeting be closed to members of the public” is carried then the Presiding Member is to close the meeting in accordance with clause 5.2.

13.8 Ruling by the Presiding Member be overruled—effect of motion

If a motion “that the ruling of the Presiding Member be overruled” is carried, that ruling is to have no effect and the meeting is to proceed accordingly.

13.9 Member be no longer heard—effect of motion

If a motion “that the member be no longer heard” is carried, the speaker against whom the motion has been moved must not speak further on the current primary motion, or any amendment relating to it, except to exercise the right of reply if he or she is the mover of the primary motion.

13.10 Item be referred back to Committee—effect of motion

(1) If a motion “that the item be referred back to Committee” is carried, debate on the primary motion and any amendment is to cease and the primary motion, excluding any amendment, is to be referred back to the appropriate Committee for further consideration.

(2) If the motion in subclause (1) is lost, debate on the primary motion or amendment is to continue.

PART 14—COMMITTEES OF THE COUNCIL

14.1 Establishment, types and membership of Committees

The establishment, types and membership of Committees is dealt with in the Act.

14.2 Tenure of Committee membership

The tenure of Committee membership is dealt with in the Act.

14.3 Delegation of power to Committees

Delegation of powers and duties to Committees is dealt with in the Act.

14.4 Appointment of deputy members

The appointment of a deputy to a member of a Committee is dealt with in the Act.

14.5 Standing orders apply to Committees

Unless otherwise specifically provided, this local law applies generally to the proceedings of Committees, except for—

- (a) clause 7.2; and
- (b) clause 7.11(1).

14.6 Communications by Committees

A Committee must not communicate with any person or authority except through the CEO.

14.7 Committee to report

A committee—

- (a) is answerable to the Council;
- (b) is to report on its activities when, and to the extent, required by the Council; and
- (c) is to prepare and submit to the Council a report containing recommendations.

PART 15—PROCEDURAL MATTERS**15.1 Presiding Member to ensure compliance**

The Presiding Member of a meeting is to ensure compliance with this local law.

15.2 Suspension of standing orders

(1) A member may, at any time, move that the operation of one or more of the clauses in this local law be suspended.

(2) A member moving a motion under subclause (1) is to identify the clause or clauses in this local law to be suspended, and state the reasons for the motion, but no other discussion is to take place.

(3) A member moving a motion under subclause (1) is to identify the clause or clauses in this local law to be suspended, and state the reasons for the motion, but no other discussion is to take place.

(4) A motion under subclause (1) which is seconded and carried is to suspend the operation of the clause or clauses to which the motion relates for the duration of the meeting, unless the meeting earlier resolves otherwise.

15.3 Cases not provided for in standing orders

(1) In situations where—

- (a) standing orders have been suspended; or
- (b) a matter is not regulated by the Act, the Regulations or this local law,

the Presiding Member is to decide questions relating to the conduct of the meeting.

(2) The decision of the Presiding Member under subclause (1) is final, except where a motion of dissent is moved and carried under clause 12.1(h).

15.4 Electors' meetings

The requirements for elector's meetings are dealt with in the Act and Regulations.

15.5 Electors' meetings—standing orders apply

This local law applies, so far as is practicable, to any meeting of electors, but where there is any inconsistency between the provisions of this local law and the provisions of the Act, the latter prevail.

15.6 Restriction on voting and speaking at electors' meetings

The restriction on voting and speaking at electors' meetings is dealt with in the Regulations.

15.7 Penalty for contravention of this local law

A person who breaches a provision of this local law commits an offence. Penalty: \$1 000, and a daily penalty of \$500.

15.8 Who can prosecute

Who can prosecute is dealt with in the Act.

PART 16—COMMON SEAL**16.1 Custody of the Common Seal**

The CEO is to have charge of the Common Seal of the local government, and is responsible for the safe custody and proper use of it.

16.2 Use of Common Seal

The use of the Common Seal is dealt with in the Act.

Schedule 1
PETITION TO THE SHIRE OF CAPEL

[4.9(2)(a)]

To the President and Councillors of the Shire of Capel

We, the undersigned, do respectfully request that the Council—

(Here set out a concise statement of facts and the action sought)

Correspondence in respect of this petition should be addressed to—

(Here set out the name and address of the person)

The names and addresses of your petitioners are as follows—

DATE	FULL NAME	ADDRESS AGREE / DISAGREE / NO OPINION	SIGNATURE

Note : Petitioners may contact the CEO of the Shire of Capel if they wish to withdraw from this petition or change their comment

Dated 22nd June 2016.

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

M. T. SCOTT, President.
P. F. SHEEDY, Chief Executive Officer.