

**SHIRE OF CAPEL**  
**LOCAL GOVERNMENT PROPERTY LOCAL LAW**

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## SHIRE OF CAPEL

### LOCAL GOVERNMENT PROPERTY LOCAL LAW

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the *Shire of Capel* resolved on the *19<sup>th</sup> day of September 2012* to amend the Shire of Capel Local Government Property Local Law as published in the Government Gazette on 21 February 2001.

#### PART 1 - PRELIMINARY

##### Citation

- 1.1 This local law may be cited as the Shire of Capel Local Government Property Local Law.

##### Definitions

- 1.2 In this local law unless the context otherwise requires -

**"Act"** means the *Local Government Act 1995*;

**"applicant"** means a person who applies for a permit under clause 3.2;

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

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

**"building"** means any building which is local government property and includes a -

- (a) hall or room;
- (b) corridor, stairway or annexe of any hall or room; and
- (c) jetty;

**"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;

**"date of publication"** means, where local public notice is required to be given of a matter under this local law, the date on

which notice of the matter is published in a newspaper circulating generally throughout the district;

**"determination"** means a determination made under clause 2.1;

**"district"** means the district of the local government;

**"function"** means an event or activity characterised by all or any of the following –

- (a) formal organisation and preparation;
- (b) its occurrence is generally advertised or notified in writing to particular persons;
- (c) organisation by or on behalf of a club;
- (d) payment of a fee to attend it; and
- (e) systematic recurrence in relation to the day, time and place;

**"liquor"** has the same meaning as is given to it in section 3 of the *Liquor Licensing Act 1988*;

**"local government"** means the Shire of Capel;

**"local government property"** means anything except a thoroughfare –

- (a) which belongs to the local government;
- (b) of which the local government is the management body under the *Land Administration Act 1997*;
- (c) which is an 'otherwise unvested facility' within section 3.53 of the Act; or

(d) along the district's western boundary, from the high water mark at ordinary spring tides, for a distance of 200 metres seawards towards the Indian Ocean, as approved by the Governor under section 3.19 of the Act per notice published in the *Government Gazette*, No. 149, on 18 May 2001, page 2411.

**"Manager"** means the person for the time being employed by the local government to control and manage a pool area or other facility which is local government property and includes the person's assistant or deputy;

**"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;

**"pool area"** means any swimming and wading pools and spas and all buildings, structures, fittings, fixtures, machinery, chattels, furniture and equipment forming part of or used in connection with such swimming and wading pools and spas which are local government property;

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

**"sign"** includes a notice, flag, mark, structure or device approved by the local government on which may be shown words, numbers, expressions or symbols;

**"trading"** means the selling or hiring, or the offering for sale or hire of goods or services, and includes displaying goods for the purpose of –

- (a) offering them for sale or hire;
- (b) inviting offers for their sale or hire;
- (c) soliciting orders for them; or
- (d) carrying out any other transaction in relation to them; and

**"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 –
  - (c) a wheel-chair or any device designed for use, by a physically impaired person on a footpath;
  - (d) a pram, a stroller or a similar device; and
  - (e) a boat.

### **Interpretation**

- 1.3 In this local law unless the context otherwise requires a reference to local government property includes a reference to any part of that local government property.

### **Application**

- 1.4 (1) This local law applies throughout the district and in the sea adjoining the district for a distance of 200 metres seawards from the low water mark at ordinary spring tides.
- (2) Notwithstanding anything to the contrary in this local law, the local government may:
- (a) hire local government property to any person; or
  - (b) enter into an agreement with any person regarding the use of any local government property.

### **Repeal**

- 1.5 (1) The following local laws are repealed –
- (a) Saleyards By-Laws, published in the Government Gazette of 23 September 1949;
  - (b) Relating to Safety, Decency, Convenience and Comfort of Persons in Respect of Bathing, published in the Government Gazette of 19 November 1982 and amended in the Government Gazette of 12 September 1986;
  - (c) Relating to Reserves and Foreshores, published in the Government Gazette of 29 November 1985, and amended in the Government Gazette of 12 September 1986.
- (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 no longer have any effect on and from the commencement day.
- (3) The Council may resolve that notwithstanding subclause (2), specified policies continue, or are to be taken to have continued, to have effect on and from the commencement day.

## **PART 2 - DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY**

### ***Division 1 - Determinations***

#### **Determinations as to use of local government property**

- 2.1 (1) The local government may make a determination in accordance with clause 2.2 –

- (a) setting aside specified local government property for the pursuit of all or any of the activities referred to in clause 2.7;
  - (b) prohibiting a person from pursuing all or any of the activities referred to in clause 2.8 on specified local government property;
  - (c) as to the matters in clauses 2.7(2) and 2.8(2); and
  - (d) as to any matter ancillary or necessary to give effect to a determination.
- (2) The determinations in Schedule 2 –
- (a) are to be taken to have been made in accordance with clause 2.2;
  - (b) may be amended or revoked in accordance with clause 2.6; and
  - (c) have effect on the commencement day.

### **Procedure for making a determination**

- 2.2
- (1) The local government is to give local public notice of its intention to make a determination.
  - (2) The local public notice referred to in subclause (1) is to state that –
    - (a) the local government intends to make a determination, the purpose and effect of which is summarised in the notice;
    - (b) a copy of the proposed determination may be inspected and obtained from the offices of the local government; and
    - (c) submissions in writing about the proposed determination may be lodged with the local government within 21 days after the date of publication.
  - (3) If no submissions are received in accordance with subclause (2)(c), the Council is to decide to –
    - (a) give local public notice that the proposed determination has effect as a determination on and from the date of publication;
    - (b) amend the proposed determination, in which case subclause (5) will apply; or

- (c) not continue with the proposed determination.
- (4) If submissions are received in accordance with subclause (2)(c) the Council is to–
  - (a) consider those submissions; and
  - (b) decide
    - (i) whether or not to amend the proposed determination; or
    - (ii) not to continue with the proposed determination.
- (5) If the Council decides to amend the proposed determination, it is to give local public notice:
  - (a) of the effect of the amendments; and
  - (b) that the proposed determination has effect as a determination on and from the date of publication.
- (6) If the Council decides not to amend the proposed determination, it is to give local public notice that the proposed determination has effect as a determination on and from the date of publication.
- (7) A proposed determination is to have effect as a determination on and from the date of publication of the local public notice referred to in subclauses (3), (5) and (6).
- (8) A decision under subclause (3) or (4) is not to be delegated by the Council.

### **Discretion to erect sign**

- 2.3 The local government may erect a sign on local government property to give notice of the effect of a determination which applies to that property.

### **Determination to be complied with**

- 2.4 A person shall comply with a determination.

### **Register of determinations**

- 2.5 (1) The local government is to keep a register of determinations made under clause 2.1, and of any amendments to or revocations of determinations made under clause 2.6.

- (2) Sections 5.94 and 5.95 of the Act are to apply to the register referred to in subclause (1) and for that purpose the register is to be taken to be information within section 5.94(u)(i) of the Act.

### **Amendment or revocation of a determination**

- 2.6 (1) The Council may amend or revoke a determination.
- (2) The provisions of clause 2.2 are to apply to an amendment of a determination as if the amendment were a proposed determination.
- (3) If the Council revokes a determination it is to give local public notice of the revocation and the determination is to cease to have effect on the date of publication.

### ***Division 2 - Activities which may be pursued or prohibited under a determination***

#### **Activities which may be pursued on specified local government property**

- 2.7 (1) A determination may provide that specified local government property is set aside as an area on which a person may –
  - (a) bring, ride or drive an animal;
  - (b) take, ride or drive a vehicle, or a particular class of vehicle;
  - (c) fly or use a motorised model aeroplane;
  - (d) use a children’s playground provided that the person is under an age specified in the determination, but the determination is not to apply to a person having the charge of a person under the specified age;
  - (e) launch, beach or leave a boat;
  - (f) take or use a boat, or a particular class of boat;
  - (g) deposit refuse, rubbish or liquid waste, whether or not of particular classes, and whether or not in specified areas of that local government property;
  - (h) play or practice
    - (i) golf or archery;

- (ii) pistol or rifle shooting, but subject to the compliance of that person with the *Firearms Act 1973*; or
  - (iii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
  - (i) ride a bicycle, a skateboard, rollerblades, a sandboard or a similar device; and
  - (j) wear no clothing.
- (2) A determination may specify the extent to which and the manner in which an activity referred to in subclause (1) may be pursued and in particular –
- (a) the days and times during which the activity may be pursued;
  - (b) that an activity may be pursued on a class of local government property, specified local government property or all local government property;
  - (c) that an activity is to be taken to be prohibited on all local government property other than that specified in the determination;
  - (d) may limit the activity to a class of vehicles, boats, equipment or things, or may extend it to all vehicles, boats, equipment or things;
  - (e) may specify that the activity can be pursued by a class of persons or all persons; and
  - (f) may distinguish between different classes of the activity.

**Activities which may be prohibited on specified local government property**

- 2.8 (1) A determination may provide that a person is prohibited from pursuing all or any of the following activities on specified local government property -
- (a) smoking on premises;
  - (b) riding a bicycle, a skateboard, rollerblades, a sandboard or a similar device;

- (c) taking, riding or driving a vehicle on the property or a particular class of vehicle;
  - (d) riding or driving a vehicle of a particular class or any vehicle above a specified speed;
  - (e) taking or using a boat, or a particular class of boat;
  - (f) the playing or practice of -
    - (i) golf, archery, pistol shooting or rifle shooting; or
    - (ii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
  - (g) the playing or practice of any ball game which may cause detriment to the property or any fauna on the property; and
  - (h) the traversing of sand dunes or land which in the opinion of the local government has environmental value warranting such protection, either absolutely or except by paths provided for that purpose.
- (2) A determination may specify the extent to which and the manner in which a person is prohibited from pursuing an activity referred to in subclause (1) and, in particular –
- (a) the days and times during which the activity is prohibited;
  - (b) that an activity is prohibited on a class of local government property, specified local government property or all local government property;
  - (c) that an activity is prohibited in respect of a class of vehicles, boats, equipment or things, or all vehicles, boats, equipment or things;
  - (d) that an activity is prohibited in respect of a class of persons or all persons; and
  - (e) may distinguish between different classes of the activity.
- (3) In this clause:
- "premises"** means a building, stadium or similar structure which is local government property, but not an open space such as a park or a playing field.

### ***Division 3 - Transitional***

#### **Signs taken to be determinations**

- 2.9 (1) Where a sign erected on local government property has been erected under a local law of the local government repealed by this local law, then it is to be taken to be and have effect as a determination on and from the commencement day, except to the extent that the sign is inconsistent with any provision of this local law or any determination made under clause 2.1.
- (2) Clause 2.5 does not apply to a sign referred to in subclause (1).

### **PART 3 - PERMITS**

#### ***Division 1 - Preliminary***

##### **Application of Part**

- 3.1 This Part does not apply to a person who uses or occupies local government property under a written agreement with the local government to do so.

#### ***Division 2 - Applying for a permit***

##### **Application for permit**

- 3.2 (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).

### **Decision on application for permit**

- 3.3 (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.

### ***Division 3 - Conditions***

#### **Conditions which may be imposed on a permit**

- 3.4 (1) Without limiting the generality of clause 3.3(1)(a), the local government may approve an application for a permit subject to conditions relating to –
- (a) the payment of a fee;
  - (b) compliance with a standard or a policy of the local government adopted by the local government;
  - (c) the duration and commencement of the permit;
  - (d) the commencement of the permit being contingent on the happening of an event;
  - (e) the rectification, remedying or restoration of a situation or circumstance reasonably related to the application;
  - (f) the approval of another application for a permit which may be required by the local government under any written law;
  - (g) the area of the district to which the permit applies;
  - (h) where a permit is issued for an activity which will or may cause damage to local government property, the payment of a deposit or bond against such damage; and

- (i) the obtaining of public risk insurance in an amount and on terms reasonably required by the local government.
- (2) Without limiting clause 3.3(1)(a) and subclause (1), the following paragraphs indicate the type and content of the conditions on which a permit to hire local government property may be issued –
- (a) when fees and charges are to be paid;
  - (b) payment of a bond against possible damage or cleaning expenses or both;
  - (c) restrictions on the erection of material or external decorations;
  - (d) rules about the use of furniture, plant and effects;
  - (e) limitations on the number of persons who may attend any function in or on local government property;
  - (f) the duration of the hire;
  - (g) the right of the local government to cancel a booking during the course of an annual or seasonal booking, if the local government sees fit;
  - (h) a prohibition on the sale, supply or consumption of liquor unless a liquor licence is first obtained for that purpose under the *Liquor Licensing Act 1988*;
  - (i) whether or not the hire is for the exclusive use of the local government property;
  - (j) the obtaining of a policy of insurance in the names of both the local government and the hirer, 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 hire of the local government property by the hirer; and
  - (k) the provision of an indemnity from the hirer, 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 hire of the local government property by the hirer.

### **Imposing conditions under a policy**

- 3.5 (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 3.3(1)(a).

- (2) Under clause 3.3(1)(a) the local government may approve an application subject to conditions by reference to a policy.
- (3) The local government shall 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 3.3(2).
- (4) An application for a permit shall be deemed 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 shall be deemed to be information within section 5.94(u)(i) of the Act.

### **Compliance with and variation of conditions**

- 3.6 (1) Where an application for a permit has been approved subject to conditions, the permit holder shall comply with each of those conditions.
- (2) The local government may vary the conditions of a permit, and the permit holder shall comply with those conditions as varied.

## ***Division 4 - General***

### **Agreement for building**

- 3.7 Where a person applies for a permit to erect a building on local government property the local government may enter into an agreement with the permit holder in respect of the ownership of the materials in the building.

### **Duration of permit**

- 3.8 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 3.12.

### **Renewal of permit**

- 3.9 (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 this Part shall apply to an application for the renewal of a permit *mutatis mutandis*.

### **Transfer of permit**

- 3.10 (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 an endorsement on the permit signed by the CEO.
- (4) Where the local government approves the transfer of a permit, it is not required to refund any part of any fee paid by the former permit holder.

### **Production of permit**

- 3.11 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.

### **Cancellation of permit**

- 3.12 (1) Subject to clause 7.1, a permit may be cancelled by the local government if the permit holder has not complied with a -
- (a) condition of the permit; or
  - (b) determination or a provision of any written law which may relate to the activity regulated by the permit.
- (2) On the cancellation of a permit the permit holder -

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

***Division 5 - When a permit is required***

**Activities needing a permit**

- 3.13 (1) A person shall not without a permit –
- (a) subject to subclause 3, hire local government property;
  - (b) advertise anything by any means on local government property;
  - (c) erect a structure for public amusement or for any performance, whether for gain or otherwise, on local government property;
  - (d) teach, coach or train, for profit, any person in a pool area or an indoor recreation facility which is local government property;
  - (e) plant any plant or sow any seeds on local government property;
  - (f) carry on any trading on local government property unless the trading is conducted -
    - (i) with the consent of a person who holds a permit to conduct a function, and where the trading is carried on under and in accordance with the permit; or
    - (ii) by a person who has a licence or permit to carry on trading on local government property under any written law;
  - (g) unless an employee of the local government in the course of her or his duties or on an area set aside for that purpose -
    - (i) drive or ride or take any vehicle on to local government property; or
    - (ii) park or stand any vehicle on local government property;
  - (h) conduct a function on local government property;

- (i) charge any person for entry to local government property, unless the charge is for entry to land or a building hired by a voluntary non-profit organisation;
  - (j) light a fire on local government property except in a facility provided for that purpose;
  - (k) parachute, hang glide, abseil or base jump from or on to local government property;
  - (l) erect a building or a refuelling site on local government property;
  - (m) make any excavation on or erect or remove any fence on local government property;
  - (n) erect or install any structure above or below ground, which is local government property, for the purpose of supplying any water, power, sewer, communication, television or similar service to a person; or
  - (o) depasture any horse, sheep, cattle, goat, camel, ass or mule on local government property.
- (2) The local government may exempt a person from compliance with subclause (1) on the application of that person.
- (3) The local government may exempt specified local government property or a class of local government property from the application of subclause (1)(a).

### **Permit required to camp outside a facility**

3.14 (1) In this clause –

**"facility"** has the same meaning as is given to it in section 5(1) of the *Caravan Parks and Camping Grounds Act 1995*.

(2) This clause does not apply to a facility operated by the local government.

(3) A person shall not without a permit –

(a) camp on, lodge at or occupy any structure at night for the purpose of sleeping on local government property; or

(b) erect any tent, camp, hut or similar structure on local government property other than a beach shade or windbreak erected for use during the hours of daylight and which is dismantled during those hours on the same day.

- (4) The maximum period for which the local government may approve an application for a permit in respect of paragraph (a) or (b) of subclause (3) is that provided in regulation 11(2)(a) of the *Caravan Parks and Camping Grounds Regulations 1997*.

### **Permit required for possession and consumption of liquor**

- 3.15 (1) A person, on local government property, shall not consume any liquor or have in her or his possession or under her or his control any liquor, unless –
- (a) that is permitted under the *Liquor Licensing Act 1988*; and
  - (b) a permit has been obtained for that purpose.
- (2) Subclause (1) does not apply where the liquor is in a sealed container.

### ***Division 6 - Responsibilities of permit holder***

#### **Responsibilities of permit holder**

- 3.16 A holder of a permit shall in respect of local government property to which the permit relates
- (a) ensure that an authorized person has unobstructed access to the local government property for the purpose of inspecting the property or enforcing any provision of this local law;
  - (b) leave the local government property in a clean and tidy condition after its use;
  - (c) report any damage or defacement of the local government property to the local government; and
  - (d) prevent the consumption of any liquor on the local government property unless the permit allows it and a licence has been obtained under the *Liquor Licensing Act 1988* for that purpose.

## **PART 4 - BEHAVIOUR ON ALL LOCAL GOVERNMENT PROPERTY**

### ***Division 1 - Behaviour on and interference with local government property***

#### **Behaviour which interferes with others**

- 4.1 A person shall not in or on any local government property behave in a manner which:

- (a) is likely to interfere with the enjoyment of a person who might use the property; or
- (b) interferes with the enjoyment of a person using the property.

**Behaviour detrimental to property**

- 4.2 (1) A person shall not behave in or on local government property in a way which is or might be detrimental to the property.
- (2) In subclause (1) –
- 'detrimental to the property' includes –
- (a) removing any thing from the local government property such as a rock, a plant or a seat provided for the use of any person; and
  - (b) destroying, defacing or damaging any thing on the local government property, such as a plant, a seat provided for the use of any person or a building.

**Taking or injuring any fauna**

- 4.3 (1) A person shall not, take, injure or kill or attempt to take, injure or kill any fauna which is on or above any local government property, unless that person is authorized under a written law to do so.
- (2) In this clause –
- "animal"** means any living thing that is not a human being or plant; and
- "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; or
  - (c) the carcass, skin, plumage or fur.

**Intoxicated persons not to enter local government property**

- 4.4 A person shall not enter or remain on local government property while under the influence of liquor or a prohibited drug.

### **No prohibited drugs**

- 4.5 A person shall not take a prohibited drug on to, or consume or use a prohibited drug on, local government property.

### ***Division 2 - Signs***

#### **Signs**

- 4.6 (1) A local government may erect a sign on local government property specifying any conditions of use which apply to that property.
- (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 –
- (a) not to be inconsistent with any provision of this local law or any determination; and
  - (b) to be for the purpose of giving notice of the effect of a provision of this local law.

## **PART 5 – MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY**

### ***Division 1 - Beaches***

#### **Powers of surf life saving club members**

- 5.1 (1) Subject to subclause (2), the local government may authorize under section 9.10 of the Act the members of a surf life saving club to perform all or any of the following functions in relation to a beach –
- (a) patrol any beach;
  - (b) carry out any activity on any beach;
  - (c) erect signs designating bathing areas and signs regulating, prohibiting or restricting specified activities on the whole or any part of a beach or in or on the water adjacent to the beach and to direct persons on the beach or in or on the water to comply with such signs;
  - (d) temporarily enclose any area with rope, hessian, wire or any other means for the conduct of surf life saving club activities; and

- (e) direct persons to leave the water adjacent to a beach during dangerous conditions or if a shark is suspected of being in the vicinity of a beach.
- (2) Under subclause (1), the local government shall authorize only those members who have been recommended by the surf life saving club as competent to perform the functions referred to in that subclause in respect of which they are authorized.
- (3) Under subclause (1), the local government may authorize members generally, or in relation to particular times, days or months.

### **Authorizing other persons**

- 5.2
- (1) A local government may authorize, under section 9.10 of the Act, a person to perform all or any of the functions referred to in clause 5.1(1) in relation to a beach.
  - (2) Under subclause (1), the local government shall authorize only those persons who, in the reasonable opinion of the local government, are competent to perform the functions referred to in clause 5.1(1) in respect of which they are authorized.
  - (3) Under subclause (1), the local government may authorize a person generally, or in relation to particular times, days or months.
  - (4) Where the local government has authorized members of a surf life saving club under clause 5.1(1) and a person under subclause (1) in relation to the same beach, so that they can perform all or any of the functions referred to in clause 5.1(1) contemporaneously, the local government is to specify which authorization is rendered ineffective when both are exercised.

### **Persons to comply with signs and directions**

- 5.3 A person shall -
- (a) not act in contravention of any sign erected on a beach under clause 5.1(1)(c);
  - (b) not enter an area which has been temporarily closed with rope, hessian, wire or any other means for the conduct of surf life saving club activities, unless he or she is a member of the club or has obtained permission to enter from the club; and

- (c) comply with any direction given under clause 5.1(1)(c) or 5.1(1)(e),

notwithstanding that the sign or the direction was erected or given, as the case may be, by a person referred to in clause 5.2(1).

### ***Division 2 - Fenced or closed property***

#### **No entry to fenced or closed local government property**

- 5.4 A person must not enter local government property which has been fenced off or closed to the public by a sign or otherwise, unless that person is authorized to do so by the local government.

### ***Division 3 - Toilet blocks and change rooms***

#### **5.5 Only specified gender to use entry of toilet block or change room**

- (1) Where a sign on a toilet block or change room specifies that a particular entry of the toilet block or change room is to be used by—
  - (a) females—then a person of the male gender shall not use that entry of the toilet block or change room;
  - (b) males—then a person of the female gender shall not use that entry of the toilet block or change room; or
  - (c) families—then, where the toilet block or change room is being used by a family, only an immediate member of that family may use that entry of the toilet block or change room.
- (2) Paragraphs (a) and (b) of subclause (1) do not apply to a child, when accompanied by a parent, guardian or caregiver, where the child is—
  - (a) under the age of 8 years; or
  - (b) otherwise permitted by an authorised person to use the relevant entry.

## **PART 6 - FEES FOR ENTRY ON TO LOCAL GOVERNMENT PROPERTY**

### **No unauthorized entry to function**

- 6.1 (1) A person shall not enter local government property on such days or during such times as the property may be set aside for a function for which a charge for admission is authorized, except –
  - (a) through the proper entrance for that purpose; and
  - (b) on payment of the fee chargeable for admission at the time.
- (2) The local government may exempt a person from compliance with subclause (1)(b).

## **PART 7 - OBJECTIONS AND APPEALS**

### **Application of Division 1, Part 9 of the Act**

- 7.1 When the local government makes a decision as to whether it will -
- (a) grant a person a permit or consent under this local law; or
  - (b) renew, vary, or cancel a permit or consent that a person has under this local law,
- the provisions of Division 1 of Part 9 of the Act and regulations 33 and 34 of the Regulations apply to that decision.

## **PART 8 - MISCELLANEOUS**

### **Authorized person to be obeyed**

- 8.1 A person on local government property shall obey any lawful direction of an authorized person and shall not in any way obstruct or hinder an authorized person in the execution of her or his duties.

### **Persons may be directed to leave local government property**

- 8.2 An authorized person may direct a person to leave local government property where she or he reasonably suspects that the person has contravened a provision of any written law.

### **Disposal of lost property**

- 8.3 An article left on any local government property, and not claimed within a period of 3 months, may be disposed of by the local government in any manner it thinks fit.

### **Liability for damage to local government property**

- 8.4 (1) Where a person unlawfully damages local government property, the local government may by notice in writing to that person require that person within the time required in the notice to, at the option of the local government, pay the costs of -
- (a) reinstating the property to the state it was in prior to the occurrence of the damage; or
  - (b) replacing that property.
- (2) On a failure to comply with a notice issued under subclause (1), the local government may recover the costs referred to in the notice as a debt due to it.

## **PART 9 - ENFORCEMENT**

### ***Division 1 - Notices given under this local law***

#### **Offence to fail to comply with notice**

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

#### **Local government may undertake requirements of notice**

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

### ***Division 2 - Offences and penalties***

#### ***Subdivision 1 - General***

#### **Offences and general penalty**

- 9.3 (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***

#### **Prescribed offences**

- 9.4 (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.
- (3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorized person should be satisfied that –

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

### **Form of notices**

- 9.5 (1) 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.
- (2) Where an infringement notice is given under section 9.16 of the Act in respect of an alleged offence against clause 2.4, the notice is to contain a description of the alleged offence.

### ***Division 3 – Evidence in legal proceedings***

#### **Evidence of a determination**

- 9.6 (1) In any legal proceedings, evidence of a determination may be given by tendering the register referred to in clause 2.5 or a certified copy of an extract from the register.
- (2) It is to be presumed, unless the contrary is proved, that the determination was properly made and that every requirement for it to be made and have effect has been satisfied.
- (3) Subclause (2) does not make valid a determination that has not been properly made.

**SCHEDULE 1****PRESCRIBED OFFENCES**

<b>CLAUSE</b>	<b>DESCRIPTION</b>	<b>MODIFIED PENALTY \$</b>
2.4	Failure to comply with determination	500
3.6	Failure to comply with conditions of permit	250
3.13(1)	Failure to obtain a permit	250
3.14(3)	Failure to obtain permit to camp outside a facility	250
3.15(1)	Failure to obtain permit for liquor	250
3.16	Failure of permit holder to comply with responsibilities	250
4.2(1)	Behaviour detrimental to property	500
4.4	Under influence of liquor or prohibited drug	250
4.6(2)	Failure to comply with sign on local government property	500
5.3	Failure to comply with sign or direction on beach	500
5.4	Unauthorized entry to fenced or closed local government property	250
5.5	Gender not specified using entry of toilet block or change room	250
6.1(1)	Unauthorised entry to function on local government property	250
9.1	Failure to comply with notice	500

## **SCHEDULE 2**

### **DETERMINATIONS**

The following determinations or variations to determinations represent an updated version of all Determinations made under the Shire of Capel Local Government Property Local Law and most recently as a result of resolution OC0810 from the Council meeting of 24 August 2011.

The following determinations are to be taken to have been made by the local government under clause 2.1.

#### **PART 1 – PRELIMINARY**

##### **Definitions**

1.1 In these determinations unless the context otherwise requires –

“**local law**” means the *Local Government Property Local Law* made by the local government;

##### **Interpretation**

1.2 Unless the context otherwise requires, where a term is used but not defined in a determination and that term is defined in the local law then the term shall have the meaning given to it in the local law.

#### **PART 2 – ANIMALS AND VEHICLES ON FORESHORE**

##### **Foreshore area where animals and vehicles allowed**

2.1 In this Part reference to:

- an “animal” does not include a dog, and
- a “vehicle” does not include a motorcycle or any vehicle not registered under the Road Traffic Act 1975

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

- a) generally southwest of the prolongation of Dalyellup Road to the prolongation of the southern most boundary of Wellington Location 497 and generally south west of the prolongation of Rich Road to the Barndi Walk beach access ramp;
- b) generally southwest of the Hardey Terrace beach access ramp to the northern boundary of Leschenault Location 63; and

- c) southwest of the prolongation of Forrest Beach Road for a distance of 350 metres.
- 2.3 The training of horses will only be permitted on the foreshore described in 2.2(c) above, before 9.00am each day.
- 2.4 A person shall not ride, drive, exercise, train or race an animal or drive, ride, park, stand or leave a motor vehicle on any part of the foreshore set aside under determination 2.2 so as to interfere with the enjoyment of any person or create or become a danger to any person, animal or vehicle.

(Clauses 2.2(a) and (b) were amended at Minute OC1018, 10/10/01)

(Part 2 was amended at Minute OC1118, 08/11/06)

(Clauses 2.2 (b) & (c) were amended at minute OC 0204 10/2/10)

(Clause 2.3 was added at minute OC 0204 10/2/10)

(Clause 2.1 was amended at minute OC0810 24/8/11)

### **PART 3 – USE OF SANDBOARDS**

#### **Areas where sandboarding is prohibited**

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

### **PART 4 – USE OF MOTORCYCLES & UNREGISTERED VEHICLES**

#### **Areas where the use of motorcycles and unregistered vehicles is prohibited**

A person shall not, on any foreshore or sand dune ride a motor cycle, or any vehicle not registered under the Road Traffic Act 1975

(Part 4 was amended at minute OC0810 24/8/11)

### **PART 5 – BEACH ACCESS PROHIBITIONS**

- 5.1 In this Part reference to an "animal" does not include a dog.
- 5.2 (1) Interpretation  
In this determination, unless the contrary intention appears –  
'commercial fishing operations' means the activities, carried out in a safe and expedient manner, of –  
(a) searching for, taking or attempting to take, or collecting fish; and  
(b) launching or retrieving a licensed boat associated with the fishing operation;  
'emergency vehicle' has the same meaning as is given to it in the Road Traffic Act 1975;  
'motor vehicle' includes motor cycle;

'special purpose vehicle' has the same meaning as is given to it in the Road Traffic Act 1975;

(2) Application

This determination applies to the following land –

- (a) the beach area that lies between the high and low water mark generally south west of the Barndi Walk beach access to the prolongation of Wave Walk;
- (b) the beach area that lies between the high and low water mark generally south west of the prolongation of Wave Walk to the prolongation of Peppermint Grove Road;
- (c) the beach area that lies between the high and low water mark generally south west of the prolongation of Peppermint Grove Road to the Hardey Terrace Beach access;
- (d) the beach area that lies between the high and low water mark generally south west from the northern most boundary of the Shire of Capel to the prolongation of Dalyellup Road; and
- (e) the beach area that lies between the high and low water mark generally south west from the prolongation of the southern most boundary of Wellington Location 497 to the prolongation of Rich Road, Stratham.

(3) Driving of motor vehicles and bringing, riding or driving an animal prohibited

A person shall not drive, ride, park, stand or leave a motor vehicle or bring, ride or drive an animal on any of the land mentioned in subclause (2) of this determination.

(4) Exemptions

This determination shall not apply to:

- (a) a person employed by or under a public authority while acting in the course of his or her duties under written law and in a safe and expedient manner;
- (b) the driver of an emergency vehicle or special purpose vehicle in the course of his or her duties;
- (c) the holder of a current professional fisherman's licence issued under the Fisheries Resources Management Act 1994 and holder of a current Beach Access Permit issued by the Shire of Capel while he or she is engaged in commercial fishing operations for the areas indicated in:
  - (i) Clause 4.2 (2) (a) (c) during the period 16 February to 14 December, excluding weekends and public holidays in the period 16 February to 25 April; and
  - (ii) Clause 4.2 (2) (d), (e) and (f); and

(d) the driver of a motorised wheelchair.

(Part 4 was added at Minute OC1017, 10/10/01)

(Part 2 was amended at Minute OC1118, 08/11/06)

(Part 4 - 4.2(2) was amended at minute OC 0204 10/2/10)

(Part 5 was amended at minute OC0810 24/8/11)

\* \* \* \* \*

Dated 17<sup>th</sup> day of October 2012.

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

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**M T Scott, Shire President**

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**P F Sheedy, Chief Executive Officer**