



COUNCIL MEETING 22 APRIL 2009

En Bloc Council Resolution

RECOMMENDATION

That the Officer Recommendations for **Items 14.1, 14.2, 14.3, 14.4 and 14.5** be adopted.

Items to be dealt with by separate resolution, without debate

Item No. and Title	Page No.	Reason for Separate Resolution
Item 14.6 - Annual Budget Review - Period Ending 28 February 2009	19-53	Absolute Majority Decision Required

Items Identified for Debate (Pulled Items)

Item No and Title	Pulled By	Page No	Reason	Alternative Motion
<p>16.1 - Local Law Review - Shire of Busselton Local Government Property Local Law 2009</p>	<p>Staff</p>	<p>54-58</p>	<p>Various issues were raised by Councillors and an amended proposed local law has been provided based on these concerns.</p> <ol style="list-style-type: none"> 1. The definition of "building" has been changed to refer to buildings <u>on</u> local government property. Under clause 3.7 the ability for an agreement to be entered into regarding ownership of materials in a building has been limited to an authorised person. The Council will retain the ability to determine who, if anyone, is authorised for this purpose at a later stage. 2. The typographical error in clause 5.3(d) has been corrected to "hessian". <p style="text-align: right;"><i>Continued over page →</i></p>	<p>Adoption of <u>Officer Recommendation</u>, subject to the Local Law being amended as per Appendix A (attached).</p>

Item No and Title	Pulled By	Page No	Reason	Alternative Motion
16.1 (Continued)	Staff	54-58	<p>3. Clause 5.11 regarding golf courses has been deleted completely.</p> <p>4. Infringement penalties in schedule 1 have been increased to \$200.</p> <p>5. The reference in clause 2.6(5) to bringing glass on beaches and coastal reserves has been deleted.</p> <p>6. The issue of horse exercise areas was also raised. Rangers have checked all horse exercise areas at Wonnerup and Quindalup and both areas contain signage permitting the exercise of horses. Pursuant to clause 2.9 any sign erected previously takes effect as a determination under the new local law and therefore these areas continue to operate as areas where horses can exercise.</p> <p style="text-align: right;"><i>Continued over page →</i></p>	

Item No and Title	Pulled By	Page No	Reason	Alternative Motion
16.1 (Continued)	Staff	54-58	Activities such as the Trotting Club and Agricultural Society at Churchill Park operate under a written agreement with the Shire (as contemplated by clause 1.7 of the local law) and therefore signage is not required provided a permit is obtained as is currently the case.	
16.1 - Local Law Review - Shire of Busselton Local Government Property Local Law 2009	Cr Stubbs	54-58	Any organisation wishing to erect a building on Shire property should apply to the Council for approval. It is not something that should be controlled by a permit under a Local Law.	That the <u>Officer Recommendation</u> be adopted but with clauses 3.7 and 3.13(k) being deleted.
16.1 - Local Law Review - Shire of Busselton Local Government Property Local Law 2009	Cr Hartley	54-58	The prescribed penalties have not been raised sufficiently to act as a suitable deterrent and the Officer Recommendation does not adequately reflect changed monetary values since Shire Local Laws were last modified.	That the <u>Officer Recommendation</u> be adopted except Schedule 1 with the new prescribed offences penalties set at \$500.

Shire of Busselton

LOCAL GOVERNMENT PROPERTY LOCAL LAW 2009

Local Government Act 1995

Shire of Busselton

Local Government Property Local Law 2009

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Local Government Act 1995

Shire of Busselton

Local Government Property Local Law 2009

Under the powers conferred on it by the *Local Government Act 1995* and under all other relevant powers, the Council of the Shire of Busselton resolved on [insert day and month] to make this local law.

Part 1 - Preliminary**1.1 Citation**

This local law may be cited as the *Shire of Busselton Local Government Property Local Law 2009*.

1.2 Commencement

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

1.3 Application

This local law applies throughout the district.

1.4 Repeal

The following local laws are repealed-

- (a) *Local Law Relating to Poundage Fees*, published in the *Government Gazette* on 14 April 1939;
- (b) *Local Law Relating to Building*, published in the *Government Gazette* on 12 June 1959;
- (c) *Local Law Relating to Caravan Parks and Camping Grounds*, published in the *Government Gazette* on 24 December 1975; and
- (d) *Local Law Relating to Reserves and Foreshores*, published in the *Government Gazette* on 17 January 1986.

1.5 Definitions

In this local law -

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

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

“**authorised person**” means a person authorised by the Shire under section 9.10 of the Act to perform any of the functions of an authorised 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 on 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 Shire;

“**commencement day**” means the day on which this local law commences under clause 1.2;

“**Council**” means the council of the Shire;

“**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 –

- (a) the district of the Shire; and
- (b) any area outside the district of the Shire in respect of which the Governor’s approval under section 3.61 of the Act has been obtained;

“**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 meaning given to it in section 3 of the *Liquor Control Act 1988*;

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

- (a) which belongs to the Shire or in which the Shire has an interest;
- (b) of which the Shire is the management body under the *Land Administration Act 1997*;

- (c) which is unallocated Crown land as defined in the *Land Administration Act 1997*;
- (d) which is an 'otherwise unvested facility' within section 3.53 of the Act; or
- (e) which is the subject of the Governor's approval under section 3.61 of the Act.

“Manager” means the person for the time being employed by the Shire 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 Shire;

“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*;

“Shire” means the Shire of Busselton;

“sign” includes a notice, flag, mark, structure or device approved by the CEO or an authorised person on which may be shown words, numbers, expressions or symbols;

“surf riding equipment” means any device or toy used to or assist a rider in moving in or across waves or the water surface, and includes surfboard, boogie board, windsurfer, wave ski, canoe, kite surfer, inflatable toy or similar device but not a boat;

“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

“Unclaimed Property Register” means the register kept by an attendant of any unclaimed belongings under Division 4 of Part 5 of this local law.

“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.

1.6 Interpretation

In this local law a reference to local government property includes a reference to any part of that local government property.

1.7 Overriding power to hire and agree

Despite anything to the contrary in this local law, the CEO or an authorised person, on behalf of the Shire 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.

Part 2 - Determinations in respect of local government property

Division 1 - Determinations

2.1 Determinations as to use of local government property

- (1) The Council 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.

2.2 Procedure for making a determination

- (1) The CEO or an authorised person 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 Council 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 Shire's offices; and
 - (c) submissions in writing about the proposed determination may be lodged with the CEO 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 –
- (a) to give local public notice that the proposed determination has effect as a determination on and from the date of publication;
 - (b) to amend the proposed determination, in which case subclause (5) will apply; or
 - (c) not to continue with the proposed determination.
- (4) If submissions are received in accordance with subclause (2)(c), the Council –
- (a) is to consider those submissions; and
 - (b) is to 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.

2.3 Discretion to erect sign

The CEO or an authorised person may erect a sign on local government property to give notice of the effect of a determination which applies to that property.

2.4 Determination to be complied with

A person must comply with a determination.

2.5 Register of determinations

- (1) The CEO 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.

2.6 Amendment or revocation of a determination

- (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, the CEO 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**2.7 Activities which may be pursued on specified local government property**

- (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 CEO or an authorised person, 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.

2.8 Activities which may be prohibited on specified local government property

- (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) bringing, riding or driving an animal;
 - (d) taking, riding or driving a vehicle on the property or a particular class of vehicle;
 - (e) riding or driving a vehicle of a particular class or any vehicle above a specified speed;
 - (f) taking or using a boat, or a particular class of boat;
 - (g) 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 CEO or an authorised person may cause injury or damage to a person or property;
 - (h) the playing or practice of any ball game which may cause detriment to the property or any fauna on the property;
 - (i) depositing refuse, rubbish or liquid waste, whether or not of particular classes; and
 - (j) the traversing of sand dunes or land which in the opinion of the CEO or an authorised person 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

2.9 Signs taken to be determinations

- (1) Where a sign erected on local government property has been erected under a local law of the Shire that is 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

3.1 Application of Part

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

Division 2 - Applying for a permit

3.2 Application for permit

- (1) Where a person is required to obtain a permit under this local law, that person must apply for the permit in accordance with subclause (2).
- (2) An application for a permit under this local law must -
 - (a) be in the form determined by the CEO;
 - (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 by the Council under sections 6.16 to 6.19 of the Act.
- (3) The CEO or an authorised person may require an applicant to provide additional information reasonably related to an application before determining an application for a permit.
- (4) The CEO or an authorised person may require an applicant to give local public notice of the application for a permit.
- (5) The CEO or an authorised person may refuse to consider an application for a permit which is not in accordance with subclause (2) or where the requirements of subclause (3) or (4) have not been satisfied.

3.3 Decision on application for permit

- (1) The CEO or an authorised person 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 CEO or an authorised person approves an application for a permit, he or she is to issue to the applicant, a permit in the form determined by the CEO.
- (3) If the CEO or an authorised person refuses to approve an application for a permit, he or she is to give written notice of that refusal to the applicant.

- (4) The CEO or an authorised person may, at any time, amend a condition of approval and the amended condition takes effect when written notice of it is given to the permit holder.

Division 3 - Conditions

3.4 Examples of conditions

- (1) Examples of the conditions that the CEO or an authorised person may impose on a permit are conditions relating to -
- (a) the payment of a fee;
 - (b) compliance with a standard or a policy adopted by the Shire;
 - (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 Shire 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 CEO or an authorised person.
- (2) Examples of the type and content of the conditions on which a permit to hire local government property may be issued include -
- (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 CEO or an authorised person to cancel a booking during the course of an annual or seasonal booking, if the CEO or an authorised person 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 Control 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 CEO or an authorised person and the hirer, indemnifying the CEO or the authorised person 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 Shire 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.

3.5 Imposing conditions under a policy

- (1) In this clause –
 - “**policy**” means a Shire policy 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 CEO or an authorised person may approve an application subject to conditions by reference to a policy.
- (3) The CEO or an authorised person must give to the permit holder a copy of the policy or, at the discretion of the CEO or the authorised person, 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 is not to be taken to have been approved subject to the conditions contained in a policy until the CEO or an authorised person 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 apply to a policy and, for that purpose, a policy is deemed to be information within section 5.94(u)(i) of the Act.

3.6 Compliance with conditions

Where an application for a permit has been approved subject to conditions, the permit holder must comply with each of those conditions, as amended.

Division 4 - General

3.7 Agreement for building

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

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3.8 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 3.12.

3.9 Renewal of permit

- (1) A permit holder may apply to the CEO in writing prior to expiry of a permit for the renewal of the permit.
- (2) The provisions of this Part must apply to an application for the renewal of a permit as though it were an application for a permit.

3.10 Transfer of permit

- (1) An application for the transfer of a valid permit is -
 - (a) to be made in writing;
 - (b) to be signed by the permit holder and the proposed transferee of the permit;
 - (c) to provide such information as the CEO or an authorised person may require to enable the application to be determined; and
 - (d) to be forwarded to the CEO together with any fee imposed by the Council under sections 6.16 to 6.19 of the Act.
- (2) The CEO or an authorised person may approve an application for the transfer of a permit, refuse to approve it or approve it subject to any conditions.
- (3) Where the CEO or an authorised person approves an application for the transfer of a permit, the transfer may be effected by an endorsement on the permit signed by the CEO or the authorised person.
- (4) Where the CEO or an authorised person approves the transfer of a permit, the Shire is not required to refund any part of any fee paid by the former permit holder.

3.11 Production of permit

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

3.12 Cancellation of permit

- (1) Subject to clause 9.1, a permit may be cancelled by the CEO or an authorised person if the permit holder has not complied with –
 - (a) a condition of the permit;
 - (b) a direction under clause 3.16(b); or

- (c) a 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) must 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

3.13 Activities needing a permit

- (1) A person must 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, on local government property, a structure for public amusement or for any performance, whether for gain or otherwise;
 - (d) teach, coach or train, for profit, any person on a beach, in a pool area or in an indoor recreation facility which is local government property;
 - (e) 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 in accordance with the permit; or
 - (ii) by a person who has a licence or permit to carry on trading on Shire property under any written law;
 - (f) unless an employee of the Shire 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 stop any vehicle on local government property;
 - (g) conduct a function on local government property ;
 - (h) 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;
 - (i) light a fire on local government property except in a facility provided for that purpose;
 - (j) parachute, hang glide, abseil or base jump from or on to local government property;
 - (k) erect a building or a refuelling site on local government property;

- (l) make any excavation on or erect or remove any fence on local government property;
 - (m) 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;
 - (n) depasture any horse, sheep, cattle, goat, camel, ass or mule on local government property;
 - (o) conduct or take part in any gambling game or contest or bet, or offer to bet, publicly, or
 - (p) erect, install, operate or use any broadcasting, public address system, loudspeaker or other device for the amplification of sound on local government property.
- (2) The CEO or an authorised person may exempt a person from compliance with subclause (1) on the application of that person.
- (3) The CEO or an authorised person may exempt specified local government property or a class of local government property from the application of subclause (1)(a).

3.14 Permit required to camp outside a facility

- (1) In this clause –
- “**facility**” has the meaning 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 Shire.
- (3) A person must 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 CEO or an authorised person 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*.

3.15 Permit required for possession and consumption of liquor

- (1) A person must not, on local government property, 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 Control 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

3.16 Responsibilities of permit holder

A holder of a permit must, in respect of local government property to which the permit relates -

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- (a) ensure that an authorised 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) comply with a direction from the CEO or an authorised person to take the action specified in the direction for the purpose of maintaining public safety;
- (c) leave the local government property in a clean and tidy condition after its use;
- (d) report any damage or defacement of the local government property to the CEO or an authorised person; and
- (e) 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 Control Act 1988* for that purpose.

Part 4 - Behaviour on all local government property

Division 1 - Behaviour on and interference with local government property

4.1 Behaviour which interferes with others

A person must not, in or on any local government property, behave in a way which -

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

4.2 Behaviour detrimental to property

- (1) A person must not in or on local government property, behave in a way that 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.

4.3 Fauna

- (1) A person must not take, injure or kill any fauna that is on or above any local government property, unless that person is authorised to do so under a written law or by the CEO or an authorised person.

- (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.

4.4 Flora

- (1) Unless authorised to do so under a written law or with the written approval of the CEO or an authorised person, a person must not –

- (a) remove, damage or interfere with any flora that is on or above any local government property; or
- (b) plant or deposit any flora on local government property.

- (2) In this clause –

“**flora**” means all vascular plants, seeds and other flora, whether living or dead.

4.5 Intoxicated persons not to enter local government property

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

4.6 No prohibited drugs

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

4.7 Refusal of entry and removal

- (1) If the CEO or an authorised person considers that a person has behaved, or is likely to behave, in a manner contrary to the provisions of this Part, the CEO or authorised person may –

- (a) refuse to allow that person to enter local government property; and

- (b) if the person is on local government property, direct the person to leave the local government property.
- (2) A person who has been refused entry or who has been directed to leave under subclause (1) must immediately leave the local government property quickly and peaceably.
- (3) If a person fails to comply with subclause (2), the CEO or an authorised person may remove the person, or arrange for the person to be removed, from the local government property.

Division 2 - Signs

4.8 Signs

- (1) The CEO or an authorised person may erect a sign on local government property –
 - (a) specifying any conditions of use which apply to that property; or
 - (b) for any other purpose relevant to this local law, including giving notice of a breach of clause 4.4 and substituting a sign for flora that has been removed, damaged or interfered with contrary to clause 4.4.
- (2) A person must 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 - Swimming pool areas

5.1 When entry must be refused

- (1) A Manager or an authorised person must refuse admission to any person who –
 - (a) in her or his opinion is –
 - (i) under the age of 4 years and who is unaccompanied by a responsible person over the age of 12 years;
 - (ii) under the age of 4 years and who is accompanied by a responsible person over the age of 12 years where the responsible person is incapable of or not providing, adequate supervision of or care for that person;
 - (iii) suffering from any contagious, infectious or cutaneous disease or complaint, or is in an unclean condition; or

- (iv) under the influence of liquor or a prohibited drug; or
 - (b) is to be refused admission by the CEO or an authorised person for breaching a clause of this local law.
- (2) If a person referred to in paragraph (a) or (b) of subclause (1) is in a pool area, a Manager or an authorised person must –
- (a) direct the person to leave; and
 - (b) if the person refuses or fails to leave, remove the person or arrange for the person to be removed, from the pool area.

5.2 Consumption of food or drink may be prohibited

A person must not consume any food or drink in an area where consumption is prohibited by a sign.

Division 2 - Beaches

5.3 Powers of authorised persons or surf life saving club members

- (1) An authorised person employed by the Shire may 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) Subject to subclause (3), the CEO may authorise under section 9.10 of the Act the members of a surf life saving club to perform all or any of the functions listed in subclause (1).
- (3) Members authorised by the CEO under subclause (2) must 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 authorised.
- (4) Under subclause (2), the CEO may authorise members generally, or in relation to particular times, days or months.

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5.4 Authority of Shire employee to prevail

If the CEO has authorised a person under clause 5.3(1) and a member of a surf life saving club under clause 5.3(2) in relation to the same beach, where they could perform

a function referred to in clause 5.3(1) contemporaneously, the authority of an authorised person employed by the Shire under clause 5.3(1) is to prevail.

5.5 Persons to comply with signs and directions

A person must -

- (a) not act in contravention of any sign erected on a beach under clause 5.3(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 from the club permission to enter;
- (c) comply with any direction given under clause 5.3(1)(c) or 5.3(1)(e);
and
- (d) not interfere with, obscure, obstruct, or hang any item of clothing or towel on a flag, sign, notice or item of life saving equipment.

Division 3 - Fenced or closed property

5.6 No entry to fenced or closed local government property

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 authorised to do so by CEO or an authorised person.

Division 4 - Toilet blocks and change rooms

5.7 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 must not use that entry of the toilet block or change room;
 - (b) males, then a person of the female gender must not use that entry of the toilet block or change room; or
 - (c) families, then persons who are not immediate members of a family must not use that entry of the toilet block or change room where it is already being used by a different family.
- (2) Clause 5.7(1)(a) and (b) does not apply to children under the age of 6 years when accompanied by a parent or guardian.

5.8 Hire of lockers

- (1) A person may hire a locker in or near a changeroom for the purpose of safekeeping articles on the conditions that -

- (a) it is the responsibility of the person hiring the locker to lock the locker once the articles to be stored are placed in the locker and to return the key to the attendant; and
 - (b) on receiving a receipt given in respect of the hire of the locker, an attendant is to hand to that person the key for the locker described in the receipt in order to remove the articles from the locker.
- (2) A person must not store in any locker a firearm or offensive weapon or any article or substance that has been unlawfully acquired or which is a substance or article within the meaning of 'dangerous goods' under the *Dangerous Goods Safety Act 2004*.
- (3) An attendant or authorised person may open and inspect the contents of a locker at any time, where the attendant or authorised person reasonably suspects that a breach of this local law has occurred.

5.9 Unclaimed property in locker

- (1) If an article in a locker is not claimed or collected within 48 hours after the date of hire, the article may be removed by an attendant or authorised person.
- (2) An attendant or authorised person must record in the Unclaimed Property Register, with respect to each article removed from a locker –
- (a) a description of the article removed;
 - (b) the time and date the article was removed; and
 - (c) the time and date recorded on the original receipt.
- (3) An attendant or authorised person must ensure that an article removed from the locker is stored at the place determined by the CEO or an authorised person.
- (4) An attendant or authorised person may deliver to a person an article recorded in the Unclaimed Property Register on receiving –
- (a) satisfactory evidence of the person's right to obtain the article;
 - (b) an accurate description of the article being claimed; and
 - (c) payment of any outstanding fees or storage charges.
- (5) A person who receives delivery of an article from the Unclaimed Property Register must, by way of acknowledging receipt of the article, write his or her name and address and sign his or her name in the Unclaimed Property Register.

5.10 Use of shower or bath facilities

A person may use a shower or bath facility in changerooms only on conditions that –

- (a) the facilities must be used by the person only for the purpose of cleansing, bathing and washing themselves;

- (b) use of the facilities must be restricted to a maximum period of 15 mins or such lesser time as required by an attendant; or
- (c) the facilities must not be used for the purpose of laundering or washing any clothing or other articles.

Part 6 - Fees for entry on to local government property

6.1 No unauthorised entry to function

- (1) A person must 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 authorised, except –
 - (a) through the proper entrance for that purpose; and
 - (b) on payment of the fee chargeable for admission at the time.
- (2) The CEO or an authorised person may exempt a person from compliance with subclause (1)(b).

Part 7 - Objections and appeals

7.1 Objection and appeal rights

Division 1 of Part 9 of the Act applies to a decision under this local law –

- (a) to grant, renew, amend or cancel a permit or consent; and
- (b) to refuse to allow a person to enter, or to direct a person to leave, any local government property.

Part 8 - Miscellaneous

8.1 CEO and authorised person to be obeyed

A person on local government property must obey any lawful direction of the CEO or an authorised person and must not in any way obstruct or hinder the CEO or an authorised person in the execution of her or his duties.

8.2 Persons may be directed to leave local government property

The CEO or an authorised 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.

Deleted: <#>Golf courses¶
 <#>Interpretation¶
 In this Division –¶
 “controller” means the person appointed by the CEO to direct, control and manage a golf course;¶
 “golf course” means that portion of a golf course reserve which is laid out as a golf course and includes all tees, fairways, greens, practice tees, practice fairways, practice greens and any driving range; and¶
 “golf course reserve” means the local government property described in Schedule 2 and includes all buildings, structures, fittings, fixtures and equipment on that land.¶
 <#>Observance of special conditions of play¶
 While on a golf course, a player must –¶
 <#>observe and comply with a direction of the controller in respect of any special conditions of play; ¶
 <#>observe and comply with a requirement of any notice erected to direct or control play;¶
 <#>not be accompanied by a non playing person without the permission of the controller or an authorised person¶
 <#>Children under the age of 10 years¶
 A person under the age of 10 years must not enter, play or practice on a golf course unless accompanied by a person of 18 years or older. ¶

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8.3 Disposal of lost property

An article left on any local government property, and not claimed within a period of 3 months, may be disposed of by the CEO or an authorised person in any manner he or she thinks fit.

8.4 Decency of dress

Where an authorised person considers that the clothing of any person on local government property is not proper and adequate to secure decency, the authorised person may order that person to put on adequate clothing and that person is to comply with the order immediately.

8.5 False or misleading statement

A person must not make a false or misleading statement in connection with an application, direction or notice under this local law.

Part 9 - Enforcement

Division 1 - Notices

9.1 Definition

In this Division –

“costs” of the Shire include its administrative costs.

9.2 Damage to local government property

If a person unlawfully removes, damages or interferes with local government property, the CEO or an authorised person may, at his or her option –

- (a) replace the property, or reinstate the property to the state it was in before the removal, damage or interference, and recover, from that person, as a debt, the costs of doing so; or
- (b) give the person a notice under this Division.

9.3 Breach of a permit

If a permit holder breaches a condition of the permit, or fails to comply with a direction under clause 3.16(b), the CEO or an authorised person may, at his or her option, either –

- (a) take whatever remedial action he or she considers to be appropriate to put the Shire in the position it would have been in if the breach or failure had not occurred, and to recover from the permit holder, as a debt, the costs of doing so; or
- (b) give the permit holder a notice under this Division.

9.4 Notice requirements

A notice under this Division must –

- (a) be in writing;
- (b) specify the reason for giving the notice, the work or action that is required to be undertaken and the time within which it is to be undertaken; and
- (c) be given to the person referred to in clause 9.2 or 9.3, as the case may be.

9.5 Offence to fail to comply with notice

A person who fails to comply with a notice given to him or her under this local law commits an offence.

9.6 Shire may undertake requirements of notice

If a person fails to comply with a notice given to him or her under this local law, the CEO or an authorised person may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs of doing so.

Division 2 - Offences and penalties

9.7 Offences and general penalty

- (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) 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.

9.8 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 the amount 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 authorised person should be satisfied that –
 - (a) commission of the prescribed offence is a relatively minor matter; and
 - (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

9.9 Form of notices

- (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.

9.10 Evidence of a determination

- (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

CLAUSE	DESCRIPTION	MODIFIED PENALTY \$
2.4	Failure to comply with determination	\$200
3.6	Failure to comply with conditions of permit	\$200
3.13(1)	Failure to obtain a permit	\$200
3.14(3)	Failure to obtain permit to camp outside a facility	\$200
3.15(1)	Failure to obtain permit for liquor	\$200
3.16	Failure of permit holder to comply with responsibilities	\$200
4.2(1)	Behaviour detrimental to property	\$200
4.3	Taking, Injuring, Killing any Fauna	\$200
4.4	Removing, damaging, interfering, with any flora or planting or depositing any flora	\$200
4.5	Under influence of liquor or prohibited drug	\$200
4.7	Unauthorised entry or failure to leave local government property	\$200
4.8(2)	Failure to comply with sign on local government property	\$200
5.2	Consuming food or drink in prohibited area	\$200
5.5	Failure to comply with sign or direction on beach	\$200
5.6	Unauthorised entry to fenced or closed local government property	\$200
5.7	Gender not specified using entry of toilet block or change room	\$200
6.1(1)	Unauthorised entry to function on local government property	\$200
8.5	Making a false or misleading statement	\$200
9.5	Failure to comply with notice	\$200
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Schedule 2 - Determinations

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

Part 1 - Preliminary

1.1 Definitions

In these determinations unless the context otherwise requires –

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

“**waste**” includes refuse and rubbish, whether liquid, solid, gaseous or radioactive.

1.2 Interpretation

Where a term is used but not defined in a determination and that term is defined in this local law then the term is to have the meaning given to it in this local law.

Part 2 - Application

2.1 Animals on local government property

- (1) A person must not tether any animal to a tree, shrub, tree guard, wall or fence or permit any animal to enter upon or into any local government property except where a permit or a determination specifies a particular local government property.
- (2) This clause does not apply to a guide dog used for the assistance of visually impaired persons.

2.2 Vehicles on local government property

- (1) Unless under the authority of a permit or determination, a person must not take or cause a vehicle to be taken onto or driven on local government property unless –
 - (a) the local government property is clearly designated as a road, access way or car park;
 - (b) the vehicle is driven by a local government employee, authorised person or contractor engaged by the Shire, who is engaged in providing a service, maintaining or making a delivery in connection with the local government property;
 - (c) the person is driving an emergency vehicle in the course of his or her duties; or
 - (d) the vehicle is a motorised wheelchair.
- (2) A person must not drive a vehicle or allow a vehicle to be driven on local government property at a speed exceeding 10 kilometres per hour, or in such a manner as to cause danger, inconvenience or annoyance to any person.

2.3 Motorised model aeroplanes, toys or ships

A person must not use, launch or fly a motorised model aeroplane, toy, ship, glider or rocket that is propelled by mechanical, hydraulic, combustion or pyrotechnic means on or from local government property except where a permit or a determination specifies a particular local government property.

2.4 Children's playgrounds

- (1) The Council may set aside a public reserve or any portion of a public reserve as a children's playground.
- (2) The Council may limit the ages of persons who are permitted to use a children's playground and the CEO or an authorised person may erect a sign under clause 2.3 of this local law to that effect on or in the immediate vicinity of the playground.
- (3) A person over the age specified in that sign, other than a person having the charge of a child or children in the playground, must not use a playground or interfere with the use by children of the playground.
- (4) The Council may prohibit dogs from being in a children's playground or in the vicinity of children's playgrounds by the placement of a sign indicating that prohibition.

2.5 Launching and retrieval of boats

A person must not take onto, launch from, or retrieve a boat on local government property except where a permit or a determination specifies a particular local government property unless –

- (a) the person is a local government employee, authorised person or contractor engaged by the Shire and who is engaged in providing a service, maintaining or making a delivery in connection with the local government property;
- (b) the person is in charge of a boat engaged in rescue services or dealing with an emergency;
- (c) the local government property is a boat ramp that is delineated by a sign to that effect.

2.6 Activities prohibited on local government property

- (1) A person is prohibited from playing or practising archery, pistol or rifle shooting on local government property except on land which is reserved by the Shire for that purpose, or as otherwise provided by determination or permit.
- (2) A person is prohibited from playing or practising golf, on local government property except on the Dunsborough and Districts Country Club, Reserve No. 34894.
- (3) A person must not use or ride a bicycle or wheeled recreational device, skateboard, or sand board on any local government property except on an area specified by a sign erected on the local government property.

- (4) A person must not use or take on to, a spear gun, hand spear, gidgie or similar device on any local government property.
- (5) Unless authorised by a permit or by the CEO or an authorised person, a person must not take a glass container -

(a) within 5m of the edge of a swimming pool on local government property;

(b) on to a children's playground; or

(c) within any area of local government property as indicated by signs.

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2.7 Fish cleaning

A person must not shell, gut, scale or clean fish, shellfish or any other animal, or deposit or discard waste from any fish, shellfish or other animal on local government property.

2.8 Waste

A person must not deposit or discard waste on local government property except –

- (a) in a place or receptacle set aside by the CEO or an authorised person for that purpose and subject to any conditions that may be specified on the receptacle or sign in relation to the type of waste that may be deposited or other conditions; or
- (b) at the Busselton Waste Facility, Rendezvous Road Busselton and the Dunsborough Waste Facility, Vidler Road Dunsborough, and subject to directions issued from time to time by the CEO or an authorised person for the orderly and proper use of those waste facilities in relation to hours of business, separation of waste into designated receptacles, prohibition of the deposit of certain types of refuse or waste, and conduct of persons or persons in charge of vehicles while on the site.

2.9 Umbrellas and temporary shade structures

- (1) A person may erect an umbrella or temporary shade structure on local government property that is not enclosed if –

- (a) it is erected for protection from the sun or other elements
- (b) it has an area of 6m² or less;
- (c) it has a height of 2.5m or less;
- (d) it is removed by that person immediately on leaving the local government property; and
- (e) it is not erected for advertising or promotional purposes
- unless in accordance with a permit or other prior authorisation given by the CEO or an authorised person.

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

Chief Executive Officer

President

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Failure to comply with sign or direction on beach

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Unauthorised entry to fenced or closed local government property

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Gender not specified using entry of toilet block or change room

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Failure to comply with direction of controller or notice on golf course

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Unauthorised entry to function on local government property

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Making a false or misleading statement

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Failure to comply with notice