



**CORPORATE & GOVERNANCE**  
**DIRECTORATE**  
**BOOK 1**  
**APPENDICES**

**ORDINARY COUNCIL MEETING**

To Be Held

Wednesday, 24<sup>th</sup> of November 2021  
Commencing at 5.00pm

At

Shire of Dardanup  
ADMINISTRATION CENTRE EATON  
1 Council Drive - EATON

This document is available in alternative formats such as:  
~ Large Print  
~ Electronic Format [disk or emailed]  
Upon request.



## (Appendix ORD: 12.4.1)

RISK ASSESSMENT TOOL								
<b>OVERALL RISK EVENT:</b> Bunbury & Districts Softball Association – Request for Use of Glen Huon Oval								
<b>RISK THEME PROFILE:</b> 10 - Management of Facilities, Venues and Events								
<b>RISK ASSESSMENT CONTEXT:</b> Operational								
CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL		
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD	RESIDUAL RISK RATING
<b>HEALTH</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
<b>FINANCIAL IMPACT</b>	Additional usage to the Glen Huon Oval may increase maintenance costs	Minor (2)	Possible (3)	Moderate (5 - 11)	Not required.	Not required.	Not required.	Not required.
<b>SERVICE INTERRUPTION</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
<b>LEGAL AND COMPLIANCE</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
<b>REPUTATIONAL</b>	Councils non-support of the request could be seen in a negative light by the club members and the public	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
<b>ENVIRONMENT</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.

## (Appendix ORD: 12.4.2A)

RISK ASSESSMENT TOOL								
<b>OVERALL RISK EVENT:</b>		Adoption of Local Government Property Local Law 2021						
<b>RISK THEME PROFILE:</b>		3 - Failure to Fulfil Compliance Requirements (Statutory, Regulatory)						
<b>RISK ASSESSMENT CONTEXT:</b>		Operational						
CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL		
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD	RESIDUAL RISK RATING
<b>HEALTH</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required	Not required.	Not required.	Not required.
<b>FINANCIAL IMPACT</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required	Not required.	Not required.	Not required.
<b>SERVICE INTERRUPTION</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required	Not required.	Not required.	Not required.
<b>LEGAL AND COMPLIANCE</b>	Failing to review in the 8 yearly cycle as stipulated in s.3.16 of Local Government Act 1995.	Minor (2)	Rare (1)	Low (1 - 4)	Not required	Not required.	Not required.	Not required.
<b>REPUTATIONAL</b>	Council would be seen in a negative light if we failed in our legislative requirements.	Minor (2)	Rare (1)	Low (1 - 4)	Not required	Not required.	Not required.	Not required.
<b>ENVIRONMENT</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required	Not required.	Not required.	Not required.

**Cathy Lee**

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**Subject:** FW: Dardanup Local Government Property Local Law 2021

**From:** Adam Ford <[adam.ford@dlgsc.wa.gov.au](mailto:adam.ford@dlgsc.wa.gov.au)>  
**Sent:** Tuesday, 1 June 2021 12:18 PM  
**To:** Governance Mailbox <[governance@dardanup.wa.gov.au](mailto:governance@dardanup.wa.gov.au)>  
**Subject:** Dardanup Local Government Property Local Law 2021

Good Morning,

This email is regarding the Shires proposed local government property local law. Department's comments are provided below:

**Local Government Property Local Law 2021**

**1. Jetties and jurisdictional boundaries**

Part 7 of the local law relates to the regulation of jetties.

The *Local Government Act 1995* provides under section 3.5(2) a local law may only apply to the local government's district. The Shire should ensure that the waters under and around the jetties are within the Shire's official district boundaries.

As a general rule, the districts of coastal local governments are deemed to end at the low water mark of the coastline. Depending on the official wording of a local government's boundary rivers and lakes on the edge of the district may also potentially not be included.

If the waters under and around the jetties are not within the Shire's boundaries, then in accordance with section 3.6 of the Act, the Shire must obtain the Governor's approval to make a local law applying outside the district. Without the Governor's approval, the local law would only apply to the area of the jetty that lay within the district boundaries (i.e. the portion located on land).

If a Governor's approval is required, the Department can process this request on the Shire's behalf. The Shire's should submit a request for approval along with the final draft of the local law. This approval should be obtained prior to the final draft being approved by Council.

**2. Clause 3.6 - Notice of variation of condition**

It is recommended that the Shire amends this clause to outline the following:

- when variations of conditions are effective.
- If the permit holder will receive any written notice.

**3. Clause 3.16 – Responsibility for actions of third parties**

Subclause (d) provides that a holder of a permit in respect of local government property that the permit relates is responsible for preventing the consumption of liquor on that property.

In the past, the Delegated Legislation Committee has raised issues with local laws that attempt to:

- hold a person liable for civil action resulting from the actions of others; or
- prosecute a person for an offence committed by another individual

It is suggested that the Town insert the following words at the start of the subclause "Take all reasonable action to...".

#### 4. Clause 5.3(b) – Banning individuals from local government property

Clause 5.3(b) provides that people may be banned from local government property following a decision of the local government.

The Delegated Legislation Committee has previously allowed provisions of this kind. However, the Committee has requested that the local law state the circumstances where a ban can be imposed and the duration of these bans.

The Committee has previously objected to provisions that:

- (a) Allows indefinite bans;
- (b) Allows people to be banned for offences that don't relate to conduct on property; or
- (c) Could be applied in an inconsistent manner.

It is suggested that the Shire review the clause to ensure that these issues are addressed.

#### 5. Entry into private property – Boats and jetties

Under clause 11.2, the Shire can issue a notice where a person fails to comply with a condition or fails to comply with a direction given by the City under any written law. Where a notice is not complied with, the local government can take action to remedy the situation.

In previous jetty local laws, the Joint Standing Committee has raised concerns with clauses that may permit the local government to enter private property (specifically vehicles and boats) in situations not contemplated under the Local Government Act. These concerns can be found in item 14 of the Committee's 16<sup>th</sup> Report.

It is suggested that the City should investigate this issue and determine whether any further changes to the clause may be required.

#### 6. Minor Edits

The following minor edits are suggested:

- Amend clause 4.2(b) to say:

"destroying, defacing, cutting, breaking or damaging any thing on the local government property, such as a plant or a seat provided for the use of any person or a building."

- In clause 1.3 insert the definition on prohibited drug:

**"prohibited drug** has the same meaning as given in section 3 of the *Misuse of Drugs Act 1981*;"

- In clause 1.2 change "Government Gazette" to italics.
- In clause 1.3 insert a suitable definition for "**children's playground**".
- In clause 1.3 in the definition for **local government** remove the italics from "Shire of Dardanup"
- Clause 3.13(1)(a): Change "3" to "(3)".
- Clause 3.15(1): Reformat the paragraphs for consistency.

- Clause 5.2(2): Reformat the paragraphs for consistency. **(Appendix ORD: 12.4.2B)**
- Clause 5.9: Change "5.9" to bold.
- Schedule 1 does not contain a modified penalty for an offence under clause 7.13 or clause 8.14. The Shire should ensure that this reflects the Shire's intent.

Schedule 2 currently doesn't contain any information. If there are no determinations which the Shire intends to have in place on commencement day, Schedule 2 has no purpose and can be deleted without issue. If the schedule is deleted, clause 2.1(2) may also be removed.

The Shire should also ensure that all references and cross references are accurate, particularly if any changes are made as a result of the Department's comments.

The Shire should also ensure that all references and cross references are checked, particularly if any changes are made as a result of the Department's comments.

**Minister's Directions – pursuant to s 3.12(7) of the Local Government Act 1995**

Please note: once the Shire has published a local law in the *Government Gazette*, the Shire must comply with the requirements of the Minister's *Local Laws Explanatory Memoranda Directions 2010*.

The Shire must, within 10 working days of the Gazettal publication date, forward the signed Explanatory Memoranda material to the Committee at the current address:

Committee Clerk  
Joint Standing Committee on Delegated Legislation  
Legislative Council Committee Office  
GPO Box A11  
PERTH WA 6837  
Email: [delleg@parliament.wa.gov.au](mailto:delleg@parliament.wa.gov.au)  
Tel: 9222 7404  
Fax: 9222 7805

A copy of the Minister's Directions and Explanatory Memoranda forms can be downloaded from the Department of Local Government, Sport and Cultural Industries website at [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au). Failure to comply with the Directions may render the local law inoperable.

Please note that my comments:

- have been provided to assist the Shire with drafting matters in relation to the local law;
- do not constitute legal advice;
- have been provided in good faith for the Shire's consideration; and
- should not be taken as an approval of content.

The Shire should ensure that a detailed editorial analysis of the proposed local law has been undertaken and that the content of the local law is in accordance with the Shire policies and objectives.

Kind regards,

**Adam Ford**

A/Legislation and Statutory Approvals Officer

Department of Local Government, Sport and Cultural Industries  
140 William Street, Perth WA 6000  
PO Box 8349, Perth Business Centre WA 6849

Telephone: (08) 6552 1701

Email: [Adam.Ford@dlgsc.wa.gov.au](mailto:Adam.Ford@dlgsc.wa.gov.au)

Web: [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au)

**Cathy Lee**

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**Subject:** FW: Dardanup Local Government Property Local Law 2021  
**Attachments:** SIGNED EXCO PAPER - hard copy received.PDF

**From:** Adam Ford <adam.ford@dlgsc.wa.gov.au>  
**Sent:** Tuesday, 28 September 2021 1:22 PM  
**To:** Cathy Lee <Cathy.Lee@dardanup.wa.gov.au>  
**Subject:** RE: Dardanup Local Government Property Local Law 2021

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Hi Cathy,

The public notice for the local law to apply outside the district has been published in today's government gazette.

[https://www.legislation.wa.gov.au/legislation/prod/gazettestore.nsf/FileURL/gg2021\\_166.pdf/\\$FILE/Gg2021\\_166.pdf?OpenElement](https://www.legislation.wa.gov.au/legislation/prod/gazettestore.nsf/FileURL/gg2021_166.pdf/$FILE/Gg2021_166.pdf?OpenElement)

Please also find the attached signed minute from the Executive Council.

The Shire can now proceed with making the local law.

Kind regards,

**Adam Ford**

A/Legislation and Statutory Approvals Officer

Department of Local Government, Sport and Cultural Industries  
140 William Street, Perth WA 6000  
PO Box 8349, Perth Business Centre WA 6849

Telephone: (08) 6552 1701

Email: [Adam.Ford@dlgsc.wa.gov.au](mailto:Adam.Ford@dlgsc.wa.gov.au)

Web: [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au)



Executive Council **(Appendix ORD: 12.4.2C)**

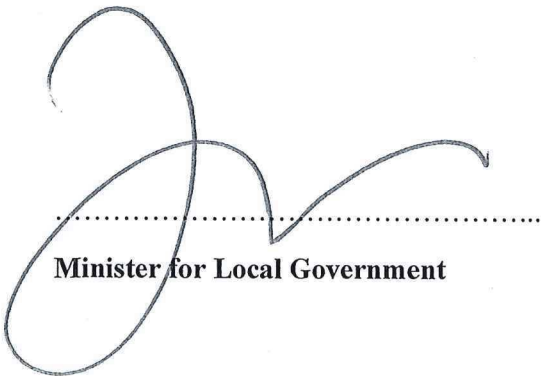
Western Australia

Department File No. .... M21002423

Minute No. .... 3360

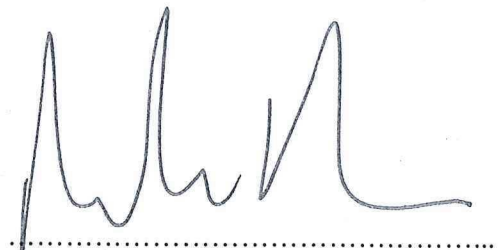
The Council advises the Governor to

Under the *Local Government Act 1995* section 3.6(1) to approve of the making of the *Shire of Dardanup Local Government Property Local Law 2021*, as set out in the attached draft, to the extent that it will apply outside the district of the Shire of Dardanup.



.....

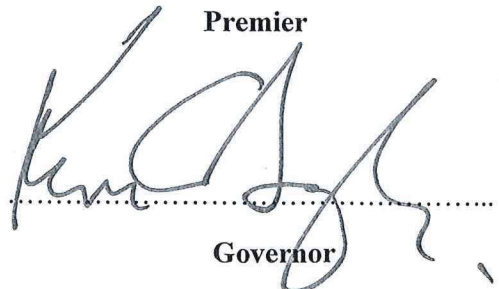
**Minister for Local Government**



.....

**Premier**

Date of Meeting ..... 7 SEP 2021

Approved  .....

**Governor**



Western (Appendix ORD: 12.4.2C)  
 Australian  
 Government

4487

# Gazette

ISSN 2204-4264 (online)

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## LOCAL GOVERNMENT

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LG401

### LOCAL GOVERNMENT ACT 1995

*Shire of Dardanup*

#### APPLICATION OF LOCAL LAW OUTSIDE DISTRICT

It is hereby noted for public information that under section 3.6(1) of the *Local Government Act 1995*, the Governor has approved of the making of the *Shire of Dardanup Local Government Property Local Law 2021* to the extent that it will apply outside the district of the Shire of Dardanup.

TIM FRASER, Executive Director-Local Government,  
Department of Local Government, Sport and Cultural Industries.

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LG501

### BUSH FIRES ACT 1954

#### FIRE BREAK NOTICE 2021/22

Notice to all owners and occupiers of land in the following local Authorities

*City of Nedlands, Town of Mosman Park, Town of Claremont, Town of Cottesloe and the Shire of Peppermint Grove.*

To prevent the outbreak, spread or extension of a bush fire which may occur, all owners and occupiers of land within the districts of the above local Authorities are required to undertake the following work on or before the 30th day of November 2021, or within 14 days of becoming an owner or occupier after that date—

**Residential Land**—Slash all grass and clear all inflammable matter on the land to a height no greater than 50mm and to maintain all grass and all inflammable matter on the land at a height no greater than 50mm up to and including the 31st day of March 2022.

**All Other Land**—Create a fire break that is clear of all inflammable matter on the land to a height no greater than 50mm and for width of no less than three metres from immediately inside the external boundaries of the property. Where there are trees in the fire break they must be trimmed back to provide a vertical clearance of a minimum three and a half metres to allow fire appliances to drive along the fire break.

If it is impracticable for any reason to clear firebreaks or take measures in accordance with this notice, you may apply in writing to your Council before the 15th day of November 2021 for permission to implement alternative measures to prevent the outbreak or spread of a bush fire. If permission is not granted in writing by your Council, you shall comply with the requirements of this notice.

Pursuant to the powers contained in the *Bush Fires Act 1954*, burning garden refuse and lighting fires in the open air is prohibited without a permit.

An owner or occupier of the land who fails or neglects to comply with this notice given pursuant to section 33 of the *Bush Fires Act 1954* within the time specified in this notice, commits an offence and is liable to pay a penalty up to \$5,000. A person in default is also liable, whether prosecuted or not, to pay the cost of performing the work directed in this notice if it is not carried out by the owner or occupier by the date required by this notice.

**Verge Maintenance**—Your Council principally relies on residents for the improvement and maintenance of nature strips. Council encourages nature strips to be maintained by the adjacent owner/occupier in support of the Bush Fires Act requirements under this notice.

By Order City of Nedlands

By Order Town of Mosman Park

By Order Town of Claremont

By Order Town of Cottesloe

By Order Shire of Peppermint Grove

BILL PARKER, Chief Executive Officer.

CARISSA BYWATER, Chief Executive Officer.

LIZ LEDGER, Chief Executive Officer.

MATTHEW SCOTT, Chief Executive Officer.

DON BURNETT, Chief Executive Officer.

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**(Appendix ORD: 12.4.2D)**

***PROPOSED DRAFT NEW 2021 LOCAL LAW***

***AMENDMENTS HIGHLIGHTED***

*Local Government Act 1995*

**SHIRE OF DARDANUP  
LOCAL GOVERNMENT PROPERTY  
LOCAL LAW 2021**

# (Appendix ORD: 12.4.2D)

*Local Government Act 1995*

**SHIRE OF DARDANUP**

**LOCAL GOVERNMENT PROPERTY LOCAL LAW 2021**

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# (Appendix ORD: 12.4.2D)

## *Local Government Act 1995*

### SHIRE OF DARDANUP LOCAL GOVERNMENT PROPERTY LOCAL LAW 2021

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the *Shire of Dardanup* resolved on *[insert date]* to make the following local law.

#### PART 1 - PRELIMINARY

##### 1.1 Citation

This local law may be cited as the *Shire of Dardanup Local Government Property Local Law 2021*.

##### 1.2 Commencement

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

##### 1.3 Definitions

In this local law unless the context otherwise requires -

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

*aircraft* has the meaning given to it in the *Civil Aviation Act 1988* (Cth);

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

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

*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;

*children's playground* means an area set aside for use by children and noted by the presence of dedicated children's playground equipment and the presence of either sand or other form of soft fall surface;

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

## (Appendix ORD: 12.4.2D)

**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 Control Act 1988*;

**local government** means the **Shire of Dardanup**;

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

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

**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;

**prohibited drug** has the same meaning as given in section 3 of the *Misuse of Drugs Act 1981*;

## (Appendix ORD: 12.4.2D)

**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.

### 1.4 Interpretation

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.

### 1.5 Application

- (1) This local law applies to the district.
- (2) This local law applies to the area of water bounded by the district's northern boundary and extending out to the midway point of the Collie River.
- (3) Notwithstanding anything to the contrary in this local law, the local government may -
  - (a) hire local government property to any person; or
  - (c) enter into an agreement with any person regarding the use of any local government property.

## (Appendix ORD: 12.4.2D)

- (4) This local law is subject to any written law and law of the Commonwealth about assistance animals as defined in the *Disability Discrimination Act 1992* (Commonwealth) section 9(2).

### 1.6 Repeal

- (1) This local law repeals the *Shire of Dardanup Local Government Property Local Law 2007*, published in the *Government Gazette* on 7 December 2007.

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

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

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

### *Division 1 - Determinations*

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

- (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.

#### 2.2 Procedure for making a determination

- (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 –

## **(Appendix ORD: 12.4.2D)**

- (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.

### **2.3 Discretion to erect sign**

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.

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

A person shall comply with a determination.

## **(Appendix ORD: 12.4.2D)**

### **2.5 Register of determinations**

- (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.

### **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 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***

### **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 aircraft;
  - (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

## (Appendix ORD: 12.4.2D)

- (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.

### **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) taking, riding or driving a vehicle or a particular class of vehicle on the property;
  - (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 plants and fauna on the property; and



## (Appendix ORD: 12.4.2D)

- (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***

#### **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 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).

# (Appendix ORD: 12.4.2D)

## 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 local government 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 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).

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

- (1) The local government may –
  - (a) approve an application for a permit unconditionally or subject to any conditions; or
  - (b) refuse to approve an application for a permit.
- (2) If the local government approves an application for a permit, it is to issue to the applicant, a permit in the form determined by the local government.
- (3) If the local government refuses to approve an application for a permit, it is to give written notice of that refusal to the applicant.

## (Appendix ORD: 12.4.2D)

(4) The local government 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 Conditions which may be imposed on a permit**

(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;

## (Appendix ORD: 12.4.2D)

(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 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 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.

### 3.5 Imposing conditions under a policy

(1) In this clause –

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

### 3.6 Compliance with and variation of conditions

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

## (Appendix ORD: 12.4.2D)

### *Division 4 - General*

#### **3.7 Agreement for building**

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.

#### **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 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 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 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.

## (Appendix ORD: 12.4.2D)

### 3.11 Production of permit

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

### 3.12 Cancellation of permit

(1) Subject to clause 9.1, 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*

### 3.13 Activities needing a permit

(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 on a beach, reserve, in a pool area or in an indoor recreational facility which is local government property;
- (e) plant or propagate 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

## (Appendix ORD: 12.4.2D)

- (ii) park or stop 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;
  - (o) depasture any horse, sheep, cattle, goat, camel, ass or mule on local government property;
  - (p) conduct or take part in any gambling game or contest or bet, or offer to bet, publicly; or
  - (q) cut, break, injure, deface, pull up, pick, remove, or destroy any tree, shrub, flower, grass or plant of any kind 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).

### 3.14 Permit required to camp outside a facility

- (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.

## (Appendix ORD: 12.4.2D)

- (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*.

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

- (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 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 shall in respect of local government property to which the permit relates -

- (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) 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) **take all reasonable action to** 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.



## (Appendix ORD: 12.4.2D)

### 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 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.

##### 4.2 Behaviour detrimental to property

(1) A person shall not behave in or on local government property in a way which is or might be detrimental to the property, unless authorised by the local government to do so.

(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, cutting, breaking or damaging any thing on the local government property, such as a plant **or** a seat provided for the use of any person or a building.

##### 4.3 Taking or injuring any fauna

(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 authorised 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.

## **(Appendix ORD: 12.4.2D)**

### **4.4 Removing or damaging any flora**

(1) A person must not remove or damage any flora which is on or above any local government property unless that person is authorised to do so under a written law or with the written approval of the local government.

(2) In this clause –

*flora* means all vascular plants other than plants recognised as weeds.

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

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

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

### **4.7 Signs**

(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.

## (Appendix ORD: 12.4.2D)

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

#### *Division 1 - Fenced or closed property*

##### **5.1 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 the local government.

#### *Division 2 - Toilet blocks and change rooms*

##### **5.2 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; or
- (b) males, then a person of the female gender shall not 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.

#### *Division 3 - Swimming pool areas*

##### **5.3 When entry must be refused**

A Manager or an authorised person shall refuse admission to, may direct to leave or shall remove or cause to be removed from a pool area, for a specified period up to 30 days, any person who is –

~~(a) is~~

- (a) under the age of 10 years and who is unaccompanied by a responsible person over the age of 16 years;
- (b) suffering from any gastrointestinal disease, skin infection or other disease that is communicable in an aquatic environment; or
- (c) in an unclean condition; or
- (d) wearing unclean clothes; or
- (e) under the apparent influence of alcohol, drugs or alcohol and drugs.

## (Appendix ORD: 12.4.2D)

~~(b) is to be refused admission under and in accordance with a decision of the local government for breaching any clause of this local law.~~

### **5.4 Consumption of food or drink may be prohibited**

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

### *Division 2 - Beaches*

### **5.5 Powers of authorised persons or surf life saving club members**

(1) An authorised person employed by the local government 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 local government 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 local government 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 local government may authorise members generally, or in relation to particular times, days or months.

### **5.6 Authority of local government employee to prevail**

The authority of an authorised person employed by the local government under clause 5.5(1) is to prevail over the authority provided to members of a surf life saving club under clause 5.5(2).

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

A person shall -

- (a) not act in contravention of any sign erected on a beach under clause 5.5(1)(c);

## (Appendix ORD: 12.4.2D)

- (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 surf life saving club;
- (c) comply with any direction given under clause 5.5(1)(c) or 5.5(1)(e); and
- (d) not interfere with, obscure, or hang any item of clothing or towel on a flag, sign, notice or item of life saving equipment.

### *Division 5 - Aerodrome (airport)*

#### **5.8 Access of animals restricted**

- (1) A person shall not bring an animal on to an aerodrome unless –
  - (a) the person is a person referred to in section 8 of the *Dog Act 1976* acting in accordance with that provision;
  - (b) the animal is being air freighted from the aerodrome;
  - (c) the animal has been air freighted to the aerodrome; or
  - (d) the person is authorised to do so by the local government.
- (2) A person in charge of an animal shall keep the animal under control and shall not allow it to wander at large on the aerodrome.
- (3) If an animal is at any time on an aerodrome in contravention of subclause (2), in addition to the person specified in that subclause, the owner of the animal at that time commits an offence against subclause (2).

### *Division 6 - Golf course*

#### **5.9 Interpretation**

In this Division –

***controller*** means the person appointed by the local government to direct, control and manage a golf course; and

***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.

## **(Appendix ORD: 12.4.2D)**

### **5.10 Observance of special conditions of play**

While on a golf course, every player shall observe and comply with a –

- (a) direction of a controller in respect of any special conditions of play; and
- (b) requirement of any notice erected to direct or control play.

## **(Appendix ORD: 12.4.2D)**

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

#### **6.1 No unauthorised entry to function**

- (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 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 local government may exempt a person from compliance with subclause (1)(b).

## **(Appendix ORD: 12.4.2D)**

### **PART 7 - JETTIES AND BRIDGES**

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

##### **7.1 Interpretation**

(1) This Part only applies to bridges and jetties which are local government property.

(2) In this Part –

*jetty* means any jetty, pier, wharf or landing place which is local government property.

#### ***Division 2 - Consents and fees***

##### **7.2 Application for consent and application fee**

(1) Where a person is required to obtain the consent of the local government under this Part, the person is to apply for that consent in the manner required by the local government.

(2) The local government may require an application for consent made under subclause (1) to be accompanied by a fee.

(3) If an application for consent is not made in the manner required by the local government or the fee which is to accompany that application is not paid, the local government may refuse to consider the application for consent.

(4) The local government shall give its decision on an application for consent, in writing to the person who applied for that consent.

(5) Where a fee is referred to in this Part, the fee must be imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

#### ***Division 3 – Prohibitions on use of jetty***

##### **7.3 When use of jetty is prohibited**

A person shall not land at, use or go on any part of a jetty which is -

(a) under construction or repair; or

(b) closed,

unless that person has first obtained the consent of the local government.



## **(Appendix ORD: 12.4.2D)**

### *Division 4 - Mooring boats to jetties*

#### **7.4 Method of mooring boat**

A person in control of a boat shall not moor or make fast the boat to a jetty, or to any part of the jetty, except to such mooring piles, ring bolts or other fastenings as are provided.

### *Division 5 - When boats may remain at jetty*

#### **7.5 When boat may remain moored**

A person in control of a boat shall not moor or make fast the boat to a jetty unless –

- (a) the boat is in distress and then only to effect the minimum repairs necessary to enable the boat to be moved elsewhere;
- (b) the embarking or disembarking of passengers is in progress, and then not for a consecutive period exceeding 2 hours without the prior consent of the local government;
- (c) where the boat is used at that time for commercial purposes, the person has first paid the fee (if any) for such mooring or making fast to the local government; or
- (d) the loading or discharging of cargo or other goods is in progress in accordance with Division 7.

#### **7.6 Authorised person may order removal of boat**

Notwithstanding anything to the contrary in this Part, a person in control of a boat moored or fastened to or alongside a jetty shall remove it immediately upon being directed to do so by an authorised person.

### *Division 6 - Launching of boats*

#### **7.7 Restrictions on launching**

A person shall not launch a boat from or over any jetty (other than a boat ramp) unless she or he has first obtained the consent of the local government.

## **(Appendix ORD: 12.4.2D)**

### *Division 7 - Cargo or other goods*

#### **7.8 Loading and discharging**

A person in control of a boat shall not allow the boat to come alongside or be moored or made fast to a jetty for the purpose of loading or discharging cargo or other goods-

- (a) until the cargo or other goods are ready to be loaded or discharged; or
- (b) without the consent of the local government –
  - (i) between the hours of 6.00pm to 6.00am on the next day; or
  - (ii) for longer than 2 consecutive hours.

#### **7.9 Outgoing cargo not to be stored on jetty**

A person in control of cargo or other goods intended for loading on to a boat shall -

- (a) not allow them to be stored or placed on a jetty unless and until the boat is moored or fastened to or alongside the jetty; and
- (b) load them on to the boat as soon as practicable after the boat is moored or fastened to or alongside the jetty.

#### **7.10 Removal of incoming cargo from jetty**

Any person unloading cargo or other goods from a boat on to a jetty shall remove them, or cause them to be removed from the jetty as soon as practicable, but not later than 6.00pm on the day on which they were placed there.

#### **7.11 Authorised person may direct removal**

An authorised person may direct a person who, in the opinion of the authorised person, is in charge of cargo or other goods which remain on a jetty contrary to any provision of this Part to remove them from the jetty.

#### **7.12 Handling of bulk cargo**

Except with the prior consent of the local government, a person shall not place or deposit bulk cargo from a vehicle, boat or container on to a jetty.

### *Division 8 - Polluting surrounding area*

#### **7.13 Polluting surrounding area**

A person shall not tip or deposit anything on to a jetty so as to pollute the surrounding area.

## **(Appendix ORD: 12.4.2D)**

### *Division 9 - Fishing from jetties and bridges*

#### **7.14 Limitations on fishing**

A person shall not -

- (a) fish from a jetty or a bridge so as to obstruct or interfere with the free movement of a boat approaching or leaving the jetty or the bridge or so as to unreasonably interfere with the use of the jetty or the bridge by any other person; or
- (b) hang or spread a fishing net from, on or over any part of a jetty or a bridge.

# (Appendix ORD: 12.4.2D)

## PART 8 - SALEYARDS

### *Division 1 - Preliminary*

#### **8.1 Interpretation**

In this Part -

*auction* has the meaning given to it in the *Auction Sales Act 1973*;

*sale* means a sale by way of auction;

*saleyard* means local government property which is used for the sale of stock;

*stock* has the meaning given to livestock in the *Auction Sales Act 1973*; and

*stock agent* means any person appointed by the owner of stock to sell that stock at a saleyard.

### *Division 2 - Sale of stock*

#### **8.2 Requirements of auctioneer's licence**

A person shall not sell by way of auction any stock at a saleyard unless that person is the holder of an auctioneer's licence to sell stock under the *Auction Sales Act 1973*.

#### **8.3 Sale times to be approved**

Sales are to be conducted at a saleyard only on such days and at such times as may be appointed by a stock agent with the prior approval of the CEO.

#### **8.4 Order of sales**

The order in which stock agents conduct sales on any day under clause 8.3 is to be the order agreed to by those stock agents, and in default of agreement, as directed by the CEO or an authorised person.

### *Division 3 - Care of and responsibility for stock*

#### **8.5 Diseased and injured stock**

(1) A person shall not -

- (a) offer for sale any stock which is diseased, emaciated, injured or suffering from ill health for sale at a saleyard; or

## **(Appendix ORD: 12.4.2D)**

- (b) deliver to any saleyard any stock which is diseased, emaciated, injured or suffering from ill health.

(2) Where in the opinion of an authorised person stock at a sale yard is diseased, emaciated, injured or suffering from ill health, the authorised person may direct the stock agent of the stock, or if there is no stock agent, the owner or the person apparently in control of that stock, to remove that stock immediately from the saleyard.

### **8.6 Care of stock**

Where the stock is yarded in any saleyard the stock agent (or if there is no stock agent, the owner) shall -

- (a) ensure that the stock is properly cared for; and
- (b) if the stock is kept yarded for more than 24 hours, provide the stock with adequate food and water.

### **8.7 When purchaser becomes responsible for stock**

The purchaser of any stock yarded in a saleyard is responsible for such stock from the time the contract of sale is entered into.

### **8.8 Time limit for removal of stock**

The purchaser of any stock at a saleyard is to remove such stock from the saleyard by 5.00pm on the day after the day of sale, or by such later time as may be allowed by an authorised person.

### **8.9 Removal of unsold stock**

Where stock yarded in a saleyard remain unsold, the stock agent or, if there is no stock agent, the owner of the stock is responsible for the care and removal of such stock from the saleyard.

### **8.10 Removal of dead or maimed stock**

Stock which have died or which have been maimed shall be immediately removed from the saleyard where the stock -

- (a) are unsold, by the stock agent, or if there is no stock agent, the owner; or
- (b) have been sold, by the purchaser.

## **(Appendix ORD: 12.4.2D)**

### *Division 4 - Payment of fees*

#### **8.11 Payment of yard fees**

Where stock is brought into a saleyard for a sale or any other purpose by a stock agent or owner, that stock agent or owner shall -

- (a) within 7 days of bringing the stock into a saleyard, give the local government a written statement signed by the stock agent or owner advising -
  - (i) the total number of stock by class brought into the saleyard; and
  - (ii) the date on which the stock was brought into the saleyard; and
- (b) within 28 days of bringing the stock into a saleyard, pay the local government the applicable yard fees set by the local government.

#### **8.12 Documents may be inspected**

The stock agent or owner shall, on demand by the CEO, make available to the CEO for inspection such documents as may be necessary to enable the CEO to verify a statement given under clause 8.11.

### *Division 5 - Control of dogs*

#### **8.13 Only working dogs allowed**

A person shall not bring into a saleyard any dog which will not be used for working with stock in that saleyard on the day which it is brought in.

#### **8.14 Diseased dogs prohibited**

A person shall not bring or permit to be brought into a saleyard a dog which is diseased.

## **(Appendix ORD: 12.4.2D)**

### **PART 9 - OBJECTIONS AND APPEALS**

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

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 32A and 33 of the Regulations apply to that decision.

## **(Appendix ORD: 12.4.2D)**

### **PART 10 - MISCELLANEOUS**

#### **10.1 Authorised person to be obeyed**

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

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

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.

#### **10.3 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 local government in any manner it thinks fit.

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

(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.



# **(Appendix ORD: 12.4.2D)**

## **PART 11 - ENFORCEMENT**

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

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

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

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

Where a person fails to comply with a notice referred to in clause 11.1, 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***

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

- (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***

#### **11.4 Prescribed offences**

- (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.

#### **11.5 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

## **(Appendix ORD: 12.4.2D)**

- (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***

#### **11.6 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.

## (Appendix ORD: 12.4.2D)

### SCHEDULE 1 [clause 11.4]

#### PRESCRIBED OFFENCES

<b>CLAUSE</b>	<b>DESCRIPTION</b>	<b>MODIFIED PENALTY \$</b>
2.4	Failure to comply with determination	125
3.6	Failure to comply with conditions of permit	125
3.13(1)	Failure to obtain a permit	125
3.14(3)	Failure to obtain permit to camp outside a facility	125
3.15(1)	Failure to obtain permit for liquor	125
3.16	Failure of permit holder to comply with responsibilities	125
4.2(1)	Behaviour detrimental to property	350
4.3(1)	Taking or injuring any fauna	350
4.4(1)	Removing or damaging any flora	350
4.5	Entering or remaining on local government property while under the influence of liquor or prohibited drug	125
4.7(2)	Failure to comply with sign on local government property	125
5.1	Unauthorized entry to fenced or closed local government property	125
5.2	Gender not specified using entry of toilet block or change room	125
5.4	Consuming food or drink in prohibited area	125
5.7	Failure to comply with sign or direction on beach	125
5.8(1)	Unauthorised presence of animal on aerodrome	350
5.8(2)	Animal wandering at large on aerodrome – person in charge	350
5.8(3)	Animal wandering at large on aerodrome – owner	350
5.10	Failure to comply with direction of controller or notice on golf course	125

**(Appendix ORD: 12.4.2D)**

6.1(1)	Unauthorised entry to function on local government property	125
7.3	Unauthorised use of any part of jetty which is closed or under repair or construction	125
7.4	Mooring of boats in unauthorised manner	125
7.5	Unauthorised mooring of a boat to jetty	125
7.6	Failure to remove moored boat on direction of authorised person	125
7.7	Launching of boat from jetty without consent	125
7.8	Mooring when not ready to load or discharge cargo, at times not permitted or for longer than permitted	125
7.9	Unlawful storing of goods on jetty	125
7.10	Removing goods from jetty during other than permitted hours	125
7.11	Failure to remove cargo on jetty on direction of authorised person	125
7.12	Unauthorised deposit of bulk cargo on jetty	125
7.14	Fishing from jetty or bridge so as to obstruct a boat or another person	125
8.2	Selling by way of auction without licence	125
8.8	Failure to remove stock	250
8.10	Failure to immediately remove dead or maimed stock	250
8.11	Failure to give statement or pay fees to local government	250
8.12	Failure to produce documents for inspection by local government	250
8.13	Unauthorised entry of dog into saleyard	125
11.1	Failure to comply with notice	250

# (Appendix ORD: 12.4.2D)

## PART 1 – PRELIMINARY

### Definitions

1.1 In these determinations unless the context otherwise requires –

*local law* means the *Shire of Dardanup Local Government Property Local Law 2021* 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.

(Appendix ORD: 12.4.2D)

Dated \_\_\_\_\_ 20\_\_\_\_

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

\_\_\_\_\_  
MR ANDRIES SCHÖNFELDT  
Chief Executive Officer

\_\_\_\_\_  
CR. MICHAEL T BENNETT  
President

***PROPOSED DRAFT NEW 2021 LOCAL LAW  
FINAL VERSION FOR ADOPTION***

*Local Government Act 1995*

**SHIRE OF DARDANUP  
LOCAL GOVERNMENT PROPERTY  
LOCAL LAW 2021**

*Local Government Act 1995*

SHIRE OF DARDANUP

LOCAL GOVERNMENT PROPERTY LOCAL LAW 2021

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**SCHEDULE 1 - PRESCRIBED OFFENCES**

*Local Government Act 1995*

**SHIRE OF DARDANUP LOCAL GOVERNMENT PROPERTY LOCAL LAW 2021**

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the *Shire of Dardanup* resolved on [insert date] to make the following local law.

**PART 1 - PRELIMINARY**

**1.1 Citation**

This local law may be cited as the *Shire of Dardanup Local Government Property Local Law 2021*.

**1.2 Commencement**

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

**1.3 Definitions**

In this local law unless the context otherwise requires -

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

*aircraft* has the meaning given to it in the *Civil Aviation Act 1988* (Cth);

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

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

*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;

*children's playground* means an area set aside for use by children and noted by the presence of dedicated children's playground equipment and the presence of either sand or other form of soft fall surface;

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

*Council* means the council of the local government;

## (Appendix ORD: 12.4.2E)

***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 Control Act 1988*;

***local government*** means the Shire of Dardanup;

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

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

***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;

***prohibited drug*** has the same meaning as given in section 3 of the *Misuse of Drugs Act 1981*;

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

**(Appendix ORD: 12.4.2E)**

**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.

**1.4 Interpretation**

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.

**1.5 Application**

- (1) This local law applies to the district.
- (2) This local law applies to the area of water bounded by the district's northern boundary and extending out to the midway point of the Collie River.
- (3) Notwithstanding anything to the contrary in this local law, the local government may -
  - (a) hire local government property to any person; or
  - (c) enter into an agreement with any person regarding the use of any local government property.
- (4) This local law is subject to any written law and law of the Commonwealth about assistance animals as defined in the *Disability Discrimination Act 1992* (Commonwealth) section 9(2).

## (Appendix ORD: 12.4.2E)

### 1.6 Repeal

- (1) This local law repeals the *Shire of Dardanup Local Government Property Local Law 2007*, published in the *Government Gazette* on 7 December 2007.
- (2) Where a policy was made or adopted by the local government under or in relation to a local law repealed by this local law, then the policy is to be taken to no longer have any effect on and from the commencement day.
- (3) The Council may resolve that notwithstanding subclause (2), specified policies continue, or are to be taken to have continued, to have effect on and from the commencement day.



**PART 2 - DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY***Division 1 - Determinations***2.1 Determinations as to use of local government property**

- (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.

**2.2 Procedure for making a determination**

- (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 –

## (Appendix ORD: 12.4.2E)

- (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.

### **2.3 Discretion to erect sign**

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.

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

A person shall comply with a determination.

### **2.5 Register of determinations**

- (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.

### **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 it is to give local public notice of the revocation and the determination is to cease to have effect on the date of publication.

**(Appendix ORD: 12.4.2E)***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 aircraft;
- (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;

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- (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) taking, riding or driving a vehicle or a particular class of vehicle on the property;
- (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 plants and 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.

## (Appendix ORD: 12.4.2E)

### *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 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).

## (Appendix ORD: 12.4.2E)

### 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 local government 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 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).

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

(1) The local government may –

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

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

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

(4) The local government 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 Conditions which may be imposed on a permit**

(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 Control Act 1988*;
- (i) whether or not the hire is for the exclusive use of the local government property;

## (Appendix ORD: 12.4.2E)

- (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.

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

(1) In this clause –

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

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

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

## *Division 4 - General*

### **3.7 Agreement for building**

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.

### **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 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 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 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.

**3.11 Production of permit**

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

**3.12 Cancellation of permit**

- (1) Subject to clause 9.1, 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***3.13 Activities needing a permit**

(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 on a beach, reserve, in a pool area or in an indoor recreational facility which is local government property;
- (e) plant or propagate 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 stop 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;
- (o) depasture any horse, sheep, cattle, goat, camel, ass or mule on local government property;

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- (p) conduct or take part in any gambling game or contest or bet, or offer to bet, publicly; or
  - (q) cut, break, injure, deface, pull up, pick, remove, or destroy any tree, shrub, flower, grass or plant of any kind 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).

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

- (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*.

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

- (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 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 shall in respect of local government property to which the permit relates –

- (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;

**(Appendix ORD: 12.4.2E)**

- (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) take all reasonable action to 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 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.

**4.2 Behaviour detrimental to property**

(1) A person shall not behave in or on local government property in a way which is or might be detrimental to the property, unless authorised by the local government to do so.

(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, cutting, breaking or damaging any thing on the local government property, such as a plant or a seat provided for the use of any person or a building.

**4.3 Taking or injuring any fauna**

(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 authorised 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.

**4.4 Removing or damaging any flora**

(1) A person must not remove or damage any flora which is on or above any local government property unless that person is authorised to do so under a written law or with the written approval of the local government.

## (Appendix ORD: 12.4.2E)

(2) In this clause –

*flora* means all vascular plants other than plants recognised as weeds.

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

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

## *Division 2 - Signs*

### **4.7 Signs**

(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.

## (Appendix ORD: 12.4.2E)

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

#### *Division 1 - Fenced or closed property*

##### **5.1 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 the local government.

#### *Division 2 - Toilet blocks and change rooms*

##### **5.2 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; or
- (b) males, then a person of the female gender shall not 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.

#### *Division 3 - Swimming pool areas*

##### **5.3 When entry must be refused**

A Manager or an authorised person shall refuse admission to, may direct to leave or shall remove or cause to be removed from a pool area, for a specified period up to 30 days, any person who is –

- (a) under the age of 10 years and who is unaccompanied by a responsible person over the age of 16 years;
- (b) suffering from any gastrointestinal disease, skin infection or other disease that is communicable in an aquatic environment; or
- (c) in an unclean condition; or
- (d) wearing unclean clothes; or
- (e) under the apparent influence of alcohol, drugs or alcohol and drugs.

## (Appendix ORD: 12.4.2E)

### 5.4 Consumption of food or drink may be prohibited

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

### *Division 2 - Beaches*

### 5.5 Powers of authorised persons or surf life saving club members

(1) An authorised person employed by the local government 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 local government 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 local government 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 local government may authorise members generally, or in relation to particular times, days or months.

### 5.6 Authority of local government employee to prevail

The authority of an authorised person employed by the local government under clause 5.5(1) is to prevail over the authority provided to members of a surf life saving club under clause 5.5(2).

### 5.7 Persons to comply with signs and directions

A person shall -

- (a) not act in contravention of any sign erected on a beach under clause 5.5(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 surf life saving club;
- (c) comply with any direction given under clause 5.5(1)(c) or 5.5(1)(e); and



## (Appendix ORD: 12.4.2E)

- (d) not interfere with, obscure, or hang any item of clothing or towel on a flag, sign, notice or item of life saving equipment.

### *Division 5 - Aerodrome (airport)*

#### **5.8 Access of animals restricted**

- (1) A person shall not bring an animal on to an aerodrome unless –
  - (a) the person is a person referred to in section 8 of the *Dog Act 1976* acting in accordance with that provision;
  - (b) the animal is being air freighted from the aerodrome;
  - (c) the animal has been air freighted to the aerodrome; or
  - (d) the person is authorised to do so by the local government.
- (2) A person in charge of an animal shall keep the animal under control and shall not allow it to wander at large on the aerodrome.
- (3) If an animal is at any time on an aerodrome in contravention of subclause (2), in addition to the person specified in that subclause, the owner of the animal at that time commits an offence against subclause (2).

### *Division 6 - Golf course*

#### **5.9 Interpretation**

In this Division –

***controller*** means the person appointed by the local government to direct, control and manage a golf course; and

***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.

#### **5.10 Observance of special conditions of play**

While on a golf course, every player shall observe and comply with a –

- (a) direction of a controller in respect of any special conditions of play; and
- (b) requirement of any notice erected to direct or control play.

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

**6.1 No unauthorised entry to function**

- (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 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 local government may exempt a person from compliance with subclause (1)(b).

**PART 7 - JETTIES AND BRIDGES**

*Division 1 - Preliminary*

**7.1 Interpretation**

- (1) This Part only applies to bridges and jetties which are local government property.
- (2) In this Part –

*jetty* means any jetty, pier, wharf or landing place which is local government property.

*Division 2 - Consents and fees*

**7.2 Application for consent and application fee**

- (1) Where a person is required to obtain the consent of the local government under this Part, the person is to apply for that consent in the manner required by the local government.
- (2) The local government may require an application for consent made under subclause (1) to be accompanied by a fee.
- (3) If an application for consent is not made in the manner required by the local government or the fee which is to accompany that application is not paid, the local government may refuse to consider the application for consent.
- (4) The local government shall give its decision on an application for consent, in writing to the person who applied for that consent.
- (5) Where a fee is referred to in this Part, the fee must be imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act.

*Division 3 – Prohibitions on use of jetty*

**7.3 When use of jetty is prohibited**

A person shall not land at, use or go on any part of a jetty which is -

- (a) under construction or repair; or
- (b) closed,

unless that person has first obtained the consent of the local government.

*Division 4 - Mooring boats to jetties*

**7.4 Method of mooring boat**

A person in control of a boat shall not moor or make fast the boat to a jetty, or to any part of the jetty, except to such mooring piles, ring bolts or other fastenings as are provided.

## (Appendix ORD: 12.4.2E)

### *Division 5 - When boats may remain at jetty*

#### **7.5 When boat may remain moored**

A person in control of a boat shall not moor or make fast the boat to a jetty unless –

- (a) the boat is in distress and then only to effect the minimum repairs necessary to enable the boat to be moved elsewhere;
- (b) the embarking or disembarking of passengers is in progress, and then not for a consecutive period exceeding 2 hours without the prior consent of the local government;
- (c) where the boat is used at that time for commercial purposes, the person has first paid the fee (if any) for such mooring or making fast to the local government; or
- (d) the loading or discharging of cargo or other goods is in progress in accordance with Division 7.

#### **7.6 Authorised person may order removal of boat**

Notwithstanding anything to the contrary in this Part, a person in control of a boat moored or fastened to or alongside a jetty shall remove it immediately upon being directed to do so by an authorised person.

### *Division 6 - Launching of boats*

#### **7.7 Restrictions on launching**

A person shall not launch a boat from or over any jetty (other than a boat ramp) unless she or he has first obtained the consent of the local government.

### *Division 7 - Cargo or other goods*

#### **7.8 Loading and discharging**

A person in control of a boat shall not allow the boat to come alongside or be moored or made fast to a jetty for the purpose of loading or discharging cargo or other goods-

- (a) until the cargo or other goods are ready to be loaded or discharged; or
- (b) without the consent of the local government –
  - (i) between the hours of 6.00pm to 6.00am on the next day; or
  - (ii) for longer than 2 consecutive hours.

#### **7.9 Outgoing cargo not to be stored on jetty**

A person in control of cargo or other goods intended for loading on to a boat shall -

## (Appendix ORD: 12.4.2E)

- (a) not allow them to be stored or placed on a jetty unless and until the boat is moored or fastened to or alongside the jetty; and
- (b) load them on to the boat as soon as practicable after the boat is moored or fastened to or alongside the jetty.

### **7.10 Removal of incoming cargo from jetty**

Any person unloading cargo or other goods from a boat on to a jetty shall remove them, or cause them to be removed from the jetty as soon as practicable, but not later than 6.00pm on the day on which they were placed there.

### **7.11 Authorised person may direct removal**

An authorised person may direct a person who, in the opinion of the authorised person, is in charge of cargo or other goods which remain on a jetty contrary to any provision of this Part to remove them from the jetty.

### **7.12 Handling of bulk cargo**

Except with the prior consent of the local government, a person shall not place or deposit bulk cargo from a vehicle, boat or container on to a jetty.

## *Division 8 - Polluting surrounding area*

### **7.13 Polluting surrounding area**

A person shall not tip or deposit anything on to a jetty so as to pollute the surrounding area.

## *Division 9 - Fishing from jetties and bridges*

### **7.14 Limitations on fishing**

A person shall not -

- (a) fish from a jetty or a bridge so as to obstruct or interfere with the free movement of a boat approaching or leaving the jetty or the bridge or so as to unreasonably interfere with the use of the jetty or the bridge by any other person; or
- (b) hang or spread a fishing net from, on or over any part of a jetty or a bridge.

**PART 8 - SALEYARDS**

***Division 1 - Preliminary***

**8.1 Interpretation**

In this Part -

***auction*** has the meaning given to it in the *Auction Sales Act 1973*;

***sale*** means a sale by way of auction;

***saleyard*** means local government property which is used for the sale of stock;

***stock*** has the meaning given to livestock in the *Auction Sales Act 1973*; and

***stock agent*** means any person appointed by the owner of stock to sell that stock at a saleyard.

***Division 2 - Sale of stock***

**8.2 Requirements of auctioneer's licence**

A person shall not sell by way of auction any stock at a saleyard unless that person is the holder of an auctioneer's licence to sell stock under the *Auction Sales Act 1973*.

**8.3 Sale times to be approved**

Sales are to be conducted at a saleyard only on such days and at such times as may be appointed by a stock agent with the prior approval of the CEO.

**8.4 Order of sales**

The order in which stock agents conduct sales on any day under clause 8.3 is to be the order agreed to by those stock agents, and in default of agreement, as directed by the CEO or an authorised person.

***Division 3 - Care of and responsibility for stock***

**8.5 Diseased and injured stock**

(1) A person shall not -

(a) offer for sale any stock which is diseased, emaciated, injured or suffering from ill health for sale at a saleyard; or

(b) deliver to any saleyard any stock which is diseased, emaciated, injured or suffering from ill health.

(2) Where in the opinion of an authorised person stock at a sale yard is diseased, emaciated, injured or suffering from ill health, the authorised person may direct the stock agent of the stock, or if there is no stock agent, the owner or the person apparently in control of that stock, to remove that stock immediately from the saleyard.

## (Appendix ORD: 12.4.2E)

### **8.6 Care of stock**

Where the stock is yarded in any saleyard the stock agent (or if there is no stock agent, the owner) shall -

- (a) ensure that the stock is properly cared for; and
- (b) if the stock is kept yarded for more than 24 hours, provide the stock with adequate food and water.

### **8.7 When purchaser becomes responsible for stock**

The purchaser of any stock yarded in a saleyard is responsible for such stock from the time the contract of sale is entered into.

### **8.8 Time limit for removal of stock**

The purchaser of any stock at a saleyard is to remove such stock from the saleyard by 5.00pm on the day after the day of sale, or by such later time as may be allowed by an authorised person.

### **8.9 Removal of unsold stock**

Where stock yarded in a saleyard remain unsold, the stock agent or, if there is no stock agent, the owner of the stock is responsible for the care and removal of such stock from the saleyard.

### **8.10 Removal of dead or maimed stock**

Stock which have died or which have been maimed shall be immediately removed from the saleyard where the stock -

- (a) are unsold, by the stock agent, or if there is no stock agent, the owner; or
- (b) have been sold, by the purchaser.

## *Division 4 - Payment of fees*

### **8.11 Payment of yard fees**

Where stock is brought into a saleyard for a sale or any other purpose by a stock agent or owner, that stock agent or owner shall -

- (a) within 7 days of bringing the stock into a saleyard, give the local government a written statement signed by the stock agent or owner advising -
  - (i) the total number of stock by class brought into the saleyard; and
  - (ii) the date on which the stock was brought into the saleyard; and
- (b) within 28 days of bringing the stock into a saleyard, pay the local government the applicable yard fees set by the local government.

## **(Appendix ORD: 12.4.2E)**

### **8.12 Documents may be inspected**

The stock agent or owner shall, on demand by the CEO, make available to the CEO for inspection such documents as may be necessary to enable the CEO to verify a statement given under clause 8.11.

### *Division 5 - Control of dogs*

### **8.13 Only working dogs allowed**

A person shall not bring into a saleyard any dog which will not be used for working with stock in that saleyard on the day which it is brought in.

### **8.14 Diseased dogs prohibited**

A person shall not bring or permit to be brought into a saleyard a dog which is diseased.



**PART 9 - OBJECTIONS AND APPEALS**

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

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 32A and 33 of the Regulations apply to that decision.

**PART 10 - MISCELLANEOUS**

**10.1 Authorised person to be obeyed**

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

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

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.

**10.3 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 local government in any manner it thinks fit.

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

(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 11 - ENFORCEMENT**

*Division 1 - Notices given under this local law*

**11.1 Offence to fail to comply with notice**

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

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

Where a person fails to comply with a notice referred to in clause 11.1, 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*

**11.3 Offences and general penalty**

(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*

**11.4 Prescribed offences**

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

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

**11.5 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

## (Appendix ORD: 12.4.2E)

- (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*

#### **11.6 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**  
**[clause 11.4]**

**PRESCRIBED OFFENCES**

<b>CLAUSE</b>	<b>DESCRIPTION</b>	<b>MODIFIED PENALTY \$</b>
2.4	Failure to comply with determination	125
3.6	Failure to comply with conditions of permit	125
3.13(1)	Failure to obtain a permit	125
3.14(3)	Failure to obtain permit to camp outside a facility	125
3.15(1)	Failure to obtain permit for liquor	125
3.16	Failure of permit holder to comply with responsibilities	125
4.2(1)	Behaviour detrimental to property	350
4.3(1)	Taking or injuring any fauna	350
4.4(1)	Removing or damaging any flora	350
4.5	Entering or remaining on local government property while under the influence of liquor or prohibited drug	125
4.7(2)	Failure to comply with sign on local government property	125
5.1	Unauthorized entry to fenced or closed local government property	125
5.2	Gender not specified using entry of toilet block or change room	125
5.4	Consuming food or drink in prohibited area	125
5.7	Failure to comply with sign or direction on beach	125
5.8(1)	Unauthorised presence of animal on aerodrome	350
5.8(2)	Animal wandering at large on aerodrome – person in charge	350
5.8(3)	Animal wandering at large on aerodrome – owner	350
5.10	Failure to comply with direction of controller or notice on golf course	125
6.1(1)	Unauthorised entry to function on local government property	125

**(Appendix ORD: 12.4.2E)**

<b>CLAUSE</b>	<b>DESCRIPTION</b>	<b>MODIFIED PENALTY \$</b>
7.3	Unauthorised use of any part of jetty which is closed or under repair or construction	125
7.4	Mooring of boats in unauthorised manner	125
7.5	Unauthorised mooring of a boat to jetty	125
7.6	Failure to remove moored boat on direction of authorised person	125
7.7	Launching of boat from jetty without consent	125
7.8	Mooring when not ready to load or discharge cargo, at times not permitted or for longer than permitted	125
7.9	Unlawful storing of goods on jetty	125
7.10	Removing goods from jetty during other than permitted hours	125
7.11	Failure to remove cargo on jetty on direction of authorised person	125
7.12	Unauthorised deposit of bulk cargo on jetty	125
7.14	Fishing from jetty or bridge so as to obstruct a boat or another person	125
8.2	Selling by way of auction without licence	125
8.8	Failure to remove stock	250
8.10	Failure to immediately remove dead or maimed stock	250
8.11	Failure to give statement or pay fees to local government	250
8.12	Failure to produce documents for inspection by local government	250
8.13	Unauthorised entry of dog into saleyard	125
11.1	Failure to comply with notice	250

**PART 1 – PRELIMINARY**

**Definitions**

1.1 In these determinations unless the context otherwise requires –

*local law* means the *Shire of Dardanup Local Government Property Local Law 2021* 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.

Dated \_\_\_\_\_ 20\_\_\_\_

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

\_\_\_\_\_  
MR ANDRIES SCHÖNFELDT  
Chief Executive Officer

\_\_\_\_\_  
CR. MICHAEL T BENNETT  
President

## (Appendix ORD: 12.4.3A)

RISK ASSESSMENT TOOL								
<b>OVERALL RISK EVENT:</b>		Appointment of Councillors and Representatives to Advisory Groups & Adoption of Terms of Reference						
<b>RISK THEME PROFILE:</b>		6 - Engagement Practices						
<b>RISK ASSESSMENT CONTEXT:</b>		Operational						
CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL		
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD	RESIDUAL RISK RATING
<b>HEALTH</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
<b>FINANCIAL IMPACT</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
<b>SERVICE INTERRUPTION</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
<b>LEGAL AND COMPLIANCE</b>	Local Government Act 1995 compliance requirement to review delegations annually	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
<b>REPUTATIONAL</b>	Failure to engage with the community fully would reflect negatively on the Council and Shire.	Moderate (3)	Rare (1)	Low (1 - 4)	Not required.	Not required.	Not required.	Not required.
<b>ENVIRONMENT</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.



**New Combined Advisory Group +  
DRAF ToR for Adoption**

**COMMUNITY, SPORT & RECREATION  
ADVISORY GROUP**

**INSTRUMENT OF APPOINTMENT  
&  
TERMS OF REFERENCE**

**2021**

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## 1 AIMS

The Community, Sport & Recreation Advisory Group aims to provide advice on the provision of community and sports & recreation facilities, services and programmes in the Shire of Dardanup and to provide a forum for the dissemination and consideration of information regarding relevant issues.

## 2 OBJECTIVES

The Objectives of the Advisory Group are to:

2.1 Provide a means of participation and communication between clubs, groups and community services and the Shire of Dardanup, and act in an advisory capacity with a specific focus on:

- Club and community group capacity building;
- Sporting and community facility development;
- Community development initiatives;
- Events, public art and place activation initiatives;
- Community Safety and Crime Prevention.

2.2 Provide advice and make recommendations relating to:

2.2.1 The formulation of a community and Council vision with regards to community services and culture; and

2.2.2 The development and implementation of relevant initiatives and programs.

## 3 MEMBERSHIP

3.1 The term of appointment for membership will be a period of two (2) years.

3.2 Community Representation: Membership will be sought from the Shire of Dardanup Community. A maximum of six (6) community representatives will be appointed from across the Shire with one (1) representative from the Artisans community to make up this number.

3.3 Participating Organisational Representation: Membership will be sought from all incorporated community groups and sporting clubs operating within the Shire of Dardanup, as well as from the following organisations:

- Bethanie Aged Care
- St. John of God Hospital
- Headspace Bunbury
- WA Country Health Service
- Eaton Family Centre
- APM Communities
- Eaton Community College
- Department of Local Government, Sport and Cultural Industries
- Australind Police

3.4 Elected Members: Council will nominate three (3) Elected Members to the Community Advisory Group. All other Elected Members will be notified of all meetings and may attend Advisory Group meetings at will, but are not entitled to vote on matters.

- 3.5 Shire Officers: The Chief Executive Officer shall appoint an officer to manage the Advisory Group. In normal circumstances this is the Director Sustainable Development. Shire staff attending the Advisory Group will table papers for discussion and participate in the discussion. Shire Officers are not members of the Advisory Group and shall not vote.
- 3.6 Chair and Deputy Chair: One of the elected Members will be appointed by Council as the Chair and another as the Deputy Chair of the Advisory Group. The Chairperson shall ensure that the Advisory Group operates in accordance with the Terms of Reference at all times.
- 3.7 Advisory Group Support: The relevant Director will arrange for administrative support. Such support will include the preparation and distribution of the agenda, notice of meetings, and recording and distribution of meeting notes. The Advisory Group secretariat is also responsible for arranging the meeting venue, refreshments and coordinating any presentations.
- 3.8 Specialist Advice: Individuals and groups may be invited to attend Advisory Group meetings to provide specialist advice. They must not be involved in the decision making process and cannot vote on any issue.

#### 4 MEETINGS

- 4.1 Advisory Groups will meet at least bi-annually, with a minimum of 2 meetings per year, dates to be resolved by Council. Extraordinary meetings may be called by the Chair in consultation with the relevant Director or Chief Executive Officer.
- 4.2 As there are no powers or duty delegated to the Advisory Group the meetings are not open to the public.
- 4.3 Notice of meetings including an agenda shall be given to members at least 5 days prior to each meeting.
- 4.4 The Director shall ensure that detailed meeting notes of all meetings are kept and shall, not later than 5 days after each meeting, provide the members with a copy of such meeting notes.
- 4.5 All members of the Advisory Group shall have one vote. If the vote of the members present are equally divided, the Chairperson is to cast a second vote.
- 4.6 Advisory Group members may list matters for consideration by tabling matters at least ten (10) days prior to the next meeting with the relevant Director. The Director will be responsible for preparing the Advisory Group Agenda, researching and reporting on those matters tabled for discussion. It is at the discretion of the Chief Executive Officer as to whether a matter will be included in the Agenda.
- 4.7 Meeting notes will form a record for the Shire of Dardanup, but will not require endorsement by Council. Matters requiring Council consideration will be subject to a separate specific report to be prepared by the appropriate Officer and taken to the next Council meeting. The meeting notes will be presented to Council through the Information Bulletin and also be made available on the Shire's website.

## 5 QUORUM

Quorum for a meeting shall be at least 50% of the number of offices, whether vacant or not. A decision of the Advisory Group will be made by a show of hands.

## 6 DELEGATIONS

6.1 The Advisory Group performs an advisory function and does not have any delegated authority.

## 7 CONFLICTS OF INTEREST

7.1 All members need to be aware that any conflict of interest needs to be disclosed in writing, to ensure probity is maintained at all times. All previous disclosures of interest will remain listed in the Agenda and will be acknowledged at the start of a meeting, thereby negating to disclose it in writing again.

7.2 If a Member discloses a financial or proximity interest in a matter under consideration by the Group, the member should disclose the nature of their interest, and also the extent of that interest.

7.3 If a Member discloses a financial or proximity interest in a matter under consideration by the Group and wishes to remain and participate in the meeting, the Member is to inform the Chairperson that the Member intends to remain and participate in the meeting.

7.4 The meeting notes shall record the members' disclosure of interests and the extent of the interests. They shall also record the times a Disclosing Member has departed and/or re-entered the meeting and/or is absent from the meeting during the item of interest, or whether they remained and participated in the meeting when considering the matter to which an interest was declared.

7.5 If a member is unsure whether they have an interest in a matter, they are encouraged to raise the issue with the relevant Director in attendance at the meeting.

## 8 CONFIDENTIALITY AND PRIVACY

8.1 Members of the Advisory Group may have exposure to confidential or personal information and if so they are required to maintain the security of any confidential information and not access, use or remove any information, unless the member is authorised to do so.

8.2 Members of the Advisory Group will be advised when matters are deemed Confidential by the Chair. Documents provided at the meeting will be identified as Confidential and all confidential documents will be returned to the Chair following the meeting.

8.3 Should a member become aware of any unauthorised release or misuse of confidential or personal information, they are advised to contact the relevant Director.

8.4 Should a breach of Confidentiality be made by an Advisory Group member, the Chief Executive Officer will remove the respective member from the Advisory Group.

8.5 Members are not to speak to the media in their capacity as Advisory Group Members and any comments on social media are to be in their personal capacity and not in their capacity as an Advisory Group Member.

## 9 CODE OF CONDUCT

9.1 The relevant Shire of Dardanup Code of Conduct applies to members of the Advisory Group and shall be adhered to during meetings and interactions with Elected Members, staff and the community when acting in the capacity of an Advisory Group member.

## **COMMUNITY ADVISORY GROUP**

# **INSTRUMENT OF APPOINTMENT & TERMS OF REFERENCE**

**2021**

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## 1 AIMS

The Community Advisory Group aims to provide advice on developing and implementing community and cultural programmes, events and services in the Shire of Dardanup through initiatives, policies and processes that deliver the Shire of Dardanup Strategic Community Plan.

## 2 OBJECTIVES

The Objectives of the Advisory Group are to:

2.1 Act in an advisory capacity on matters relating to community and cultural services, with specific focus on:

- Events and Festivals;
- Community Programmes;
- Aged and Health Care Services;
- Art programmes:
  - Performing Art
  - Public Art
  - Events
- Youth Programmes
- Community Safety and Neighbourhood Watch

2.2 Provide advice and make recommendations relating to:

2.2.1 The formulation of a community and Council vision with regards to community services and culture; and

2.2.2 The development and implementation of relevant initiatives and programs.

## 3 MEMBERSHIP

3.1 The term of appointment for membership will be a period of two (2) years.

3.2 Community Representation: Membership will be sought from the Shire of Dardanup Community. A maximum of six (6) community representatives will be appointed from across the Shire with one (1) representative from the Artisans community to make up this number.

3.3 Participating Organisational Representation: Membership will be sought from the following Organisations:

- Bunbury Repertory Club
- Eaton Foreshore Festival Committee
- Bull and Barrel Festival Committee
- Bethanie's Aged Care
- St. John of Gods Hospital
- Neighbourhood Watch
- Ferguson Valley Marketing
- Eaton Community College

- Eaton Senior Citizens
- Dardanup Senior Citizens
- Eaton & Millbridge Lions Club
- Dardanup Lions Club

- 3.4 Elected Members: Council will nominate three (3) Elected Members to the Community Advisory Group. All other Elected Members will be notified of all meetings and may attend Advisory Group meetings at will, but are not entitled to vote on matters.
- 3.5 Shire Officers: The Chief Executive Officer shall appoint an officer to manage the Advisory Group. In normal circumstances this is the Director Sustainable Development. Shire staff attending the Advisory Group will table papers for discussion and participate in the discussion. Shire Officers are not members of the Advisory Group and shall not vote.
- 3.6 Chair and Deputy Chair: One of the elected Members will be appointed by Council as the Chair and another as the Deputy Chair of the Advisory Group. The Chairperson shall ensure that the Advisory Group operates in accordance with the Terms of Reference at all times.
- 3.7 Advisory Group Support: The relevant Director will arrange for administrative support. Such support will include the preparation and distribution of the agenda, notice of meetings, and recording and distribution of meeting notes. The Advisory Group secretariat is also responsible for arranging the meeting venue, refreshments and coordinating any presentations.
- 3.8 Specialist Advice: Individuals and groups may be invited to attend Advisory Group meetings to provide specialist advice. They must not be involved in the decision making process and cannot vote on any issue.

#### 4 MEETINGS

- 4.1 Advisory Groups will meet at least bi-annually, with a minimum of 2 meetings per year, dates to be resolved by Council. Extraordinary meetings may be called by the Chair in consultation with the relevant Director or Chief Executive Officer.
- 4.2 As there are no powers or duty delegated to the Advisory Group the meetings are not open to the public.
- 4.3 Notice of meetings including an agenda shall be given to members at least 5 days prior to each meeting.
- 4.4 The Director shall ensure that detailed meeting notes of all meetings are kept and shall, not later than 5 days after each meeting, provide the members with a copy of such meeting notes.
- 4.5 All members of the Advisory Group shall have one vote. If the vote of the members present are equally divided, the Chairperson is to cast a second vote.
- 4.6 Advisory Group members may list matters for consideration by tabling matters at least ten (10) days prior to the next meeting with the relevant Director. The Director will be responsible for preparing the Advisory Group Agenda, researching and reporting on those matters tabled

**(Appendix ORD: 12.4.3C)**

for discussion. It is at the discretion of the Chief Executive Officer as to whether a matter will be included in the Agenda.

- 4.7 Meeting notes will form a record for the Shire of Dardanup, but will not require endorsement by Council. Matters requiring Council consideration will be subject to a separate specific report to be prepared by the appropriate Officer and taken to the next Council meeting. The meeting notes will be presented to Council through the Information Bulletin.

## 5 QUORUM

- 5.1 Quorum for a meeting shall be at least 50% of the number of offices, whether vacant or not.

## 6 DELEGATIONS

- 6.1 The Advisory Group performs an advisory function and does not have any delegated authority.

## 7 CONFLICTS OF INTEREST

- 7.1 All members need to be aware that any conflict of interest needs to be disclosed in writing, to ensure probity is maintained at all times. All previous disclosures of interest will remain listed in the Agenda and will be acknowledged at the start of a meeting, thereby negating to disclose it in writing again.
- 7.2 If a Member discloses a financial or proximity interest in a matter under consideration by the Group, the member should disclose the nature of their interest, and also the extent of that interest.
- 7.3 If a Member discloses a financial or proximity interest in a matter under consideration by the Group and wishes to remain and participate in the meeting, the Member is to inform the Chairperson that the Member intends to remain and participate in the meeting.
- 7.4 The meeting notes shall record the members' disclosure of interests and the extent of the interests. They shall also record the times a Disclosing Member has departed and/or re-entered the meeting and/or is absent from the meeting during the item of interest, or whether they remained and participated in the meeting when considering the matter to which an interest was declared.
- 7.5 If a member is unsure whether they have an interest in a matter, they are encouraged to raise the issue with the relevant Director in attendance at the meeting.

## 8 CONFIDENTIALITY AND PRIVACY

- 8.1 Members of the Advisory Group may have exposure to confidential or personal information and if so they are required to maintain the security of any confidential information and not access, use or remove any information, unless the member is authorised to do so.

- 8.2 At the first meeting of the Advisory Group, a Confidential Agreement will be provided to members for their review and execution.
  - 8.3 Members of the Advisory Group will be advised when matters are deemed Confidential by the Chair. Documents provided at the meeting will be identified as Confidential and all confidential documents will be returned to the Chair following the meeting.
  - 8.4 Should a member become aware of any unauthorised release or misuse of confidential or personal information, they are advised to contact the relevant Director.
  - 8.5 Should a breach of Confidentiality be made by an Advisory Group member, the Chief Executive Officer will remove the respective member from the Advisory Group.
  - 8.6 Members are not to speak to the media in their capacity as Advisory Group Members and any comments on social media are to be in their personal capacity and not in their capacity as an Advisory Group Member.
- 9 CODE OF CONDUCT
- 9.1 The relevant Shire of Dardanup Code of Conduct applies to members of the Advisory Group and shall be adhered to during meetings and interactions with Elected Members, staff and the community when acting in the capacity of an Advisory Group member.

**SPORT AND RECREATION  
ADVISORY GROUP**

**INSTRUMENT OF APPOINTMENT  
&  
TERMS OF REFERENCE**

**2021**

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## 1 AIMS

The Sport and Recreation Advisory Group aims to advise on the provision of sport and recreation facilities and services within the Shire of Dardanup and to provide a forum for the dissemination and consideration of information regarding sport and recreation issues.

## 2 OBJECTIVES

The Objectives of the Advisory Group are to:

- 2.1 Provide a means of participation and communication between the Sporting and Recreation groups and the Shire of Dardanup on matters pertaining to sporting and recreation.
- 2.2 Provide advice and make recommendations relating to:
  - 2.2.1 The formulation of a community and Council vision with regards to sport and recreation matters; and
  - 2.2.2 The development and implementation of relevant initiatives and programs.

## 3 MEMBERSHIP

- 3.1 The term of appointment for membership will be a period of two (2) years.
- 3.2 *Participating Organisational Representation:* Membership will be sought from the following Organisations:
  - Department of Sport & Recreation - Representative
  - Eaton Basketball Association - Representative
  - Eaton Cricket Club - Representative
  - Eaton Junior Football Club - Representative
  - Eaton Dardanup Soccer Club- Representative
  - Basketball Southwest - Representative
  - Eaton Boomers Football Club - Representative
  - Bunbury & Districts Softball Association – Representative
  - Eaton Tennis Club - Representative
  - Eaton Bowling Club - Representative
  - Burekup Cricket Club - Representative
  - Eaton Netball Association - Representative
  - WA iSport - Representative
- 3.3 *Elected Members:* Council will nominate three (3) Elected Members to the Sport and Recreation Advisory Group. All other Elected Members will be notified of all meetings and may attend Group meetings at will, but are not entitled to vote on matters.
- 3.3 *Shire Officers:* The Chief Executive Officer shall appoint an officer to manage the Advisory Group. In normal circumstances this is the **Director Sustainable Development**. Shire staff attending the Advisory Group will table papers for discussion and participate in the discussion. Shire Officers are not members of the Advisory Group and shall not vote.

- 3.4 *Chair and Deputy Chair:* One of the elected Members will be appointed by Council as the Chair and another as the Deputy Chair of the Advisory Group. The Chairperson shall ensure that the Advisory Group operates in accordance with the Terms of Reference at all times.
- 3.5 *Advisory Group Support:* The relevant Director will arrange for administrative support. Such support will include the preparation and distribution of the agenda, notice of meetings, and recording and distribution of meeting notes. The Advisory Group secretariat is also responsible for arranging meeting venue, refreshments and coordinating any presentations.
- 3.6 *Specialist Advice:* Individuals and groups may be invited to attend Advisory Group meetings to provide specialist advice. They must not be involved in the decision making process and cannot vote on any issue.

#### 4 MEETINGS

- 4.1 Advisory Groups will meet at least bi-annually, with a minimum of 2 meetings, dates to be resolved by the Advisory Group. Extraordinary meetings may be called by the Chair in consultation with the relevant Director or Chief Executive Officer.
- 4.2 As there are no powers or duty delegated to the Advisory Group the meetings are not open to the public.
- 4.3 Notice of meetings including an agenda shall be given to members at least **5 days** prior to each meeting.
- 4.4 The Director shall ensure that detailed meeting notes of all meetings are kept and shall, not later than **5 days** after each meeting, provide the members with a copy of such meeting notes.
- 4.5 All members of the Advisory Group shall have one vote. If the vote of the members present are equally divided, the Chairperson is to cast a second vote.
- 4.6 Advisory Group members may list matters for consideration by tabling matters at least ten **(10) days** prior to the next meeting with the relevant Director. The Director will be responsible for preparing the Advisory Group Agenda, researching and reporting on those matters tabled for discussion. It is at the discretion of the Chief Executive Officer as to whether a matter will be included in the Agenda.
- 4.7 Meeting notes will form a record for the Shire of Dardanup, but will not require endorsement by Council. Matters requiring Council consideration will be subject to a separate specific report to be prepared by the appropriate Officer and taken to the next Council meeting. The meeting notes will be presented to Council through the Information Bulletin.

#### 5 QUORUM

- 5.1 Quorum for a meeting shall be at least 50% of the number of offices, whether vacant or not.



## 6 DELEGATIONS

- 6.1 The Advisory Group performs an advisory function and does not have any delegated authority.

## 7 CONFLICTS OF INTEREST

- 7.1 All members need to be aware that any conflict of interest needs to be disclosed in writing, to ensure probity is maintained at all times. All previous disclosures of interest will remain listed in the Agenda and will be acknowledged at the start of a meeting, thereby negating to disclose it in writing again.
- 7.2 If a Member discloses a financial or proximity interest in a matter under consideration by the Group, the member should disclose the nature of their interest, and also the extent of that interest.
- 7.3 If a Member discloses a financial or proximity interest in a matter under consideration by the Group and wishes to remain and participate in the meeting, the Member is to inform the Chairperson that the Member intends to remain and participate in the meeting.
- 7.4 The meeting notes shall record the members' disclosure of interests and the extent of the interests. They shall also record the times a Disclosing Member has departed and/or re-entered the meeting and/or is absent from the meeting during the item of interest, or whether they remained and participated in the meeting when considering the matter to which an interest was declared.
- 7.5 If a member is unsure whether they have an interest in a matter, they are encouraged to raise the issue with the relevant Director in attendance at the meeting.

## 8 CONFIDENTIALITY AND PRIVACY

- 8.1 Members of the Advisory Group may have exposure to confidential or personal information and if so they are required to maintain the security of any confidential information and not access, use or remove any information, unless the member is authorised to do so.
- 8.2 Members of the Advisory Group will be advised when matters are deemed Confidential by the Chair. Documents provided at the meeting will be identified as Confidential and all confidential documents will be returned to the Chair following the meeting.
- 8.3 Should a member become aware of any unauthorised release or misuse of confidential or personal information, they are advised to contact the relevant Director.
- 8.4 Should a breach of Confidentiality be made by an Advisory Group member, the Chief Executive Officer will remove the respective member from the Advisory Group.
- 8.5 Members are not to speak to the media in their capacity as Advisory Group Members and any comments on social media are to be in their personal capacity and not in their capacity as an Advisory Group Member.

- 8.6 Members are not to speak to the media in their capacity as Advisory Group Members and any comments on social media are to be in their personal capacity and not in their capacity as an Advisory Group Member.

## 9 CODE OF CONDUCT

- 9.1 The relevant Shire of Dardanup Code of Conduct applies to members of the Advisory Group and shall be adhered to during meetings and interactions with Elected Members, staff and the community when acting in the capacity of an Advisory Group member.

Advisory Groups	Terms of Reference	Council Reps	2021 Meeting Date	Existing/Added	Meeting Days/Time	Venue	Proposed Meeting Dates 2022 Minimum of 2 meetings per year	New Council Rep Appointment	Council Res
Economic and Development	<a href="#">2021 - ToR Economic and Development Advisory Group</a>	Cr M Bennett Cr T Gardiner Cr M Hutchinson	3 February 2021 10 November 2021	Existing	Wednesday 5.00pm	Shire of Dardanup Council Chambers	13 July & 30 November at 5pm	<b>Cr. M T Bennett [Chair]</b> <b>Cr. T G Gardiner</b>	
Eaton Advisory Group	<a href="#">2021 - ToR - Eaton Advisory Group</a>	Cr M Bennett Cr P Perks Cr S Gillespie C Boyce	10 February 2021 7 July 2021	Existing	Wednesday 5.00pm to 7.00pm	Shire of Dardanup Council Chambers	2 February & 6 July at 5pm	<b>Cr. M T Bennett</b> <b>Cr. P R Perks</b>	
Burekup Advisory Group	<a href="#">2021 - ToR - Burekup Advisory Group</a>	Cr M Bennett Cr M Hutchinson Cr J Dow	3 March 2021 4 August 2021	Existing	Monday nights except 3 Mon of month – 5.00pm	Burekup Country Club	14 March & 8 August at 5pm	<b>Cr. M T Bennett</b>	
Roadwise Advisory Group	<a href="#">2021 - ToR Roadwise Advisory Group</a>	Cr P Robinson Cr T Gardiner Cr P Perks	24 March 2021 11 August 2021	Existing	Wednesday 4.00pm to 6.00pm	Shire of Dardanup Council Chambers	2 March & 3 August at 4pm	<b>Cr. P S Robinson [Chair]</b> <b>Cr. E P Lilly [Deputy]</b> <b>Cr. T G Gardiner</b>	
Dardanup Advisory Group	<a href="#">2021 - ToR Dardanup Advisory Group</a>	Cr P Robinson Cr T Gardiner Cr P Perks	7 April 2021 1 September 2021	Existing	Wednesday 5.30pm to 7.30pm	Thomas Little Hall Dardanup	6 April & 7 September at 5.30pm	<b>Cr. P S Robinson [Chair]</b> <b>Cr. E P Lilly [Deputy]</b>	
Ferguson Valley Advisory Group	<a href="#">2021 - ToR - Ferguson Valley Advisory Group</a>	Cr P Robinson Cr T Gardiner C Boyce	5 May 2021 6 October 2021	Existing	Wednesday 5.00pm to 7.00pm	Ferguson Hall	4 May & 5 October at 5pm	<b>Cr. T G Gardiner [Chair]</b> <b>Cr. P S Robinson</b> <b>Cr. M T Bennett</b>	
Sustainable Development	<a href="#">2021 - ToR Sustainable Development Advisory Group</a>	Cr M Bennett Cr M Hutchinson C Boyce	19 May 2021 8 September 2021	Existing	Wednesday 5.00pm to 7.00pm	Shire of Dardanup Council Chambers	18 May & 19 October at 5pm	<b>Cr. M T Bennett</b> <b>Cr. E P Lilly</b>	
Wanju/Waterloo	<a href="#">2021 - ToR - Wanju and Waterloo Advisory Group</a>	Cr M Bennett Cr P Robinson Cr T Gardiner	9 June 2021 3 November 2021	Existing	Wednesday 5.00pm to 7.00pm	Shire of Dardanup Council Chambers	1 June & 2 November at 5pm	<b>Cr. M T Bennett</b> <b>Cr. E P Lilly</b> <b>Cr. T G Gardiner</b>	
Community Development	<b>To be adopted or deleted</b> <a href="#">2021 - ToR Community Advisory Group</a>	Cr P Perks Cr S Gillespie Cr J Dow	21 April 2021 18 August 2021	Now Dissolved and Combined with Sport and Rec Group	Wednesday 5.00pm to 7.00pm	Shire of Dardanup Council Chambers	16 February & 21 September at 5pm	<b>Cr. M T Bennett</b> <b>Cr. E P Lilly</b>	-----
Sport and Recreation Advisory Group	<b>To be adopted or deleted</b> <a href="#">2019 - ToR - Sport and Recreation Advisory Group</a>	Cr M Bennett Cr P Perks Cr S Gillespie	17 February 2021 14 July 2021	Now Dissolved and Combined with Community Development Group	Wednesday 5.00pm to 7.00pm	Shire of Dardanup Council Chambers	20 April & 16 November at 5pm	<b>Cr. M T Bennett</b> <b>Cr. T G Gardiner</b>	-----
Community, Sport & Recreation Advisory Group	<b>To be adopted or deleted</b> <a href="#">2021 - ToR Community, Sport and Recreation Advisory Group</a>		20 April 2022	Added	Wednesday 5.30pm to 7.30pm	Shire of Dardanup Council Chambers	20 April & 21 September at 5.30pm	<b>Cr. M T Bennett</b> <b>Cr. E P Lilly</b>	

## (Appendix ORD: 12.4.4A)

RISK ASSESSMENT TOOL								
<b>OVERALL RISK EVENT:</b>		Appointment of Delegates and Representatives to Various Community & Regional Committees						
<b>RISK THEME PROFILE:</b>		6 - Engagement Practices						
<b>RISK ASSESSMENT CONTEXT:</b>		Operational						
CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL		
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD	RESIDUAL RISK RATING
<b>HEALTH</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
<b>FINANCIAL IMPACT</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
<b>SERVICE INTERRUPTION</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
<b>LEGAL AND COMPLIANCE</b>	Local Government Act 1995 compliance requirement to review delegations annually	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
<b>REPUTATIONAL</b>	Failure to engage with the community and Regional Groups fully would reflect negatively on the Council and Shire.	Moderate (3)	Rare (1)	Low (1 - 4)	Not required.	Not required.	Not required.	Not required.
<b>ENVIRONMENT</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.

External Committees/Groups	Contact Details	Council Reps	Existing/Added	Meeting Days/Time	Venue	Proposed Meeting Dates 2022	New Council Rep Appointment	Council Res
Burekup Country Club Committee	Errol Sheedy (President) 0418 931 064 <a href="mailto:burekupcountryclub@gmail.com">burekupcountryclub@gmail.com</a>	Cr M Hutchinson	Existing	3 <sup>rd</sup> Monday of each month 6.30pm	Burekup Country Club	3 <sup>rd</sup> Monday of each month		
Eaton Senior Citizens Association	Bill Adams (President) 0403 500 647 <a href="mailto:Cryptic4.28@gmail.com">Cryptic4.28@gmail.com</a>	Cr M Bennett	Existing	2 <sup>nd</sup> Wednesday of each month 9.00am	Eaton Senior Citizens (will be Bowling Club in 2022)	Every 2 Wednesday of each month 9.00am	<b>Cr. M T Bennett</b>	
Regional Road Group	Bronwyn Albury (Secretary) 08 9724 5614 <a href="mailto:Bronwyn.albury@mainroads.wa.gov.au">Bronwyn.albury@mainroads.wa.gov.au</a>	Cr P Robinson C Boyce	Existing	TBC – Held quarterly	Shire of Dardanup Council Chambers	To be confirmed at meeting 6/12/21	<b>Cr. M T Bennett</b> <b>Cr. P S Robinson [Dep]</b>	
Leschenault Catchment Council	Katrina Zeehandelaar-Adams 0458 960 576 <a href="mailto:Katrina.za@leschenaultcc.org.au">Katrina.za@leschenaultcc.org.au</a> LCC is hiring an executive officer in 2022. They will be the primary contact when this occurs.	Cr P Perks	Existing	TBC – held quarterly	Varies – held at different locations across catchment	Meeting dates for 2022 will be confirmed after AGM on 17/11/21	<b>Cr. E P Lilly</b> <b>Cr. P R Perks [Dep]</b>	
Bunbury Geographe Economic Alliance	Angie Marcus 08 9792 7388 <a href="mailto:admin@bgea.com.au">admin@bgea.com.au</a>	Cr P Perks Cr M Bennett	Existing	Every 6 weeks from mid-February onwards 4:30pm to 6.30pm	Location varies as to which board member is hosting		<b>Cr. M T Bennett</b> <b>Cr. T G Gardiner [Proxy]</b>	
South West WALGA Zone	Tim Lane (Manager, Strategy & Association Governance – WALGA) 08 9213 2029 <a href="mailto:tlane@walga.asn.au">tlane@walga.asn.au</a>	Cr M Bennett Cr P Robinson	Existing	Held bimonthly 9.00am – 12noon	Varies – held at different SW councils	18/2/21 – Donnybrook-Balingup 22/4/22 – Harvey 24/6/22 – Manjimup 26/8/22 – Nannup 25/11/22 - AMR	<b>Cr. M T Bennett</b> <b>Cr. T G Gardiner [Dep]</b>	
Ferguson Valley Marketing and Promotions	Brigitte Milligan 0428 281 551 <a href="mailto:marketing@fergusonvalley.net.au">marketing@fergusonvalley.net.au</a>	C Boyce Cr P Robinson	Existing	2 <sup>nd</sup> Thursday of each month 5.00pm	St Aidans Wines	2 <sup>nd</sup> Thursday of each month 5.00pm	<b>Cr. T G Gardiner</b> <b>Cr. P S Robinson [Dep]</b>	
Bunbury Geographe Group of Councils	Andre Schonfeldt (Chair) 08 9724 0306 <a href="mailto:records@dardanup.wa.gov.au">records@dardanup.wa.gov.au</a>	Cr M Bennett Cr P Robinson	Existing	Held bimonthly Monday 3.00pm	Shire of Dardanup Council Chambers	TBC – Schedule will be set at next meeting (8/11/21)	<b>Cr. M T Bennett</b> <b>Cr. T G Gardiner [Proxy]</b>	
Ferguson Hall Committee	Andy Crilly (Chair) 0429 200 250 <a href="mailto:fergusonhall@dardanup@gmail.com">fergusonhall@dardanup@gmail.com</a> or <a href="mailto:andytonicrilly@hotmail.com">andytonicrilly@hotmail.com</a>	Cr P Robinson	Existing	1 <sup>st</sup> Friday of each month 5.00pm	Ferguson Hall	1 <sup>st</sup> Friday of each month 5.00pm	<b>Cr. P S Robinson</b> <b>Cr. T G Gardiner [Dep]</b>	
Peron Naturaliste Partnership	Craig Perry Coastal Adaptation Coordinator 0434 665 866 <a href="mailto:peronnaturalistepartnership@mandurah.wa.gov.au">peronnaturalistepartnership@mandurah.wa.gov.au</a>	C Boyce Cr P Robinson	Existing	Fridays 10.30am - Noon	Rotates – Bunbury Area. TBA	November, March, and July [AGM]	<b>Cr. P S Robinson</b> <b>Cr. P R Perks [Dep]</b>	
Eaton Community College Board	Rochelle Brown – School Officer Eaton Community College 20 Recreation Drive, EATON WA 6232 9796 7049 <a href="mailto:rochelle.brown@education.wa.edu.au">rochelle.brown@education.wa.edu.au</a>	Cr. P R Perks	Existing	Tuesdays, 5.30pm Twice per school term	Eaton Community College	8 & 22 Feb 3 May 14 June 26 July 6 September 18 October 29 November	<b>Cr. M T Bennett</b>	
Eaton Bowling & Social Club And Eaton Senior Citizens Building Joint Management Committee	Kerry Edwards – Eaton Bowling & Social Club Secretary <a href="mailto:sec@eatonbowling.com.au">sec@eatonbowling.com.au</a> 97251074	Cr. P R Perks	Existing	TBA	Eaton Bowling & Social Club & Eaton Senior Citizens Building	TBA		

**(Appendix ORD: 12.4.5)****RISK ASSESSMENT TOOL****OVERALL RISK EVENT:** Setting of Advisory Group and Committee Meeting Dates 2022**RISK THEME PROFILE:**

4 - Document Management Processes

3 - Failure to Fulfil Compliance Requirements (Statutory, Regulatory)

**RISK ASSESSMENT CONTEXT:** Operational

CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL		
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD	RESIDUAL RISK RATING
<b>HEALTH</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
<b>FINANCIAL IMPACT</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
<b>SERVICE INTERRUPTION</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
<b>LEGAL AND COMPLIANCE</b>	Non-compliance with meeting procedures could lead to penalties being imposed on the Shire.	Minor (2)	Rare (1)	Low (1 - 4)	Not required.	Not required.	Not required.	Not required.
<b>REPUTATIONAL</b>	Non-compliance of advertising Committee dates will impact on the Shire's business reputation.	Minor (2)	Unlikely (2)	Low (1 - 4)	Not required.	Not required.	Not required.	Not required.
<b>ENVIRONMENT</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.



COUNCIL POLICY NO:-
<b>Exec CP202 – ELECTED MEMBER GRIEVANCES, INVESTIGATIONS AND RESOLUTIONS</b>

GOVERNANCE INFORMATION			
Procedure Link:	NA	Administrative Policy Link:	NA

ADMINISTRATION INFORMATION					
Version:	New	OCM	24/02/2021	Res: 31-21	Synopsis: Policy created.
Version:					

**1. RESPONSIBLE DIRECTORATE**

Directorate – Executive

**2. PURPOSE OR OBJECTIVE**

To outline the policy, process and procedures for investigating grievances and complaints against Elected Members relating to alleged breaches of the Shire’s Elected Member Code of Conduct, or more serious matters of misconduct.

**3. POLICY**

The Shire of Dardanup’s Grievance, Investigation & Resolution Process outlined below will apply the principals of procedural fairness. The Shire President and Chief Executive Officer will decide upon the most appropriate way to take the grievance forward based on the preliminary enquiry and risk assessment.

If an investigation commences, consideration of legislation and industrial instruments will determine the powers, limitations and responsibilities of the Shire of Dardanup.

**3.1 Definitions**

Complainant	A person who raises a complaint about a matter regarding the workplace.
Respondent	An Elected Member who is alleged to have acted in a manner which caused the complainant to raise a complaint.
Shire President	Throughout this policy will refer to the Shire President or the Deputy Shire President where a conflict arise.
Chief Executive Officer	Throughout this policy will refer to the Chief Executive Officer or the Deputy Chief Executive Officer where a conflict arise.

**3.2 Vexatious or Malicious Complaints**

Where a Complainant has deliberately made a vexatious or malicious complaint the Complainant may be subject to the process and procedure set out in this policy.

**3.3 Victimisation of Complainant**

A Complainant must not be victimised by the Respondent or any other person for making a complaint. Anyone responsible for victimising a Complainant may be subject to the process and procedure set out in this policy.

**3.4 Confidentiality**

The parties to the grievance, investigation and resolutions process must:

- Maintain confidentiality throughout the process; and
- Keep documentation produced during the process secure as part of official Shire of Dardanup records.

Breaches of confidentiality will be subject to the process and procedure set out in this policy.

**(Appendix ORD: 12.4.6A)****4. PROCESS****4.1 Key Principles in the Grievance, Investigation & Resolution Process**

The following principles will apply to any grievance made:

- **Anonymity:** The anonymity of a complainant will be of utmost importance throughout this process and the complainant's name will only be released with agreement from the Complainant.
- **Anonymous Complaints:** Any grievance or complaint that is lodged anonymously without contact details may not necessarily be investigated.
- **Documentation:** All grievances will be documented and Complainants will be advised of this at the outset.
- **Confidential:** All parties must keep matters related to a grievance confidential.
- **Procedural fairness:** Where an investigation is required the principles of procedural fairness will apply.

Procedural fairness – The principles of procedural fairness provide that a fair and proper procedure be followed:

- The Respondent is advised of the details of any allegations made against them where reasonably practicable;
- The Respondent is advised of potential consequences applicable to the situation;
- The Respondent is given an opportunity to respond to any allegations made against them and for the response to be received and considered before a decision is made.

**4.2 Self Manage**

A Complainant should attempt to resolve the grievance directly with the Respondent(s) concerned in the first instance. The Complainant should identify the specific behaviour which has caused offence, explain the impact of that behaviour on them, and request that the behaviour stops. In some circumstances, the Respondent may be unaware that their behaviour offends the Complainant. These actions should be taken as soon as possible.

If the Complainant is not comfortable attempting to resolve the grievance directly with the Respondent, or if their attempts to resolve the issue are unsuccessful, or if the issue is deemed sufficiently serious, the Complainant may seek guidance from the Shire President / Chief Executive Officer / Manager Governance & HR on the options available.

The Complainant has the choice whether to proceed with their complaint at that stage and the complaint can be withdrawn at any time.

If a complaint is withdrawn and the Shire of Dardanup deems the matter to be sufficiently serious, it may continue to investigate the complaint even if it has been withdrawn.

**4.3 Informal Complaint**

A complaint can be dealt with on an informal basis where:

- The allegations are not deemed sufficiently serious, for example interpersonal conflict or potentially a minor breach of policies, procedures and guidelines;
- The Complainant is reluctant to lodge a formal complaint; or
- The Complainant aims to preserve the relationship.

The informal complaint procedure may be approached as follows:

- The Complainant should approach the Shire President, Chief Executive Officer or Manager Governance & HR to outline their concerns, the desired outcome and any ideas for resolution of the complaint.
- The Shire President, Chief Executive Officer/ Manager Governance & HR will explain the various options available to the Complainant for the resolution of the complaint.
- If the Complainant decides to proceed with the complaint they may;
  - Ask the Respondent for an apology.
  - Ask the Shire President, Chief Executive Officer to meet with the Complainant and the Respondent separately to discuss the issues and explore possible solutions.
  - If the matter is resolved to the satisfaction of all parties, the matter will be concluded.
  -



**(Appendix ORD; 12.4.6A)**

If the matter is not resolved the Complainant may decide to lodge a formal complaint as per 4.4 below.

All meetings with the Complainant and the Respondent should be documented and any correspondence between the parties should be retained on a confidential basis by the Chief Executive Officer or Manager Governance & HR.

**4.4 Formal Complaint**

A complaint should be dealt with through the formal complaint procedure set out below where:

- A complaint relates to Division 3 of the Code of Conduct – Behaviour; or
- A complaint relates to other Divisions of the Code of Conduct including but not Limited to Division 2- General Principals and Division 4 Rules of Conduct; or
- A complaint involves sufficiently serious allegations, including but not limited to misconduct, sexual harassment, discrimination, criminal conduct, breaches of policies, the Code of Conduct or of the Local Government Act 1995 (WA) including relevant Regulations; or
- The complaint involves a particularly sensitive or personal matter; or
- A formal complaint procedure is deemed appropriate in the circumstances.

**5. PROCEDURE****5.1 Submitting a Complaint**

A formal complaint should be made in writing on the Code of Conduct Complaints Form [Appended] to the Chief Executive Officer or Manager Governance & HR with all the required information provided and should include the following information:

- The Complainant's name and contact details;
- Details of the specific incident or issue including dates, times and exact conduct being complained about;
- If the complaint is about a person(s), the identity of the Respondent/Respondents and their relationship to the Complainant;
- The names of any witnesses who were present during the specific incident or who have first-hand knowledge of the issue being complained about;
- The outcome the Complainant is seeking; and
- Any action that has already been taken in an effort to resolve the issue.

Acknowledgement of receipt of a complaint is to be sent by the Chief Executive Officer or Manager Governance & HR to the complainant and is to include a statement that the matter will be dealt with by the Shire President and Chief Executive Officer or where a conflict arises by the respective Deputy.

The Elected Member being complained about is to be advised that the Chief Executive Officer has received a complaint and that the matter will be dealt with according to this Policy. The Elected Member being complained about will not be informed as to whom lodged the complaint.

**5.2 Dealing with a Complaint**

Where a complaint relates to the *Code of Conduct Division 3 – Behaviour*, the Shire President and Chief Executive Officer will deal with the complaint jointly in accordance with the provisions set out below.

Where a complaint relates to more serious matters as per the Local Government Act 1995, the Chief Executive Officer, will remain the Complaints Officer and the provisions set out below will guide the Chief Executive Officer in dealing with such complaints.

**5.3 Preliminary Inquiry**

Before commencing a formal investigation the Chief Executive Officer will conduct or instruct a person to conduct a preliminary inquiry to gather further information about the complaint to determine the level of seriousness involved.

The purpose of a preliminary inquiry is to:

- Obtain details about the complaint and assess the seriousness of the allegations;
- Determine the level of factual dispute;
- Assess whether there is sufficient evidence to proceed to a formal investigation; and

**(Appendix ORD: 12.4.6A)**

- Determine whether the Shire should proceed with an investigation or refer the matter to an external authority. It may be appropriate to refer a matter to an external authority where the alleged conduct is potentially of a criminal nature, potentially breaches the Local Government Act 1995 or may need to be dealt with by the Corruption and Crime Commission.

The Chief Executive Officer may refuse to deal with a complaint if the Chief Executive Officer is satisfied that the complaint is frivolous, vexatious, misconceived or without substance. If the Shire President and Chief Executive Officer refuses to deal with a complaint, notice must be given of the reason(s) for doing so to the complainant.

#### **5.4 Investigation**

If deemed necessary the Chief Executive Officer may require a formal investigation to be conducted. The Chief Executive Officer can elect to appoint a person from outside the organisation to conduct the investigation or an appropriate employee may conduct the investigation (Investigator).

The role of the Investigator is to collect information about the complaint and make findings about whether any allegations are able to be substantiated on the balance of probabilities. The Investigator is responsible for ascertaining facts, reviewing documentation, interviewing parties and make recommendations as to whether allegations are substantiated.

The depth and scope of the investigation will depend on the nature of the complaint, however, as a general guide the following should be covered by the investigation report:

- The circumstances of any allegations made;
- A list of allegations made by the Complainant, the Respondent's response to the allegations and whether any of the allegations are substantiated;
- Outline where any policies or legislation have been breached;
- Evidence stemming from the complaint include any documentation such as emails; letters and witness evidence;
- An evidence matrix for every allegation; and
- Any mitigating circumstances that have been presented through the investigation on behalf of the Respondent.

The Investigator is to investigate the complaint in accordance with the principles of procedural fairness and determine whether, on the balance of probabilities, the allegation is substantiated or a breach has occurred and provide the outcome to the Chief Executive Officer.

#### **5.5 Outcome of a Formal Complaint**

##### Complaints under Division 3 of the Code of Conduct

In relation to complaints against the *Code of Conduct - Division 3 Behaviour* the Shire President and Chief Executive Officer will consider the report from the Investigator to determine:

- Whether a breach has occurred;
- Whether or not further action is to be taken; and
- If further action is to be taken, prepare and implement a plan to address the behavior of the Respondent.

In making this determination the Shire President and Chief Executive Officer is to give written notice to the Complainant and the Respondent of:

- Their findings and the reasons for their findings; and
- If finding that a breach occurred the decision that such a breach has occurred.

##### Complaints not related to Division 3 of the Code of Conduct

For all other complaints to the Chief Executive Officer as the Complaints Officer of the Local Government, when advised on the balance of probability the allegation is substantiated or that a breach of other Divisions of the Code of Conduct has occurred, the Chief Executive Officer will forward the complaint and all relevant information to the Standards Panel or the Department of Local Government, for a decision on what, if any, sanction(s) is appropriate in the circumstances.

**(Appendix ORD: 12.4.6A)**

The Chief Executive Officer will notify both the Complainant and Respondent of the outcome of the investigation and what action will be undertaken. This notification will consider the matter concluded for the purposes of this policy, process and procedure.

**5.6 Withdrawing a Complaint**

A person who has made a complaint can withdraw the complaint at any time prior to the Chief Executive Officer concluding its investigation subject to the following:

- a) A withdrawal of a complaint must be in writing addressed to the Chief Executive Officer;
- b) If the complaint is withdrawn, a written acknowledgement will be sent to the complainant; and
- c) The withdrawal of the complaint will:
  - i) Release the Chief Executive Officer from any obligation to investigate the matter to which the complaint relates; and
  - ii) Prevent the Chief Executive Officer from receiving any further complaint regarding the same subject, unless the Shire is satisfied that it is appropriate to do so.

**5.7 Reporting Obligations**

If the Chief Executive Officer or another employee of the Shire of Dardanup has reporting obligations pursuant to the *Corruption and Crime Commission Act 2003* (WA) and suspects on reasonable grounds that a matter arises which concerns or may concern misconduct, the relevant authority must be notified of that matter as soon as reasonably practicable.

Elected Members must also be aware of and adhere to any obligations pursuant to the *Public Interest Disclosure Act 2003* (WA).

**Attachment: Code of conduct - 'Complaint About Alleged Breach Form'** [Code of Conduct Complaints Form](#)

**Code of Conduct for Council Members, Committee Members and Candidates**

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Schedule 1, Division 3 of the *Local Government (Model Code of Conduct) Regulations 2021*

- NOTE:** A complaint about an alleged breach must be made —
- (a) in writing in the form approved by the local government
  - (b) to an authorised person
  - (c) within one month after the occurrence of the alleged breach.

<b>Name of person who is making the complaint:</b>	
<i>Dependent on the seriousness of the complaint, anonymous complaints will be investigated. However note that as an anonymous complainant it is impossible to be advised of the outcome.</i>	
Name: _____	
Given Name(s)	Family Name

<b>Contact details of person making the complaint:</b>	
Address:	
Email:	
Contact Number:	

<b>Name of the local government concerned:</b>
<b>Shire of Dardanup</b>

<b>Name of council member, committee member, candidate alleged to have committed the breach:</b>	
<i>If the complaint is about a person(s), the identity of the Respondent/Respondents and their relationship to the Complainant:</i>	
Name:	
Relationship:	

<b>Date of the alleged breach:</b>

**Code of Conduct for Council Members, Committee Members and Candidates**

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**Names of Witnesses/Relevant persons**

The names of any witnesses (and contact details if available) who were present during the specific incident or who have first-hand knowledge of the issue being complained about:

**State the full details of the alleged breach. Attach any supporting evidence to your complaint form.**

*Details of the specific incident or issue including dates, times and exact conduct being complained about:*

**Date of alleged breach:**

**Outcome sought:**

Please state the outcome you are seeking as Complainant:

**Action taken:**

Any action that has already been taken in an effort to resolve the issue.

**Code of Conduct for Council Members, Committee Members and Candidates**

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<b>Confidentiality clause - Signing</b>	
<p>I acknowledge that any oral or written information exchanged regarding this Complaint is regarded as confidential information. As such, I agree to maintain confidentiality of all such confidential information, and shall not disclose any relevant confidential information to any third parties, except for the information that: (a) is or will be in the public domain; or (b) is under the obligation to be disclosed pursuant to the applicable laws or regulations.</p>	
Signature of Complainant:	
Date:	

<b>Received by Authorised Officer</b>	
Authorised Officer Name:	
Signature of Authorised Officer:	
Date:	

**NOTE TO PERSON MAKING THE COMPLAINT:**

This form should be completed, dated and signed by the person making a complaint of an alleged breach of the Code of Conduct. The complaint is to be specific about the alleged breach and include the relevant section/subsection of the alleged breach.

The complaint must be made to the authorised officer within one month after the occurrence of the alleged breach.

Signed complaint form is to be forwarded to: Complaints Officer, Shire of Dardanup- 1 Council Drive, Eaton WA 6232 or email to [ceo@dardanup.wa.gov.au](mailto:ceo@dardanup.wa.gov.au)

**(Appendix ORD: 12.4.6B)**

<b>RISK ASSESSMENT TOOL</b>								
<b>OVERALL RISK EVENT:</b>		Code of Conduct Complaints Management Process						
<b>RISK THEME PROFILE:</b>		3 - Failure to Fulfil Compliance Requirements (Statutory, Regulatory)						
<b>RISK ASSESSMENT CONTEXT:</b>		Operational						
CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL		
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD	RESIDUAL RISK RATING
<b>HEALTH</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
<b>FINANCIAL IMPACT</b>	Financial impact to organisation is significant when investigations need to be carried out due to non compliance of rules, codes and regulations and laws.	Moderate (3)	Possible (3)	Moderate (5 - 11)	Education regarding financial impacts and implementation of legislation and policy to all elected members.	Minor (2)	Unlikely (2)	Low (1 - 4)
<b>SERVICE INTERRUPTION</b>	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.
<b>LEGAL AND COMPLIANCE</b>	Non compliance with legislation can result in charges of serious misconduct. Serious breaches carry penalties of up to \$10,000 or imprisonment for 2 years.	Major (4)	Rare (1)	Moderate (5 - 11)	Education regarding impacts on non-compliance and implementation of legislation and policy to all elected members.	Moderate (3)	Rare (1)	Low (1 - 4)

**(Appendix ORD: 12.4.6B)**

CONSEQUENCE CATEGORY	RISK EVENT	PRIOR TO TREATMENT OR CONTROL			RISK ACTION PLAN (Treatment or controls proposed)	AFTER TREATMENT OR CONTROL		
		CONSEQUENCE	LIKELIHOOD	INHERENT RISK RATING		CONSEQUENCE	LIKELIHOOD	RESIDUAL RISK RATING
REPUTATIONAL	Elected members have high public profiles. Media interest is significant when local governments are not working harmoniously.	Moderate (3)	Possible (3)	Moderate (5 - 11)	Education regarding reputational impacts and implementation of legislation and policy to all elected members.	Moderate (3)	Rare (1)	Low (1 - 4)
ENVIRONMENT	No risk event identified for this category.	Not Required - No Risk Identified	N/A	N/A	Not required.	Not required.	Not required.	Not required.

(Appendix ORD: 12.4.6B)





Department of  
Local Government, Sport  
and Cultural Industries

(Appendix ORD: 12.4.6C)



Local Government  
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LOCAL GOVERNMENT ACT REVIEW ►► DELIVERING FOR THE COMMUNITY

# **Guidelines on the Model Code of Conduct for Council Members, Committee Members and Candidates**

March 2021

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# Model Code of Conduct

## Introduction

Local government is vital for the delivery of key services and infrastructure in the community. Individuals who are, or seek to be, members of local councils and council committees are entrusted by their community to represent local views, make sound decisions, and utilise public funds effectively to deliver services and amenities for their community. As such, a high standard of professional and ethical conduct is expected of council members and committee members in local governments, as well as candidates in local government elections.

A review of the *Local Government Act 1995* (Act), including consultation with community and sector stakeholders, led to the implementation of priority reforms under the *Local Government Amendment Act 2019* (Amendment Act).

The Amendment Act was developed in response to stakeholder feedback that there was a need for governance reforms, including a Code of Conduct for council members, committee members and candidates that clearly reflects community expectations of behaviour and supports consistency between local governments in relation to the overall process for managing alleged breaches of that Code.

As a result, key reforms under the Amendment Act include the introduction of a Model Code of Conduct (Model Code) that must be adopted by local governments and applied to council members, committee members and candidates; as well as a separate Code of Conduct for Employees.

The Model Code replaces the previous statutory requirement for local governments to develop and implement an individual code of conduct for their council members, committee members and employees.

The *Model Code of Conduct Regulations 2021* (Regulations) have been developed to give effect to the Amendment Act, and provide for:

- overarching principles to guide behaviour;
- behaviours and complaints which are managed by local governments; and
- rules of conduct, contraventions of which are considered by the independent Local Government Standards Panel (Standards Panel) where appropriate.

## Definitions

The Model Code defines key terms to aid understanding and compliance. Where a term is not defined in either the Regulations or the Act, then the generally accepted meaning of the term applies. Some additional guidance is provided as follows:

**Candidate:** an individual is considered a candidate when their nomination for election is accepted by a Returning Officer under section 4.49 of the Act. The Model Code applies to the individual from that point. Any alleged breach of the Model Code may only be addressed if and when the individual is elected as a council member.

## (Appendix ORD: 12.4.6C)

**Council member:** references to 'council member' in the Regulations mean an individual who has been elected as a council member under the Act. The requirements of the Regulations also apply to a council member who is a committee member on a council committee.

**Committee member:** under the Regulations, a 'committee member' includes any council member, local government employee or unelected member of the community who has been engaged by the council to participate in a council committee.

**Evidence:** references to 'evidence' in the Regulations means the available facts or information indicating whether an allegation is true or valid. Local governments must use evidence provided by the complainant and by the person to whom the complaint relates, as well as other relevant information, to decide whether an alleged breach of the Model Code has occurred.

**Local government(s):** per the approach in the Act, references to 'local government' in the Regulations mean the body corporate that is the local governing body made up of the council, Chief Executive Officer (CEO) and administrative staff appointed and managed by the CEO.

Where a statutory function entails decision-making on governance matters, the council is responsible for making those decisions unless the matter is delegated. This includes decisions on complaints regarding the conduct of council members, committee members and candidates, as set out in the Regulations.

Further guidance on certain terms in the Model Code is provided in these Guidelines.

### **Purpose**

The purpose of the Model Code is to guide the decisions, actions and behaviours of members, both in council and on council committees, and of candidates running for election as a council member.

Members must comply with the provisions in the Model Code in fulfilling their role and responsibilities in council and on council committees, as set out in the Act.

An individual who has nominated as a candidate for election as a council member is also required to demonstrate professional and ethical behaviour during their election campaign. If elected, the individual must continue to comply with the Model Code in council and on council committees.

It is the individual responsibility of council members, committee members and candidates to become familiar with the Model Code, these Guidelines and any relevant policies of their local government, and to follow the Code at all times.

Where the behaviour of a council member, committee member or candidate does not comply with the Code, it is intended that the local council address the behaviour through education and other remedial actions that the council considers appropriate, rather than formal sanctions.

Where an individual does not comply with any action required by the council, then the council may determine that the matter is to be referred to the Standards Panel as an

## **(Appendix ORD: 12.4.6C)**

alleged contravention of a rule of conduct. The Standards Panel has the authority to make binding decisions regarding allegations of minor misconduct.

### **Adoption**

Section 5.104 of the Act requires that local governments adopt the Model Code as their Code of Conduct within three months of the Regulations coming into operation (by 3 May 2021).

In accordance with section 5.104(4), the Model Code applies until the local government adopts it as their Code. This means that the principles, behaviour requirements and rules of conduct of the Regulations apply to council members, committee members and candidates even if their local government has not yet adopted the Model Code.

While local governments may not amend Division 2 (Principles) or Division 4 (Rules of Conduct), additional behaviour requirements can be included in Division 3 (Behaviours) if deemed appropriate by the local government. Any additions must be consistent with the Model Code of Conduct (section 5.104(3) of the Act).

In preparing the Code for adoption, local governments are encouraged to review their existing Code and consider incorporating any additional behaviour requirements that are not represented in the Model Code. This may include specific dress standards or the appropriate use of technology.

To adopt the Code, a resolution passed by an absolute majority of the council is required. Once the Code is adopted, it must be published on the local government's official website (section 5.104(7)).

### **Division 2 – General Principles**

This section of the Regulations set out the fundamental rules that council members, committee members and candidates are expected to adhere to, promote and support. Adhering to these rules will assist individuals to comply with the behaviours outlined in Division 3 and 4.

The principles outline the overarching approach that members and candidates should demonstrate in their role as public representatives, or potential public representatives. Individuals should consider all behaviours in light of these principles, including any behaviour and conduct that is not covered specifically in Division 3 and 4.

The principles are grouped into three key areas: Personal Integrity; Relationships with others and Accountability. Additional guidance on these areas is provided as follows:

#### **Integrity and conflicts of interest**

Members and candidates are generally active in their local area which may lead to a conflict between the public interests of the community and the personal interests of the individual, their family members and associates.

## **(Appendix ORD: 12.4.6C)**

It is the individual responsibility of members and candidates to disclose any such conflicts and ensure that they are managed appropriately to comply with the Model Code and serve their community as expected by the local electors.

Individuals should also consider perceived and potential conflicts of interest. While an individual may be confident of the integrity of their actions, it is important to reflect on how their actions may appear to others, and/or how an action taken now could lead to a conflict of interest in future. If an interest is identified, the individual should disclose and manage this to avoid a conflict with the public interest.

### **Avoidance of reputational damage**

Elected members and candidates may hold strong concerns in relation to actions, or a lack of action, by their local government on certain matters.

It is the individual responsibility of members to ensure that they comply with the Model Code by raising concerns in a respectful and constructive manner and working effectively with their colleagues for their community, as expected by the local electors.

During an election campaign, it is the individual responsibility of candidates to ensure that any concerns they raise regarding the current local government is based on accurate information and expressed in a respectful and constructive manner that demonstrates to local electors their suitability as a potential public representative.

### **Decision-making and accountability**

Council and committee members regularly make decisions that impact on their local area. The community expects that members will make council and committee decisions based on information that is relevant and factually correct. This will vary according to the decision to be made and the information available to the council members and committee members at that time.

In general, individuals are responsible for ensuring their decisions are based on information that is accurate and pertinent to the matter at hand; and can be reasonably considered accurate and relevant by others.

As part of being accountable to their community, council members and committee members should accept responsibility for the decisions they make in the performance of their role.

## **Division 3 – Behaviour**

This section of the Regulations sets the standards of behaviour which reflect the general principles outlined in Division 2.

It is the individual responsibility of members and candidates to demonstrate, promote and support professional and ethical behaviour as provided in the Model Code.

Complaints regarding alleged breaches of the Model Code in Division 3 are managed by the local council as the decision-making body of the local governments, unless this function has been delegated.

## (Appendix ORD: 12.4.6C)

The division also provides a principles-based process for responding to alleged breaches. The emphasis is on education and development, rather than punitive sanctions, with the aim of establishing or restoring positive working relationships and avoiding further breaches.

Failure to comply with this Division may give rise to a complaint regarding the conduct of a council member, committee member or candidate, which may lead to the council making a formal finding of a breach and requiring remedial action by the individual.

It is recommended that local governments develop further guidance on dealing with complaints through the introduction of a complementary policy or procedure on complaints management to the extent it is not provided for in the Regulations. There are resources on effective complaints management available on the Ombudsman WA's website at [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au).

### **Complaints**

#### **Process for making a complaint**

Clause 11 of the Regulations provides that a person can make a complaint alleging a breach of Division 3 within one month of the alleged breach occurring.

Local governments should ensure that making a complaint is a simple and accessible process so that any member of the local community can raise concerns about the conduct of council members, committee members and candidates.

Local governments should make it clear that it is important a complainant provides details in their complaint, with supporting information where feasible to do so, because the complaint will form part of the evidence considered by the council when deciding whether a breach of the Model Code has occurred.

#### **Action required**

Local governments must authorise at least one person to receive complaints regarding members and candidates. While the Regulations do not include specific requirements and a local government may decide that the complaints officer is appropriate, other options could include:

- President or Mayor,
- Deputy President or Mayor (especially for complaints about the President or Mayor),
- Chief Executive Officer, or
- External consultant

The Regulations also provide that complaints are to be made in writing in a form approved by the local government.

#### **Action required**

Local governments must determine whether there will be a specific template for complaints and process for how they are to be lodged.

## (Appendix ORD: 12.4.6C)

Local governments may choose to:

- establish a specific email address for conduct complaints
- provide a name/position to whom complaints should be addressed
- prepare an online complaint form
- engage an independent person to support the resolution of a complaint. Local governments may consider sharing the services of an independent person.

The Department has prepared a template form for complaints to assist local governments. The template is available on the department's website at [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au).

The authorised person(s) should acknowledge the receipt of every written complaint in a timely manner. As part of the acknowledgment process, the complainant should be provided information on how the complaint will be progressed and an expected timeframe for the matter to be finalised. This may include providing the complainant with a copy of the complaint policy.

The local government may determine that the person who is authorised to receive complaints takes responsibility for the administrative process. This may include preparing the necessary report to the council or committee tasked with making a decision on the complaint.

The report should contain a summary of the alleged breach, including evidence provided by the complainant. It should also contain information from the person to whom the complaint relates.

### **Dealing with a complaint**

The Regulations do not specify a timeframe by when complaints should be dealt with, however, a timeframe could be included in a local government's policy.

In the interests of procedural fairness, all complaints should be dealt with in a timely manner and allow all parties the opportunity to provide information regarding the alleged conduct.

Clause 12 of the Regulations outlines the process for dealing with complaints regarding the conduct of elected members and candidates. The Model Code leaves it open to local governments to determine the most appropriate and effective process for how this is undertaken. Possible options could include:

#### Council considered

Under this option, all complaints received are considered by the council. This would require a report to be provided to the council – either with or without a recommendation (this is a matter for the Council to determine).



## (Appendix ORD: 12.4.6C)

The council may choose to appoint an independent/external consultant to review complaints and provide a report to the council. If an independent consultant is tasked with reviewing complaints, it may be preferable that they also make a recommendation as to whether a breach has occurred.

If the person authorised to receive complaints prepares the report, it may be more appropriate that no recommendation is made, and council make a finding on the basis of the information they are provided.

### Committee considered

Under this option, a committee is established to consider complaints. The makeup of the committee will depend on whether the power to make a finding can be delegated to the committee, or whether they are tasked with making a recommendation for council consideration.

In establishing a committee, local governments may like to consider forming a behaviour review committee that contains a member from some surrounding local governments and an independent person, to review all complaints for those local governments. The committee would prepare a recommendation which is submitted to the relevant council for consideration.

If the committee is tasked with making a recommendation for council consideration, and the council do not accept the recommendation, the reasons why it is not accepted should be noted in the minutes.

### CEO considered

As with a number of functions in the Act, this function can be delegated to the CEO. Councils may choose to make it the responsibility of the CEO so as to remove council members from the decision-making process. However, consideration also needs to be given as to whether it is appropriate for the CEO to be responsible for making findings on council members' behaviour.

### **Triaging complaints**

Local governments should consider how they are going to respond to complaints, and whether complaints are going to be addressed based on seriousness or impact of the allegation or on the order in which complaints are received. This should be outlined in the complaint policy.

#### **Action required**

Local governments must determine who will be considering complaints received and how complaints will be prioritised and managed.

Clause 12(2) of the Regulations require that the person to whom the complaint relates is given a reasonable opportunity to be heard. This should include providing a copy of the complaint to that person in a timely manner and allowing them an opportunity to respond to the allegations in writing. The information provided by that person will assist the local government in forming a view as to whether a breach has occurred.

## **(Appendix ORD: 12.4.6C)**

### **Mediation**

Local governments may choose to introduce mediation following the receipt of a complaint. This could be in the form of informal or formal mediation, conducted either internally or with an external mediator. Mediation may prove to be a valuable tool to resolve matters quickly, before they escalate. If mediation is successful, there is the ability for a complaint to be withdrawn.

### **Making a finding**

Clause 12(1) requires the local government (which could be the council or a committee) to consider whether the alleged matter which is the subject of a complaint, did occur and make a finding on whether the matter constituted a breach of the Code of Conduct.

The same approach should be used as the Standards Panel in their deliberations and decision-making; that is, based on the complaint and other evidence received by the council, the council must be satisfied that, on the balance of probabilities, it is more likely than not that a breach occurred.

At a minimum, the information used to make a finding will include the information provided by the complainant and the person to whom the complaint relates. While not mandatory, there is nothing that prohibits local governments seeking further evidence to assist in making a decision, such as statements from witnesses.

### **Conflicts of interest**

Members will be required to disclose an impartiality interest. This will include the complainant (if applicable) and person to who the alleged breach applies.

An impartiality interest does not require a member to leave the room for the debate or decision. By having both the complainant and accused in the room, it may also allow further input and clarification around the circumstances of the complaint.

The Presiding Member must keep control of the meeting and ensure everyone is provided with an opportunity to speak. Members should remain respectful and open-minded and make a decision on whether a breach has occurred or not using the information available.

### **Action Plans**

Clause 12(4) provides that if a finding that a breach of the Code of Conduct did occur, the local government may determine that no further action is required; or that an action plan must be prepared and implemented.

An action plan should be designed to provide the member with the opportunity and support to demonstrate the professional and ethical behaviour expected of elected representatives.

## **(Appendix ORD: 12.4.6C)**

The action plan does not need to be complex. The plan should outline:

- the behaviour(s) of concern;
- the actions to be taken to address the behaviour(s);
- who is responsible for the actions; and
- an agreed timeframe for the actions to be completed.

An action plan should not include measures that are intended to be a punishment, and instead should focus on mechanisms to encourage positive behaviour and prevent negative behaviour from occurring again in future.

The Code requires that in preparing the action plan, consultation must be undertaken with the elected member to whom the plan relates. This is designed to provide the member with the opportunity to be involved in matters such as the timing of meetings or training. Note: some members may not be willing to engage with the opportunity to participate in the process.

The council or a delegated person should monitor the actions and timeframes set out in the action plan. This is important because if the member does not comply with the action/s within the agreed timeframe, then under the Regulations it is considered a contravention of a rule of conduct.

### **Dismissal of complaints**

While local governments are required to consider all complaints, they can be dismissed if:

- the behaviour occurred at a council or committee meeting and the behaviour was dealt with at that meeting (clause 13), or
- the complaint is withdrawn (clause 14).

Clause 13 allows a complaint to be dismissed if the behaviour occurred at a council or committee meeting, and that behaviour was addressed at the time. This could have been by the presiding member, or remedial action was taken in accordance with the local government's standing orders or local law.

### **Where agreement cannot be reached**

Circumstances may arise when a local council cannot agree on a finding, whether the complaint can be dismissed under clause 13, or an appropriate course of action following a finding of breach.

While the presiding member has the casting vote, in a divided situation, the local government may decide to engage an independent person/consultant to review the evidence and make a recommendation. If this occurs, the council (or committee) should give due consideration to the advice and recommendation, and if they don't accept the recommendation they should state the reasons why in the minutes.

### Withdrawal of a complaint

Clause 14 provides the option for a complaint to be withdrawn before it is considered by the council.

Local governments may elect to include in their complaints policy the option for mediation between the complainant and the member. Mediation may resolve any specific issues before the council is required to make a finding and may lead to the complainant withdrawing the complaint. Clause 14 requires a withdrawal to be made in writing and provided to the person(s) authorised to receive complaints.

### Division 4 – Rules of Conduct

Contraventions of rules of conduct are matters that:

- negatively affect the honest or impartial performance of an elected member;
- involve a breach of trust placed in the elected member; or
- involve the misuse of information or material.

Division 4 sets out rules of conduct for elected members and candidates that relate to the principles in Division 2 and the behaviours in Division 3. This Division also introduces a new rule of conduct to address situations where an elected member does not undertake the actions required by the local council following a breach of the Model Code. A contravention of this rule of conduct is considered a minor breach, as defined in the Act.

The process for complaints under Division 4 is outlined in the Act. Complaints in the first instance are directed to the complaints officer at the local government. The Act provides that the complaints officer is the CEO or another officer with delegated responsibility.

A council may decide to refer an alleged contravention of Division 4 to the independent Standards Panel in accordance with the Act. As the Panel does not have investigative powers, decisions are made based on the information received by the Panel from the local government. The Standards Panel must be satisfied that, on the balance of probabilities, it is more likely than not that a breach has occurred for the Standards Panel to make a finding of breach.

Where the Standards Panel makes a finding against an elected member or candidate, sanctions will be imposed in accordance with the Part 5 Division 9 of the Act.

Nothing in this Division removes the obligations placed upon council members and employees (including the CEO) of the local government under the *Corruption, Crime and Misconduct Act 2003*.

Further information on the Standards Panel process is available on the Department's website.

## **(Appendix ORD: 12.4.6C)**

### **Further information**

The aim of the Model Code of Conduct is to foster a high standard of professional and ethical conduct by council members and candidates, and to support consistency across local governments in relation to their response to complaints regarding conduct.

Local governments are encouraged to seek guidance and advice on specific matters whenever necessary. For queries, please contact: [actreview@dlgsc.wa.gov.au](mailto:actreview@dlgsc.wa.gov.au)

## Code of Conduct for Council Members, Committee Members and Candidates

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### BEHAVIOUR COMPLAINT

Please read the Shire of Dardanup's Code of Conduct Behaviour Complaints Policy on our website [[insert hyperlink](#)] before submitting a complaint. This Policy details:

- How the Shire of Dardanup will process and determine a Behaviour Complaint; and
- How confidentiality of the complaint will be handled.

To make a valid **Behaviour Complaint**:

- 
- The allegation must relate to a breach of the behaviour standards in Division 3 of the Shire of Dardanup's Code of Conduct for Council Members, Committee Members and Candidates.

- 
- Complete all sections of the Behaviour Complaint Form attached, including any additional information that will support assessment of the complaint. *The Behaviour Complaints Officer may contact you to clarify or ask for more information.*

- 
- The completed Behaviour Complaint Form **MUST** be lodged with the Shire of Dardanup Behaviour Complaints Officer within one (1) month of the alleged behaviour breach.
- 

### RULES OF CONDUCT COMPLAINT

A **Rules of Conduct Complaint** refers to a breach of the Rules of Conduct outlined in Division 4 of the Shire of Dardanup's Code of Conduct for Council Members and Candidates, including Council Members when acting as a Committee Member. This type of complaint is determined by the Local Government Standards Panel, administered through the Department of Local Government, Sport and Cultural Industries. Further information about Rules of Conduct Complaints may be obtained from:

- Department of Local Government, Sport and Cultural Industries: (08) 6552 7300 or [www.dlgsc.wa.gov.au](http://www.dlgsc.wa.gov.au);

OR

- The Shire of Dardanup's Rules of Conduct Complaints Officer: (08) 9724 0322 or [complaints@dardanup.wa.gov.au](mailto:complaints@dardanup.wa.gov.au)

### NEED ADVICE?

If you require advice in making a Behaviour Complaint, please contact the Shire of Dardanup's Behaviour Complaints Officer on (08) 9724 0322 or by email [complaints@dardanup.wa.gov.au](mailto:complaints@dardanup.wa.gov.au)

**Code of Conduct for Council Members, Committee Members and Candidates**

Schedule 1, Division 3 of the *Local Government (Model Code of Conduct) Regulations 2021*

- NOTE:** A complaint about an alleged breach must be made —
- (a) in writing in the form approved by the local government
  - (b) to an authorised person
  - (c) within one month after the occurrence of the alleged breach.

**COMPLAINANT DETAILS**

**Name of person who is making the complaint:**

Name: \_\_\_\_\_

Given Name(s)

Family Name

**Contact details of person making the complaint:**

**Residential Address:**

**Postal Address:**

**Email:**

**Contact Numbers:**

**COMPLAINT DETAILS**

**Name of council member, committee member, candidate alleged to have committed a behaviour breach:**

**Name:**

**Position:**

Select the position that the person was fulfilling at the time the person committed the alleged behaviour breach:

**Select the position that the person was fulfilling at the time the person committed the alleged behaviour breach:**

Council Member of the Shire of Dardanup

Member of a Committee of the Shire of Dardanup

Candidate for Election at the Shire of Dardanup

**Code of Conduct for Council Members, Committee Members and Candidates**

<b>Date the alleged breach occurred:</b>

<b>Location where the alleged breach occurred:</b>

<b>Which of the behaviours prescribed in Division 3 of the Shire of Dardanup's Code of Conduct do you allege this person has breached?</b>	
<b>Clause 8. Personal integrity</b>	
(1) A council member, committee member or candidate —	
(a) must ensure that their use of social media and other forms of communication complies with this code; and	<input type="checkbox"/>
(b) must only publish material that is factually correct	<input type="checkbox"/>
(2) A council member or committee member —	
(a) must not be impaired by alcohol or drugs in the performance of their official duties; and	<input type="checkbox"/>
(b) must comply with all policies, procedures and resolutions of the local government.	<input type="checkbox"/>
<b>Clause 9. Relationship with others</b>	
A council member, committee member or candidate —	
(a) must not bully or harass another person in any way; and	<input type="checkbox"/>
(b) must deal with the media in a positive and appropriate manner and in accordance with any relevant policy of the local government; and	<input type="checkbox"/>
(c) must not use offensive or derogatory language when referring to another person; and	<input type="checkbox"/>
(d) must not disparage the character of another council member, committee member or candidate or a local government employee in connection with the performance of their official duties; and	<input type="checkbox"/>
(e) must not impute dishonest or unethical motives to another council member, committee member or candidate or a local government employee in connection with the performance of their official duties.	<input type="checkbox"/>



**Code of Conduct for Council Members, Committee Members and Candidates**

**Clause 10. Council or committee meetings**

When attending a council or committee meeting, a council member, committee member or candidate

(a) must not act in an abusive or threatening manner towards another person; and	<input type="checkbox"/>
(b) must not make a statement that the member or candidate knows, or could reasonably be expected to know, is false or misleading; and	<input type="checkbox"/>
(c) must not repeatedly disrupt the meeting; and	<input type="checkbox"/>
(d) must comply with any requirements of a local law of the local government relating to the procedures and conduct of council or committee meetings; and	<input type="checkbox"/>
(e) must comply with any direction given by the person presiding at the meeting; and	<input type="checkbox"/>
(f) must immediately cease to engage in any conduct that has been ruled out of order by the person presiding at the meeting.	<input type="checkbox"/>

**State the full details of the alleged breach.**

*Details of the specific incident or issue including dates, times and exact conduct being complained about:*

**List any additional information you have provided as part of this complaint:**

*Please ensure all information relevant to the alleged breach has been attached. This information will be the basis on which the complaint is considered.*

**Code of Conduct for Council Members, Committee Members and Candidates**

**Names of Witnesses/Relevant persons**

The names of any witnesses (and contact details if available) who were present during the specific incident or who have first-hand knowledge of the issue being complained about:

**Have you made any efforts to resolve the complaint with the Respondent?**

*Please note, you MUST complete this section*

<b>YES</b>	<input type="checkbox"/>	<i>If yes, please describe the efforts that you have made.</i>
<b>NO</b>	<input type="checkbox"/>	<i>If no, please include a brief statement explaining why you have not made any efforts to resolve the issue with the person complained about.</i>

**Alternative Dispute Resolution**

*The Shire of Dardanup has a policy that the Complainant and the Respondent be offered the opportunity to participate in an Alternative Dispute Resolution process, that if agreed to by BOTH parties, will be undertaken before the complaint is dealt with.*

*The objective is to support both parties to reach a mutually satisfactory outcome that resolves the issues and restores the relationship between them. An outcome may be that as the Complainant, you will have absolute discretion to withdraw or continue with this Complaint.*

*Please contact the Behaviour Complaints Officer if you would like more information.*

**Would you agree to participate in an Alternative Dispute Resolution process?**

**YES**

**NO**

**Code of Conduct for Council Members, Committee Members and Candidates**

**Desired outcome of the Complaint:**

*Please explain what you would like to happen as a result of lodging this complaint, including the opportunity to participate in Alternative Dispute Resolution.*

**COMPLAINANT** *please sign and date*

I acknowledge that any oral or written information exchanged regarding this Complaint is regarded as confidential information. As such, I agree to maintain confidentiality of all such confidential information, and shall not disclose any relevant confidential information to any third parties, except for the information that: (a) is or will be in the public domain; or (b) is under the obligation to be disclosed pursuant to the applicable laws or regulations.

**Signature:**

**Date:**

**Please submit completed Behaviour Complaint to:**

The Shire of Dardanup's Behaviour Complaints Officer:

Mailing Address: Shire of Dardanup  
PO Box 7016  
EATON WA 6232

In person: 1 Council Drive  
EATON WA 6232

Email: [complaints@dardanup.wa.gov.au](mailto:complaints@dardanup.wa.gov.au)

**OFFICE USE ONLY:** *Received by the Council appointed Behaviour Complaints Officer*

**Authorised Officer's Name:**

**Authorised Officer's Signature:**

**Date received:**

## **BEHAVIOUR COMPLAINTS COMMITTEE**

# **INSTRUMENT OF APPOINTMENT & TERMS OF REFERENCE**

**2021**

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## 1. INTRODUCTION

The Council of the Shire of Dardanup (the "Council") establishes this committee under the powers given in Section 5.8 of the Local Government Act 1995, the committee to be known as the Behaviour Complaints Committee, (the "Committee").

The Council appoints to the Committee those persons to be members of the committee by resolution of Council. Membership of the Committee shall, unless otherwise specified, be for a term ceasing on the day prior to local government elections being held. Council may appoint members for a further term at the next available meeting following the elections.

The Committee shall act for and on behalf of Council in accordance with provisions of the Local Government Act 1995, local laws and the policies of the Shire of Dardanup and this instrument.

## 2. NAME

The name of the Committee is the "Behaviour Complaints" Committee.

## 3. OBJECTIVES – GENERIC

The following objectives are generic to all Council committees:

- 3.1 To consider, advise and assist the local government in performing specified functions or fulfilling required responsibilities within its district;
- 3.2 Where appropriate, to liaise with relevant agencies and other persons in the development, review and testing of Council policy and strategic objectives;
- 3.3 To carry out research and other activities as directed by the Council or prescribed by the regulations; and
- 3.4 To fulfil the objectives and/or undertake the specific tasks as a Committee of Council specified in Section 4 – Functions of the Committee and Section 5 Committee Objectives - Specific.
- 3.5 To ensure that all members dealings are carried out in accordance with the Shire of Dardanup Code of Conduct for Council Members, Committee Members & Candidates.

## 4. FUNCTIONS OF THE BEHAVIOUR COMPLAINTS COMMITTEE

The Behaviour Complaints Committee is a Committee of Council established in accordance with s.5.8 of the *Local Government Act 1995* (the Act) for the purpose of dealing with Behaviour Complaints made under Division 3 of the Shire of Dardanup's Code of Conduct for Council Members, Committee Members and Candidates (Code of Conduct).

## 5. COMMITTEE OBJECTIVES - SPECIFIC

The Behaviour Complaints Committee shall have the following objectives:

- 5.1 To consider and advise Council on Complaints in accordance with the 'Shire of Dardanup Code of Conduct for Council Members, Committee Members and Candidates' and Local Government (Model Code of Conduct) Regulations 2021, Regulation 12 (MCC.r.12):
- 5.2 Dismissing a behaviour complaint in accordance with clause 13 of the Code of Conduct and providing reasons for any such dismissal.
- 5.3 Making a Finding as to whether an alleged complaint has or has not occurred, based upon evidence from which it may be concluded that it is more likely that the breach occurred than it did not occur [*clause 12(3) of the Code of Conduct*].
- 5.4 Determining reasons for such a Finding.
- 5.5 Where a Finding is made that a breach has occurred, determining:
  - To take no further action; or
  - Prepare and implement a plan to address the behaviour of the person to whom the complaint relates.
- 5.6 The extent of authority of the Behaviour Complaints Committee is limited by Condition of the Delegated Authority.

## 6. MEMBERSHIP

- 6.1 The Behaviour Complaints Committee is a Committee of Council Members only in accordance with s.5.9(2)(a) of the Act.
- 6.2 Membership of the Behaviour Complaints Committee will comprise of 5 Council Members, appointed by Council in accordance with s.5.10 of the Act. In addition, at least 4 Council Members will be appointed as Deputy Committee Members in accordance with s.5.11A of the Act.
- 6.3 The Delegated Authority Condition prescribes that if an appointed Committee Member is identified in the Complaint as either the Complainant or the Respondent, they are to recuse themselves from the Committee's Function by providing an apology. They are to be replaced for the duration of the handling of the subject Complaint by a Deputy Committee Member, selected by the Presiding Member of the Committee.
- 6.4 The following sections in *Local Government Act 1995*, in relation to representation are relevant:

### **5.10. *Committee members, appointment of***

- (1) *A committee is to have as its members —*
  - (a) *persons appointed\* by the local government to be members of the committee (other than those referred to in paragraph (b)); and*
  - (b) *persons who are appointed to be members of the committee under subsection (4) or (5).*

*\* Absolute majority required.*

## **(Appendix ORD: 12.4.6E)**

- (2) *At any given time each council member is entitled to be a member of at least one committee referred to in section 5.9(2)(a) or (b) and if a council member nominates himself or herself to be a member of such a committee or committees, the local government is to include that council member in the persons appointed under subsection (1)(a) to at least one of those committees as the local government decides.*
- (3) *Section 52 of the Interpretation Act 1984 applies to appointments of committee members other than those appointed under subsection (4) or (5) but any power exercised under section 52(1) of that Act can only be exercised on the decision of an absolute majority of the council.*
- (4) *If at a meeting of the council a local government is to make an appointment to a committee that has or could have a council member as a member and the mayor or president informs the local government of his or her wish to be a member of the committee, the local government is to appoint the mayor or president to be a member of the committee.*

### **5.11 Committee membership, tenure of**

- (1) *Where a person is appointed as a member of a committee under section 5.10(4) or (5), the person's membership of the committee continues until —*
  - (a) *the person no longer holds the office by virtue of which the person became a member, or is no longer the CEO, or the CEO's representative, as the case may be; or*
  - (b) *the person resigns from membership of the committee; or*
  - (c) *the committee is disbanded; or*
  - (d) *the next ordinary elections day,**whichever happens first.*
- (2) *Where a person is appointed as a member of a committee other than under section 5.10(4) or (5), the person's membership of the committee continues until —*
  - (a) *the term of the person's appointment as a committee member expires; or*
  - (b) *the local government removes the person from the office of committee member or the office of committee member otherwise becomes vacant; or*
  - (c) *the committee is disbanded; or*
  - (d) *the next ordinary elections day,**whichever happens first.*

6.5 A member retains membership of the committee until; the person no longer holds office by virtue of which the person became a member, the person resigns, the committee is disbanded, the local government removes the person from office; or the next election date.

## **7. PRESIDING MEMBER**

- 7.1 The CEO or delegated nominee will preside until the position of Presiding member is filled in accordance with Schedule 2.3 clause 3 of the *Local Government Act 1995*.
- 7.2 The Committee shall appoint a Presiding Member and Deputy Presiding Member to conduct its business in accordance with the following provisions of the *Local Government Act 1995*:

### **5.12 Presiding members and deputies, election of**

- (1) *The members of a committee are to elect a presiding member from amongst themselves in accordance with Schedule 2.3, Division 1 as if the references in that Schedule —*
  - (a) *to "office" were references to "office of presiding member"; and*



## (Appendix ORD: 12.4.6E)

- (b) to “council” were references to “committee”; and
- (c) to “councillors” were references to “committee members”.

(2) *The members of a committee may elect a deputy presiding member from amongst themselves but any such election is to be in accordance with Schedule 2.3, Division 2 as if the references in that Schedule —*

- (a) to “office” were references to “office of deputy presiding member”; and
- (b) to “council” were references to “committee”; and
- (c) to “councillors” were references to “committee members”; and
- (d) to “mayor or president” were references to “presiding member”.

7.3 The Presiding Member shall ensure that business is conducted in accordance with the Shire of Dardanup Standing Orders and that minutes of the proceedings are kept in accordance with Section 5.22 of the *Local Government Act 1995*.

### 5.22. *Minutes of council and committee meetings*

- (1) *The person presiding at a meeting of a council or a committee is to cause minutes to be kept of the meeting’s proceedings.*
- (2) *The minutes of a meeting of a council or a committee are to be submitted to the next ordinary meeting of the council or the committee, as the case requires, for confirmation.*
- (3) *The person presiding at the meeting at which the minutes are confirmed is to sign the minutes and certify the confirmation.*

7.4 The Deputy presiding member has the following functions as per section 5.13 of the *Local Government Act 1995*:

### 5.13. *Deputy presiding members, functions of*

*If, in relation to the presiding member of a committee —*

- (a) *the office of presiding member is vacant; or*
  - (b) *the presiding member is not available or is unable or unwilling to perform the functions of presiding member,*
- then the deputy presiding member, if any, may perform the functions of presiding member.*

7.5 A presiding member is to be chosen from the committee members present at the meeting if the presiding member or deputy presiding member are unavailable or unwilling to perform the functions of the presiding member in accordance with Section 5.14 the *Local Government Act 1995*:

### 5.14. *Who acts if no presiding member*

*If, in relation to the presiding member of a committee —*

- (a) *the office of presiding member and the office of deputy presiding member are vacant; or*
  - (b) *the presiding member and the deputy presiding member, if any, are not available or are unable or unwilling to perform the functions of presiding member,*
- then the committee members present at the meeting are to choose one of themselves to preside at the meeting.*

## **(Appendix ORD: 12.4.6E)**

### 8. MEETINGS

8.1 The Complaints Behaviour Committee meetings are required to:

- be called and convened by the CEO, as required, in consultation with the Committee's Presiding Member;
- include public question time *[Admin.r.5]*
- make the Committee Notice Papers and Agenda publicly available *[s.5.94(p), s.5.96A(f)]*, with the exception of agenda content that relates to that part of the meeting which will be closed to members of the public under s.5.23(2) *[Admin.r.14]*; and
- make Committee minutes publicly available *[s.5.94(n), s.5.96A(h)]*, with the exception of Minutes content that relates to that part of the meeting which was closed to the public or was determined as confidential under s.5.23(2).

8.2 Meetings are to be scheduled as required by the CEO or Behaviour Complaints Officer in consultation with the Committee Presiding Member. Wherever possible, notice of meetings including an agenda shall be given to members at least **5 days** prior to each meeting.

8.3 The Presiding member shall ensure that detailed minutes of all meetings are kept and shall, not later than **5 days** after each meeting, provide the members and Council with a copy of such minutes.

8.4 The minutes of the meeting are to be included in the next available Ordinary meeting of Council agenda for consideration of recommendations or to be received by the Council.

8.5 All members of the Committee shall have one vote. If the vote of the members present are equally divided, the person presiding is to cast a second vote.

8.6 Shire of Dardanup Local Law Standing Orders apply to all Shire of Dardanup committees.

### 9. QUORUM

9.1 Quorum for a meeting shall be at least 50% of the number of offices, whether vacant or not. A decision of the Committee does not have effect unless it has been made by a simple majority.

*(Note – Council may, at the request of the Committee, agree to set the quorum at a lesser number. However in such circumstances any recommendation on expenditure of monies or on forming policy positions that is being made to Council or the CEO, the committee must have at least 50% of the members present to make a valid recommendation/s.)*

**(Appendix ORD: 12.4.6E)****10. DELEGATED POWERS**

- 10.1 The Behaviour Complaints Committee will act under Delegated Authority in accordance with s.5.16 of the Act. The delegation is recorded in the Shire of Dardanup Register of Delegations.
- 10.2 It is a Condition of Delegated Authority that the Behaviour Complaints Committee will be unable to exercise delegated authority if the Complainant or Respondent attend as a Complaints Committee Member.

**11. TERMINATION OF COMMITTEE**

Termination of the Committee shall be:

- 11.1 In accordance with the Local Government Act 1995; or
- 11.2 At the direction of Council; or
- 11.3 On the specified date.

**12. AMENDMENT TO THE INSTRUMENT OF APPOINTMENT AND DELEGATION**

- 12.1 This document may be altered at any time by the Council on the recommendation of the Committee, or by direct resolution of Council.

**13. COMMITTEE DECISIONS**

- 13.1 Committee decisions shall not be binding on Council in any circumstance.

**14. COUNCIL RESOLUTION ESTABLISHING THE COMMITTEE**

- 14.1 The Behaviour Complaints Committee was established by Resolution of the Shire of Dardanup Council on 24 November 2021.

**15. OFFICER(S) RESPONSIBLE FOR MANAGEMENT OF THE COMMITTEE**

- 15.1 The Chief Executive Officer shall appoint an officer relative to the Committee's Terms of Reference to manage the committee. In normal circumstances this is the Deputy Chief Executive Officer.
- 15.2 The appointed officer shall provide the secretarial and administrative support through his/her Directorate.

