

Shire of Peppermint Grove

LOCAL GOVERNMENT PROPERTY LOCAL LAW

TABLE OF CONTENTS

PART 1 - PRELIMINARY

- 1.1 Citation
- 1.2 Definitions
- 1.3 Interpretation
- 1.4 Application
- 1.5 Repeal

PART 2 - PERMITS

Division 1 - Preliminary

- 2.1 Application of Part

Division 2 - Applying for a permit

- 2.2 Application for permit
- 2.3 Decision on application for permit

Division 3 - Conditions

- 2.4 Conditions which may be imposed on a permit
- 2.5 Imposing conditions under a policy
- 2.6 Compliance with and variation of conditions

Division 4 - General

- 2.7 Agreement for building
- 2.8 Duration of permit
- 2.9 Renewal of permit
- 2.10 Transfer of permit
- 2.11 Production of permit
- 2.12 Cancellation of permit

Division 5 - When a permit is required

- 2.13 Activities needing a permit
- 2.14 Permit required to camp outside a facility
- 2.15 Permit required for possession and consumption of liquor

Division 6 - Responsibilities of permit holder

- 2.16 Responsibilities of permit holder

PART 3 - BEHAVIOUR ON ALL LOCAL GOVERNMENT PROPERTY

Division 1 - Behaviour on and interference with local government property

- 3.1 Behaviour which interferes with others
- 3.2 Behaviour detrimental to property
- 3.3 Taking or injuring any fauna
- 3.4 Intoxicated persons not to enter local government property
- 3.5 No prohibited drugs
- 3.6 No smoking

Division 2 - Signs

- 3.7 Signs

PART 4 - OBJECTIONS AND APPEALS

- 4.1 Application of Division 1, Part 9 of the Act

PART 5 - MISCELLANEOUS

- 5.1 Authorized person to be obeyed
- 5.2 Persons may be directed to leave local government property
- 5.3 Disposal of lost property
- 5.4 Liability for damage to local government property

PART 6 - ENFORCEMENT

Division 1 - Notices given under this local law

- 6.1 Offence to fail to comply with notice
- 6.2 Local government may undertake requirements of notice

Division 2 - Offences and penalties

Subdivision 1 - General

6.3 Offences and general penalty

Subdivision 2 - Infringement notices and modified penalties

6.4 Prescribed offences

6.5 Form of notices

SCHEDULE 1 - PRESCRIBED OFFENCES

Local Government Act 1995
Shire of Peppermint Grove

LOCAL GOVERNMENT PROPERTY LOCAL LAW

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

PART 1 - PRELIMINARY

Citation

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

Definitions

1.2 In this local law unless the context otherwise requires -

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

"applicant" means a person who applies for a permit under clause 2.2;

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

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

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

- (a) hall or room;
- (b) corridor, stairway or annexe of any hall or room; and
- (c) a building on the local government depot site;

"CEO" means the chief executive officer of the local government;

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

"Council" means the council of the local government;

"district" means the district of the local government;

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

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

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

"local government" means the Shire of Peppermint Grove;

"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;

"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;

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

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

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

- (a) offering them for sale or hire;
- (b) inviting offers for their sale or hire;
- (c) soliciting orders for them; or

- (d) carrying out any other transaction in relation to them; and

"vehicle" includes –

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

but excludes –

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

Interpretation

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

Application

- 1.4 (1) This local law applies throughout the district.
- (2) Notwithstanding anything to the contrary in this local law, the local government may -
- (a) hire local government property to any person; or
 - (b) enter into an agreement with any person regarding the use of any local government property.

Repeal

1.5 (1) The following local laws are repealed –

Reserve By-laws, published in the Government Gazette of 17 May 1940.

(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.

Provisions of other written laws

Throughout this local law text boxes have been inserted containing references to provisions of other written laws which complement this local law. These provisions have been reproduced in full in a separate document published in the Local Laws Manual, titled ‘Complementary Legislation’. This can be found in Section 4 (Legislative Review) starting on page 23.

Delegation

See sections 5.42 to 5.46 of the *Local Government Act 1995* and sections 58 and 59 of the *Interpretation Act 1984*.

PART 2 - PERMITS

Division 1 - Preliminary

Application of Part

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

Division 2 - Applying for a permit

Application for permit

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

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

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

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

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

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

Decision on application for permit

2.3 (1) The local government may –

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

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

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

Division 3 - Conditions

Conditions which may be imposed on a permit

2.4 (1) Without limiting the generality of clause 2.3(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 2.3(1)(a) and subclause (1), the following paragraphs indicate the type and content of the conditions on which a permit to hire local government property may be issued –

- (a) when fees and charges are to be paid;
- (b) payment of a bond against possible damage or cleaning expenses or both;
- (c) restrictions on the erection of material or external decorations;
- (d) rules about the use of furniture, plant and effects;
- (e) limitations on the number of persons who may attend any function in or on local government property;

- (f) the duration of the hire;
- (g) the right of the local government to cancel a booking during the course of an annual or seasonal booking, if the local government sees fit;
- (h) a prohibition on the sale, supply or consumption of liquor unless a liquor licence is first obtained for that purpose under the *Liquor Licensing Act 1988*;
- (i) whether or not the hire is for the exclusive use of the local government property;
- (j) the obtaining of a policy of insurance in the names of both the local government and the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer; and
- (k) the provision of an indemnity from the hirer, indemnifying the local government in respect of any injury to any person or any damage to any property which may occur in connection with the hire of the local government property by the hirer.

Imposing conditions under a policy

2.5 (1) In this clause –

"policy" means a policy of the local government adopted by the Council containing conditions subject to which an application for a permit may be approved under clause 2.3(1)(a).

(2) Under clause 2.3(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 2.3(2).

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

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

Compliance with and variation of conditions

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

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

Division 4 - General

Agreement for building

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

Duration of permit

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

- (a) otherwise stated in this local law or in the permit; or
- (b) cancelled under clause 2.12.

Renewal of permit

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

(2) The provisions of this Part shall apply to an application for the renewal of a permit *mutatis mutandis*.

Transfer of permit

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

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

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

(3) Where the local government approves an application for the transfer of a permit, the transfer may be effected by an endorsement on the permit signed by the CEO.

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

Production of permit

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

Cancellation of permit

2.12 (1) Subject to clause 4.1, 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) a provision of any written law which may relate to the activity regulated by the permit.

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

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

Division 5 - When a permit is required

Activities needing a permit

2.13 (1) A person shall not without a permit –

- (a) subject to subclause 3, hire local government property;
- (b) advertise anything by any means on local government property;
- (c) erect a structure for public amusement or for any performance, whether for gain or otherwise, on local government property;
- (d) plant any plant or sow any seeds on local government property;
- (e) carry on any trading on local government property unless the trading is conducted -

- (i) with the consent of a person who holds a permit to conduct a function, and where the trading is carried on 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;
- (f) unless an employee of the local government in the course of her or his duties or on an area set aside for that purpose -
 - (i) drive or ride or take any vehicle on to local government property; or
 - (ii) park or stand any vehicle on local government property;
- (g) conduct a function on local government property ;
- (h) charge any person for entry to local government property, unless the charge is for entry to land or a building hired by a voluntary non-profit organisation;
- (i) light a fire on local government property except in a facility provided for that purpose;
- (j) parachute, hang glide, abseil or base jump from or on to local government property or climb rocks along the River Foreshore Reserve within Peppermint Grove;
- (k) erect a building or a refuelling site on local government property;
- (l) make any excavation on or erect or remove any fence on local government property; or
- (m) erect or install any structure above or below ground, which is local government property, for the purpose of supplying any water, power, sewer, communication, television or similar service to a person.
- (n) store, secure or place a dinghy on the River Foreshore Reserve within Peppermint Grove.

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

(3) The local government may exempt specified local government property or a class of local government property from the application of subclause (1)(a).

Permit required to camp outside a facility

2.14 (1) In this clause –

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

- (2) This clause does not apply to a facility operated by the local government.
- (3) A person shall not without a permit -
 - (a) camp on, lodge at or occupy any structure at night for the purpose of sleeping on local government property; or
 - (b) erect any tent, camp, hut or similar structure on local government property other than a beach shade or windbreak erected for use during the hours of daylight and which is dismantled during those hours on the same day.
- (4) The maximum period for which the local government may approve an application for a permit in respect of paragraph (a) or (b) of subclause (3) is that provided in regulation 11(2)(a) of the *Caravan Parks and Camping Grounds Regulations 1997*.

Local government to consider suitability of land for camping for more than 3 nights

See regulation 13 of the *Caravan Parks and Camping Grounds Regulations 1997*.

Caravan or camp to be maintained

See regulation 14 of the *Caravan Parks and Camping Grounds Regulations 1997*.

Reserves under control of a local government

The powers of a local government over reserves (which were formerly vested in it, and which are now the subject of a management order under the *Land Administration Act 1997*) are contained in section 3.54 of the *Local Government Act 1995* and section 5 of the *Parks and Reserves Act 1895*.

Disturbing local government land or anything on it

See regulation 5 of the *Local Government (Uniform Local Provisions) Regulations 1996*.

Permit required for possession and consumption of liquor

2.15 (1) A person, on local government property, shall not consume any liquor or have in her or his possession or under her or his control any liquor, unless –

- (a) that is permitted under the *Liquor Licensing Act 1988*; and
- (b) a permit has been obtained for that purpose.

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

Limitations as to liquor on unlicensed premises etc

See section 119 *Liquor Licensing Act 1988*.

Division 6 - Responsibilities of permit holder

Responsibilities of permit holder

2.16 A holder of a permit shall in respect of local government property to which the permit relates -

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

Unlawful discrimination

See *Equal Opportunity Act 1984* references for unlawful discrimination.

PART 3 - BEHAVIOUR ON ALL LOCAL GOVERNMENT PROPERTY

Division 1 - Behaviour on and interference with local government property

Behaviour which interferes with others

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

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

Indecent acts

See section 203 of the *Criminal Code*.

Disorderly conduct

See section 54 of the *Police Act 1892*.

Behaviour detrimental to property

3.2 (1) A person shall not behave in or on local government property in a way which is or might be detrimental to the property.

(2) In subclause (1) –

'detrimental to the property' includes –

- (a) removing any thing from the local government property such as a rock, a plant or a seat provided for the use of any person; and
- (b) destroying, defacing or damaging any thing on the local government property, such as a plant, a seat provided for the use of any person or a building.

Damage to animals, plants etc in gardens

See section 58A of the *Police Act 1892*.

Criminal damage

See section 444 of the *Criminal Code*.

Wilful damage to property

See section 80 of the *Police Act 1892*.

Graffiti

See sections 65(2) and 80A of the *Police Act 1892*.

Compensation and restitution orders

See Part 16 of the *Sentencing Act 1995*, sections 111, 117 (compensation orders) and 120 (restitution orders).

Littering

See sections 23 and 24 of the *Litter Act 1979*, also regulations 4, 5 and 6 of the *Litter Regulations 1981*.

Protected flora

See sections 23A and 23B of the *Wildlife Conservation Act 1950*.

Taking or injuring any fauna

3.3 (1) A person shall not, take, injure or kill or attempt to take, injure or kill any fauna which is on or above any local government property, unless that person is authorized under a written law to do so.

(2) In this clause –

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

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

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

Injury or destroying native or acclimatised animals or birds on parks, roads or reserves

See section 97 of the *Police Act 1892*.

Taking or unlawful possession of protected fauna

See sections 16 and 16A of the *Wildlife Conservation Act 1950* and section 20 of the same Act in relation to the authority of wildlife officers.

Intoxicated persons not to enter local government property

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

Circumstances in which an intoxicated person may be apprehended by police

See section 53A of the *Police Act 1892*.

No prohibited drugs

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

No Smoking

3.6 (1) A person shall not smoke in or on local government property which is –
(a) a building or vehicle; or
(b) an item of plant or machinery with an enclosed operator compartment.

(2) Subclause (1) does not apply to local government property which is leased or hired to a person for private use.

Division 2 - Signs

Signs

3.7 (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; and
 - (b) to be for the purpose of giving notice of the effect of a provision of this local law.

PART 4 - OBJECTIONS AND APPEALS

Application of Division 1, Part 9 of the Act

- 4.1 When the local government makes a decision as to whether it will -
- (a) grant a person a permit or consent under this local law; or
 - (b) renew, vary, or cancel a permit or consent that a person has under this local law,

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

PART 5 - MISCELLANEOUS

Personation

See section 87 of the *Criminal Code*.

Bathing in proper bathing costume

See section 104 of the *Police Act 1892*.

Wilful and obscene exposure

See section 66(11) of the *Police Act 1892*.

Authorized person to be obeyed

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

Resisting or obstructing public officers

See section 172 of the *Criminal Code*.

Disobedience to lawful order issued by statutory authority

See section 178 of the *Criminal Code*.

Persons may be directed to leave local government property

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

Power of police and persons aggrieved to apprehend certain offenders

See section 49 of the *Police Act 1892*.

Preventing persons from wrongfully entering or removing persons wrongfully on local government property

See section 254 of the *Criminal Code*.

Disposal of lost property

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

Liability for damage to local government property

5.4 (1) Where a person unlawfully damages local government property, the local government may by notice in writing to that person require that person within the time required in the notice to, at the option of the local government, pay the costs of –

- (a) reinstating the property to the state it was in prior to the occurrence of the damage; or
- (b) replacing that property.

(2) Unless there is proof to the contrary, a person is to be taken to have damaged local government property within subclause (1) where –

- (a) a vehicle or a boat caused the damage, the person was the person responsible, at the time the damage occurred, for the control of the vehicle or the boat; or

(b) the damage occurred under a permit, the person is the permit holder in relation to that permit.

(3) 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 6 - ENFORCEMENT

Division 1 - Notices given under this local law

Offence to fail to comply with notice

6.1 person to do any thing, if a person fails to comply with the notice, that person commits an offence.

Local government may undertake requirements of notice

6.2 Where a person fails to comply with a notice referred to in clause 6.1, the local government may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs incurred in so doing.

Division 2 - Offences and penalties

Subdivision 1 - General

Offences and general penalty

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

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

Subdivision 2 - Infringement notices and modified penalties

Prescribed offences

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

- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 1.
- (3) For the purpose of guidance only, before giving an infringement notice to a person in respect of the commission of a prescribed offence, an authorized person should be satisfied that –
 - (a) commission of the prescribed offence is a relatively minor matter; and
 - (b) only straightforward issues of law and fact are involved in determining whether the prescribed offence was committed, and the facts in issue are readily ascertainable.

Form of notices

6.5 For the purposes of this local law -

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

Deviation in forms

See section 74 of the *Interpretation Act 1984*.

SCHEDULE 1

PRESCRIBED OFFENCES

CLAUSE	DESCRIPTION	MODIFIED PENALTY \$
2.6	Failure to comply with conditions of permit	100
2.13(1)	Failure to obtain a permit	100
2.14(3)	Failure to obtain permit to camp outside a facility	100
2.15(1)	Failure to obtain permit for liquor	100
2.16	Failure of permit holder to comply with responsibilities	100
3.2(1)	Behaviour detrimental to property	100
3.4	Under influence of liquor or prohibited drug	100
3.6	Smoking in or on local government property	100
3.7(2)	Failure to comply with sign on local government property	100
6.1	Failure to comply with notice	200

Dated 19th March 2001.

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

R J H SMITH, DEPUTY PRESIDENT

G K SIMPSON, CEO