



Community Ranger Services

## **Operational Practice & Procedure Manual**

***A united approach to Enforcement, Reviews and Appeals,  
Operational Practice and Procedure***

### **Background/History**

Identified by Community Services Directorate as being needed to provide for the consistent enforcement of legislation within Ranger Services as well as providing for a structured process of review for any infringement notices issued.

Adopted by the Executive Management Team 19/09/2017

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| <b>Responsible Division</b> | Community Services |                        |                |

## Purpose

The purpose of this Operational Practice and Procedure (OP & P) is to –

- Outline the Shire’s approach to the implementation of the regulatory framework controlling parking/traffic, dogs/cats, fire management, litter, camping and related management of local government property (all of which are matters primarily handled by the Shire’s Community Ranger Services);
- Supplement relevant requirements, direction and advice already set out in the Shire’s ‘Compliance Policy’ and relevant Acts, Regulations, Local Laws and/or other relevant documents; and
- Provide transparent, consistent and accountable guidance and processes associated with implementing the relevant regulatory framework, including decisions to issue work orders and infringements, pursue prosecution and respond to requests for withdrawal/cessation of work orders, infringements, prosecution and/or to respond to external reviews of decisions, i.e. in court or with the State Administrative Tribunal.

## Interpretation

Terms used in this OP & P shall be interpreted in a manner consistent with the relevant Acts, Regulations, Local Laws and/or other relevant documents and the following terms shall apply to the implementation of this OP & P –

**Authorised Person** means a person appointed under section 9.10 of the Local Government Act 1995 to issue an infringement, a person acting in the course of his or her duties as an employee of the Shire or a person authorised to commence a prosecution under section 9.24 of the LGA, or otherwise authorised to commence a prosecution or issue an infringement under any other law the Shire administers.

**Delegated Person** means a person delegated from time-to-time by the Chief Executive Officer or the Council as appropriate as one of the persons who can make or be involved in a decision regarding a request for withdrawal of a work order, infringement or prosecution and shall generally include the Executive Manager Community Development, Executive Manager Corporate Services, Executive Manager Engineering & Development Services, Manager Emergency and Ranger Services, Manager Financial Services, Senior Community Ranger or any persons acting in those positions.

**A Panel of Delegated Persons** means three or more Delegated Persons.

## Relevant Legislation/Documents

The relevant legislation/documents associated with this OP & P includes, but is not limited to, the following –

- Local Government Act 1995
- Local Government (Functions & General) Regulations 1996
- Local Government (Miscellaneous Provisions) Act 1960
- Shire of Capel Parking and Parking Facilities Local Law 2016,
- Road Traffic Act 1974
- Local Government (Parking for Disabled Persons) Regulations 1988
- Dog Act 1976
- Dog Regulations 1976 Dog (Restricted Breeds) Regulations (No. 2) 2002
- Shire of Capel Local Laws Relating to Dogs 2007,
- Cat Act 2011
- Cat Regulations 2012
- Shire of Capel Local Law Relating to the Keeping and Welfare of Cats 2004,
- Bush Fires Act 1954
- Bush Fires Regulations 1954
- Bush Fires (Infringements) Regulations 1978
- Shire of Capel Firebreak and Fuel Hazard Reduction Notice (as amended or adopted from time to time)
- Caravan Parks and Camping Grounds Act 1995
- Caravan Parks and Camping Grounds Regulations 1997
- Litter Act 1979
- Litter Regulations 1982
- Shire of Capel Local Government Property Local Law,
- Shire of Capel Activities in Thoroughfares and Public Places and Trading Local Law 2016

## **OP & P Statement 1 – General Principles**

- 1.1 The Shire will enforce the regulatory framework relating to parking/traffic, dogs/cats, fire management, litter, camping and related management of local government property in a consistent, fair and objective manner, whilst at the same time, promoting positive resident and customer relations, and providing a conscientious and respectful service.
- 1.2 Where there are breaches of the relevant regulatory framework and the Shire becomes aware of that breach, the Shire will issue an infringement or, where necessary or appropriate (particularly having regard to this OP & P and the Shire's 'Compliance Policy'), will pursue prosecution.
- 1.3 Authorised Persons are expected to use their reasonable judgement and discretion whilst enforcing the regulatory framework relating to parking/traffic, dogs/cats, fire management, litter, camping and related management of local government property. At the discretion of the Authorised Person, infringement notices will not be issued for trivial matters, or where a caution or work order is considered more appropriate to the circumstances.
- 1.4 Where a single incident results in multiple breaches of the regulatory framework, the Authorised Person shall use their reasonable judgement to determine the most appropriate action to take given the circumstances. That may result in the lesser of two or more possible infringements being applied where implications of the breach are relatively minor, or the greater of two or more possible infringements being issued where the implications of the breach are relatively great. If there has been a consistent pattern of breaches occurring in a given area or by given parties, then the greater infringement will generally be issued.
- 1.5 Once there has been a decision to prosecute, or an infringement notice or work order has been issued by an Authorised Person, it will only be withdrawn following the submission and consideration of a request for withdrawal as set out in this OP & P.

## **OP & P Statement 2 – Parking**

### **Objectives/Statement of Intent**

- 1 The aim of parking and traffic controls and their enforcement is to ensure the efficient and equitable use by persons entitled to use special purpose parking bays, and the safety of pedestrians and other motorists.
- 2 The Shire will aim to provide consistent enforcement of parking and traffic controls. Notwithstanding that, residents and visitors are responsible for ensuring they are complying with parking controls at all times.
- 3 The Shire will review parking controls as needs are identified and implement new controls as appropriate and following completion of appropriate consultation and applicable legal/administrative processes. The Shire will be conscious of available resources and the need to provide for consistent enforcement in determining when, where and what parking controls should be applied.

### **Circumstances where a request for withdrawal of parking/traffic infringements/prosecutions will be supported –**

Requests for withdrawal of parking/traffic infringements/prosecutions will be supported in the following circumstances –

- 1 Vehicle breakdown. In this instance, documentary evidence must be provided from the RAC or a reputable mechanical firm, or in the form of a Statutory Declaration from the person who rectified the fault, confirming the fact that the vehicle could not be moved.
- 2 'Life threatening' medical emergency. Such that the owner or driver was unable to move the vehicle. An appropriate person at a medical practitioner's surgery or a relevant hospital authority must substantiate this in writing.
- 3 Vehicle involved has been stolen or otherwise used without the prior authority of the owner. In this situation, the relevant Police Report Number is to be provided. Where the vehicle has been used without the prior authority of the owner by someone known to the owner, the identity of that person must be provided to the Shire.
- 4 Missing, obscured, deleted or inadequate signage. Where this can be confirmed, following a site inspection by an Authorised Person, who confirms the assertion. This does not include instances where the person making the request has simply not seen or misunderstood the signage.

## **Circumstances where a request for withdrawal of parking/traffic infringements/prosecutions may be supported –**

Requests for withdrawal of parking/traffic infringements/prosecutions may be supported in the following circumstances –

- 1 Extenuating circumstances involving an unusual, undeserved or disproportionate hardship caused to a person. This includes, but is not limited to, where an offender provides evidence of a very compelling extenuating circumstance, which shall generally be limited to matters which affect the physical/psychological/emotional state of the offender at the time of the offence including;
  - Life threatening illness or injury
  - Acute or chronic physical pain or mental condition
  - Terminal medical condition
  - Permanent or temporary incapacity
  - Financial stress
  - Grief associated with death
- 2 Penalty unenforceable. Evidence is available to the Shire which indicates that, if the matter was contested in court, the court would not uphold/support the infringement/prosecution.
- 3 Lesser infringement more appropriate. Where two or more breaches of the regulatory framework were occurring simultaneously and there is a lesser infringement that was more appropriate to the circumstances of the case. The initial infringement shall only be withdrawn once a new infringement has been issued and paid.
- 4 Disabled driver parking across more than one parking space, other than a disabled parking space. Only where it can be demonstrated that the vehicle had a clearly visible 'ACROD' sticker and there are reasonable grounds to assert that there were no suitable disabled bays available at the time. Generally does not apply where the driver was obstructing the footpath or had mounted non-mountable kerbing.
- 5 Current Australian Disability permit inadequately or not displayed in disabled bay. In the event that a driver or passenger of a vehicle does not display their current, valid ACROD permit in plain view, not at all or is not observed at the time of the issue of an infringement, if the offender is a registered ACROD permit holder and they supply their permit at a later date to an Authorised Person.

## **Circumstances where a request for withdrawal of parking/traffic infringements/prosecutions will not be supported –**

Requests for withdrawal of parking/traffic infringements/prosecutions will not be supported in any other circumstances, including any of the following specific circumstances –

- The driver could not find convenient parking elsewhere in time to make their appointment, undertake their business, get to work/class on time or similar.
- The driver had not applied for the relevant parking permit.
- The permit had moved such that it was no longer visible.
- The sign was confusing to the driver.
- The driver did not know that parking controls applied.
- The driver was only there for a few minutes (i.e. in locations where parking is not permitted at all).
- The driver was not familiar with Shire parking requirements.
- A member of the public indicated it was OK to park or agreed to take responsibility for a parking infringement.
- The driver was not the owner, but the owner cannot get the driver to accept responsibility.

## **OP & P Statement 3 – Animals (Dogs/Cats and Other Animals)**

### **Objectives/Statement of Intent**

The following sets out the key objectives/statement of intent in relation to the Shire's enforcement of dog and cat controls.

- 1 The Shire promotes responsible pet ownership and recognises that pets can add substantially to the wellbeing and quality of life of their owners.
- 2 The aim of dog and cat controls is to promote responsible pet ownership, avoid nuisance being created for members of the community and visitors, limit damage to and loss of wildlife, and protect the welfare and safety of cats and dogs.
- 3 The Shire will aim to provide consistent enforcement of dog and cat controls but available staffing resources and workload demands at any given time may affect the Shire's capacity to enforce dog and cat controls from time-to-time. Notwithstanding that, residents and visitors are responsible for ensuring they are complying with dog and cat regulations at all times.
- 4 The Shire will review dog and cat controls periodically and adjust dog and cat controls as appropriate and following completion of appropriate consultation and applicable legal/administrative processes. The Shire will be conscious of available resources and the need to provide for consistent enforcement in determining when, where and what dog and cat controls should be applied.
- 5 The Shire will respond to reasonable requests for assistance with protecting the welfare of dogs, cats and other animals by the public and other agencies and investigate as necessary. When the matter is found to be of a serious nature it will be handed over to the RSPCA for further action.
- 6 The Shire will engage in community education as appropriate and as resources allow, promoting responsible pet ownership, whilst ensuring that the primary responsibility always rests with pet owners.

### **Circumstances where a request for withdrawal of dog/cat infringements/prosecutions will be supported –**

Requests for withdrawal of dog/cat infringements/prosecutions will be supported in the following circumstances –

- 1 Missing, obscured, deleted or inadequate signage. Where this can be confirmed, following a site inspection by an Authorised Person, who confirms the assertion. This does not include instances where the person making the request has simply not seen or misunderstood the signage.
- 2 Trespassing on to dog/cat owner's property. Someone has entered on to the owner's property without the owners' consent and let the dog/cat out of the property. Details of report to the Police to verify this act of trespass must be provided.

- 3 Proof of sterilisation or micro chipping. Either a signed statement from a Veterinary surgeon or a signed and witnessed Statutory Declaration is supplied.
- 4 Dog – proof of the dog being under three (3) months of age, or cat - proof of age under six (6) months. If the owner of the dog/cat can reasonably demonstrate that the cat/dog is under the age required by legislation for registration and registers the dog within seven (7) calendar days of the infringement being issued.
- 5 Proof of ownership. If the owner of the dog/cat can reasonably demonstrate that they only had the unregistered dog/cat for less than fourteen (14) days.
- 6 Unlawful entry to the property. A Police report must be provided as proof to warrant withdrawal.
- 7 Age of person in control of dog. If the person in control of the dog at the time of infringement was under eighteen (18) years of age.

### **Circumstances where a request for withdrawal of dog/cat infringements/prosecutions may be supported –**

Requests for withdrawal of dog/cat infringements/prosecutions may be supported in the following circumstances –

- 1 Extenuating circumstances involving an unusual, undeserved or disproportionate hardship caused to a person. This includes, but is not limited to, where an offender provides evidence of a very compelling extenuating circumstance, which shall generally be limited to matters which affect the physical/psychological/emotional state of the offender at the time of the offence including;
  - Life threatening illness or injury
  - Acute or chronic physical pain or mental condition
  - Terminal medical condition
  - Permanent or temporary incapacity
  - Financial stress
  - Grief associated with death
- 2 Penalty unenforceable. Evidence is available to the Shire which indicates that, if the matter was contested in court, the court would not uphold/support the infringement/prosecution.
- 3 Lesser infringement more appropriate. Where two or more breaches of the regulatory framework were occurring simultaneously and there is a lesser infringement that was more appropriate to the circumstances of the case. The initial infringement shall only be withdrawn once a new infringement has been issued and paid.
- 4 Recent Accidental Fence Damage. If the fence at the property where the dog or cat is registered has fallen down, or otherwise become insufficient to contain the dog/cat due to a storm or other factor entirely outside the control of the pet owner (such as a vehicle other than the owners damaging the fence when the owner was not at home) within 24 hours of an offence occurring. A Police report and/or insurance claim must be provided to substantiate.

- 5 If the person in control of the dog at the time of infringement was under 18 years of age.

### **Circumstances where a request for withdrawal of dog/cat infringements/prosecutions will not be supported –**

Requests for withdrawal of dog/cat infringements/prosecutions will not be supported in any other circumstances, including any of the following specific circumstances –

- The owner of the dogs/cats did not know that a permit was required to have more than two dogs/cats.
- I did not know that the dog had to be registered over three (3) months of age.
- I did not know that the cat had to be registered over six (6) months of age.
- I did not know that the dog had to be on a leash outside a dog exercise area.
- I did not see the dogs prohibited sign.
- I could not control my dog in the exercise area.
- My dog is trained to walk off a leash.
- No one was around.
- I did not have a dog poo bag so I could not remove the excreta.
- The dog poo bag dispenser was empty.
- I could not find a bin to dispose of the excreta.
- I did not know the gate was left open.
- The dog/cat can jump the fence.
- The dog digs under the fence.
- I haven't been able to get the fence fixed.
- The dog/cat ran out when I opened the door.
- The dog/cat escaped through the open window.
- The property owner will not raise the fence to contain my dog/cat.
- I was not home when the dog escaped, so it's not my fault.
- It is not my dog/cat, I am looking after it for some else.
- I did not know it was a restricted breed.

## **OP & P Statement 4 – Fire Management**

### **Objectives/Statement of Intent**

The following sets out the key objectives/statement of intent in relation to the Shire's enforcement of fire management controls.

- 1 The Shire recognises that bush fire safety is a shared and a collective responsibility involving the whole of the community. Bush fires do not respect property boundaries and an elevated bush fire risk on one property does not just affect the property in question, it increases risk for the whole of the community.
- 2 The Shire promotes individual, landowner and community responsibility for the management of bush fire risk and, in particular, strongly encourages all residents in bush fire prone areas to have their own bush fire response plan, join their local Bushfire Ready Group (BRG) and/or become an emergency services volunteer with a Bush Fire Brigade.
- 3 The Shire supports and works with the Shire's Volunteer Bush Fire Brigades, Department of Fire & Emergency Services and Department of Biodiversity, Conservation and Attractions, as well as many others, to ensure that our community is adequately resourced and prepared to fight fires, but recognises that a major component of protecting our community is through mitigation of bush fire risk, especially through creation and maintenance of fire breaks and low fuel areas on both public and private land.
- 4 The aim of fire management controls and their enforcement is to reduce the risks of and from bush fires to both life and property, including the lives of emergency services volunteers.
- 5 The Shire will aim to provide consistent enforcement of fire management controls, but available staffing resources and workload demands at any given time may affect the Shire's capacity to enforce fire management controls from time-to-time. Notwithstanding that, residents and visitors are responsible for ensuring they are complying with fire management controls at all times.
- 6 During the 'bush fire season' (generally 1 December to 26 April), enforcement of fire management controls will be the highest priority for the Shire's Community Ranger Services, other than responding to emergencies that may occur from time to time. The priority areas for enforcement of fire management controls are areas identified as being bush fire prone.
- 7 The Shire, upon the recommendation of the Bush Fire Advisory Committee will review fire management controls periodically and adjust fire management controls as appropriate and following completion of appropriate consultation and applicable legal/administrative processes. The Shire will be conscious of available resources and the need to provide for consistent enforcement in determining when, where and what fire management controls should be applied. The Shire will consider cost implications for landowners and potential environmental impacts as and when it is deemed necessary to review fire management controls, but will always place the greatest weight on the protection of human life.

- 8 The Shire will engage in community education as appropriate and as resources allow, promoting individual, landowner and community responsibility for protecting our community from bush fire risk.

## **Guidelines for issuing of fire management warnings, work orders or infringements**

- 1 Where a person undertakes burning or any other activity that is prohibited from time to-time or requires a permit and the offender can be identified, an infringement will be issued.
- 2 Following the undertaking of an inspection of a property against the Shire's Bush Fire Prevention Order, where a property is not fully compliant with the notice, cautions, work orders or infringements will be issued as follows –
  - 2.1 Very minor non-compliance. Non-compliance with the Notice is of a very minor nature only and does not increase the risk to either the property itself or other properties in any significant way. In these circumstances a warning will be issued, advising the property owner of the area/s of non-compliance and recommending that steps are taken to address the area/s as soon as possible and for future fire seasons. There will usually be no follow-up inspection during that fire season, but there usually will be the following fire season.
  - 2.2 Minor non-compliance. Non-compliance with the Notice is of a minor nature but does increase the risk to either the property itself or other properties. In these circumstances a work order will be issued, advising the property owner of the area/s of non-compliance and requiring that steps are taken to address the area/s within 14 days. There will be a follow-up inspection during that fire season, and usually the following fire season as well. If the property is not fully compliant when a follow-up inspection is undertaken, then an infringement will be issued and a contractor may be engaged by the Shire to do the necessary works on the landowner's behalf, with the costs of engaging the contractor subsequently recovered from the landowner.
  - 2.3 More than minor non-compliance. Non-compliance with the Notice is of a more than minor nature and clearly increases the risk to either the property itself or other properties. In these circumstances an infringement will be issued, advising the property owner of the area/s of non-compliance and requiring that steps are taken to address the area/s within 14 days. There will be a follow-up inspection during that fire season, and usually the following fire season as well. If the property is not fully compliant when a follow-up inspection is undertaken, then a second infringement will be issued and a contractor may be engaged by the Shire to do the necessary works on the landowner's behalf, with the costs of engaging the contractor subsequently recovered from the landowner.

## **Bush Fire Prevention Order Variations and Fire Management Plans**

- 1 Landowners may apply for approval of a variation for their property from the normal requirements of the Bush Fire Prevention Order. Such applications will only be considered for a forthcoming fire season where they are lodged prior to 31 October in any given year and it is clear that both an overall fire safety outcome and an overall biodiversity protection outcome at least as good as that which would be achieved through compliance with the Order will be achieved. Applications must be made using the appropriate form developed by the Shire and as amended from time-to-time.
- 2 Whilst construction of buildings to higher fire safety standards, installation of appropriately designed sprinkler or other fire suppression systems or approved bush fire shelters is encouraged, they are not factors that can or will be considered by the Shire in assessing applications for approval for variations from the Order.
- 3 Once a variation has been approved for any given property, that approval shall be valid for a period of 5 years, unless the circumstances surrounding the management of the property change. If there is a change to the Order such that the variation no longer provides for an overall fire safety outcome at least as good as that which would be achieved through compliance with the Order, then the Shire may require that a further application be made, setting out how the fire management approach will be modified to achieve a satisfactory outcome.
- 4 The Bush Fire Prevention Order sets out that, where there is an adopted Fire Management Plan for a given property (such plans are usually prepared as part of the process of gaining subdivision approval for creation of new lots), that the provisions of the Fire Management Plan prevail over the normal requirements of the Bush Fire Prevention Order.
- 5 Where a Fire Management Plan applies, it is not possible to obtain approval for a variation from the Bush Fire Prevention Order. Instead, application must be made for approval of a revised or new Fire Management Plan. Applications for approval of new or revised Fire Managements Plans must be made by appropriately experienced and/or qualified bush fire consultants.

### **Circumstances where a request for withdrawal of fire management infringements/prosecutions will be supported –**

Requests for withdrawal of fire management infringements/prosecutions will be supported in the following circumstances –

- 1 New property owner. When the new property owner owned the property for 14 days or less at the time of the inspection.
- 2 Work Order/Infringement addressed incorrectly. When the infringement/work order has been posted to an address that was not the nominated service address for the property at the time of posting (this would essentially be only if the landowner has submitted the necessary paperwork to change the nominated service address to the Shire and that has not been reflected in the Shire's records at the time of posting).

- 3 Deceased owner. If one or more of the property owners has passed away within 30 days of the inspection, prior to or during the fire season.
- 4 Old property owner. If settlement was finalised prior to 1 December in any given financial year and the change of ownership was not reflected in the Shire's system prior to the inspection.

Note: In all of the above circumstances, whilst the work order or infringement will be withdrawn, the property still needs to be brought into compliance with the Bush Fire Prevention Order in a timely fashion (generally within 14 days of the owner becoming aware of the property's non-compliance), and may be re-inspected during the same fire season. If full compliance is not achieved, then further work orders or infringements will be issued and further action taken by the Shire in a manner consistent with this OP & P.

### **Circumstances where a request for withdrawal of fire management infringements/prosecutions may be supported –**

Requests for withdrawal of fire management infringements/prosecutions may be supported in the following circumstances –

- 1 Extenuating circumstances involving an unusual, undeserved or disproportionate hardship caused to a person. This includes, but is not limited to, where an offender provides evidence of a very compelling extenuating circumstance, which shall generally be limited to matters which affect the physical/psychological/emotional state of the offender at the time of the offence including;
  - Life threatening illness or injury
  - Acute or chronic physical pain or mental condition
  - Terminal medical condition
  - Permanent or temporary incapacity
  - Financial stress
  - Grief associated with death
- 2 Penalty unenforceable. Evidence is available to the Shire which indicates that, if the matter was contested in court, the court would not uphold/support the infringement/prosecution.
- 3 Lesser infringement more appropriate. Where two or more breaches of the regulatory framework were occurring simultaneously and there is a lesser infringement that was more appropriate to the circumstances of the case. The initial infringement shall only be withdrawn once a new infringement has been issued and paid.
- 4 Conflict with other laws. It can be clearly demonstrated that compliance with the Bush Fire Prevention Order would put the landowner into conflict with other laws.

Note: In relation to 4 above, it is the primary responsibility of the landowner to determine and demonstrate that this is the case. In most cases, however, works necessary for bush fire safety and to comply with the Bush Fire Prevention Order are exempt from State environmental laws. Different circumstances may apply in relation to Commonwealth environmental laws.

## **Circumstances where a request for withdrawal of fire management infringements/prosecutions will not be supported –**

Requests for withdrawal of fire management infringements/prosecutions will not be supported in any other circumstances, including any of the following specific circumstances–

- I did not know that a permit was required to burn.
- I did not understand the conditions of the permit.
- I was not aware there were conditions on the permit.
- I was not aware that I needed to follow directions from the Fire Control Officer.
- I did not think that the Bush Fire Prevention Order related to the offending property.
- I did not understand the Bush Fire Prevention Order.
- I did not receive the Bush Fire Prevention Order in the mail.
- The property owner was away on holidays when the property was inspected.
- The notice was sent to the address on the system (old address), but I had forgot to update my service address with the Shire.
- The contractor I used said it was sufficient.
- I do not agree with the Bush Fire Prevention Order.
- I am a Fire Control Officer.
- I am a volunteer fire fighter.
- I think protection of bush is more important than fire safety.
- I want to live in a bush environment.
- I want to preserve my privacy.
- I like to have the bush around me.
- I am prepared to take the risk

## **OP & P Statement 5 – Litter**

### **Objectives/Statement of Intent**

The following sets out the key objectives/statement of intent in relation to the Shire's enforcement of litter controls –

- 1 The aim of the enforcement of the Litter Act is to control the unlawful disposal of litter, to maintain an attractive and healthy environment and ensuring the safety of the Community.
- 2 The Shire will aim to provide consistent enforcement of the Litter Act at all times, but available staffing resources and workload demands at any given time may affect the Shire's capacity to enforce the Litter Act from time-to-time. Notwithstanding that, residents and visitors are responsible for ensuring they comply with litter controls at all times.
- 3 The Shire will review relevant legislation in relation to litter controls periodically as appropriate in consultation with other relevant agencies. The Shire will be conscious of available resources and the need to provide for consistent enforcement in determining when appropriate controls should be applied.
- 4 In all instances where the offender can be identified, the Shire will seek to have the offender remove the litter within 48 hours. If the offender does not remove the litter as required, the Shire of Capel shall remove the litter and recover the cost of this action from the offender in accordance with the provisions of Section 29 of the Litter Act 1979.

### **Circumstances where a request for withdrawal of litter infringements/prosecutions will be supported –**

Requests for withdrawal of litter infringements/prosecutions will be supported in the following circumstances –

- Correct offender identification. The offender can provide evidence or Statutory Declaration, properly signed and witnessed, that they were not involved in the committal of the offence, and or/identify the correct offender who allegedly committed the offence.

### **Circumstances where a request for withdrawal of litter infringements/prosecutions may be supported –**

Requests for withdrawal of litter infringements/prosecutions may be supported in the following circumstances –

- 1 Extenuating circumstances involving an unusual, undeserved or disproportionate hardship caused to a person. This includes, but is not limited to, where an offender provides evidence of a very compelling extenuating circumstance, which shall generally be limited to matters which affect the physical/psychological/emotional state of the offender at the time of the offence including;

- Life threatening illness or injury
  - Acute or chronic physical pain or mental condition
  - Terminal medical condition
  - Permanent or temporary incapacity
  - Financial stress
  - Grief associated with death
- 2 Penalty unenforceable. Evidence is available to the Shire which indicates that, if the matter was contested in court, the court would not uphold/support the infringement/prosecution.
- 3 Lesser infringement more appropriate. Where two or more breaches of the regulatory framework were occurring simultaneously and there is a lesser infringement that was more appropriate to the circumstances of the case. The initial infringement shall only be withdrawn once a new infringement has been issued and paid.

### **Circumstances where a request for withdrawal of litter infringements/prosecutions will not be supported –**

Requests for withdrawal of litter infringements/prosecutions will not be supported in any other circumstances, including any of the following specific circumstances –

- I did not know that dumping lawn clippings on the Shire’s Reserve or verge was considered littering.
- I did not know that you could not dump green waste on to vacant land.
- The green waste/lawn clippings were dumped on to vacant land / Shire Reserve or verge to help or stop soil erosion.
- It was not me who threw the litter / cigarette butt from the vehicle.
- I did not know that you could not put household waste in public bins or in bins used on building sites.
- The waste facility was too far to drive / too costly in fees.
- I will not use the waste facility as it costs money, and I am a ratepayer and it should be free.
- I did not have anywhere else to dump or leave the vehicle.

## **OP & P Statement 6 – Unauthorised Camping (Other than at a Licensed Caravan Park and/or Camping Ground)**

### **Objectives/Statement of Intent**

The following sets out the key objectives/statement of intent in relation to the Shire's enforcement of caravan and camping controls (other than at a licensed caravan park and/or camping ground) –

- 1 The aim of the enforcement of the Caravan Parks and Camping Grounds Act 1995 and Regulations is to ensure that people sleeping/camping in moveable dwellings, tents or their vehicle within the Shire comply with the relevant legislation.
- 2 The Shire will aim to provide consistent enforcement of the Caravan Parks and Camping Grounds Act 1995 and Regulations at all times, but available staffing resources and workload demands at any given time may affect the Shire's capacity to enforce the Caravan Parks and Camping Grounds Act 1995 and Regulations from time-to-time. Notwithstanding that, residents and visitors are responsible for ensuring they comply with camping regulations at all times.
- 3 The Shire aims to promote responsible and sustainable caravanning and camping, reduce the impact on the natural environment and the nuisance to the community caused by irresponsible caravanning and camping.
- 4 The Shire will review relevant Legislation in relation to caravanning and camping controls periodically as appropriate in consultation with other relevant agencies. The Shire will be conscious of available resources and the need to provide for consistent enforcement in determining when appropriate controls should be applied.

### **Circumstances where a request for withdrawal of caravan and camping infringements/prosecutions will be supported –**

Requests for withdrawal of camping infringements/prosecutions will be supported in the following circumstances –

- 1 Vehicle breakdown. In this instance, documentary evidence must be provided from the RAC or a reputable mechanical firm, or in the form of a Statutory Declaration from the person who rectified the fault, confirming the fact that the vehicle could not be moved.
- 2 'Life threatening' medical emergency. Such that there was no reasonable alternative but to camp in a location where camping was not legal. An appropriate person at a medical practitioner's surgery or a relevant hospital authority must substantiate this in writing.

## **Circumstances where a request for withdrawal of caravan and camping infringements/prosecutions may be supported –**

Requests for withdrawal of caravan and camping infringements/prosecutions may be supported in the following circumstances –

- 1 Extenuating circumstances involving an unusual, undeserved or disproportionate hardship caused to a person. This includes, but is not limited to, where an offender provides evidence of a very compelling extenuating circumstance, which shall generally be limited to matters which affect the physical/psychological/emotional state of the offender at the time of the offence including;
  - Life threatening illness or injury
  - Acute or chronic physical pain or mental condition
  - Terminal medical condition
  - Permanent or temporary incapacity
  - Financial stress
  - Grief associated with death
- 2 Penalty unenforceable. Evidence is available to the Shire which indicates that, if the matter was contested in court, the court would not uphold/support the infringement/prosecution.
- 3 Lesser infringement more appropriate. Where two or more breaches of the regulatory framework were occurring simultaneously and there is a lesser infringement that was more appropriate to the circumstances of the case. The initial infringement shall only be withdrawn once a new infringement has been issued and paid.

## **Circumstances where a request for withdrawal of caravan and camping infringements/prosecutions will not be supported –**

Requests for withdrawal of caravan and camping infringements/prosecutions will not be supported in any other circumstances, including any of the following specific circumstances –

- I did not see the no camping sign.
- I did not know that you could not sleep or camp in your vehicle, caravan or tent.
- There is no sign that does not say that you cannot sleep or camp in your vehicle, caravan or tent.
- I saw other people's vehicles here with people sleeping in their vehicles, caravans or tents.
- All the caravan parks were full.
- All the caravan parks cost too much.
- I purchased this type of vehicle so that I did not have to use caravan parks.
- It was late, and we were tired.
- I am just passing through the Shire.
- The sign was hard to understand.
- I am unable to understand your directions as English is not my native language

## **OP & P Statement 7 – Local Government Property Local Law (LGPLL)**

### **Objectives/Statement of Intent**

- 1 The Shire aims to promote responsible and sustainable use of the natural amenity, environment, Council facilities, land and reserves, and provide for the prevention, control and abatement of pollution and environmental harm, for the conservation, preservation, protection, enhancement and management of the environment.
- 2 The aim of the enforcement of the Shire of Capel Local Government Property Local Law is to ensure fair and equitable use of and activities on or within local government property, reserves and buildings.
- 3 The Shire will aim to provide consistent enforcement of the Shire of Capel Local Government Property Local Law at all times, but available staffing resources and workload demands at any given time may affect the Shire's capacity to enforce the Shire of Capel Local Government Property Local Law from time-to-time. Notwithstanding that, residents and visitors are responsible for ensuring they comply with appropriate controls and permits at all times.
- 4 The Shire aims to promote responsible use of activities on or within local government property, reserves and buildings, reduce the impact on the natural environment and the nuisance to the community caused by irresponsible activities.
- 5 The Shire will review relevant Legislation in relation to the Shire of Capel Local Government Property Local Law periodically as appropriate in consultation with other relevant agencies. The Shire will be conscious of available resources and the need to provide for consistent enforcement in determining when appropriate controls should be applied.

### **Circumstances where a request for withdrawal of LGPLL infringements/prosecutions will be supported –**

Requests for withdrawal of LGPLL infringements/prosecutions will be supported in the following circumstances –

- 1 Incorrectly issued. The infringement was issued incorrectly by the issuing officer.
- 2 Different owner/driver. The owner of the vehicle was not the person in control of the vehicle at the time. A statutory declaration form with the correct offender details will need to be provided before warranting withdrawal.
- 3 Vehicle involved has been stolen or used without the prior authority of the owner. In this situation, the relevant Police Report Number is to be provided.
- 4 Missing, obscured, deleted or inadequate signage. This will be accepted following a site inspection by an Authorised Person, who confirms the assertion.

- 5 'Life threatening' medical emergency. An authorised person at a medical practitioner's surgery or a relevant hospital authority must substantiate this in writing.

### **Circumstances where a request for withdrawal of LGPLL infringements/prosecutions may be supported –**

Requests for withdrawal of LGPLL infringements/prosecutions may be supported in the following circumstances –

- 1 Extenuating circumstances involving an unusual, undeserved or disproportionate hardship caused to a person. This includes, but is not limited to, where an offender provides evidence of a very compelling extenuating circumstance, which shall generally be limited to matters which affect the physical/psychological/emotional state of the offender at the time of the offence including;
  - Life threatening illness or injury
  - Acute or chronic physical pain or mental condition
  - Terminal medical condition
  - Permanent or temporary incapacity
  - Financial stress
  - Grief associated with death
- 2 Penalty unenforceable. Evidence is available to the Shire which indicates that, if the matter was contested in court, the court would not uphold/support the infringement/prosecution.
- 3 Lesser infringement more appropriate. Where two or more breaches of the regulatory framework were occurring simultaneously and there is a lesser infringement that was more appropriate to the circumstances of the case. The initial infringement shall only be withdrawn once a new infringement has been issued and paid.

### **Circumstances where a request for withdrawal of LGPLL infringements/prosecutions will not be supported –**

Requests for withdrawal of LGPLL infringements/prosecutions will not be supported in any other circumstances, including any of the following specific circumstances –

- I did not see the sign.
- I did not know that you cannot drive on a Council Reserve / beach.
- I did not know that a permit was required from the Shire to be able to drive on/use the Reserve/beach.
- The sign was hard to understand.
- I am unable to understand your directions as English is not my native language.
- The owner of the vehicle was not the driver, but the owner cannot get the driver to accept responsibility.

## **OP & P Statement 8 - Process for making a request for Shire consideration of withdrawal of Work Orders / Infringements/ Prosecutions**

- 1 Persons who wish to request that the Shire consider withdrawal of work orders/infringements/prosecutions are strongly encouraged to first consider whether the circumstances of the case fit the relevant, stated circumstances where this OP & P indicates that the Shire will or may withdraw infringements/prosecutions. If that is not the case, or the circumstances of the case fit the relevant, stated circumstances where this OP & P indicates that the Shire will not withdraw infringements/prosecutions, submission of a request for withdrawal is strongly discouraged.
- 2 Persons who wish to request that the Shire consider withdrawal of work orders/infringement/prosecution must make their request in writing (either letter or email) and addressed as follows - Post to – Shire of Capel Attention: Senior Community Ranger PO Box 369 Capel WA 6271 or Email to – info@capel.wa.gov.au (with the subject line to begin with 'Attention: Senior Community Ranger').

(Note: whilst the details above do form part of this OP & P as adopted by the Council, because of their procedural nature, they may be amended or modified at officer level without reference to the Council).

- 3 Requests should include the following information:
  - Infringement or prosecution notice number or file reference.
  - Date of issue of the infringement or prosecution notice.
  - Vehicle/dog/cat registration number as appropriate.
  - Return address and phone number.
  - All relevant supporting documentation (see more detailed OP & P statements above for further guidance).
  - Reasons why the infringement notice should be reviewed, withdrawn or the modified penalty reduced.
- 4 Whilst persons can discuss potential requests for withdrawal with Shire officers over the telephone or face-to-face, requests will not be determined until a request is made in writing as detailed above.
- 5 If a person requires assistance in meeting the requirements of 4 above, assistance can be given by Shire staff only for the purpose of documenting the person's case, but not in constructing the case for withdrawal of the notice.
- 6 All requests should be made as soon as possible after the infringement/prosecution notice is received, preferably within seven days.

## **OP & P Statement 9 – Process for Shire consideration of requests for withdrawal of Work Orders /Infringements/ Prosecutions**

- 1 Requests will initially be considered by one Delegated Person (usually the Senior Community Ranger) provided that the delegated person was not also the Authorised Person, who will determine whether the circumstances fall into a category where this OP & P indicates that will, may or will not be supported.
- 2 Where the circumstances fall into a 'may' category, the request shall be referred to a Panel of Delegated Persons for consideration.
- 3 Where the circumstances of the case fall into a 'will' or 'will not' category, the request shall be determined by one Delegated Person in a manner consistent with this OP & P.
- 4 If the person who made the initial request is not satisfied with the outcome of the consideration of that initial request and the Shire is again notified in writing, the decision will then be reviewed by the Panel of Delegated Persons.

(The Panel of Delegated Persons will meet on an 'as required' basis to consider requests, but in any case within 28 days of receipt of a request that must be considered by the Panel).

- 5 The Panel of Delegated Persons will consider requests in a manner consistent with this OP and P and make the following determination –
  - Dismiss request and confirm the original work order/infringement/prosecution;
  - Modify the decision (such as reducing a penalty or similar to a lesser penalty);
  - Uphold the request and withdraw the work order/infringement/prosecution.
- 6 The outcome and reasons for the decision made regarding a request will be communicated in writing within 7 days of the decisions being made.

## OP & P Statement 10 – Objections and Appeals

- 1 Infringement Notice: When the Shire gives an infringement notice, an affected person has a right of objection to the Shire’s decision to give the notice.

An affected person may lodge an objection and request a review of the Shire’s decision to issue an infringement notice by submitting an objection to the Shire, generally within 28 days (or within such further time as the Shire determines) after the person was made aware of the notice.

The Shire’s infringement notices must include advise to the effect that if the alleged offender does not wish to have the infringement notice registered with the State Government’s Fines Enforcement Registry, the amount of money specified in the notice as being the modified penalty for the particular offence must be paid within the time specified (generally a period of 28 days) after the notice was given.

Legislation under which an infringement notice may be given and or withdrawn includes:

- Local Government Act 1995
- Local Government (Functions & General) Regulations 1996
- Local Government (Miscellaneous Provisions) Act 1960
- Shire of Capel Parking and Parking Facilities Local Law 2016,
- Road Traffic Act 1974
- Local Government (Parking for Disabled Persons) Regulations 1988
- Dog Act 1976
- Dog Regulations 1976 Dog (Restricted Breeds) Regulations (No. 2) 2002
- Shire of Capel Local Laws Relating to Dogs 2007,
- Cat Act 2011
- Cat Regulations 2012
- Shire of Capel Local Law Relating to the Keeping and Welfare of Cats 2004,
- Bush Fires Act 1954
- Bush Fires Regulations 1954
- Bush Fires (Infringements) Regulations 1978
- Shire of Capel Firebreak and Fuel Hazard Reduction Notice (as amended or adopted from time to time)
- Caravan Parks and Camping Grounds Act 1995
- Caravan Parks and Camping Grounds Regulations 1997
- Litter Act 1979
- Litter Regulations 1982
- Shire of Capel Local Government Property Local Law,
- Shire of Capel Activities in Thoroughfares and Public Places and Trading Local Law 2016

- 2 Notices other than infringement notices: When a notice other than an infringement notice is issued for a prescribed offence, an affected person may object and request a review of the Shire’s notice. Where a person lodges and objection to a notice or decision made by the Shire, the provisions of Division 1 of Part 9 of the Act, and Regulations 33 and 34 of the Local Government (Functions and General) Regulations 1996 will generally apply as follows:

An affected person may lodge an objection and request a review of the Shire’s decision to issue a notice other than an infringement notice by submitting an objection in the prescribed form generally within 28 days (or within such further

time as the Shire determines) after the person was made aware of the Shire's notice.

- 3 Appeals – Notices other than infringement notices: If a person has lodged an objection to a notice other than an infringement notice and has been advised by the Shire of how it has been decided to dispose of the objection, the person may apply to the State Administrative Tribunal for a review of the Shire's decision.

Where a decision is made to not support the withdrawal of a notice other than an infringement notice the applicant shall be advised of the Shire's decision in writing and informing of their right to apply to the State Administrative Tribunal for a review of the Shire's decision within 28 days of receiving the decision.