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CEMETERIES ACT 1986

SHIRE OF ASHBURTON

**LOCAL LAW RELATING TO THE
MANAGEMENT AND CONTROL OF
CEMETERIES**

CEMETERIES ACT 1986

SHIRE OF ASHBURTON

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CEMETERIES ACT 1986

SHIRE OF ASHBURTON

LOCAL LAW RELATING TO THE MANAGEMENT AND CONTROL OF CEMETERIES

In pursuance of the powers conferred upon it by the above mentioned Act, and all powers enabling it, the Shire of Ashburton hereby records having resolved on 16 June 1998 to make the following local law.

PART 1—PRELIMINARY**1. Citation**

This local law shall be cited as the Shire of Ashburton "Local Law Relating to the Management and Control of Cemeteries".

2. Commencement

This local law comes into effect fourteen (14) days after the date of its publication in the *Government Gazette*.

3. Repeal of Local Law

The Shire of Ashburton "Cemeteries Local Law" published in the *Government Gazette* on 28 February 1975 and all other local laws relating to Cemeteries are hereby repealed.

4. Content and Intent

This local law provides for rules and guidelines for the management and control of cemeteries located in Onslow (Reserve No. 20632) and Tom Price (Reserve No. 43087).

5. Interpretation

(1) In this local law, unless the context otherwise requires—

"animal" means any animal;

"Act" means the Cemeteries Act 1986;

"ashes" means so much of the remains of a dead body after the due processes of cremation as may be contained in the standard sized cremation urn;

"burial" has the same meaning as is given to it in the Act;

"Cemetery" means the Shire of Ashburton Cemeteries of Onslow and Tom Price which the Governor by order has vested under the care, control and management of the local government;

"dead body" has the same meaning given to it in Act;

"defence force" has the same meaning given to that expression in the Defence Act 1903.

"Commissioner of Police" means the commissioner of Police for the time being appointed under the Police Act 1892 and includes any person for the time being acting in the capacity in the absence of the Commissioner of police.

"funeral" includes the burial and cremation of a dead body and all associated processions and ceremonials but does not include so much of the ceremonial that is solely a religious rite;

"Funeral Director" means a person, firm or company holding a current funeral director's licence;

"General Manager" means the Chief Executive Officer for the time being appointed in accordance with this local law and includes any person for the time being acting in that capacity in the absence of the Chief Executive Officer;

"grant" means a grant issued by the local government, of an exclusive right of burial in a grave;

"grave" means a specified area of the Cemetery for burial;

"ground niche" means a specified area of the Cemetery for the placement of ashes not being a grave;

"guide dog" has the same meaning as is given to that expression in the Dog Act 1976;

"holder" in relation to a grant includes—

(a) a person issued with a grant by the local government;

(b) a person for the time being appearing to the Council to be the holder of a grant;

"memorial" means a memorial plaque or memorial as described in this local law or as otherwise approved by the local government;

"Minister" means the Minister for Local Government;

“personal representative “ means the administrator or executor of an estate of a deceased person;

“remains” means ashes or what remains of a dead body after burial;

“set fee” refers to fees and charges set by a resolution of the Council and published in the *Government Gazette* in accordance with section 53 of the Cemeteries Act 1986;

“single funeral permit” means a permit issued by the Board under section 20 or 21 of the Act which entitles the holder to conduct at the cemetery a funeral of a person named in the permit.

(2) Unless otherwise defined herein the terms and expressions used in this local law shall have the same meaning given to them in the Act.

(3) Where a term is not defined in this local law, the Act or regulations, the term is to be taken from the Oxford Dictionary.

PART 2—ADMINISTRATION

6. Powers and Functions of the Chief Executive Officer

Subject to any directions given by the local government the Chief Executive Officer shall exercise all the powers and functions of the local government in respect of the Cemetery.

7. Appointment of Trustee

The Shire President, Deputy President and Councillor representatives of the particular Ward in which any Cemetery is located will be trustees of that particular Cemetery.

8. Plans and Registers

(1) The local government shall establish and maintain—

- (a) a plan of the Cemetery showing the location and identifying number of every burial place of grave and the distribution of the land, compartments and section;
- (b) a register containing the identification numbers of graves and the names of the persons buried;
- (c) a register of grants made with respect to the Cemetery;
- (d) a register of persons cremated whose ashes have been buried or disposed of in the Cemetery.

(2) The plans and registers referred to in paragraph (1) shall be open for inspection at the local government offices by members of the public during normal office hours.

PART 3—RIGHTS OF BURIAL/GRANTS

9. Issues of a Grant

(1) Upon—

- (a) the written application of a person; and
- (b) payment of the set fee,

the local government may issue to that person a grant of right of burial for a term of 50 years.

(2) The local government may grant exclusive rights of burial in respect of more than one grave to any person but shall not grant such rights in respect of more than five graves to any one person.

10. Rights of a Holder

(1) A grant confers on the holder, during the term of the grant, an exclusive right—

- (a) to bury one or more dead bodies, or the ashes of one or more dead bodies in the grave or graves specified in the grant; and
- (b) to arrange for the placing of a memorial plaque of the kind referred to in clause 34 on the grave or graves specified in the grant.

(2) An authorised person may request a holder to produce the grant before the exercise of any of the rights referred to in subclause (1) and the holder shall forthwith comply with that request.

11. Renewal of a Grant

(1) Where, at any time during the term of a grant issued under clause 9 the holder—

- (a) makes written application; and
- (b) pays the set fee,

the local government shall renew that grant for a further term of 50 years commencing on the initial expiry date of the grant.

(2) Where the renewal is refused the local government may from the date of expiry of the grant deal with the grave in respect of which the grant was originally issued as it sees fit.

12. Replacement Grant

Upon—

- (a) the written application of a holder; and
- (b) the production of evidence to the satisfaction of the local government, which may include a statutory declaration by the holder,

the local government may issue a new grant to replace a grant, which is lost or has been destroyed.

13. Transfer of a Grant

A holder who wishes to assign a grant must produce to the local government for registration the document giving effect to the assignment.

14. Exercising the Rights of a Holder

(1) Where a person who is not the holder of a grant seeks authority from the local government to exercise the rights conferred on the holder of such grant that person shall provide the local government—

- (a) a statutory declaration to the effect that he/she has the right to exercise such rights and knows of no other person having a prior or equal right or in the case of a Funeral Director that he/she has the permission of the holder or other person entitled to that grave; and
- (b) an indemnity to the local government by such person in respect of all damages costs expenses and liabilities resulting from the exercise or enjoyment of such rights by that person.

(2) If the local government is satisfied on the basis of the written evidence provided by the person referred to in subclause (1) that the holder of the grant—

- (a) is unavailable;
- (b) is not immediately ascertainable; or
- (c) has died without bequeathing the grant by will

then the local government may authorise in writing that person being—

- (d) the holder's next of kin;
- (e) the holder's personal representative;
- (f) a person acting expressly on behalf of the holder's personal representative; or
- (g) where no one described in paragraphs (d), (e) or (f) is available or immediately ascertainable, any other person approved by the local government,

to exercise, subject to any conditions imposed by the local government, the rights conferred on the holder.

15. Burial Without a Grant

(1) Where a person who wishes to bury a dead body, or the ashes of a dead body, in a grave which is not the subject of a grant—

- (a) makes written application; and
- (b) pays the set fee,

the local government may authorise the burial of that dead body or ashes in a specified grave allocated for that purpose.

(2) Where a grave is allocated under subclause (1), the local government shall retain all rights and powers in respect of that grave, including the rights and powers to reopen the grave to—

- (a) disinter the remains buried in that grave and reinter them—
 - (i) in the same grave;
 - (ii) in another grave but within the Cemetery; or
 - (iii) elsewhere in accordance with the Act;
- (b) bury other dead bodies.

PART 4—APPLICATION FOR FUNERALS/REQUIREMENTS TO HOLD FUNERALS**16. Application to Hold a Funeral**

(1) A person who desires to hold a funeral within the Cemetery shall, in the case of the burial of a dead body—

- (a) make an application to the local government in the form determined by the local government from time to time; and
- (b) lodge with the application referred to in (a)—
 - (i) evidence to the satisfaction of the Local Government that the holder of the grant in respect of the grave in which the dead body is intended to be buried has consented to or would not object to the burial; or
 - (ii) an application for a grant under clause 9; or
 - (iii) an application for the allocation of a grave under clause 4.

(2) All applications referred to in subclause (1) shall be accompanied by—

- (a) a certificate of identification in accordance with clause 17; and either
- (b) a doctor's certificate for burial or disposal of the dead body; or
- (c) a coroner's order for burial.

(3) All applications to hold a funeral on a Saturday, Sunday or Public Holiday must be lodged with the local government during working hours no later than forty eight (48) hours before the funeral unless a later time is approved by the local government.

17. Certificate of Identification

(1) After a dead body is placed in a coffin and prior to a dead body being removed to the Cemetery, a person who personally knew the deceased shall identify the dead body and shall complete the form prescribed by the local government from time to time, unless—

- (a) in the opinion of the Funeral Director, the dead body is not in a fit state to be viewed; or
- (b) after reasonable effort the Funeral Director is unable to arrange for a person to identify the dead body.

(2) Where—

- (a) in the opinion of the Funeral Director, the dead body is not in a fit state to be viewed; or
- (b) after reasonable effort the Funeral Director is unable to arrange for a person to identify the dead body,

then the Funeral Director shall complete the form prescribed by the local government from time to time.

18. Receipt of the Application for a Funeral

Upon receipt of a properly completed application form in accordance with clause 15 and all other things required by this Part, the local government shall—

- (a) fix a time for the funeral; and
- (b) cause the preparation of any grave that is required.

19. Times for Burials

(1) A person shall only carry out a burial between the hours of 6.00am and 6.00pm, Monday to Sunday.

(2) A person shall not carry out a burial

- (a) on Christmas Day; or
- (b) on Good Friday.

PART 5—FUNERAL DIRECTORS

20. Directing a Funeral

A person shall not direct a funeral within the Cemetery or otherwise make use of the Cemetery for any purpose connected with directing a funeral unless that person is—

- (a) a Funeral Director who holds a funeral director's licence or a single funeral permit;
- (b) an employee of a Funeral Director who holds a funeral director's licence or a single funeral permit; or
- (c) the holder of a single funeral permit issued in accordance with this local law.

21. Funeral Director's Licence

(1) The local government may upon receipt of an application in writing by any person and upon payment of the set fee, issue to the applicant a funeral director's licence authorising the holder to direct funerals within the Cemetery at such times and on such days and subject to such conditions as the local government shall specify and in compliance with the provisions of this Part.

(2) If the application referred to in subclause (1) is approved by the local government, the local government shall issue to the applicant a licence in a suitable form determined by the local government from time to time.

(3) Any person who is the holder of a current funeral director's licence may apply for a new licence for the following year by lodging with the local government an application in writing, and payment of the set fee.

22. Period of Licence

A funeral director's licence—

- (a) shall be valid from the date specified therein until the 30th day of June next following the date of commencement of the licence or until the licence is determined pursuant to clause 23, whichever shall occur sooner; and
- (b) shall not be transferable.

23. Responsibilities of the Holder of a Funeral Director's Licence

The holder of a funeral director's licence shall be responsible for the compliance by every person purporting to be authorised to direct a funeral within the Cemetery pursuant to that licence in accordance with the Act and this local law.

24. Cancellation of a Funeral Director's Licence

(1) The local government may, by notice in writing to the holder of a funeral director's licence, cancel the licence if—

- (a) the holder of the funeral director's licence or any employee of the holder has committed a breach of this Part, the Act, the Cremation Act 1927 or any of the conditions upon which the licence was issued;
- (b) in the opinion of the local government, the conduct of the holder of the funeral director's licence or any employee of the holder in directing or attempting to direct any funeral within a Cemetery is inappropriate or unbecoming;
- (c) the holder of the funeral director's licence has purported to transfer the licence issued to that holder;
- (d) the funeral director's licence was issued erroneously or in consequence of a false or fraudulent document, statement or representation;
- (e) the fee for the funeral director's licence is due and unpaid; or
- (f) the local government is no longer satisfied that the holder of the funeral director's licence has suitable facilities and equipment for handling and storing dead bodies and conducting funerals.

(2) Upon the cancellation of a licence pursuant to this clause, no part of any fee paid for the issue of that licence is refundable by the Council.

25. Application for a Single Funeral Permit

Every application for a single funeral permit made under section 20 or 21 of the Act shall include coffin specifications and details of the vehicle transporting the dead body to the gravesite.

26. Application May Be Refused

The local government may refuse an application for a single funeral permit if, in the opinion of the local government, either the coffin specifications or the details of the vehicle transporting the dead body to the gravesite or crematorium, are not structurally sound or are otherwise inadequate or inappropriate, or on any other grounds.

PART 6—FUNERALS

27. Requirements as to Coffins

A person shall not bring a dead body into a Cemetery unless—

- (a) the local government has received an application for the burial of that dead body in accordance with Part 4;
- (b) it is enclosed in a coffin which in the opinion of the local government is structurally sound and bears the name of the deceased person indelibly inscribed in legible characters on a plate on the coffin's lid; and
- (c) under the plate referred to in paragraph (b) there is a substantive lead strip bearing the surname of the deceased person stamped in legible characters, each character being not less than 10mm in height.

28. Funeral Processions

(1) The time fixed by the local government for any burial shall be the time at which the funeral procession is to arrive at the Cemetery gates, and, if not punctually observed, then the applicant who applied to hold the funeral shall pay the set fee for being late.

(2) Subject to subclause (3), every funeral procession shall enter by the principal entrance, and no vehicle except the hearse, and official mourning coaches, shall be permitted to enter the cemetery.

(3) This clause shall not apply to persons using wheelchairs or motorised wheelchairs.

29. Directions to Place Ashes

(1) A personal representative may apply in writing to the local government for permission to dispose of ashes in the Cemetery.

(2) Upon payment of the set fee the local government may grant permission for the ashes to be disposed of by placing in a grave or ground niche or scattering of the winds.

(3) An authorised person may place the ashes of a deceased person within a grave in accordance with the local government approval, provided the person requesting the placement of the ashes has the written permission of the local government and the approval of the holder of the right of burial of the grave.

30. Depth of Grave

Every grave shall be dug at least 1.8 metres deep at the first interment unless requested otherwise by the applicant and approved by the local government.

31. Re-opening a Grave

(1) Subject to paragraph (2), if for the purpose of re-opening a grave in the Cemetery the Local Government finds it necessary to remove plants, grass, shrubs or other like matter from the grave, then the person ordering the re-opening of that grave shall bear the cost of the removal and any necessary reinstatement.

(2) If the Minister orders the exhumation of a body in accordance with section 58 of the Act then the Minister may further order how and by whom the cost referred to in paragraph (1) should be met.

32. Exhumation of a Coffin

(1) Subject to paragraph (2), a person shall not exhume a coffin in the Cemetery for the purposes of re-burial within twelve (12) months after the date of its interment.

(2) Subclause (1) shall not apply where the exhumation of a dead body and the exhumation is ordered or authorised pursuant to the Act.

(3) Subject to subclause (1) and (2) prior to any other exhumation, the holder of a grant must have applied in writing to the local government requesting the exhumation and the local government has authorised the exhumation.

33. Opening of Coffin

(1) A person shall not open a coffin in the Cemetery unless—

- (a) the coffin is opened for the purposes of the exhumation of a dead body; or
- (b) that person has produced to the local government an order signed by the Commissioner of Police and the local government has approved the opening of that coffin.

PART 7—FLOWERS AND MEMORIALS**34. Requirements of a Memorial Plaque**

- (1) Memorial plaques placed in the Cemetery shall—
 - (a) be made of admiralty bronze or any other material approved by the local government;
 - (b) be not less than 380mm x 280mm, nor more than 560mm x 305mm unless otherwise approved by the local government; and
 - (c) bear an inscription approved by the local government.
- (2) Memorial plaques shall—
 - (a) be no greater than 20mm in thickness; and
 - (b) be placed upon a base mounting approved by the local government.
- (3) All memorial plaques made of stone shall—
 - (a) not exceed 50mm in thickness placed upon a base mounting approval by the Board; or
 - (b) not be less than 100mm in thickness if it is not to be placed upon a base mounting.

35. Flowers

- (1) All flowers must be placed in vases or receptacles.
- (2) No person shall plant trees, shrubs or plants in the Cemetery without the prior approval of the local government.
- (3) A person may remove wilted flowers from a grave or memorial and these are to be placed in a receptacle provided by the local government for that purpose.

PART 8—MISCELLANEOUS REQUIREMENTS**36. Conditions of Work**

A person carrying out work within a Cemetery shall not leave any uncompleted work in an untidy or unsafe condition.

37. Vehicles

- (1) No person shall drive and/or park a vehicle anywhere within the cemetery.
- (2) Subclause (1) does not apply to any vehicle used in the funeral procession or carrying the coffin or undertaking works within the Cemetery.

38. Animals

- (1) Subject to subclause (2), a person shall not bring an animal into or permit an animal to enter or remain in the Cemetery, other than with the approval of the local government.
- (2) Subclause (1) shall not apply to a hearing impaired person or a person who is blind or partially blind and is accompanied by a hearing or guide dog.

39. Fireworks or Firearms

- (1) A person shall not bring or discharge any fireworks within the Cemetery.
- (2) A person shall not bring or discharge any firearms within the Cemetery except in the case of a military funeral when firearms may be brought into a Cemetery and discharged by members of the Defence Force.

40. Damaging and Removing Objects

Except for subclause 35(3) a person shall not damage, remove or pick any tree, plant, shrub or flower in the Cemetery or any other object or thing on any grave or niche or memorial or which is the property of the local government without the permission of the local government.

41. Advertising

A person shall not carry on or advertise any trade, business or profession within the Cemetery without the prior written approval of the local government which consent may be granted subject to such conditions as the local government thinks fit.

42. Littering and Damage

A person shall not—

- (a) break or cause to be broken any glass, ceramics or other material in or upon the Cemetery;
- (b) discard, deposit, leave or cause to be discarded, deposited or left any refuse or litter in or upon the Cemetery other than in a receptacle provided for that purpose.

43. Obeying Signs and Directions

A person shall obey all signs displayed, marked, placed or erected by the local government within the Cemetery and any other lawful direction of an authorised person.

PART 9—OFFENCES AND MODIFIED PENALTIES**44. Removal from a Cemetery**

Any person failing to comply with any provision of this local law or behaving in a manner that in the opinion of the local government or one of its authorised persons is inappropriate or unbecoming in the Cemetery may in addition to any penalty provided by this local law be ordered by an authorised person to leave the Cemetery.

45. Offence

A person who commits a breach of any provision of this local law commits an offence and shall on conviction be liable to a penalty not exceeding \$500 and if the offence is a continuing one to a further penalty not exceeding \$20.00 for every day or part of a day during which the offence is continued.

46. Modified Penalties

- (1) The offences specified in the First Schedule are offences which may be dealt with under section 63 of the Act.
- (2) The modified penalty payable in respect of an offence specified in the First Schedule is set out in the fourth column of the First Schedule.
- (3) The prescribed form of the infringement notice referred to in section 63(1) of the Act is set out in the Second Schedule.
- (4) The prescribed form of the notice withdrawing an infringement notice referred to in section 63(3) of the Act is set out in the Third Schedule.

First Schedule

CEMETERIES ACT 1986

Shire of Ashburton

LOCAL LAW RELATING TO THE MANAGEMENT AND CONTROL OF CEMETERIES

MODIFIED PENALTIES

Item	Clause	Nature of Offence	Modified Penalty
1	36(1)	Unauthorised use of a vehicle—driving and parking of vehicle	\$50
2	37	Animal at large	\$50
3	38	Unlawful use of a firearm or fireworks	\$50
4	39	Damaging and removing objects	\$50
5	40	Unauthorised advertising and/or trading	\$50
6	41	Littering and damage to property	\$50
7	42	Disobeying signs or unlawful direction	\$50

Second Schedule

LOCAL LAW RELATING TO THE MANAGEMENT AND CONTROL OF CEMETERIES

Shire of Ashburton

INFRINGEMENT NOTICE

No:.....

Date:/...../.....

To: , of.....

It is alleged that on the.....day of.....19.....you committed an offence that you—

You may dispose of this matter—

- (1) By payment of a penalty of \$.....within twenty-eight days of this Notice at any Shire office or;
- (2) By having it dealt with by a Court.

If this modified penalty is not paid within the time specified, Court proceedings may be taken against you.

.....
Name of Authorised Person

.....
Signature of Authorised Person

Third Schedule

LOCAL LAW RELATING TO THE MANAGEMENT AND CONTROL OF CEMETERIES

Shire of Ashburton

WITHDRAWAL OF INFRINGEMENT NOTICE

No:.....

Date:/...../.....

To:, of.....

Infringement Notice No:....., dated...../...../..... for

with a penalty of \$.....is hereby withdrawn.

No further action will be taken / It is proposed to institute Court proceedings for the alleged offence (delete which is not applicable).

.....
Name of Authorised Person

.....
Signature of Authorised Person

.....
Chief Executive Officer

Dated this 16th day of June 1998.

The Common Seal of the Shire of Ashburton was hereunto affixed in the presence of—

BRIAN HAYES, Shire President.

DAVID CAREY, Chief Executive Officer.

