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SHIRE OF KENT

ANIMALS, ENVIRONMENT AND NUISANCE LOCAL LAW 2023

Under the powers conferred by the *Local Government Act 1995*, the *Cat Act 2011* and under all other powers enabling it, the Council of the Shire of Kent resolved on 20 September 2023 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Kent Animals, Environment and Nuisance Local Law 2023*.

1.2 Commencement

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

1.3 Application

This local law applies throughout the district.

1.4 Repeal

The following local laws are repealed—

- (a) the Shire of Kent *Local Laws Relating to the Removal of Refuse, Rubbish, Litter, Derelict Vehicles; Vehicle Bodies and other Materials or Things* published in the *Government Gazette* on 23 March 1998; and
- (b) *Shire of Kent Cat Control Local Law* published in the *Government Gazette* on 23 March 1998.

1.5 Terms Used

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

Act means the *Local Government Act 1995*;

affiliated person means a person who is a member of a poultry or pigeon club incorporated under the *Associations Incorporation Act 2015*;

amusement means anything usually conducted for amusement at a fair, a carnival or a show, whether conducted at a fair, a carnival or a show or elsewhere;

authorised person means a person authorised by the local government to perform any of the functions under this local law and includes the CEO;

aviary bird means any bird, other than poultry or pigeons, kept, or usually kept in an aviary or cage;

birds includes poultry;

builder means the holder of a building permit issued in respect of building works on a building site or a person in control of a building site;

building permit has the meaning given to it by the *Building Act 2011*;

building site means any lot for which a building permit is current;

CEO means the Chief Executive Officer of the local government;

Code of Practice—Pigeon Keeping means the document entitled A Code of Practice—May 1994—Pigeon Keeping and Pigeon Racing published in May 1994 by the Pigeon Racing Federation of WA (Incorporated) and the Independent Racing Pigeon Federation (Incorporated), as amended from time to time;

cow includes an ox, calf or bull;

development has the meaning given to it in the *Planning and Development Act 2005*;

development approval means a development approval under a local planning scheme;

development site includes any lot or lots for which there is currently a development or subdivision approval, and any lot or lots upon which construction work, earthworks, clearing of scrub, trees or overgrowth or any other site works are taking or have taken place;

district means the district of the local government;

disused means, in relation to any thing whatsoever, that the thing—

- (a) is not in use for the purpose for which it was designed or appears to have been designed or intended; or
- (b) has been stored or left stationary on land in the district for more than 1 month;

dust means any visible granular or particulate material which has or has the potential to become airborne and includes organic and non-organic matter and sand, but does not include smoke;

EHO means an Environmental Health Officer appointed by the local government;

equipment means equipment, machinery or vehicles used for, or in connection with, the development of land;

food premises includes the meaning of “food” as given under section 9 of the *Food Act 2008* and the meaning of “food business”, as given under section 10 of the *Food Act 2008*;

general industry zone means any area zoned “General Industry” under a local planning scheme;

horse means a stallion, mare, gelding, shetland pony, pony, colt or foal, and includes an ass, mule, donkey and any beast of whatever description used for burden or draught or for carrying persons;

land includes any building or structure on the land;

licence means a licence, permit or approval issued under this local law;

licence holder means a person who holds a valid licence;

light industry zone means any area zoned “Light Industry” under a local planning scheme;

liquid waste means waste from any process or activity that is in liquid form and includes paint, fuel, grease, fat, oil, degreaser solvent, detergent, chemical, animal waste, food waste, effluent and all discharges of liquid to land, air or water that are not otherwise authorised by a written law but does not include uncontaminated stormwater;

livestock means any horse, cow, sheep, goat, swine, buffalo, deer, camel, llama or alpaca;

livestock vehicle means a vehicle that contains livestock or previously has been used for the carriage of livestock;

local government means the Shire of Kent;

local planning scheme has the meaning given to it by the *Planning and Development Act 2005*;

lot has the meaning given to it by the *Planning and Development Act 2005*;

miniature horse means a horse which meets the standard and height for a miniature horse as described by the Miniature Horse Association of Australia Inc;

miniature pig means a pig that does not exceed 650 millimetres in height as an adult and weighs less than 55 kilograms;

mixed used zone means any area zoned “Mixed Use” under a local planning scheme;

nuisance means—

- (a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;
- (b) an unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land; or
- (c) interference which causes material damage to land or other property on the land affected by the interference;

occupier means any person who is in control of any land or part of any land or authorised by the owner, lessee, licensee or any other person empowered to exercise control in relation to land to perform any work in relation to any land and includes a builder or contractor;

owner has the meaning given in section 1.4 of the Act;

pigeon includes homing pigeons and other domesticated breeds of the species *Columba livia*, but does not include native pigeons or doves whether or not the keeping of such birds is subject to the approval of the Department of Biodiversity, Conservation and Attractions;

poultry includes fowls, roosters, ducks, peafowls, turkeys, geese, guinea fowls, pheasants and other birds commonly kept for the production of eggs or meat for domestic consumption;

public notice means such notice as the local government considers necessary—

- (a) stipulating duration and placement of notices as is considered relevant to inform the community;
- (b) not requiring compliance with local public notice under section 1.7 of the *Local Government Act*; and
- (c) the local government may place the notice given as a public notice on the local government’s website or other means of informing the public;

refuse means any waste material including bricks, lime, cement, concrete, rubble, stones, iron, timber, tiles, bags, plastics, ashes, vegetation, timber, wood or metal shavings, sawdust, and waste food, and includes any broken, used, derelict or discarded matter;

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

residential building has the meaning given to it in the Residential Design Codes of Western Australia as amended;

residential zone includes any area zoned under a local planning scheme as—

- (i) “Residential”;
- (ii) “Mixed Use” where the land use or intended use, is predominantly for residential purposes as determined by an authorised person;
- (iii) “Special” or “Cultural and Natural Resource” within a townsite where the land use or intended use is aligned and consistent with residential purposes as determined by an authorised person;

rural zone means any area zoned under a local planning scheme as—

- (a) “Rural”;
- (b) “Rural Smallholding”; or
- (c) “Special” or “Cultural and Natural Resource” outside a townsite where the land use or intended use is aligned and consistent with rural purposes as determined by an authorised person;

rural residential zone means any area zoned “Rural Residential” under a local planning scheme;

sand means granules or particles of rock, earth, clay, loam, silt and any other granular, particulate or like material including dust and gravel;

Schedule means a schedule to this local law;

set fee means a fee or charge made by the local government under sections 6.16 to 6.19 of the Act;

stormwater means any naturally occurring water that results from rainfall on or around a site, or water flowing onto the site;

subdivision approval means a subdivision approval under the *Planning and Development Act 2005*;

thoroughfare has the meaning given to it in section 1.4 of the Act;

townsite means the following townsites constituted under section 26(2) of the *Land Administration Act 1997*—

- (a) Nyabing; and
- (b) Pingrup;

truck means a motor vehicle having a tare weight in excess of 3,000 kilograms;

unreasonable noise has the meaning given to it by the *Environmental Protection Act 1986*;

vectors of disease means an arthropod or rodent that transmits, by biological or mechanical means, an infectious agent from a source or reservoir to a person, and includes fleas, bedbugs, crab lice, body lice and head lice;

vermin includes rats, mice, flies, fleas, mites, lice, cockroaches and any other animal, whether vertebrate or invertebrate, which is known to be a vector of disease or likely to cause damage to human food, habitation or possessions; and

written notice means a written notice issued in accordance with Part 9.

(2) Any other expression used in this local law and not defined herein shall have the meaning given to it in the Act.

(3) Where, in this local law, a duty, obligation or liability is imposed on an “owner or occupier” the duty shall be deemed to be imposed jointly and severally on each owner and occupier.

PART 2—KEEPING OF ANIMALS

2.1 Interpretation

In this Part, unless the context otherwise requires—

animal includes cats, dogs, rabbits and ferrets or the like;

catteries are premises registered for the breeding or caring of cats; and

member of a cat organisation means a person referred to in the *Cat Regulations 2012* regulation 23(c).

2.2 Cleanliness

An owner or occupier of premises in or on which a dog, cat or other animal is kept shall—

- (a) keep the premises free from excrement, filth, food waste and all other matter which is or is likely to become offensive or injurious to health, or to attract rats or other vectors of disease;
- (b) when so directed by an EHO, clean and disinfect the premises; and
- (c) keep the premises, so far as possible, free from flies or other vectors of disease, by spraying with a residual insecticide or other effective means.

2.3 Animal enclosures

(1) A person shall not keep or cause, or permit to be kept, any animals on premises which are not effectively drained or of which the drainage flows to the walls or foundations of any building.

(2) The owner or occupier of premises where animals are kept shall, when given written notice, pave, grade and drain the floors of all structures and the surface of the ground of all enclosures used for the keeping of animals.

2.4 Cats

(1) Subject to clause 2.5, a person shall not keep more than 3 cats over the age of 6 months on premises on any land within the district, without a licence from the local government.

(2) An owner or occupier of premises may apply to the local government for exemption from the requirements of subclause (1).

(3) The local government shall not grant a licence under subclause (2) unless it is satisfied that the number of cats to be kept will not be a nuisance or injurious or dangerous to health.

- (4) An exemption granted under this clause shall specify—
- (a) the owner or occupier to whom the exemption applies;
 - (b) the premises to which the exemption applies; and
 - (c) the maximum number of cats which may be kept on the premises.
- (5) A person who is granted an exemption under subclause (2) may be subject to conditions, including but not limited to—
- (i) replacement of a cat not permitted if it dies or is permanently removed from the premises not being permitted;
 - (ii) the licence holder will provide adequate space for the exercise of the cats;
 - (iii) the premises shall be maintained in good order and in a clean and sanitary condition; and
 - (iv) such other conditions, as the local government considers appropriate.

2.5 Conditions for keeping cats

- (1) The occupier of any premises shall not keep a cattery on those premises, unless the cattery is registered with the local government and the occupier has complied with the following conditions—
- (a) the occupier shall obtain a licence from the local government to establish a cattery;
 - (b) upon receiving a licence to establish a cattery, the occupier shall apply for registration of the cattery in the form determined by the local government;
 - (c) the occupier shall have paid, to the local government, the annual registration set fee;
 - (d) the occupier shall provide, for every cat, a properly constructed shelter with an enclosure, which shall comply with the following conditions—
 - (i) every shelter shall have a floor area of not less than 0.50 square metres for every cat over the age of 3 months old that may be kept therein; and
 - (ii) the area of the enclosure appurtenant to any shelter or group of shelters forming a cattery shall not be less than 3 times the area of the shelter or group of shelters to which it is appurtenant;
 - (e) every shelter or enclosure shall be at least 10 metres from the boundary of any land not in the same ownership or possession, or at least 10 metres from any dwelling, church, schoolroom, hall, factory, dairy or premises wherein food is manufactured, packed or prepared for human consumption; and
 - (f) all enclosures, yards, runs and shelters within which cats are kept shall be maintained at all times in a clean condition and free from vectors of disease and shall at any time be cleaned, disinfected or otherwise dealt with as an EHO may direct.
- (2) A certificate of registration of a cattery issued by the local government shall—
- (a) be in the form approved by local government; and
 - (b) expire on 30 June next after the date of its issue.

2.6 Keeping of fauna

- (1) In this clause—

fauna means any animal, bird or reptile 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 unless it has been shed or discarded by the fauna in a normal or natural manner.

- (2) Notwithstanding the provisions of this Part, a person may keep fauna for the period and under such conditions as may be authorised by the department of the Public Service principally assisting in the administration of the *Conservation and Land Management Act 1984*.

PART 3—KEEPING OF BIRDS

3.1 Keeping of poultry and pigeons in a residential or mixed use zone

- (1) An owner or occupier of premises in a residential or mixed use zone shall not keep or permit to be kept on the premises—
- (a) more than 12 poultry; and
 - (b) more than 12 pigeons unless the owner or occupier is an affiliated person in which case the maximum number of pigeons may be increased to 100.
- (2) An owner or occupier of premises in a residential or mixed use zone may apply to the local government to vary the requirements of subclause (1).

3.2 Conditions for keeping of poultry

- (1) A person who keeps poultry or permits poultry to be kept shall ensure that—
- (a) no poultry shall be kept less than 5 metres from any residential building on the land;
 - (b) no poultry is able to approach within—
 - (i) 9 metres of the property's primary public thoroughfare;

- (ii) 3 metres of any other public thoroughfare; or
 - (iii) 15 metres of a neighbouring residential building, public building or premises where people are employed or premises where food is stored, prepared, manufactured or sold;
 - (c) all structures or enclosures within which poultry are kept are maintained at all times in a clean condition; and
 - (d) where the structure has an impervious floor, it is laid with a fall to the front of at least 1 in 50.
- (2) An owner or occupier of a premises who keeps poultry or permits poultry to be kept may apply to the local government to vary the requirements of subclause (1)(b) or (d).

3.3 Roosters, geese, turkeys and peafowl

- (1) An owner or occupier of premises in a residential or mixed use zone shall not keep or permit to be kept on the premises—
- (a) roosters;
 - (b) geese;
 - (c) turkeys;
 - (d) peafowls; or
 - (e) guinea fowl.
- (2) An owner or occupier of premises in a residential or mixed use zone may apply to the local government to vary the requirements of subclause (1).

3.4 Conditions for keeping of pigeons

- (1) A person who keeps pigeons, or permits pigeons to be kept, shall ensure that—
- (a) all pigeons are kept in a properly constructed pigeon loft, except where registered homing pigeons are freed for exercise;
 - (b) all structures or enclosures within which pigeons are kept are maintained at all times in a clean condition;
 - (c) no opening to a pigeon loft, including openings for ventilation, is within 9 metres of any residential building; and
 - (d) no opening to a pigeon loft, including openings for ventilation, is within—
 - (i) 9 metres of a public thoroughfare; or
 - (ii) 15 metres of a neighbouring residential building, public building or premises where people are employed or premises where food is stored, prepared, manufactured or sold.
- (2) An affiliated person who keeps pigeons, or permits pigeons to be kept, shall do so in accordance with the Code of Practice—Pigeon Keeping, subject to the provisions of this local law.

3.4 Restrictions on pigeon nesting and perching

The local government may order an owner or occupier of a house on or in which pigeons are, or are in the habit of nesting or perching, to take adequate steps to prevent them from continuing to do so.

3.5 Conditions of keeping aviary birds

- A person who keeps, or permits to be kept, aviary birds shall ensure that—
- (a) the aviary or cage in which the birds are kept is located at least 1 metre from any lot boundary and at least 5 metres from a residential building on any other lot;
 - (b) there is a floor beneath the roofed area of the aviary or cage which is constructed of smooth, impervious material with a gradient of at least 1 in 50 to the front of the aviary or cage;
 - (c) the aviary or cage is kept in clean condition and good repair at all times;
 - (d) all feed for the birds other than that intended for immediate consumption is stored in vermin proof containers; and
 - (e) effective measures are taken to prevent the attraction or harbourage of vermin.

3.6 Nuisance caused by birds

An owner or occupier of land shall not keep any bird or birds which—

- (a) are or create a nuisance; or
- (b) emit an unreasonable noise.

PART 4—KEEPING OF FARM ANIMALS

4.1 Interpretation

In this Part, unless the context otherwise requires—

approved animal means any farm animal which is the subject of a licence;

farm animal includes a sheep, cow, goat, horse (excluding a miniature horse), deer, alpaca, pig (excluding a miniature pig) or any other animal so classified by the local government; and

manure receptacle means a receptacle constructed of smooth, impervious material and in such a manner as to be easily cleaned, which has a tight fitting lid or cover to prevent the release of odours and prevent the entry of vectors of disease or vermin.

4.2 Licence required to keep farm animals

Subject to clause 4.4, an owner or occupier of land shall not keep, or allow to be kept, any farm animal unless—

- (a) in accordance with a valid licence authorising the keeping of such a farm animal issued in relation to the land pursuant to clause 4.3; or
- (b) in a rural or rural residential zone and in accordance with the provisions of any local planning scheme applicable to that zone.

4.3 Application for a licence to keep farm animals

In addition to the requirements of clause 8.1, an application for a licence required by clause 4.2(a) shall include the following information—

- (a) a plan of the property, at a scale not less than 1:200, with dimensions clearly marked, showing where it is proposed that the animal is to be kept and the distance of that location from any residential building, public building or premises where people are employed or premises where food is stored, prepared, manufactured or sold;
- (b) a sketch plan, at a scale of 1:100, indicating the nature of the shelter or housing to be provided for the animal;
- (c) a detailed written plan for the management of manure which addresses—
 - (i) control of flies and other vermin;
 - (ii) disease prevention; and
 - (iii) prevention of nuisance odours; and
- (d) the appropriate set fees.

4.4 Determination of application to keep farm animals

(1) Subject to clauses 4.5 and 8.2(1)(a), the local government may—

- (a) refuse to determine an application for a licence which does not comply with clause 4.3;
- (b) approve an application for a licence subject to such conditions as it considers appropriate; or
- (c) refuse to approve an application for a licence.

(2) Where an application for a licence is approved subject to conditions, the licence holder shall comply with those conditions or cause compliance with those conditions.

(3) Where the local government approves an application under subclause (1)(b), it is to issue to the applicant a licence in the form determined by the local government.

(4) A licence is valid from the date of issue until 30 June the following year, unless it is cancelled prior to that date under this local law.

4.5 Conditions of licence to keep farm animals

(1) A licence shall not be granted pursuant to clause 4.4—

- (a) unless the land for which the licence is sought is of such dimensions and configuration as will permit the subject animal to be confined in a minimum cleared area of 150 square metres and prevented from approaching within 15 metres of any residential building, public building or premises where people are employed or premises where food is stored, prepared, manufactured or sold;
- (b) in the case of a horse (other than a miniature horse) or cow, unless the land for which the licence is sought has a minimum area of 1 hectare; and
- (c) for the keeping of any pig (other than a miniature pig).

(2) The local government shall take into account the opinions of occupiers of adjoining properties in determining whether to grant a licence for the keeping of a farm animal.

(3) A licence to keep a farm animal may be issued subject to conditions, including—

- (a) that a stable or shelter is provided for housing the approved animal;
- (b) that a manure receptacle is provided in a position convenient to the shelter or place where the approved animal is kept, and that the receptacle is used for the receipt of all manure produced on the premises; and
- (c) any other conditions that the local government considers necessary for the protection of the health and amenity of the neighbourhood.

4.6 Requirements for keeping farm animals

(1) An owner or occupier of premises upon which a farm animal or farm animals are kept, shall—

- (a) maintain the place or places where the animals are kept in clean condition;
- (b) ensure that any farm animal or farm animals kept on the premises does not cause or constitute a nuisance;
- (c) maintain the premises free from flies or other vermin by spraying with residual insecticide or other effective means;
- (d) if a manure receptacle is required to be used—
 - (i) cause all manure produced on the premises to be collected daily and placed in the receptacle;

- (ii) cause the receptacle to be emptied as often as is necessary to prevent it becoming offensive or a breeding place for flies or other vermin, but in any case at least once a week; and
 - (iii) keep the lid of the receptacle closed except when manure is being deposited or removed; and
 - (e) not permit any farm animal to approach within 15 metres of any residential building, public building or premises where people are employed or premises where food is stored, prepared, manufactured or sold.
- (2) An owner or occupier of premises in a rural or rural smallholding zone shall not keep more than 6 pigs other than on premises registered as a piggery pursuant to the provisions of the *Health (Miscellaneous Provisions) Act 1911*, except with a licence from the local government.

4.7 Keeping a miniature horse

- (1) An owner or occupier of a premises may keep only a sterilised miniature horse on land of not less than 1,000 square metres in area provided it is registered with the local government and the annual registration set fee is paid.
- (2) An owner or occupier of premises shall—
- (a) not keep more than one miniature horse on land zoned residential or mixed use without a licence from the local government or an authorised person; and
 - (b) not permit a miniature horse to come within 9 metres of any residential building, public building or premises where people are employed or premises where food is stored, prepared, manufactured or sold.
- (3) The local government or an authorised person may prohibit the keeping of a miniature horse on any land or may state the conditions under which a miniature horse may be kept.

4.8 Keeping a miniature pig

- (1) Except for a miniature pig, and subject to subclause (2) no person shall keep a pig or pigs, in a townsite.
- (2) A person shall not keep a miniature pig in any residential, mixed use or rural residential zone without a licence from the local government or an authorised person.
- (3) An owner or occupier of premises where a miniature pig is kept shall—
- (a) only keep a sterilised animal and retain written proof of its sterilisation;
 - (b) confine the animal on the property at all times;
 - (c) ensure the animal does not cause a nuisance to any neighbour regarding noise, dust, or odour;
 - (d) maintain documentary evidence that the animal's veterinary treatment against roundworm and tapeworm is current; and
 - (e) not permit the animal to come within 9 metres of any residential building, public building or premises where people are employed or premises where food is stored, prepared, manufactured or sold.
- (4) The local government or an authorised person may prohibit the keeping of a miniature pig on any land, or state the conditions under which the miniature pig may be kept.

4.9 Requirements for farm animal shelters

- (1) Any stable, enclosure or shelter provided for the keeping of farm animals, whether or not a licence is required for the keeping of such farm animals pursuant to clause 4.4, shall—
- (a) not be situated within 15 metres of any residential building, public building or premises where people are employed or premises where food is stored, prepared, manufactured or sold;
 - (b) not be situated within 1 metre of any lot boundary;
 - (c) be constructed of materials approved by an authorised person;
 - (d) have on each side of the building between the wall and roof a clear opening of at least 150 millimetres in height, and of sufficient length, to provide adequate ventilation to the stable, enclosure or shelter;
 - (e) when required by the local government have a separate stall for each horse, cow or other approved animal, the shortest dimension of which shall be at least twice the length of the animal housed therein; and
 - (f) subject to subclause (2), have a floor, the upper surface of which shall—
 - (i) be raised at least 75 millimetres above the surface of the surrounding ground;
 - (ii) be constructed of cement, concrete or other similar impervious material; and
 - (iii) have a fall of 1 in 100 to a drain which shall empty into a trapped gully situated outside the stable or shelter.
- (2) A stable or shelter constructed with a sand floor may be approved by an authorised person subject to—
- (a) the site being well drained, with the sand floor being at least 1.5 metres above the highest known ground water level;
 - (b) a 300 millimetre thick bed of crushed limestone being laid under the sand of the stable;
 - (c) the sand, whether natural or imported, being clean, coarse and free from dust;
 - (d) footings to the stable or shelter being a minimum of 450 millimetres below ground level; and

- (e) the design of the stable allowing for the access of small earthmoving machinery, such as a skid steer loader, into each stall to maintain the correct floor height.

(3) An owner or occupier of any land upon which a stable or shelter is located must ensure that the stable or shelter complies in all respects with the requirements of subclause (1), and, where the licence referred to in subclause (2) has been granted, with the requirements of subclause (2).

4.10 Livestock not to stray

The owner or person in charge of livestock shall not permit that livestock to stray or to be at large in a thoroughfare, public place or upon private property without the consent of the property owner.

4.11 Property to be fenced

The owner or occupier of property on which livestock is kept, shall cause the property or a portion of the property to be fenced in a manner capable of confining the livestock, to that portion where the livestock is kept.

PART 5—BUILDING, DEVELOPMENT AND LAND CARE

5.1 Application of this Part

This Part applies only within the townsites.

5.2 Provision of refuse receptacles

The owner or occupier of a building site or development site shall at all times provide and maintain a refuse receptacle, available for use on the site, which includes a suitable cover, to the satisfaction of an authorised person, of such design as will—

- (a) contain any refuse likely to be produced on the site; and
- (b) prevent refuse being blown from the receptacle by wind.

5.3 Control of refuse

(1) From the time of commencement of works on a building site or development site until the time of completion of such work, the owner or occupier of the site shall—

- (a) ensure all refuse on the site is placed and contained in the refuse receptacle and prevented from being blown from the site by wind;
- (b) keep the site free from any refuse;
- (c) maintain the verge, footpath and any other reserve, immediately adjacent to the site, free of refuse from the site; and
- (d) ensure the refuse receptacle is emptied when full.

(2) The owner or occupier of a building site or development site shall ensure that within 2 days of completion of works on the site, the site and the verge and footpath immediately adjacent to it, is cleared of all refuse and all refuse receptacles are removed from the site.

5.4 Prohibited activities for prevention of dust and liquid waste

(1) An owner and or occupier of land must take reasonable steps or measures to—

- (a) stabilise dust on the land;
- (b) contain all liquid waste on the land; and
- (c) ensure no dust or liquid waste is released or escapes from the land, whether by means of wind, water or any other cause.

(2) Subclause (1)(c) does not apply to land where the primary activity is broad acre farming.

(3) Where the local government forms the opinion that an owner or occupier has not complied with subclause (1) the local government may give written notice requiring the owner and or occupier to do one or more of the following—

- (a) comply with subclause (1)(a) or (1)(b);
- (b) clean up and properly dispose of any released or escaped dust or liquid waste;
- (c) clean up and make good any damage resulting from the released or escaped dust or liquid waste; and
- (d) take effective measures to stop any further release or escape of dust or liquid waste.

(4) Where written notice is issued under subclause (3), the requirements of the notice must be complied with in the period as is specified in the notice.

(5) Where the local government forms the opinion that dust or liquid waste has escaped or has been released from an activity undertaken on land or as a consequence of the use of equipment on land, the local government may give written notice requiring that the activity or use of equipment on the land be ceased immediately, for such period as is specified in the notice on—

- (a) any owner or occupier of the land; or
- (b) any operator of equipment on the land.

(6) Where the local government is of the opinion that dust or liquid waste may be released or escape as a result of an activity which is likely to be carried out from any land, the local government may give to the owner and or occupier written notice providing that the activity may only be carried on subject to conditions specified in the notice.

5.5 Dust management

If an owner or occupier of land intends to undertake any work involving the clearing of land, from which any sand or dust is likely to be released whether by means of wind, water or any other cause, the local government may require the owner, occupier or builder to—

- (a) submit a Dust Management Plan in accordance with the Department of Water and Environmental Management document “A guideline for managing the impacts of dust and associated contaminants from land development sites, contaminated sites remediation and other related activities” (March 2011), or any updated version of this document; and
- (b) obtain written approval of the Dust Management Plan from an authorised person before commencement of any work.

5.6 Removal of refuse and disused materials

(1) The owner or occupier of a lot shall not keep, or permit to remain on the lot, any refuse, rubbish or disused material of whatever nature or kind which in the opinion of the local government or an authorised person is likely to give the lot an untidy appearance and does not conform with the general appearance of other land in that particular part of the district.

(2) The local government or an authorised person may give written notice to the owner or occupier of a lot requiring the removal of refuse, rubbish or disused material from the lot within the time specified in the notice.

5.7 Removal of unsightly overgrowth of vegetation

(1) The owner or occupier of a lot shall not permit to remain on a lot, any unsightly overgrowth of vegetation that gives the lot an untidy appearance and does not conform with the general appearance of other land in that particular part of the district.

(2) The local government or an authorised person may give written notice to the owner or occupier of a lot requiring the removal of the overgrowth of vegetation within the time specified in the notice.

5.8 Storage of vehicles, vessels and machinery

(1) The owner or occupier of a lot shall not—

- (a) store, or allow to remain in public view on any lot, more than 1 vehicle, vessel or machinery (whether licensed or not) in a state of disrepair;
- (b) store, or allow to remain in public view on any lot, any vehicle, vessel or machinery in a state of disrepair for a period in excess of 1 month;
- (c) store, or allow to remain in public view on any lot, any vehicle, vessel or machinery parts (including tyres);
- (d) wreck, dismantle or break up any vehicle, part or body of a vehicle, vessel or machinery except where performed—
 - (i) inside a building; or
 - (ii) within an area enclosed by a fence or wall of not less than 1.8 metres in height and of such a nature as to screen all vehicles, parts or bodies of vehicles, vessels or machinery from the thoroughfare and from adjoining properties; or
- (e) wreck, dismantle or break up a vehicle, vessel or machinery so as to cause a nuisance.

(2) Subclause (1) does not apply to land zoned for general industry or light industry under a local planning scheme.

5.9 Disposing of disused refrigerators or similar containers

A person shall not place, leave or dispose of a disused refrigerator, ice chest, ice box, trunk, chest or other similar article having a compartment which has a capacity of 0.04 cubic metres or more on any land without first—

- (a) removing every door and lid and every lock, catch and hinge attached to a door or lid; or
- (b) rendering every door and lid incapable of being fastened.

PART 6—NUISANCES AND DANGEROUS THINGS**6.1 Application of this Part**

This Part applies only within the townsites.

6.2 Use of exterior lights

An owner or occupier of land on which floodlights or other exterior lights are erected or used, shall not allow the floodlights or other exterior lights to shine directly onto any other premises.

6.3 Emission or reflection of light

An owner or occupier of land shall ensure that—

- (a) artificial light is not emitted or reflected from anything on the land so as to illuminate premises outside that land to more than 50 lux; and
- (b) natural light is not reflected from anything on the land so as to create or cause a nuisance to the occupier of any other premises or to a person lawfully using a thoroughfare.

6.4 Notice may require specified action to prevent emission or reflection of light

(1) The local government may by written notice direct the owner or occupier to take such actions as an authorised person considers necessary within the time specified in the notice where—

- (a) floodlights or other exterior lights shine directly onto any other premises;
- (b) artificial light is emitted or reflected from anything on the land so as to illuminate premises outside the land to more than 50 lux; or
- (c) natural light is reflected from anything on the land so as to create or cause a nuisance to the occupier of any other premises or to a person lawfully using a thoroughfare.

(2) The notice referred to in subclause (1) may direct that—

- (a) floodlights or other exterior lights are used only during the hours specified in the notice;
- (b) the direction in which the lights shine be altered as specified in the notice;
- (c) any reflective surfaces be painted or otherwise treated so as to abate the nuisance; or
- (d) any combination of these measures that the local government believes to be appropriate to the circumstances.

6.5 Burning rubbish, refuse or other material

(1) A person shall not set fire to rubbish, refuse or other materials unless—

- (a) a licence has first been obtained from the local government;
- (b) the person demonstrates to the satisfaction of the local government that reasonable alternatives for the disposal of the rubbish, refuse or other material do not exist and the potential for pollution is low;
- (c) the material does not include any plastic, rubber, food scraps or other material likely to cause the generation of smoke or odour in such quantity as to cause a nuisance to other persons;
- (d) a haze alert has not been issued by the Bureau of Meteorology for the period during which burning is to take place; and
- (e) the burning complies with the *Bush Fires Act 1954*, any annual fire hazard reduction notice issued by the local government under that Act and any conditions of a licence as determined by the local government.

(2) Subclause (1) shall not apply to any barbeque, solid fuel water heater, space heater or ovens fired with dry paper, dry wood, synthetic char or charcoal type fuel.

(3) Subclause (2) is subject to any fire danger rating as determined by the Bureau of Meteorology.

6.6 Burning of cleared vegetation prohibited

An owner or occupier of any building or development site shall ensure that no vegetation or other material cleared from the site is burnt on the site.

6.7 Escape of smoke, fumes, odours and other emissions

An owner or occupier of land or premises shall not cause or permit the escape of smoke, fumes or odours from the land or premises in such quantity or of such a nature as to cause or to be a nuisance to any person.

6.8 Disposal of swimming pool backwash

(1) The owner or occupier of land on which a swimming pool is constructed shall ensure that all backwash is not permitted to discharge onto or run-off onto adjacent land so as to cause a nuisance, or cause damage to any structures situated on adjacent land.

(2) Subclause (1) shall not prevent the discharge of swimming pool backwash from a lot into a local government approved stormwater drain or road by a method approved by an authorised person.

6.9 Containment of stormwater

(1) Subject to subclause (2), the owner or occupier of a lot shall ensure that all stormwater received by any building, house, other structure or any paved or sealed or other surfaced areas including any vehicle access ways on the lot is contained within the lot and is not permitted to discharge onto or run-off onto adjacent land so as to cause a nuisance, or cause damage to any structures situated on adjacent land.

(2) Subclause (1) shall not prevent the discharge of stormwater from a lot into a local government approved stormwater drain or road.

6.10 Amusements nuisance

A person shall not, without written authorisation from the local government, provide or conduct any amusement on land so as to create or be a nuisance to any owner or occupier of land in the district.

6.11 Restrictions on feeding of birds

(1) A person shall not feed a bird—

- (a) so as to cause a nuisance, or
- (b) with a food or substance that is not a natural food of a bird.

(2) Where an authorised person forms the opinion that a person has not complied with subclause (1) the authorised person may give the person written notice requiring the person to clean up and properly dispose of any feed or waste products specified in the notice.

6.12 Hazardous trees

- (1) Where a tree on a lot endangers any person or thing on adjoining land, the local government may give written notice to the owner or the occupier of the lot to remove, cut, move or otherwise deal with that tree so as to make the tree safe.
- (2) Where a tree on a lot presents a serious and immediate danger to any person or thing, the local government may take any remedial action it considers appropriate in order to make the tree safe without having given the owner or occupier written notice pursuant to subclause (1).
- (3) The local government reserves its right to recover any costs incurred by the local government for remedial action taken in terms of subclause (2).

PART 7—VEHICLE NUISANCE**7.1 Livestock vehicles**

- (1) A person shall not park a vehicle containing livestock in a townsite for a period in excess of 30 minutes.
- (2) A person shall not park a vehicle which contains or has been used for the carriage of livestock so as to create or be a nuisance to any person, by reason of the odour emanating from the vehicle.
- (3) If a person parks a vehicle containing livestock in a townsite in accordance with subclause (1), then the person does not contravene subclause (2).

7.2 Truck noise from residential land

A person shall not start or drive a truck on land zoned, approved or used for residential purposes between the hours of 10.30 pm and 6.30 am on the following day without first obtaining the written consent of the local government.

PART 8—LICENCES**8.1 Application for licence**

- (1) Where a person is required to obtain a licence under this local law, that person shall apply for the licence in accordance with subclause (2).
- (2) An application for a licence 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; and
 - (d) be forwarded to the local government together with any set fee.
- (3) An authorised person may require an applicant to provide additional information reasonably related to an application before determining an application for a licence.
- (4) An authorised person may require an applicant to give public notice of the application for a licence.
- (5) An authorised person may refuse to consider an application for a licence which is not in accordance with subclause (2) or where the requirements of subclause (3) or (4) have not been satisfied.

8.2 Decision on application for licence

- (1) An authorised person may—
 - (a) approve an application for a licence unconditionally or subject to any conditions; or
 - (b) refuse to approve an application for a licence.
- (2) If an authorised person approves an application for a licence, written notice of approval is to be issued to the applicant.
- (3) If an authorised person refuses to approve an application for a licence, written notice of that refusal is to be given to the applicant.
- (4) An authorised person may, at any time, amend a condition of a licence and the amended condition takes effect when written notice of it is given to the licence holder.

8.3 General restrictions on grant of licence

- (1) An authorised person shall not grant a licence if there are reasonable grounds for believing that the carrying on of the activity to which the application relates would constitute an unacceptable risk to the safety of the public.
- (2) An authorised person shall not grant a licence unless satisfied that—
 - (a) the applicant is capable of carrying on the activity in accordance with this local law and the terms and conditions of the licence;
 - (b) the public place at which the activity is to be provided is suitable for that purpose;
 - (c) a licence or similar authority granted or issued to the applicant has not been cancelled in the period of 5 years before the application is made; and
 - (d) the applicant is considered to be a fit and proper person to carry on the activity.

8.4 Amendment of licence

- (1) An authorised person may, by written notice given to the licence holder, amend a licence—
 - (a) imposing any new condition; or

(b) change or remove any existing condition.

(2) An amendment may be made on application made by the licence holder or on the initiative of an authorised person.

(3) An amendment will come into effect on the day that written notice is given to the licence holder, or some other date as specified in the notice.

8.5 False or misleading statement

A person shall not make a false or misleading statement in connection with an application in respect of a licence under this local law.

8.6 Compliance with conditions

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

8.7 Duration of licence

A licence 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 licence; or
- (b) cancelled under this Division.

8.8 Renewal of licence

(1) A licence holder may apply to the local government for the renewal of a licence.

(2) An application for renewal shall—

- (a) be in the form determined by the local government;
- (b) be signed by the licence holder;
- (c) provide the information required by the form;
- (d) be forwarded to the local government no later than 28 days before the expiry of the licence, or within a shorter period that the local government in a particular case permits; and
- (e) be accompanied by any set fee.

(3) The provisions of this Part that apply to an application for a licence also apply to an application for the renewal of a licence as though it were an application for a licence.

8.9 Transfer of licence

(1) An application for the transfer of a valid licence is—

- (a) to be made in writing;
- (b) to be signed by the licence holder and the proposed transferee of the licence;
- (c) to include such information as an authorised person may require to enable the application to be determined; and
- (d) to be forwarded to the local government together with any set fee.

(2) An authorised person may—

- (a) approve an application for the transfer of a licence;
- (b) approve the application subject to any conditions; or
- (c) refuse to approve the application.

(3) Where an authorised person approves an application for the transfer of a licence, the transfer may be effected by an endorsement on the licence signed by the authorised person.

(4) Where an authorised person approves the transfer of a licence, the local government is not required to refund any part of any set fee paid by the former licence holder.

8.10 Cancellation of licence

A licence may be cancelled by an authorised person if—

- (a) the licence was obtained improperly;
- (b) the licence holder has persistently or frequently contravened a term or condition of the licence, or a provision of this local law; or
- (c) there are reasonable grounds for believing that the continued provision of the activity constitutes or would constitute an unacceptable risk to the safety of the public.

8.11 Surrender of licence

A licence holder may, at any time by notice in writing to the local government, surrender the licence.

8.12 Production of licence

A licence holder shall produce to an authorised person her or his licence immediately after being required to do so by that authorised person.

8.13 Production of licence document for amendment

If an authorised person amends or renews a licence, the licence holder shall, if required by an authorised person, produce the licence document to the authorised person for amendment within the period specified by the authorised person.

8.14 Return of licence document if licence no longer in effect

(1) The person who was the licence holder shall as soon as practicable return the licence document to the local government if a licence—

- (a) has expired or has not been renewed;
- (b) has been cancelled; or
- (c) has been surrendered.

(2) On the cancellation of a licence under clause 8.10 the licence holder is to be taken to have forfeited any fees paid in respect of the licence.

PART 9—NOTICES**9.1 Notice to remedy non-compliance**

Where any thing is required to be done or not permitted to be done by this local law, an authorised person may give written notice—

- (a) to the owner or the occupier of the property or property which abuts that portion of the thoroughfare where the thing has been done or not done; or
- (b) to any other person who may be responsible for the thing done or not done, requiring the person to comply with the requirements of this local law.

9.2 Notice requirements

(1) Written notice given under this Part shall—

- (a) be in writing;
- (b) given to the person referred to in clause 9.1;
- (c) specify the reason for giving the notice;
- (d) the action that is required to be undertaken; and
- (e) the time within which the work or action is to be undertaken.

(2) At the discretion of the local government, the action that may be required to be undertaken is—

- (a) to take or cease such action as may be required for compliance with this local law;
- (b) reinstate the property or thing to the state it was in before the removal, damage or interference;
- (c) replace that property or thing; or
- (d) pay for the costs of reinstatement or replacement.

9.3 Offence to fail to comply with notice

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

9.4 Local government may undertake requirements of notice

If a person fails to comply with written notice referred to in clause 9.1, the local government may—

- (a) do the thing specified in the notice, including replace the property, or reinstate the property to the state it was in before the removal, damage or interference;
- (b) take whatever remedial action it considers appropriate to put the local government in the position it would have been in if the breach or failure had not occurred; and
- (c) recover all costs from the person, as a debt.

9.5 Entry into private land

This local law is subject to sections 3.25, 3.27 and schedules 3.1 and 3.2 of the *Local Government Act 1995* and any power of entry exercised by the local government under this local law is subject to Part 3, Division 3, Subdivision 3 of the Act.

PART 10—OBJECTIONS AND APPEALS**10.1 Objections and appeals**

Division 1 of Part 9 of the Act applies to a decision under this local law in respect of the grant, renewal, transfer, amendment or cancellation of a licence or consent.

PART 11—ENFORCEMENT**11.1 Offences**

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

11.2 General penalty

A person who commits an offence under this local law is liable, on 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 the day during which the offence has continued.

11.3 Prescribed offences

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

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

11.4 Form of infringement notices

(1) For the purposes of this local law—

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

(2) Where an infringement notice is given under section 9.16 of the Act in respect of an alleged offence against clause 2.4, the notice is to contain a description of the alleged offence.

Schedule 1—Prescribed offences

[clause 11.3]

Item	Clause	Nature of offence	Modified penalty \$
1	2.2(a)	Failure to keep premise free from excrement, filth, food waste and other matter likely to be offensive or injurious to health, attracts, vermin or insects	250
2	2.2(b)	Failure to keep premises clean and disinfected when given written notice	250
3	2.2(c)	Failure to keep premises free of flies, or when given written notice, spray premises with residual insecticide or use other means to kill or repel flies	250
4	2.3	Failure to maintain adequate enclosures	250
5	2.5	Keep, or permit to be kept, any poultry, not in accordance with conditions of these local laws	250
6	2.7	Keep, or suffer to remain in a residential zone, a rooster, turkey, goose or geese, or peafowl	250
7	2.9	Failing to keep cages, enclosures and lofts maintained to minimum standard specified in the Code of Practice	250
8	2.10	Failing to prevent pigeons nesting or perching	250
9	2.11	Failing to keep aviary birds in accordance with conditions of this local law	250
10	2.12	Keeping birds so as to create a nuisance	250
11	2.13(1)	Failure to obtain a licence to keep bees	250
12	2.13(3)	Failure to comply with any obligation when temporarily keeping bees	250
13	2.15	Failure to comply with a condition of a licence to keep bees	250
14	2.20	Creation of a nuisance from keeping of bees or beehives	250
15	2.21	Failure to comply with written notice of local government	250
16	2.21	Failure to comply with written notice to remove bees or beehives for contravention of local law	250
17	2.22	Keeping a farm animal without a valid licence	250
18	2.27	Failure to comply with the conditions for keeping farm animals	250
19	2.28	Keeping a miniature horse on land without a licence	250
20	2.29	Keeping a miniature pig on land without a licence	250
21	2.32(2)	Permitting livestock to stray, or be at large in a thoroughfare, public place or private property without consent	250
22	2.32(1)	Failing to keep property fenced in a manner capable of confining livestock	250
23	3.1	Failure to provide or maintain a refuse receptacle on a building or development site	500
24	3.2	Failure to control refuse on a building or development site	500

Item	Clause	Nature of offence	Modified penalty \$
25	3.3	Unauthorised storage of materials	500
26	3.4	Release or escape of dust or liquid waste from land	500
27	3.5	Commencing works involving clearing of land without an approved Dust Management Plan	500
28	3.6	Burning of cleared vegetation or other material from a building or development site	500
29	3.9(a)	Storing, or allow to remain on land, more than one vehicle, vessel or machinery in a state of disrepair	500
30	3.9(b)	Storing, or allow to remain on land, any vehicle, vessel or machinery in a state of disrepair for a period in excess of 1 month	500
31	3.9(c)	Storing, or allow to remain on land, any vehicle, vessel or machinery parts (including tyres)	500
32	3.9(d)(i)	Wreck, dismantle or break up any vehicle part or body, vessel or machinery not inside a building	500
33	3.9(d)(ii)	Wreck, dismantle or break up any vehicle part or body, vessel or machinery not behind a sufficient fence or wall	500
34	3.9(e)	Wreck, dismantle or break up a vehicle, vessel or machinery so as to cause a nuisance	500

Dated 20 September 2023

The Common Seal of the Shire of Kent was affixed by authority of a resolution of Council in the presence of—

SCOTT CROSBY, President.
CHRISTIE SMITH, Chief Executive Officer.

11 October 2023.

**LOCAL GOVERNMENT ACT 1995
BUSH FIRES ACT 1954**

SHIRE OF KENT

BUSH FIRE BRIGADES LOCAL LAW 2023

Under the powers conferred by the *Bush Fires Act 1954*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Kent resolved on 20 September 2023 to make the following local law.

1. Citation

This local law may be cited as the *Shire of Kent Bush Fire Brigades Local Law 2023*.

2. Commencement

This local law will come into operation 14 days after publication in the *Government Gazette*.

3. Application

This local law applies throughout the district.

4. Repeal

The *By-laws of the Kent Shire Council Relating to the Establishment, Maintenance and Equipment of Bush Fire Brigades for the Shire or any part of the Shire of Kent* published in the *Government Gazette* on 6 May 1977, are repealed.

5. Definitions

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

Act means the *Bush Fires Act 1954*;

bush fire brigade is defined in section 7 of the Act;

bush fire brigade member means a volunteer fire fighter having current membership of a bush fire brigade;

bush fire brigade officer means a person holding a position referred to in clause 7(1)(c);

bush fire control officer means a person appointed by the local government to exercise the powers of a bush fire control officer or bush fire officer in accordance with the Act and this local law;

captain means the person holding or acting in that position in a bush fire brigade;

CEO means the Chief Executive Officer of the local government;

Council means the Council of the local government;

district means the district of the local government;

lieutenant means the person holding that position in a bush fire brigade;

local government means the Shire of Kent;

normal brigade activities is defined by section 35A of the Act;

Regulations means Regulations made under the Act; and

volunteer fire fighter has the meaning given to it in section 35A of the Act.

(2) In this local law, unless the context otherwise requires, a reference to—

(a) a captain;

(b) a first lieutenant;

(c) a second lieutenant; and

(d) any additional lieutenants;

means a person holding that position in a bush fire brigade.

6. Establishment of a bush fire brigade

(1) The Council by resolution may establish a bush fire brigade for the purpose of carrying out normal brigade activities.

(2) A bush fire brigade is established on the date of the local government's decision under subclause (1).

(3) A bush fire brigade established under subclause (1) is to hold a meeting at least once every financial year to appoint persons to the positions in clause 7(1)(c).

7. Name and area of bush fire brigade

(1) On establishing a bush fire brigade under clause 6(1) the Council by resolution is to—

(a) give a name to the bush fire brigade;

- (b) specify the area in which the bush fire brigade is primarily responsible for carrying out the normal brigade activities; and
 - (c) appoint—
 - (i) a captain;
 - (ii) a first lieutenant;
 - (iii) a second lieutenant; and
 - (iv) additional lieutenants if the local government considers it necessary.
- (2) A person appointed to a position pursuant to subclause (1)(c) is to be taken to be a bush fire brigade member.
- (3) The appointments referred to in subclause (1)(c) expire at the completion of the first annual general meeting of the bush fire brigade.
- (4) In accordance with section 43 of the Act, the local government may remove or appoint officers of a bush fire brigade as deemed necessary or appropriate.
- (5) Subject to subclause (4)—
- (a) an election is to be held at the first annual general meeting by the members of the brigade for appointments to the positions referred to in subclause (1)(c) and every subsequent annual general meeting; and
 - (b) if a position referred to in subclause (1)(c) becomes vacant prior to the completion of the first annual general meeting or at any time, then the brigade members are to vote for a replacement member to fill the position.
- (6) The brigade members may elect, set the term of office, describe the duties of, and dismiss, any person to any other position including secretary, treasurer, equipment officer, training officer or other positions, and may combine those positions.
- (7) The brigade members may establish types of brigade membership including fire fighting members, auxiliary members, cadet members, and honorary life members.

8. Duties of captain and bush fire brigade officers

- (1) The duties of the captain are to—
- (a) provide leadership to bush fire brigades;
 - (b) monitor bush fire brigades' resourcing, equipment and training levels;
 - (c) liaise with the local government concerning—
 - (i) fire prevention or fire suppression matters generally;
 - (ii) directions to be issued by the local government to bush fire control officers, including those who issue permits to burn; and
 - (iii) bush fire brigade officers;
 - (d) ensure that a list of bush fire brigade members is maintained;
 - (e) report annually to the local government the office bearers of the bush fire brigade in accordance with the Regulations;
 - (f) report to the local government at least annually, for consideration and appropriate provision being made in the next local government budget, the status of a bush fire brigade's—
 - (i) training and readiness;
 - (ii) protective clothing;
 - (iii) equipment; and
 - (iv) vehicles and appliances;
 - (g) nominate persons to the local government for appointment as bush fire control officers by the local government;
 - (h) arrange for normal brigade activities as authorised by the Act or by the local government; and
 - (i) where a vacancy occurs in a position appointed under clause 7(1)(c), to—
 - (i) advise the CEO of the vacancy as soon as practicable; and
 - (ii) make alternate suitable arrangements for that position until an appointment is made.
- (2) The duties of lieutenants are to—
- (a) provide support to the captain;
 - (b) command and manage members during emergencies and other bush fire brigade related activities;
 - (c) demonstrate positive leadership and mentor members;
 - (d) maintain open lines of communication and encourage positive interaction and teamwork between members;
 - (e) ensure members engaged in firefighting activities hold competencies relevant to the task;
 - (f) assist coordination and conduct of training activities for members; and
 - (g) in the absence of the captain or more senior lieutenant present assume the responsibilities and duties of that office and take responsibility for the performance of bush fire brigade activities.

Dated this 20 September 2023

The Common Seal of the Shire of Kent was affixed by authority of a resolution of Council in the presence of—

SCOTT CROSBY, President.
CHRISTIE SMITH, Chief Executive Officer.

11 October 2023.

**LOCAL GOVERNMENT ACT 1995
CEMETERIES ACT 1986**

SHIRE OF KENT

CEMETERIES LOCAL LAW 2023

Under the powers conferred by the *Cemeteries Act 1986* and the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Kent resolved on 20 September 2023 to adopt the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Kent Cemeteries Local Law 2023*.

1.2 Commencement

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

1.3 Application

This local law applies to—

- (a) Nyabing Cemetery (Reserve 14218); and
- (b) Pingrup Cemetery (Reserve 18750).

1.4 Repeal

The Shire of Kent Local Laws *Relating to the Nyabing Public Cemetery, and Pingrup Public Cemetery* published in the *Government Gazette* on 23 March 1998 are repealed.

1.5 Terms used

In this local law, unless the context otherwise requires—

Act means the *Cemeteries Act 1986*;

administrator means—

- (a) the administrator or executor of an estate of a deceased person;
- (b) the person who, by law or practice, has the right to apply for administration of the estate of the deceased person; or
- (c) a person having the lawful custody of a dead body;

ashes means so much of the remains of a dead body after the due processes of cremation as may be contained in a standard sized cremation urn of which the volume does not exceed 4,000 cubic centimetres, or such greater volume as approved by the CEO in writing;

authorised person means a person appointed by the Board for the purposes of performing any function or exercising any power, conferred upon an authorised officer by this local law, and includes the CEO;

Board means the local government;

burial means placement of a coffin containing a dead body into a grave, and includes a natural burial;

business day means any week day as the context requires—

- (a) other than a public holiday in Western Australia, or
- (b) that reasonable notice has been given that the Shire office is closed;

cemetery means a cemetery specified in clause 1.3;

CEO means the Chief Executive Officer, for the time being, of the Board;

coffin means—

- (a) a coffin or other receptacle used for the transportation of a dead body to the grave site;
- (b) the receptacle used for the burial of a dead body in a grave; and
- (c) includes the containment of the dead body only in a shroud or biodegradable coffin;

funeral director means a person—

- (a) holding current membership of—
 - (i) the Australian Funeral Directors Association, or
 - (ii) the National Funeral Directors Association; or
- (b) a person authorised by the personal representative of a deceased person, and approved by the CEO;

grave cover means a covering a grave of durable material whether permeable or impermeable;

headstone means a memorial designed for placement at the head of a grave, commemorating a grave or the placement of ashes;

interment includes, as the case may be—

- (a) burial of a dead body;
- (b) placement of ashes in a grave, niche wall or under a commemorative plaque; or
- (c) scattering of ashes within a cemetery;

interment permit means a single funeral permit issued by the Board under section 20 or 21 of the Act which entitles the holder to conduct the interment of a person named in the permit, and includes placement of ashes in a niche wall or memorial local, or scattering of ashes;

local government means the Shire of Kent;

mausoleum means a burial chamber wholly above or partially above and below ground level, so constructed as to allow the deposition of dead bodies into a compartment in the wall or floor and being sealed from view;

memorial has the meaning set out in the Act;

memorial plaque means a panel, plate or tablet designed or used for purposes of bearing a commemorative inscription;

memorial work means to install, repair, renovate or remove a memorial;

monument means a sculpture, statue, cover of a grave or other form of memorial approved by the Board commemorating a grave or the placement of ashes, other than a headstone or memorial plaque;

natural burial means burial in the ground—

- (a) without preparation of the dead body using chemical preservatives; and
- (b) by containment of the dead body only in a shroud or biodegradable coffin;

personal representative means—

- (a) the administrator or executor of an estate of a deceased person;
- (b) the person who, by law of practice, has the right to apply for administration of the estate of the deceased person; or
- (c) a person having the lawful custody of a dead body;

set fee refers to fees and charges set by a resolution of the Board and published in the *Government Gazette*, under section 53 of the Act;

standard grave means a grave which does not exceed any of the following dimensions: 2.4m long, 1.2m wide and 2.1m deep;

utility services means municipal or public services and include the supply of water, electrical power, gas and refuse, building waste and sewerage disposal services;

vault means a below ground lined grave with 1 or more sealed compartments constructed to specifications approved from time to time by the Board; and

vehicle includes—

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

but excludes—

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

PART 2—ADMINISTRATION

2.1 Powers and functions of CEO

Subject to any directions given by resolution of the Board, the CEO shall exercise all the powers and functions of the Board in respect of each cemetery.

2.2 Plans

(1) The Board shall establish and maintain a plan of each cemetery showing—

- (a) the location of areas set aside for burials, niche wall compartments, and placement of ashes in a garden;
- (b) the location of an area to be used only for burials of persons of a particular religious denomination;
- (c) the location of different areas of each cemetery to which different requirements for memorials apply;
- (d) the location of areas set aside for the works and other uses as specified in sections 24(2)(a) and (b) of the Act; and
- (e) areas restricted from burial without approval of the CEO.

(2) The Board may from time to time establish and vary the boundaries of any area referred to in subclause (1).

(3) The plans referred to in subclause (1) shall be open for inspection by members of the public during normal office hours of the Board.

2.3 Grant of right of burial

(1) Upon payment of the set fee, a grave, niche compartment or memorial location shall be granted right of burial for a period in accordance with section 25(1) of the Act.

(2) Upon payment of the set fee, a grant of right of burial shall be extended for a further period in accordance with section 25(2) or (4) of the Act.

(3) A grant of right of burial made and recorded at the commencement of this local law, shall remain valid for the periods specified by the Act.

(4) If the Board refuses to an application under subclause (1) or (2), written notice of the refusal is to be given to the applicant.

2.4 Board may enter into an agreement for maintenance

The Board may enter into an agreement with the holder of a grant of right of burial under clause 2.3 for the maintenance of an area of a cemetery at the expense of the holder.

PART 3—APPLICATION FOR INTERMENT

3.1 Application for interment permit

(1) A funeral director may apply for approval for interment in a cemetery.

(2) An application for an interment permit of a dead body and shall include coffin specifications and details of the vehicle transporting the dead body to the gravesite.

(3) An application under subclause (1) shall be accompanied by the set fee.

3.2 Applications to be accompanied by certificates etc.

(1) An application under clause 3.1 shall be accompanied by a certificate issued under clause 3.3, in respect of the dead body.

(2) The Board may require that an application under clause 3.1 be accompanied by either a medical certificate of death or a Coroner's order of burial, in respect of the dead body.

3.3 Certificate of identification

(1) After a dead body is placed in a coffin and prior to the dead body being removed to a cemetery, a person who personally knew the deceased shall identify the dead body and shall provide a certificate of identification, 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) A funeral director shall provide a certificate of identification, 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.

3.4 Minimum notice required

An application for interment shall be made to the Board at least 5 business days prior to the day proposed for interment, otherwise an extra charge may be made.

3.5 Refusal of application

(1) The Board may refuse an application for an interment permit—

- (a) if in the opinion of the Board, either the coffin specifications or the details of the vehicle transporting the dead body to the gravesite are not structurally sound or are otherwise inadequate or inappropriate; or
- (b) on any other grounds.

(2) If the Board refuses to approve an application under subclause (1), written notice of the refusal is to be given to the applicant.

PART 4—FUNERALS AND MEMORIAL SERVICES

4.1 Fixing times for interments

(1) On receipt of a properly completed application form and the satisfaction of all other requirements of the Act and this local law, the Board may—

- (a) approve a time for the funeral; and
- (b) dig or re-open any grave that is required.

(2) The time approved for an interment is at the discretion of the Board but will be as near as possible to the time requested by the applicant.

(3) Except with the permission of the Board and subject to such conditions as may be applied, a person shall not carry out an interment—

- (a) on a Saturday, a Sunday or a public holiday;
- (b) commencing at any time other than between the hours 9:00 am to 2.00 pm; or
- (c) to conclude later than 3.00pm.

4.2 Memorial services or processions

Upon application, the Board may permit, with or without interment or broadcasting of ashes—

- (a) the conduct of a memorial service; or
- (b) a procession.

4.3 Processions

The time fixed by the Board for interment shall be the time at which the procession is to arrive at the cemetery gates, and, if not punctually observed, then the applicant who applied to hold the interment under clause 3.1 shall if required, pay the set fee for being late.

4.4 Conduct of interments by the Board

When conducting an interment, or for the purposes of deciding whether to conduct an interment, under section 22 of the Act the Board may—

- (a) require a written request to be made for the Board to conduct an interment;
- (b) in its absolute discretion, charge any person requesting it to conduct an interment the set fee for the conduct of that funeral;
- (c) where no fee or a reduced fee has been charged by it for the conduct of the interment, determine the manner in which the interment shall be conducted;
- (d) specify an area in the cemetery for the interment;
- (e) conduct the funeral notwithstanding the failure of a person to make any application or to obtain any consent required under this local law; and
- (f) do or require anything which is considered necessary or convenient for the conduct of the funeral by the Board.

PART 5—INTERMENTS

5.1 Requirements for burials and coffins

(1) A person shall not bring a dead body into a cemetery unless—

- (a) the Board has approved an application for the burial of that dead body in accordance with clause 3.1;
- (b) it is enclosed in a coffin which in the opinion of the Board is adequate to the task and bears the name of the deceased person indelibly inscribed in legible characters on a plate properly affixed in a clearly visible position on the lid of the coffin; 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 10 mm in height.

(2) Where the dead body is contained in a shroud or biodegradable coffin—

- (a) the plate referred to in subclause (1)(b) is to be placed on the outside of the shroud or biodegradable coffin; and
- (b) the lead strip referred to in subclause (1)(c) is to be placed inside the shroud or biodegradable coffin.

5.2 Preparation of graves

(1) A person shall not dig or prepare a grave or fill a grave, unless that person has the permission of the Board.

(2) Regardless of prior grant of right of burial under clause 2.3 or gravesite approved upon application made under clause 3.1, the Board may direct the digging or preparation of a grave in an alternate position, where—

- (a) evidence of a prior interment is found, or known to have occurred;
- (b) access to the position is constrained;
- (c) the digging or preparation of the grave is unreasonably difficult; or
- (d) utility services may be interfered with.

(3) Where an alternative position for the grave is directed under subclause (2), the Board is to advise the funeral director immediately.

5.3 Dimensions of graves

(1) A person shall not bury a dead body in a cemetery other than in a standard grave, unless that person has the permission of the CEO.

(2) Every grave prepared by the Board shall be dug at least 1.8m deep and shall not exceed 2.3m in depth, unless otherwise determined by the Board.

(3) A person shall not bury a dead body within a cemetery so that the distance from the top of the coffin to the original surface of the ground is—

- (a) subject to paragraph (b), less than 1600mm, unless that person has the permission of the CEO; or
- (b) in any circumstances less than 750mm.

(4) The permission of the Board in subclause (3) shall not be granted unless in the opinion of the CEO exceptional circumstances require granting of that permission.

5.4 Ashes not to be held by the Board

The Board shall not accept custody of ashes of a deceased person.

5.5 Disposal of ashes

(1) Except in accordance with an approved application under clause 3.2, a person shall not bring or dispose of the ashes of a deceased person in a cemetery.

(2) A funeral director, the personal representative of a deceased person whose body has been cremated, or other person approved by the CEO, may apply to the Board for permission to dispose of the ashes of that deceased person in a cemetery by one of the following methods, if that method is available—

- (a) placed in a niche wall;
- (b) placed in a grave, vault or mausoleum subject to the appropriateness of the interment as determined by the Board;
- (c) scattered in an area approved by the Board;
- (d) placed in a memorial garden; or
- (e) placed in or under other memorials approved by the Board.

(3) The Board may require a person making an application under subclause (2) to—

- (a) provide additional information reasonably related to the application before determining the application; and
- (b) where to be placed in a grave or other position containing the remains of a dead person, to—
 - (i) provide the consent of the deceased person's personal representative; or
 - (ii) establish the appropriateness of the relationship between the deceased person whose ashes are to be interred, and the person previously interred to the CEO's satisfaction.

(4) The Board may—

- (a) approve an application under subclause (2) unconditionally or subject to any conditions; or
- (b) refuse to approve an application under subclause (2).

(5) Where an application under subclause (2) has been approved subject to conditions, the applicant must comply with each of those conditions, as amended.

(6) If the Board refuses to approve an application under subclause (2), written notice of the refusal is to be given to the applicant.

5.6 Vaults and mausoleums

(1) A person shall not construct a vault or mausoleum within a cemetery, except with the specific approval of the Board.

(2) A vault or mausoleum within a cemetery shall at all times remain the property of the Board.

(3) An application under subclause (1) shall be in writing and shall be accompanied by payment of the set fee.

(4) The Board may require a person making an application under subclause (1) to provide additional information reasonably related to the application before determining the application.

(5) The Board may—

- (a) approve an application under subclause (1) unconditionally or subject to any conditions; or
- (b) refuse to approve an application under subclause (1).

(6) Where an application under subclause (1) has been approved subject to conditions, the applicant must comply with each of those conditions, as amended.

(7) If the Board refuses to approve an application under subclause (1), written notice of that refusal is to be provided to the applicant.

(8) A person shall not place a dead body in a vault or mausoleum except—

- (a) in a closed coffin;
- (b) in a soundly constructed and sealed chamber; and
- (c) in accordance with subclause (9).

(9) The number of burials in a chamber must not exceed the number for which the chamber was designed.

5.7 Re-opening a grave

(1) A person shall not reopen a grave without the approval of the Board.

(2) If for the purpose of re-opening a grave in a cemetery, the Board 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.

5.8 Exhumation of a coffin

(1) Subject to subclause (2), a person shall not exhume a coffin in a cemetery for the purposes of reburial within 12 months after the date of its interment.

(2) Subclause (1) shall not apply where 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 of right of burial must have applied in writing to the CEO requesting the exhumation and the CEO has authorised the exhumation.

5.9 Opening of coffin

A person shall not open a coffin in a 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 CEO an order signed by the Commissioner of Police and the CEO has approved the opening of that coffin.

PART 6—APPLICATIONS FOR MEMORIALS**6.1 Application to place memorial**

(1) Upon payment of the set fee, the Board may approve an application to place a memorial with or without conditions, including restricting use of materials such as wood, dimensions of a memorial etc, so as not to detract from the amenity of the cemetery.

(2) The Board may require the written consent of the holder of the right of burial of the grave, the personal representative of a deceased person, or other person to the satisfaction of the CEO to accompany an application for a memorial made under section 30 of the Act.

(3) Where written consent is not able to be produced, the Board may approve with or without conditions or decline an application in its absolute discretion.

(4) If the Board refuses to approve an application under subclause (2), written notice of that refusal is to be provided to the applicant.

6.2 Australian War Graves

Notwithstanding anything in this local law to the contrary, the Office of Australian War Graves—

- (a) may place a complying memorial on a military grave; and
- (b) is not required to pay the set fee for any memorial that is placed upon a military grave.

PART 7—MEMORIALS PERMITTED**7.1 Requirement for memorial works**

(1) Memorial works shall comply with such requirements and conditions as may be imposed by resolution the Board, including but not limited to—

- (a) grave cover—
 - (i) dimensions not to exceed the width and length of a standard grave without approval under clause 7.2(3);
 - (ii) thickness not to exceed 150mm; and
 - (iii) materials;
- (b) headstone, memorials and bases, monuments—
 - (i) dimensions not to extend beyond any grave cover in place or the dimensions of a standard grave if no grave cover is in place;
 - (ii) height; and
 - (iii) materials;
- (c) plaques—
 - (i) maximum dimensions;
 - (ii) dimensions shall not extend beyond any base upon which the plaque is mounted; and
 - (iii) materials; and
- (d) gravesite boundary, whether kerbing, loose or cemented rock, or fencing—
 - (i) dimensions shall not to exceed the width and length of a standard grave without approval under clause 7.2(3);
 - (ii) height; and
 - (iii) materials.

(2) Where memorial works are approved under subclause (1) and are to be undertaken by the Board, the memorial works shall be—

- (a) at the expense of the administrator;
- (b) the expense shall be calculated in accordance with the set fee; and
- (c) if specified, on the agreed date at the agreed time.

7.2 Limitation on dimensions of memorials

- (1) No part of any memorial works, including any kerbing, boundary marker or enclosure is to extend beyond the dimensions of a standard grave.
- (2) No part of a headstone, memorial plaque or monument above its base shall extend horizontally beyond its base.
- (3) Notwithstanding subclause (1), on request of an administrator, the Board may approve memorial works over multiple adjoining gravesites—
- (a) where the persons interred are of the same family; or
 - (b) for another acceptable reason.

7.3 Display of trade names on memorials not allowed

A person shall not display any trade names or marks on a memorial other than a farm or property name, or location having a close relationship with the deceased person.

PART 8—MEMORIALS AND OTHER WORK**8.1 Numbering of graves**

A person shall not install a memorial on a grave unless the number of that grave is, depending on the area where the grave is located, indelibly and legibly inscribed either on the base of the head of the monument or on the base of the headstone, or if this is not practicable, on the kerbing at the foot of the grave.

8.2 Carrying out memorial work

- (1) A person shall not carry out memorial work within a cemetery unless that person is authorised by the Board to do so under clause 6.1.
- (2) All material required in the erection and completion of any memorial work shall be prepared before being taken to a cemetery.
- (3) The Board may place restrictions on the hours of work, access to a cemetery or other matters considered appropriate.
- (4) Memorial works shall be suspended during the conduct of any funeral within a cemetery.
- (5) Work is not permitted to be left unattended in an untidy or unsafe state.

8.3 Removal of sand, soil or loam

No sand, earth or other material shall be taken from any part of a cemetery for use in the construction of any memorial or other work, or cause any material to be removed from a cemetery except with the written approval of the Board.

8.4 Removal of rubbish

All refuse, rubbish or surplus material remaining after approved memorial works are completed shall be immediately removed from the cemetery by the person carrying out the same.

8.5 Plants and trees

No trees or shrubs shall be planted on any grave or within a cemetery except such as shall be approved by the Board.

8.6 Supervision

All workers, whether employed by the Board or by any other person, shall at all times while within the boundaries of the cemetery be subject to the supervision of an authorised person and shall obey any directions of an authorised person.

8.7 Placing of grave ornaments

- (1) A person shall not place vases or other grave ornaments—
- (a) outside the perimeter of a grave in a cemetery as defined in the plans kept and maintained under section 40(2) of the Act; or
 - (b) outside of an area set aside by the Board as a memorial plaque section.
- (2) The use of glass, porcelain, ceramics or pottery is not permitted, other than that already in place at commencement of this local law.

8.8 Hours of work

Except in accordance with the permission of an authorised person, a person shall not carry out memorial or other work within a cemetery—

- (a) during a funeral; or
- (b) other than between the hours of 8:00 am and 5:00 pm on a business day.

8.9 Unfinished work

A person who does not complete any work before 5:00 pm on a business day shall leave the work in a neat and safe condition to the satisfaction of the Board.

PART 9—GENERAL**9.1 Vehicle access and speed limitation**

(1) A person shall drive a vehicle on a vehicular access way or the constructed roadway or other areas designated for the use of vehicles within a cemetery, unless otherwise authorised by the Board.

(2) A person driving a vehicle, within a cemetery, shall not exceed the speed limit of 10km per hour, and shall comply with the signs and directions in the cemetery.

9.2 Animals

A person shall not bring an animal into or allow an animal to enter or remain in a cemetery, other than—

- (a) an *assistance animal* as defined in section 9(2) of the *Disability Discrimination Act 1992* (Commonwealth); or
- (b) with the approval of the Board or an authorised person.

9.3 Utility services

(1) Other than with the approval of the Board, a person shall not—

- (a) connect any device or equipment to any utility services supplied on or at a cemetery; or
- (b) alter or interfere with utility services infrastructure located in a cemetery.

(2) The Board may recover from a person the reasonable costs incurred by the Board for the supply to and use of any utility services by that person at a cemetery.

9.4 Damaging and removing of objects

Subject to clause 9.5, a person shall not damage, remove or pick any tree, plant, shrub or flower in a cemetery or any other object or thing on any grave or memorial or which is the property of the Board without the permission of the Board.

9.5 Withered flowers

A person may remove withered flowers from a grave or memorial and these are to be disposed of in an appropriate manner.

9.6 Littering and vandalism

A person shall not—

- (a) damage, deface or interfere with any monument or gravesite in any manner whatsoever;
- (b) break or cause to be broken any glass, ceramic or other material in or upon a cemetery; or
- (c) discard, deposit, leave or cause to be discarded, deposited or left any refuse or litter in a cemetery other than in a receptacle provided for that purpose.

9.7 Advertising

(1) A person shall not advertise or carry on any trade, business or profession in a cemetery without the approval of the Board.

(2) Upon payment of the set fee, the Board may consider and give approval subject to such conditions as the Board thinks fit.

9.8 Compliance with signs and directions of the Board

(1) The Board may display, mark, place or erect a sign within a cemetery specifying conditions relating to the use of the cemetery.

(2) A person shall obey all signs displayed, marked, placed or erected by the Board within a cemetery and any other lawful direction of the Board or an authorised person.

9.9 Removal from a cemetery

(1) Any person failing to comply with any provisions of this local law or behaving in a manner that in the opinion of the Board is inappropriate in a cemetery may in addition to any penalty provided by this local law be ordered to leave the cemetery.

(2) A person to whom an order under subclause (1) is given must comply with that order.

9.10 Board may close cemetery

The Board may—

- (a) temporarily close a cemetery or any part of it;
- (b) exclude from a cemetery the public and all persons or so many of the public or so many persons as the Board consider to be necessary;
- (c) regulate, prohibit or restrict access to a cemetery or any part of it; or
- (d) direct persons to leave a cemetery or any part of it, for purposes of—
 - (i) a funeral or public convenience;
 - (ii) maintenance, redevelopment or extension of the cemetery;
 - (iii) public safety; or
 - (iv) other operational reasons.

9.11 Liability for damage or works required to comply

Where a person—

- (a) causes damage to any grave, memorial, structure, building, furniture, plant or any other item or thing in a cemetery;
- (b) does a thing not authorised by this local law; or
- (c) does not do a thing required by this local law;

the Board may by notice in writing to that person require that person within the time required in the notice to, at the option of the Board—

- (d) pay the costs of reinstating the property to the state it was in prior to the occurrence of the damage;
- (e) pay the costs of replacing that property;
- (f) pay the costs of works required to comply with this local law; or
- (g) carry out works required to comply with this local law.

9.12 Offence to fail to comply with notice

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

9.13 Board may undertake requirements of notice

Where a person fails to comply with a notice referred to in clause 9.12, the Board 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.

9.14 False or misleading statement

A person shall not make a false or misleading statement in connection with any matter under this local law.

PART 10—OBJECTIONS AND REVIEW**10.1 Objections and review**

Division 1 of Part 9 of the *Local Government Act 1995* applies to a decision under this local law to—

- (a) refuse an application for a permit;
- (b) impose or vary a condition of a permit; or
- (c) revoke a permit.

PART 11—OFFENCES AND MODIFIED PENALTIES**11.1 Offences**

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

11.2 General penalties

A person who commits an offence under this local law commits is liable on conviction to a penalty not exceeding \$500, and if the offence is of a continuing nature, to an additional penalty not exceeding \$20 for every day or part of a day during which the offence has continued.

11.3 Modified penalties

- (1) The offences specified in Schedule 1 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 Schedule 1 is set out in the fourth column of Schedule 1.
- (3) The infringement notice referred to in Section 63(1) of the Act shall be in the form set out in Schedule 2.
- (4) The notice withdrawing an infringement notice referred to in Section 63(3) of the Act shall be in the form set out in Schedule 3.

Schedule 1—Modified Penalties

[cl.11.2]

Item	Clause	Nature of offence	Modified Penalty \$
1	4.2(a)	Holding a memorial service without permission	50
2	4.2(b)	Conducting a procession without permission	50
3	5.1	Failure to obtain approval to bring a dead body into a cemetery	50
4	5.2(1)	Unauthorised digging, preparation or filling of grave	50

Item	Clause	Nature of offence	Modified Penalty \$
5	5.3(1)	Unauthorised burial of dead body	50
6	5.5(1)	Unauthorised disposal of ashes	50
7	5.5(2)	Disposal of ashes in an unauthorised manner	50
8	5.6(1)	Unauthorised construction of vault or mausoleum	50
9	5.7(1)	Unauthorised reopening of a grave	50
10	5.8(1)	Unauthorised exhumation of a coffin	50
11	5.9	Unauthorised opening of a coffin	50
12	7.3	Unauthorised use of trade name or mark on a memorial	50
13	8.1	Carrying out memorial work without grave number on memorial or surrounds	50
14	8.2	Unauthorised construction of a memorial	50
15	8.3	Unauthorised use of materials taken from within a cemetery	50
16	8.4	Failure to remove rubbish and surplus materials	50
17	8.5	Unauthorised planting of tree or shrub	50
18	8.6	Failure to comply with direction of authorised person	50
19	8.7	Unauthorised placing of grave ornaments	50
20	8.8	Works carried out during unauthorised times	50
21	8.9	Failure to leave uncompleted works in a tidy and safe condition	50
22	9.1(1)	Driving vehicle other than on vehicular access way or constructed roadways or within designated areas	50
23	9.1(2)	Exceeding speed limit	50
24	9.2(b)	Permitting an animal in a cemetery without approval	50
25	9.3	Interference with utility services	50
26	9.4	Damaging or removing objects	50
27	9.5	Failure to dispose of withered flowers appropriately	50
28	9.6	Littering and/or vandalism	50
29	9.7	Unauthorised advertising and/or trading	50
30	9.8(2)	Failure to obey sign or lawful direction within a cemetery	50
31	9.9(2)	Failure to comply with order to leave a cemetery	50
32	9.10	Failure to comply with closure of all or part of a cemetery	50
33	9.12	Failure to comply with notice within specified period	50
34	9.14	Making a false or misleading statement	50
35	11.1	All other offences not otherwise specified	50

Schedule 2—Infringement Notice

[cl. 11.2(3)]

Shire of Kent

INFRINGEMENT NUMBER:		
To:		
Address:		
	It is alleged that –	
At—		
On—	Day	Date
Location (as indicated)—	Nyabing Cemetery (Reserve 14218)	
	Pingrup Cemetery (Reserve 18750)	
	You committed the following offence—	
Contrary to—	Shire of Kent Cemeteries Local Law 2023	
Schedule 1 reference—	Item No.—	Clause—
Offence—		
Brief description –		

The modified penalty for the offence is —	\$
	If you do not wish to have a complaint of the alleged offence heard and determined by a court, the amount of the modified penalty may be paid at the Shire of Kent within a period of 28 days after the giving of this notice.
Name of authorised person—	
Position—	
Signature—	
Date—	
	Payments may be made— (a) <i>by EFT (contact Shire Office for details)</i> (b) <i>in person at the Shire Office during business hours</i> (c) <i>by mail to—Shire of Kent</i> PO Box 15, Nyabing 6341 Please make cheques payable to Shire of Kent.

Schedule 3—Withdrawal of Infringement Notice

[cl. 11.2(4)]

Shire of Kent

To—		
Address—		
	It is advised that —	
Infringement Notice No.—		
Dated—		
For the alleged offence of—		
	has been withdrawn.	
The modified penalty of—	\$	
Reason for withdrawal— (Delete whichever does not apply)	No further action will be taken.	
	It is proposed to institute court proceedings for the alleged offence	
Name of authorised person—		
Position—		
Signature—		
Date—		

Dated 20 September 2023

The Common Seal of the Shire of Kent was affixed by authority of a resolution of Council in the presence of—

SCOTT CROSBY, President.

CHRISTIE SMITH, Chief Executive Officer.

11 October 2023.

**LOCAL GOVERNMENT ACT 1995
DOG ACT 1976**

SHIRE OF KENT

DOGS LOCAL LAW 2023

Under the powers conferred by the *Dog Act 1976*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Kent resolved on 20 September 2023 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Kent Dogs Local Law 2023*.

1.2 Commencement

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

1.3 Application

This local law applies throughout the district.

1.4 Repeal

The *Shire of Kent Local Law—Dogs*, published in the *Government Gazette* on 23 March 1998 is repealed.

1.5 Terms used

In this local law unless the context otherwise requires—

Act means the *Dog Act 1976*;

adjoining includes land or premises which have a portion of a common boundary with a lot or is separated from that lot by a public reserve, road, right-of-way, pedestrian access way, access leg of a battle-axe lot or the equivalent not more than 6m in width;

authorised person means a person appointed by the local government under section 9.10 of the *Local Government Act 1995* to perform all or any of the functions conferred on an authorised person under this local law and includes the CEO;

CEO means the Chief Executive Officer of the local government;

dangerous dog has the meaning given to it by section 3(1) of the Act;

district means the district of the Shire of Kent;

dog management facility has the meaning given to it in section 3(1) of the Act, and includes a kennel establishment;

infringement notice means the notice referred to in clause 7.4;

kennel establishment means any premises where more than the number of dogs under clause 3.3 over the age of three months are kept, boarded, trained or bred temporarily, usually for profit and where the occupier of the premises is not the ordinary keeper of the dogs;

licence means a licence to keep an approved kennel establishment on premises granted under clause 4.4;

licensee means the holder of a licence granted under clause 4.4;

local government means the Shire of Kent;

local planning scheme means a planning scheme of the local government made under the *Planning and Development Act 2005*;

nuisance means—

- (a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;
- (b) an unreasonable interference with the use and enjoyment of a person's ownership or occupation of land; or
- (c) interference which causes material damage to land or other property on the land affected by the interference;

owner in relation to a dog, has the same meaning as in section 3(1) and (2) of the Act;

person liable for the control of the dog has the same meaning as in section 3(1) of the Act;

premises in addition to the meaning given to it in section 3 of the Act, means the premises described in the application for a licence made under clause 4.1;

public notice means such notice as the local government considers necessary—

- (a) stipulating duration and placement of notices as is considered relevant to inform the community;

- (b) not requiring compliance with local public notice under section 1.7 of the Local Government Act; and
- (c) the local government may place the notice given as a public notice on the local government's website or other means of informing the public;

public place has the meaning given to it by section 3(1) of the Act;

Regulations means the *Dog Regulations 2013*;

Schedule means a schedule to this local law;

set fee means a fee or charge made by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995*;

thoroughfare has the meaning given to it in section 1.4 of the *Local Government Act 1995*;

townsite means the following townsites constituted under section 26(2) of the *Land Administration Act 1997*—

- (a) Nyabing; and
- (b) Pingrup; and

transferee means a person who applies for the transfer of a licence to her or him under clause 4.12.

PART 2—IMPOUNDING OF DOGS

2.1 Fees and charges

The following set fees and charges are to be imposed and determined by the local government—

- (a) the charges to be levied under section 29(4) of the Act relating to the seizure and impounding of a dog;
- (b) the additional set fee payable under section 29(4) of the Act where a dog is released at a time or on a day other than those determined under clause 2.2; and
- (c) application for additional costs of the destruction and the disposal of a dog referred to in section 29(15) of the Act.

2.2 Attendance of authorised person at dog management facility

An authorised person is to be in attendance at the dog management facility for the release of dogs at the times and on the days of the week as determined by the CEO.

2.3 Release of impounded dog

- (1) A claim for the release of a dog seized and impounded is to be made to an authorised person or if absent, to the CEO.
- (2) An authorised person is not to release a dog seized and impounded to any person unless that person has produced, to the satisfaction of an authorised person, evidence—
 - (a) of her or his ownership of the dog or of her or his authority to take delivery of it; or
 - (b) that he or she is the person identified as the owner on a microchip implanted in the dog.

2.4 Unauthorised release

Unauthorised release of dogs is dealt with by section 43 of the Act.

PART 3—KEEPING OF DOGS

3.1 Dogs to be confined

(1) An occupier of premises on which a dog is kept must—

- (a) cause a portion of the premises on which the dog is kept to be fenced in a manner capable of confining the dog;
- (b) ensure the fence used to confine the dog and every gate or door in the fence is of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through it;
- (c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises (unless the gate is temporarily opened in a manner that ensures that the dog remains confined) and is fitted with a proper latch or other means of fastening it;
- (d) maintain the fence and all gates and doors in the fence in good order and condition; and
- (e) where no part of the premises consists of open space, yard or garden or there is no open space or garden or yard of which the occupier has exclusive use or occupation, ensure that other means exist on the premises (other than the tethering of the dog) for effectively confining the dog within the premises.

(2) Notwithstanding subclause (1) the confinement of dangerous dogs is dealt with in the Act and the Regulations.

3.2 Limitation on the number of dogs

(1) This clause does not apply to premises which have been—

- (a) licensed under Part 4 of this local law as an approved kennel establishment; or
- (b) granted an exemption under section 26(3) of the Act.

(2) The limit on the number of dogs which may be kept on any premises is, for the purpose of section 26(4) of the Act—

- (a) two dogs over the age of three months and the young of those dogs under that age if the premises are within a townsite; or
- (b) four dogs over the age of three months and the young of those dogs under that age if the premises are outside a townsite.

3.3 Application to keep additional dog or dogs

Subject to clause 3.5, the local government may consider—

- (1) an application to keep one additional dog on premises that are within a townsite which shall—
 - (a) provide sufficient detail regarding the reason for keeping more than two dogs;
 - (b) provide written consent from owners and occupiers of any premises adjoining the premises; and
 - (c) in the case of a tenanted property, provide written consent from either the landowner or their appointed real estate agent.
- (2) an application to keep more than four dogs on premises outside a townsite which shall—
 - (a) provide sufficient detail regarding the reason for keeping more than four dogs; and
 - (b) in the case of a tenanted property, provide written consent from either the landowner or their appointed real estate agent.
- (3) applications to keep an additional dog or dogs where—
 - (a) the property is deemed suitable by an authorised person—
 - (i) having sufficient space capable of confining all dogs;
 - (ii) noise, odours, fleas, flies and other vectors of disease will be effectively controlled; and
 - (iii) the care and welfare of the dogs is considered adequate;
 - (b) the details of every dog proposed to be kept on the premises are provided including name, age, colour/description, breed, registration number and microchip details; and
 - (c) sufficient reason has been provided, including but not limited to—
 - (i) replacement of an elderly or sick dog not expected to live;
 - (ii) a family emergency resulting in the dog being inherited;
 - (iii) merging of two households;
 - (iv) where the applicants have had approval to keep an additional dog or dogs in another local authority; or
 - (v) on premises outside a townsite, the dog or dogs are required for stock management or to be on the premises temporarily for the purposes of training for stock management.

3.4 Determination of application

In determining an application for approval to keep additional dogs, the local government is to have regard to—

- (a) the matters referred to in clause 3.5;
- (b) the effect which approval of the proposed may have on the environment or amenity of the neighbourhood; and
- (c) whether approval of the application will create a nuisance for the owners and occupiers of adjoining premises.

3.5 Where application cannot be approved

The local government will not approve an application to keep an additional dog or dogs where—

- (a) more than three dogs are proposed to be kept on premises within a townsite;
- (b) more than six dogs are proposed to be kept on premises outside a townsite; or
- (c) where any dog already kept on the premises is a dangerous dog.

3.6 Conditions of approval

(1) The local government may approve an application to keep an additional dog or dogs subject to any conditions as considered appropriate.

(2) Approval of an application is not transferable to successive owners or occupiers of the premises.

3.7 Variation of approved conditions

The local government may vary the conditions of approval by giving not less than 14 days notice.

3.8 Revocation of approval to keep additional dogs

Where a person does not comply with the conditions of approval to keep an additional dog or dogs under clause 3.6 the local government may revoke the approval to keep an additional dog or dogs.

PART 4—APPROVED KENNEL ESTABLISHMENTS**4.1 Application for licence for approved kennel establishment**

An application for a licence containing the information specified in Schedule 1, must be lodged with the local government together with—

- (a) plans and specifications of the kennel establishment, including a site plan;
- (b) copies of the notices to be given under clause 4.2(1);
- (c) written evidence that either the applicant or another person who will have the charge of the dogs, will reside on the premises or, in the opinion of an authorised person, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare;
- (d) a written acknowledgement that the applicant has read and agrees to comply with any code of practice relating to the keeping of dogs nominated by the local government; and
- (e) the set fee for the application for a licence.

4.2 Public notice of proposed use

(1) An applicant for a licence must give notice of the proposed use of the premises as an approved kennel establishment after the application for a licence has been lodged—

- (a) in a public notice within the district; and
- (b) to the owners and occupiers of any premises adjoining the premises.

(2) The public notices in subclause (1) must specify that—

- (a) any written submissions as to the proposed use are to be lodged with the local government within 14 days of the date the notice is given; and
- (b) the application, plans and specifications may be inspected at the offices of the local government.

(3) The local government may refuse to determine the application for a licence until the public notice or public notices, as the case may be, is given in accordance with its directions where—

- (a) a public notice given under subclause (1) does not clearly identify the premises; or
- (b) a public notice given under subclause (1)(a) is of a size or in a location in the newspaper which, in the opinion of an authorised person, would fail to serve the purpose of notifying persons of the proposed use of the premises.

4.3 Exemption from public notice requirements

The requirements of clauses 4.1(b), 4.2 and 4.4(a) do not apply in respect of the application for a licence where under a local planning scheme an application for a licence is made in respect of premises on which an approved kennel establishment is either a—

- (a) permitted use; or
- (b) use which the local government may approve subject to compliance with specified notice requirements.

4.4 When application can be determined

An application for a licence is not to be determined by the local government until—

- (a) the applicant has complied with clause 4.1;
- (b) the applicant submits proof that the notices referred to in clause 4.2(1) have been given in accordance with that clause; and
- (c) the local government has considered any written submissions received within the time specified in clause 4.2(2)(a) on the proposed use of the premises.

4.5 Determination of application

In determining an application for a licence, the local government is to have regard to—

- (a) the matters referred to in clause 4.6;
- (b) any written submissions received within the time specified in clause 4.2(2)(a) on the proposed use of the premises;
- (c) any economic or social benefits which may be derived by any person in the district if the application for a licence is approved;
- (d) the effect which the kennel establishment may have on the environment or amenity of the neighbourhood;
- (e) whether the approved kennel establishment will create a nuisance for the owners and occupiers of adjoining premises; and
- (f) whether or not the imposition of and compliance with appropriate conditions of a licence will mitigate any adverse effects of the approved kennel establishment identified in the preceding paragraphs.

4.6 Where application cannot be approved

The local government cannot approve an application for a licence where—

- (a) an approved kennel establishment cannot be permitted by the local government on the premises under a local planning scheme; or
- (b) an applicant for a licence or another person who will have the charge of the dogs will not reside on the premises, or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare.

4.7 Conditions of approval

- (1) The local government may approve an application for a licence subject to the conditions contained in Schedule 2 and to such other conditions as the local government considers appropriate.
- (2) In respect of a particular application for a licence, the local government may vary any of the conditions contained in Schedule 2.

4.8 Fees

- (1) On lodging an application for a licence, the applicant is to pay a set fee to the local government.
- (2) On the issue or renewal of a licence, the licensee is to pay a set fee to the local government.
- (3) On lodging an application for the transfer of a valid licence, the transferee is to pay a set fee to the local government.

4.9 Form of licence

The licence is to be in the form determined by the local government from time to time and is to be issued to the licensee.

4.10 Period of licence

- (1) The period of effect of a licence is set out in section 27(5) of the Act.
- (2) A licence is to be renewed if the set fee is paid to the local government prior to the expiry of the licence.
- (3) On the renewal of a licence the conditions of the licence at the time of its renewal continue to have effect.

4.11 Variation or cancellation of licence

- (1) The local government may vary the conditions of a licence.
- (2) The local government may cancel a licence—
 - (a) on the request of the licensee;
 - (b) following a breach of the Act, the Regulations or this local law; or
 - (c) if the licensee is not considered to be a fit and proper person in the opinion of an authorised person.
- (3) The date a licence is cancelled is to be, in the case of—
 - (a) paragraph (a) of subclause (2), the date requested by the licensee; or
 - (b) paragraphs (b) and (c) of subclause (2), the date determined under section 27(6) of the Act.
- (4) If a licence is cancelled the set fee paid for that licence is not refundable for the term of the licence that has not yet expired.

4.12 Transfer

- (1) A written application for the transfer of a valid licence from the licensee to another person must be—
 - (a) made by the transferee;
 - (b) made with the written consent of the licensee; and
 - (c) lodged with the local government together with—
 - (i) written evidence that a person will reside at or within reasonably close proximity to the premises the subject of the licence;
 - (ii) the set fee for the application for the transfer of a licence; and
 - (iii) any other relevant information required.
- (2) The local government is not to determine an application for the transfer of a valid licence until the transferee has complied with subclause (1).
- (3) The local government may approve, whether or not subject to such conditions as it considers appropriate, or refuse to approve an application for the transfer of a valid licence.
- (4) Where the local government approves an application for the transfer of a valid licence, then on the date of approval, unless otherwise specified in the notice issued under clause 4.13(b), the transferee becomes the licensee of the licence for the purposes of this local law.

4.13 Notification

The local government is to give written notice to—

- (a) an applicant for a licence of the local government's decision on her or his application;
- (b) a transferee of the local government's decision on her or his application for the transfer of a valid licence;
- (c) a licensee of any variation made under clause 4.11(1);
- (d) a licensee when her or his licence is due for renewal and the manner in which it may be renewed;
- (e) a licensee when her or his licence is renewed;
- (f) a licensee of the cancellation of a licence under clause 4.11(2)(a); and
- (g) a licensee of the cancellation of a licence under paragraphs (b) or (c) of clause 4.11(2), which notice is to be given in accordance with section 27(6) of the Act.

4.14 Inspection of kennel

With the consent of the occupier, an authorised person may inspect an approved kennel establishment at any time.

PART 5—DOGS IN PUBLIC PLACES

5.1 Places where dogs are prohibited absolutely

- (1) Designation of places where dogs are prohibited absolutely is dealt with in the Act.
- (2) If a dog enters or is in a place specified in subclause (1), every person liable for the control of the dog at that time commits an offence.
- (3) Subclause (2) does not apply to a dog who is being used as an assistance animal as defined in the *Disability Discrimination Act 1992* (Commonwealth).

5.2 Places which are dog exercise areas

Designation of places which are dog exercise areas is dealt with in the Act.

PART 6—MISCELLANEOUS

6.1 Offence to excrete

- (1) A dog must not excrete on—
 - (a) any thoroughfare or other public place; or
 - (b) any land which is not a public place without the consent of the occupier.
- (2) Subject to subclause (3), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.
- (3) The person liable for the control of the dog does not commit an offence against subclause (2) if any excreta is removed immediately by that person.

6.2 Fees and charges

Fees and charges are to be imposed and determined by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995*.

6.3 False or misleading statement

A person shall not make a false or misleading statement in connection with an application in respect of a licence under this local law.

6.4 Objections and appeals

Any person who is aggrieved by the conditions imposed in relation to a licence, the revocation of a licence, or by the refusal of the local government to grant a licence may object to or appeal against the decision under Division 1 of Part 9 of the *Local Government Act 1995*.

PART 7—ENFORCEMENT

7.1 Offences

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

7.2 General penalty

- (1) A person who commits an offence under this local law is liable, on conviction, to a penalty not exceeding \$5,000 and if the offence is of a continuing nature, to an additional penalty not exceeding \$100 for each day or part of the day during which the offence has continued.
- (2) Notwithstanding subclause (1) a person who commits an offence under clause 6.1(2) is liable, on conviction, to a penalty not exceeding \$1,000.

7.3 Prescribed offences

- (1) The offences contained in Schedule 3 are offences in relation to which a modified penalty may be imposed.
- (2) The amount appearing in the fourth column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is not a dangerous dog.

7.4 Form of infringement notices

- (1) For the purposes of this local law—
 - (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*;
 - (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 *Local Government (Functions and General) Regulations 1996*; 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 *Local Government (Functions and General) Regulations 1996*.
- (2) Where an infringement notice is given under section 9.16 of the Act in respect of an alleged offence against clause 2.4, the notice is to contain a description of the alleged offence.

Schedule 1—Application for a licence for an approved kennel establishment

[cl. 4.1]

Shire of Kent

An application for a licence for an approved kennel establishment shall contain the following information—

- (a) full name of applicant;
- (b) postal address;
- (c) email address;
- (d) landline and mobile telephone numbers as appropriate;
- (e) facsimile number if appropriate;
- (f) address of proposed kennel premises;
- (g) number of dogs;
- (h) breed of dogs if appropriate;
- (i) either—
 - (i) name and contact details of the person residing on the premises, and date from which taking up residence on the premises; or
 - (ii) name, address and contact details of the person sufficiently close to the premises so as to control the dogs and ensure their health and welfare, and date from which taking up responsibility for the premises;
- (j) a site plan of the premises showing the location of the kennels and yards and all other buildings and structures and fences;
- (k) plans and specifications of the proposed kennel establishment;
- (l) copy of public notice of proposed use to appear in newspaper;
- (m) copy of notice of proposed use to be given to adjoining premises;
- (n) written evidence that a person will reside—
 - (i) at the premises; or
 - (ii) sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare;
- (o) if the person in item (n) is not the applicant, written evidence that the person is a person in charge of the dogs; and
- (p) signed by the applicant.

Schedule 2—Conditions of a licence for an approved kennel establishment

[cl. 4.7]

Shire of Kent

An application for a licence for an approved kennel establishment may be approved subject to the following conditions—

- (a) each kennel, unless it is fully enclosed, must have a yard attached to it;
- (b) each kennel and each yard must be at a distance of not less than—
 - (i) 25m from the front boundary of the premises and 5m from any other boundary of the premises;
 - (ii) 10m from any dwelling; and
 - (iii) 25m from any church, school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;
- (c) each yard for a kennel must be kept securely fenced with a fence constructed of link mesh or netting or other materials approved by the local government;
- (d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;
- (e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the floor area of the kennel or group of kennels to which it is attached;
- (f) the upper surface of the kennel floor must be—
 - (i) at least 100mm above the surface of the surrounding ground;
 - (ii) smooth so as to facilitate cleaning;

- (iii) rigid;
- (iv) durable;
- (v) slip resistant;
- (vi) resistant to corrosion;
- (vii) non-toxic;
- (viii) impervious;
- (ix) free from cracks, crevices and other defects; and
- (x) finished to a surface having a fall of not less than 1 in 100 to a spoon drain which in turn must lead to a suitably sized diameter sewerage pipe which must be properly laid, ventilated and trapped in accordance with the health requirements of the local government;
- (g) all kennel floor washings must pass through the drain in item (f)(x) and must be piped to approved apparatus for the treatment of sewage in accordance with the health requirements of the local government;
- (h) the kennel floor must have a durable upstand rising 75mm above the floor level from the junction of the floor and external and internal walls, or internal walls must be so constructed as to have a minimum clearance of 50mm from the underside of the bottom plate to the floor;
- (i) where a yard is to be floored, the floor must be constructed in the same manner as the floor of any kennel;
- (j) from the floor, the lowest internal height of a kennel must be, whichever is the lesser of—
 - (i) 2m; or
 - (ii) four times the height of the breed of dog in the kennel, when it is fully grown, measured from the floor to the uppermost tip of its shoulders while in a stationary upright position;
- (k) the walls of each kennel must be constructed of concrete, brick, stone or framing sheeted internally and externally with good quality new zincalume or new pre-finished colour coated steel sheeting or new fibrous cement sheeting or other durable material approved by the local government;
- (l) all external surfaces of each kennel must be kept in good condition;
- (m) the roof of each kennel must be constructed of impervious material;
- (n) all kennels and yards and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorised person;
- (o) all refuse, faeces and food waste must be disposed of daily into the approved apparatus for the treatment of sewage;
- (p) noise, odours, fleas, flies and other vectors of disease must be effectively controlled;
- (q) suitable water must be available at the kennel via a properly supported standpipe and tap; and
- (r) the licensee or the person nominated in the application for a licence, must, in accordance with the application for the licence, continue to reside—
 - (i) at the premises; or
 - (ii) in the opinion of the local government, sufficiently close to the premises so as to control the dogs, and to ensure their health and welfare.

Schedule 3—Prescribed offences

[cl.7.3]

Item	Clause	Nature of offence	Modified penalty \$
1	3.1	Failing to provide means for effectively confining a dog	200
2	6.1	Dog excreting in prohibited place	100
3	6.3	Making a false or misleading statement	300
4	7.1	All other offences not otherwise specified	200

Dated 20 September 2023

The Common Seal of the Shire of Kent was affixed by authority of a resolution of Council in the presence of—

SCOTT CROSBY, President.
CHRISTIE SMITH, Chief Executive Officer.

11 October 2023.

LOCAL GOVERNMENT ACT 1995

SHIRE OF KENT

FENCING LOCAL LAW 2023

Under the powers conferred by the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Kent resolved on 20 September 2023 to make the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Kent Fencing Local Law 2023*.

1.2 Commencement

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

1.3 Repeal

The *Shire of Kent Local Laws Relating to Fencing* as published in the *Government Gazette* on 2 September 1998, are repealed.

1.4 Application

This local law applies throughout the district.

1.5 Terms used

In this local law unless the context otherwise requires—

adversely affect land has the meaning given to it in section 3 of the *Building Act 2011*;

applicant means a person who makes an application for a licence under this local law;

AS or AS/NZS means an Australian or Australian/New Zealand Standard published by Standards Australia, and available for viewing free of charge at the Shire of Kent Shire Office;

authorised person means a person authorised by the local government to perform any of the functions under this local law and includes the CEO;

barbed wire means a wire or strand of wires having small pieces of sharply pointed wire twisted around it at short intervals;

CEO means the Chief Executive Officer of the local government;

cultural and natural resource lot means a lot where a cultural and natural resource use—

- (a) is or may be permitted under a local planning scheme; and
- (b) is or will be the predominant use of the lot;

dangerous in relation to any fence means—

- (a) an electrified fence that does not comply with clause 5.2 or 5.3 of this local law;
- (b) a fence containing barbed wire other than a fence constructed and maintained in accordance with this local law;
- (c) a fence containing exposed broken glass, asbestos fibre, razor wire, metal spikes or any other potentially harmful projection or material; or
- (d) a fence that is likely to collapse or fall, or part of which is likely to collapse or fall, from any cause;

district means the district of the local government;

dividing fence has the meaning given in section 5 of the *Dividing Fences Act 1961*;

electrified fence means a fence carrying or designed to carry an electric charge;

fence means any structure used or functioning as a barrier, other than a retaining wall, irrespective of where it is located and includes a gate or door that separates the road reserve and a lot adjacent to the road reserve;

front boundary means the boundary that separates a thoroughfare and the front of a lot;

front fence means a fence in the front setback area of a lot;

front setback area means the area between the building line of a lot and the front boundary of that lot; measured at a right angle to the front boundary;

general industry lot means a lot where a general industrial use—

- (a) is or may be permitted under a local planning scheme; and
- (b) is or will be the predominant use of the lot;

height in relation to a fence means the vertical distance between the top of the fence at any point and—

- (a) the ground level; or

- (b) where the ground levels on each side of the fence are not the same, the higher ground level, immediately below that point;

light industry lot means a lot where a light industrial use—

- (a) is or may be permitted under a local planning scheme; and
- (b) is or will be the predominant use of the lot;

land includes a house, building, work or structure in or on the land;

licence means a licence, permit or approval issued under this local law;

local government means the Shire of Kent;

local planning scheme means a local planning scheme and includes any structure plan adopted or approved by the local government made under the *Planning and Development Act 2005*;

lot means a defined portion of land depicted on a plan or diagram available from, or deposited with, the Western Australian Land Information Authority and for which a separate Crown grant or certificate of title has been or can be issued and includes a strata lot;

masonry includes stone, concrete, brick or other solid material;

mixed use lot means a lot where mixed use—

- (a) is or may be permitted under a local planning scheme; and
- (b) is or will be the predominant use of the lot;

natural ground level, in relation to a development, means—

- (a) the level approved, for the purposes of the development, by the local government, under a local planning scheme; or
- (b) in any other case, the level that existed immediately before the commencement of the development (including any site works);

notice of breach means a notice referred to in clause 8.1;

occupier has the meaning given to it in section 1.4 of the *Local Government Act 1995*;

owner has the meaning given to it in section 1.4 of the *Local Government Act 1995*;

razor wire means a coiled strong wire with pieces of sharp cutting edges set across it at close intervals;

repair has the meaning given to it in section 5 of the *Dividing Fences Act 1961*;

residential lot means a lot where a residential use—

- (a) or may be permitted under a local planning scheme;
- (b) or will be the predominant use of the lot; and
- (c) includes a mixed use lot having a predominantly residential land use in the opinion of an authorised person;

retaining wall means any structure that prevents the movement of soil in order to allow ground levels of different elevations to exist adjacent to one another;

rural lot means a lot where a rural use—

- (a) is or may be permitted under a local planning scheme; and
- (b) is or will be the predominant use of the lot;

rural residential lot means a lot where a rural residential use—

- (a) is or may be permitted under a local planning scheme; and
- (b) is or will be the predominant use of the lot;

rural smallholding use means a lot where a rural smallholding use—

- (a) is or may be permitted under a local planning scheme; and
- (b) is or will be the predominant use of the lot;

Schedule means a Schedule to this local law;

secondary frontage in the case of a lot that has a frontage and access to more than one thoroughfare, means the longer or the longest of the boundaries that separates the lot from the thoroughfare;

set fee means a fee determined by the local government in accordance with sections 6.16 to 6.19 of the *Local Government Act 1995*;

special use lot means a lot where a special use—

- (a) is or may be permitted under a local planning scheme; and
- (b) is or will be the predominant use of the lot;

sufficient fence means a fence described in clause 2.2 or 2.3;

thoroughfare has the meaning given to it in section 1.4 of the *Local Government Act 1995*, but does not include a private thoroughfare that is not under the management or control of the local government;

townsite means the following townsites constituted under section 26(2) of the *Land Administration Act 1997*—

- (a) Nyabing; and
- (b) Pingrup;

visually permeable in reference to a wall, gate, door, screen or fence that the vertical surface when viewed directly from the street or other public space has—

- (a) continuous vertical or horizontal gaps of 50mm or greater width occupying not less than one third of the total surface area;
- (b) continuous vertical or horizontal gaps less than 50mm in width, occupying at least one half of the total surface area in aggregate; or
- (c) a surface offering equal or lesser obstruction to view; and

watercourse means a river, stream or creek in which water flows in a natural channel, whether permanently or intermittently.

1.6 Requirements of planning legislation and local planning scheme

Nothing within this local law affects any provision of—

- (a) the *Planning and Development Act 2005*, or any regulations or orders made under that Act; or
- (b) a local planning scheme.

1.7 Requirements of Building Act 2011

Nothing in this local law affects a provision in any written law in respect of a building permit for a fence.

1.8 Transitional provision

A dividing fence or fence lawfully constructed prior to this local law coming into operation constitutes a sufficient fence.

PART 2—SUFFICIENT FENCES

2.1 Sufficient fences—requirement

Subject to clause 2.4, a person shall not construct or alter a dividing fence that does not satisfy the requirements of a sufficient fence.

2.2 Sufficient fences—generally

(1) Subject to clauses 2.3 and 2.4, a sufficient fence—

- (a) on a residential lot a dividing fence constructed and maintained in accordance with Schedule 1;
- (b) on a general industry lot or light industry lot is a dividing fence constructed and maintained in accordance with Schedule 2; and
- (c) on a rural lot, rural residential lot or rural smallholding lot is a dividing fence constructed and maintained in accordance with Schedule 3.

(2) Where, on a mixed use lot the use or intended use, as determined by an authorised person, is predominantly—

- (a) residential use, fencing shall comply with the requirements of a residential lot; and
- (b) non-residential use, fencing shall comply with the requirements of a general industry or light industry lot.

(3) On a cultural and natural resource use lot or a special use lot, the requirements shall be determined by an authorised person—

- (a) within a townsite, fencing shall comply where the use is aligned and consistent with—
 - (i) residential use, the requirements of a residential lot; and
 - (ii) other than-residential use, the requirements of a general industry or light industry lot; and
- (b) outside a townsite, fencing shall comply where the use is aligned and consistent with—
 - (i) rural, rural residential or rural smallholding use, the requirements of a rural lot, rural residential lot or rural smallholding lot; and
 - (ii) other than as rural, rural residential or rural smallholding use, the requirements as general industry, light industry lot, rural lot, rural residential lot or rural smallholding lot.

2.3 Sufficient fences—between lots having different requirements

Subject to clause 2.4, where a fence is constructed on or near the boundary between—

- (a) a residential lot and a lot zoned for any other purpose, a sufficient fence is a fence constructed and maintained in accordance with Schedule 1;
- (b) a general industry or light industry, and a rural or rural residential lot, a sufficient fence is a fence constructed and maintained in accordance with Schedule 2; and
- (c) a rural lot and a rural residential lot, a sufficient fence is a fence constructed and maintained in accordance to the requirements of Schedule 3.

2.4 General discretion of the local government

(1) Notwithstanding the provisions of clauses 2.1, 2.2 or 2.3, and subject to Part 6, an authorised person may issue a licence for the construction or repair of a dividing fence that is not a sufficient fence where all of the owners of the lots adjoining the fence give written consent for a licence for that purpose.

(2) An agreement in respect of a dangerous fence is taken not to be an agreement between owners of adjoining properties for the purposes of subclause (1).

PART 3—FENCING GENERALLY

3.1 Fences within front setback areas

A person shall not construct a fence more than 1200mm in height, within the front setback area of a residential lot without a licence.

3.2 Fences on secondary frontages

Subject to clauses 3.1 and 3.3 a person shall not construct or maintain a fence on any secondary frontage of a residential lot unless the fence is a sufficient fence.

3.3 Sightlines at vehicle access point

(1) Fences are to be truncated or reduced to a height not more than 750mm, within 1500mm where walls, fences and other structures adjoin vehicle access points where a driveway meets a thoroughfare and where two thoroughfares intersect.

(2) The provision of subclause (1) shall not apply to a visually permeable fence that does not obscure the lines of vision of a motorist using the driveway for access to a thoroughfare.

3.4 Obstruction of watercourse

No person shall construct a fence of impervious material in any place, position or location where it will, or is likely to, act as a barrier to or restrict the flow of a watercourse.

3.5 Gates or doors in fences

A person shall not construct a gate or door in a fence that—

- (a) encroaches into or over any other land; or
- (b) opens by sliding parallel to the fence on the outside of the fence.

3.6 Retaining walls

A person shall not construct a retaining wall exceeding 500mm in height unless a building permit has been granted under section 20 of the *Building Act 2011*.

3.7 Masonry fences and walls

A person shall not construct or a wall or fence exceeding 750mm in height constructed or partially constructed of masonry unless a building permit has been granted under section 20 of the *Building Act 2011*.

3.8 Alteration of ground levels

(1) A person shall not alter the natural ground level of land on or within 1000mm of the boundary of a lot, whether by removing soil or bringing onto the land any fill of any kind, by more than 500mm without a licence.

(2) A fence constructed of corrugated fibre-reinforced pressed cement shall not have more than 150mm difference in the ground levels on each side of the fence.

(3) Where land has been filled or retained to a height of more than 500mm above natural ground level at or within 1000mm of a boundary of a lot, a person shall only construct a dividing fence that is a sufficient fence on the said filled land or retaining wall if the person produces to an authorised person the written consent of the owners of the adjoining lot.

3.9 Maintenance of fences

(1) An owner or occupier of a lot on which a fence is constructed shall maintain the fence in good condition so as to prevent it from becoming damaged, dangerous, dilapidated or unsightly.

(2) Where in the opinion of an authorised person, a fence is in a state of disrepair or is dangerous or is otherwise in breach of a provision of this local law, an authorised person may give a notice of breach under clause 8.1 to the owner or occupier of the lot on which the fence is constructed.

3.10 Fences across rights-of-way, public access ways or thoroughfares

A person shall not construct, place or maintain a fence or obstruction across any right-of-way, public access way or thoroughfare without the approval of the local government in accordance with regulation 9 of the *Local Government (Uniform Local Provisions) Regulations 1996*.

PART 4—FENCING MATERIALS

4.1 Prohibited materials

A person shall not construct, maintain or allow to remain a fence that is comprised, in whole or in part of spikes, broken glass, jagged materials, barbed wire, razor wire, asbestos or any other dangerous material except to the extent provided for in Part 5.

4.2 Pre-used fencing materials

(1) A person shall not construct or maintain a dividing fence from pre-used materials without a licence issued by an authorised person.

(2) Where a licence is issued for the use of pre-used materials, the materials shall be structurally fit for the purpose, and comply with any conditions imposed by an authorised person.

- (3) Conditions for use of pre-used fencing materials may include but are not limited to—
- (a) painting;
 - (b) treatment;
 - (c) specific use or placement; and
 - (d) upgrading.

PART 5—RESTRICTED FENCING

5.1 Barbed wire fencing

- (1) An owner or occupier of a residential lot shall not affix or allow to remain any barbed wire on any fence bounding that lot.
- (2) An owner or occupier of a rural or rural residential lot shall not place or affix barbed wire upon a fence on that lot where the fence is adjacent to a thoroughfare or other public place unless the barbed wire is fixed to the side of the fence posts furthest from the thoroughfare or other public place.
- (3) An owner or occupier of a general industry or light industry lot shall not construct or affix to any fence bounding that lot any barbed wire unless—
- (a) the wire or material are attached on posts vertically or at an angle of 45 degrees; and
 - (b) the bottom row of wire or other materials is not less than 2000mm above the ground level.
- (4) If the posts that carry the barbed wire or other materials referred to in subclause (3) are angled towards the outside of the lot bounded by the fence, the face of the fence shall be set back from the lot boundary a sufficient distance to ensure that the angled posts, barbed wire or other materials do not encroach onto or over adjoining land.

5.2 Electrified fencing for animal control

- (1) An owner or occupier of a lot shall not construct or use an electrified fence on that lot without first obtaining a licence.
- (2) Notwithstanding subclause (1), a licence is not required for an electrified fence that is—
- (a) constructed on a rural or rural residential lot;
 - (b) for the purpose of animal control;
 - (c) installed in accordance with the manufacturer's specifications; and
 - (d) not the dividing fence with a residential lot.
- (3) Notwithstanding subclause (2)(a) to (c), the local government may by written notice require an electrified fence to be removed where it is a dividing fence with an adjoining property having different requirements.

5.3 Electrified fencing for security

- (1) An electrified fence for the purpose of security shall not be present on a lot unless it complies with *AS/NZS 3016:2002 Electrical Installations—Electric Security Fences*.
- (2) A licence to have and use an electrified fence for the purpose of security shall not be issued—
- (a) on a residential lot or that portion of a fence adjoining a residential lot;
 - (b) on any other lot in a townsite without the approval of Council;
 - (c) on a lot outside a townsite without the approval of the local government; and
 - (d) unless provision is made so as to enable the fence to be rendered inoperable during the hours of business operations, if any, on the lot where it is constructed.

5.4 Razor wire fencing

- (1) An owner or occupier of a lot shall not construct a fence wholly or partly of razor wire on that lot without first obtaining a licence under subclause (2).
- (2) A licence to have a fence constructed wholly or partly of razor wire shall not be issued—
- (a) in respect of a lot that is a residential lot or that portion of a fence adjoining a residential lot;
 - (b) if the fence is within 3000mm of the boundary of the lot; or
 - (c) where any razor wire used in the construction of the fence is less than 2000mm or more than 2400mm above the ground level.

PART 6—LICENCES

6.1 Application for a licence

- (1) An owner of a lot may apply to the local government for a licence under this Part.
- (2) An application for a licence under this local law shall—
- (a) provide all necessary documentation and information required for a decision;
 - (b) provide two copies of a plan and specifications of the proposed;
 - (c) engineering certification of structural or electrical engineering specifications, if required;
 - (d) be signed by the owner of the lot;
 - (e) be forwarded to the local government together with any set fee; and
 - (f) be in the form determined by the local government from time to time.

(3) An authorised person may require an applicant to provide additional information reasonably related to an application before determining an application for a licence.

6.2 Determination of an application

(1) An authorised person may refuse to consider an application that does not comply with clause 6.1.

(2) An authorised person may—

- (a) approve an application;
- (b) approve an application subject to conditions as the authorised person sees fit; or
- (c) refuse an application.

(3) In determining whether to issue a licence, an authorised person may consider, in addition to any other matter authorised to consider, whether the construction or retention of the fence would adversely affect land or impact on—

- (a) the safe or convenient use of any land;
- (b) the safety or convenience of any person; or
- (c) the visual amenity of the streetscape or neighbouring properties.

(4) An authorised person may by written notice amend a condition imposed under subclause (2)(b).

(5) An amendment under subclause (4) is effective from the date specified in the notice.

(6) If an authorised person approves an application, a written licence and any conditions applied is to be given to the applicant.

(7) If an authorised person refuses to approve an application, written notice of that refusal and the reasons for the decision is to be given to the applicant.

6.3 Compliance with licence issued

Where a licence is issued under clause 6.2, the applicant and the owner or occupier of the lot to which the licence relates, shall comply with the terms and any conditions of that licence.

6.4 Revocation of a licence

An authorised person may revoke a licence if—

- (a) the owner or occupier requests an authorised person to do so;
- (b) the fence to which the licence relates has been demolished and is not rebuilt for a period of 6 months;
- (c) the circumstances have changed in such a way that a licence for the fence could no longer be granted under this local law;
- (d) the owner or occupier fails to comply with a condition of the licence or breaches a provision of this local law in respect of the fence; or
- (e) the owner or occupier fails to comply with a notice of breach issued under clause 8.1.

6.5 Duration of a licence

(1) Unless otherwise stated in the licence, a licence granted under this local law transfers with the lot to which it relates and is deemed to transfer to each successive owner or occupier of that lot.

(2) Where a licence is transferred under subclause (1), the successive owner or occupier may apply to an authorised person for written confirmation of this transfer.

(3) For the avoidance of doubt, a licence granted under this local law may be relied upon by any subsequent owner or occupier of the lot, and may be enforced against them by the local government.

6.6 False or misleading statement

A person shall not make a false or misleading statement in connection with any application, requirement or request under this local law.

PART 7—OBJECTIONS AND REVIEW

7.1 Objections and review

Division 1 of Part 9 of the *Local Government Act 1995* applies to a decision under this local law to—

- (a) refuse an application for a licence;
- (b) impose or vary a condition of a licence; or
- (c) revoke a licence.

PART 8—ENFORCEMENT

8.1 Notices of breach

(1) Where a breach of any provision of this local law has occurred in relation to a fence on a lot, an authorised person may give a notice of breach in writing to the owner or occupier of that lot.

(2) A notice of breach shall—

- (a) specify the provision of this local law that has been breached;
- (b) specify the particulars of the breach; and

- (c) state that the owner or occupier is required to remedy the breach within the time specified in the notice.
- (3) An owner or occupier given a notice of breach shall comply with the terms of the notice and remedy the breach within the time specified in the notice.
- (4) Should an owner or occupier fail to comply with a notice, an authorised person may enter upon the lot to which the notice relates and remedy the breach, and may recover the expenses of doing so from the owner or occupier of the lot, as the case may be, in a court of competent jurisdiction.
- (5) The provisions of this clause are subject to section 3.25 and item 12 of Division 1 of Schedule 3.1 of the *Local Government Act 1995*.
- (6) This local law is subject to sections 3.25 and 3.27 and Schedules 3.1 and 3.2 of the *Local Government Act 1995* and any power of entry exercised by the local government under this local law is subject to Part 3, Division 3, Subdivision 3 of the Act.

8.2 Offences and penalties

- (1) A person who fails to do anything required or directed to be done under this local law, or who does anything that 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.

8.3 Prescribed offences

- (1) An offence against a clause specified in Schedule 4 is a prescribed offence for the purposes of section 9.16(1) of the *Local Government Act 1995*.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 4.

8.4 Form of notices

For the purposes of this local law—

- (a) the form of the infringement notice referred to in section 9.17 of the *Local Government Act 1995* is to be in the form of Form 2 in Schedule 1 of the *Local Government (Functions and General Regulations 1996)*; and
- (b) the form of the withdrawal of infringement notice referred to in section 9.20 of the *Local Government Act 1995* is to be in the form of Form 3 in Schedule 1 of the *Local Government (Functions and General Regulations 1996)*.

Schedule 1—Sufficient fence for residential lots

[Clause 2.2(1)(a)]

- 1. On a residential lot a sufficient fence is a dividing fence that—
 - (a) is constructed of—
 - (i) corrugated fibre-reinforced pressed cement sheeting;
 - (ii) timber pickets or post and rail;
 - (iii) brick, stone or concrete;
 - (iv) factory coloured sheet metal post and panelled fence; or
 - (v) any combination of the materials described in paragraphs (i) to (iv);
 - (b) in the case of a front fence—
 - (i) is not more than 1200mm in height; or
 - (ii) is between 1200mm and 1800mm in height; and is visually permeable fence above 1200mm;
 - (c) in the case of a side boundary fence forward of the building setback line, a fence that—
 - (i) uniformly slopes down from not more than 1800mm to not more than 1200mm in height; and
 - (ii) over a maximum distance of 1500mm from the start of the front setback area from the building to the front of the lot; and
 - (d) in the case of any other dividing fence, the fence is between 1750mm and 1850mm in height, and to which an extension of lattice or other permeable material as agreed between the owner or occupiers of adjoining properties parties may be added so that the total height of the fence is a maximum of 2100mm.
 - 2. The fence shall not adversely affect land or impact on—
 - (a) the safe or convenient use of any land;
 - (b) the safety or convenience of any person; or
 - (c) the visual amenity of the streetscape or neighbouring properties.
-

Schedule 3—Sufficient fence for general industry and light industry lots

[Clause 2.2(1)(b)]

1. On a commercial or industrial lot, a sufficient fence is a dividing fence that—
 - (a) is constructed in accordance with Schedule 1; or
 - (b) is constructed of—
 - (i) galvanised or PVC coated link mesh, that is no higher than 2000mm unless it is topped with up to 3 strands of plain or barbed wire;
 - (ii) fibre reinforced cement sheets;
 - (iii) painted or galvanized steel or aluminium sheeting;
 - (iv) factory coloured sheet metal post and panelled fence;
 - (v) timber, brick, stone or concrete; or
 - (vi) any combination of the materials described in paragraphs (i)-(v);
 - (c) in the case of a front fence—
 - (i) is not more than 1200mm in height; or
 - (ii) is more than 1200mm but not higher than 2000mm unless topped with up to 3 strands of plain or barbed wire to not more than 2400mm in height; and is visually permeable above 1200mm;
 - (d) in the case of a side boundary fence forward of the building setback line, a fence that—
 - (i) uniformly slopes down from no more than 2000mm to no more than 1200mm in height; and
 - (ii) over a maximum distance of 1500mm from the start of the front setback area from the building to the front of the lot; and
 - (e) in the case of any other dividing fence, the fence is no more than 2400mm in height, including not more than three strands of plain or barbed wire.
2. Upon application, an authorised person may issue a licence varying clause 1(c), and may impose conditions.
3. The fence shall not adversely affect land or impact on—
 - (a) the safe or convenient use of any land;
 - (b) the safety or convenience of any person; or
 - (c) the visual amenity of the streetscape or neighbouring properties.

Schedule 3—Sufficient fence for rural or rural residential lots

[Clause 2.2(1)(c)]

1. On a rural or rural residential lot, a sufficient fence is a dividing fence that is at least 1200mm in height so as to prevent stock passing through and—
 - (a) in the case of a non-electrified fence, is of—
 - (i) post and wire construction with at least five wires, with the lower wires spaced closer together than the higher wires and each wire connected to posts in all cases; or
 - (ii) post and rail construction, with at least three rails connected to posts in all cases; and
 - (b) in the case of an electrified fence, constructed in accordance with clause 5.2(2) or clause 5.3 as the case may be.
2. The fence shall not adversely affect land or impact on—
 - (a) the safe or convenient use of any land;
 - (b) the safety or convenience of any person; or
 - (c) the visual amenity of the streetscape or neighbouring properties.

Schedule 4—Prescribed offences

[Clause 8.3(1)]

Item	Clause	Nature of offence	Modified penalty \$
1	2.1	Construction or alteration of a dividing fence on a lot that is not a sufficient fence without a licence	200
2	3.1	Construction of a non-compliant fence within front setback area without a licence	200

Item	Clause	Nature of offence	Modified penalty \$
3	3.2	Construction or maintenance of a non-compliant fence in a secondary setback area without a licence	200
4	3.3	Construction of a non-compliant fence, wall or other structure at a vehicle access point	200
5	3.4	Obstruction of a watercourse	200
6	3.5	Construction of a gate or fence encroaching over other land	200
7	3.6	Construction of a retaining wall more than 500mm in height without a building permit	500
8	3.7	Construction of a masonry wall or fence more than 750mm in height without a building permit	200
9	3.8(1)	Alteration of natural ground levels without a licence	500
10	3.8(2)	Construction of a corrugated fibre-reinforced pressed cement fence with more than 150m difference in ground levels on each side	200
11	3.8(3)	Construction of a fence or retaining wall more than 500mm in height within 1000mm of a boundary without written consent of adjoining owners	200
12	3.9(1)	Failure to maintain fence in good condition	200
13	3.10	Construction or maintenance of a fence across right-of-way etc. without approval	500
14	4.1	Use of prohibited materials in a fence	500
15	4.2(1)	Use of pre-used fencing materials without a licence	200
16	5.1(1)	Using or allowing to remain barbed wire on a residential lot	200
17	5.1(2)	Non-compliant use of barbed wire on a rural or rural residential lot	200
18	5.1(3)	Non-compliant use of barbed wire on a general industry or light industry lot	200
19	5.1(4)	Encroachment of barbed wire on a general industry or light industry lot over other land	500
20	5.2(1)	Construction of an electrified fence for the purposes of animal control without a licence	200
21	5.3(1)	Construction of a non-compliant electrified fence for the purposes of security	500
22	5.3(2)	Construction of an electrified fence for the purposes of security without a licence	500
23	5.4(1)	Construction of a razor wire fence without a licence	500
24	6.3	Failure to comply with conditions of a licence for fence	500
25	6.6	Making a false or misleading statement	500
26	8.1(3)	Failure to comply with notice of breach in relation to Part 5—Restricted Fencing	500
27	8.1(3)	Failure to comply with notice of breach in relation to all matters other than Part 5—Restricted Fencing	200
28	8.2(1)	Other offences not specified	200

Dated 20 September 2023

The Common Seal of the Shire of Kent was affixed by authority of a resolution of Council in the presence of—

SCOTT CROSBY, President
CHRISTIE SMITH, Chief Executive Officer

11 October 2023.

LOCAL GOVERNMENT ACT 1995

SHIRE OF KENT

PUBLIC PLACES AND LOCAL GOVERNMENT PROPERTY LOCAL
LAW 2023

Under the powers conferred by the *Local Government Act 1995* and under all other relevant powers, the Council of the Shire of Kent resolved on 20 September 2023 to adopt the following local law.

PART 1—PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Kent Public Places and Local Government Property Local Law 2023*.

1.2 Commencement

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

1.3 Application

This local law applies throughout the district.

1.4 Repeal

The following local laws are repealed—

- (a) the Municipality of the Shire of Nyabing-Pingrup adoption of *Draft Model By-laws No. 10, Relating to Petrol Pumps* published in the *Government Gazette* on 30 September 1966;
- (b) the Municipality of the Shire of Kent adoption of *Local Government Model By-laws (Parking Facilities) No. 19* published in the *Government Gazette* on 3 September 1993;
- (c) *Shire of Kent Local Law—Nuisances* published in the *Government Gazette* on 23 March 1998;
- (d) *Shire of Kent Local Laws Relating to Reserves* published in the *Government Gazette* on 23 March 1998; and
- (e) *Shire of Kent Parking Facilities Local Law* published in the *Government Gazette* on 2 September 1998.

1.5 Transitional provisions

(1) An application for, or the renewal of a licence, permit or other authorisation made under a repealed local law that has not been finally determined before the commencement day is to be dealt with and determined as if it were an application under this local law.

(2) A licence, permit or other authorisation under a repealed local law that is in force before the commencement day is to be regarded on and after that day as a licence under this local law and may be dealt with accordingly.

1.6 Terms used

(1) In this local law—

Act means the *Local Government Act 1995*;

applicant means a person who applies for a licence;

application means an application for a licence;

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

building means any building or structure which is local government property and includes any—

- (a) hall or room; and
- (b) corridor, stairway or annexe of any hall or room; and
- (c) the immediate environs of the building if the context requires, but does not include an open space, a carpark or a similar;

building permit means a permit granted under section 20 of the *Building Act 2011*;

bulk rubbish container means a bin or container designed or used for holding a substantial quantity of rubbish and which is unlikely to be lifted without mechanical assistance, but does not include a bin or container used in connection with the local government's regular domestic rubbish collection service;

carriageway has the meaning given to it in the *Road Traffic Code 2000*;

CEO means the Chief Executive Officer of the local government;

children's playground means an area set aside for use by children and noted by the presence of any of the following—

- (a) dedicated children's playground equipment,
- (b) the presence of either sand or other form of soft fall surface; or
- (c) a sign indicating the area is a children's playground;

closed thoroughfare means a thoroughfare wholly or partially closed under section 3.50 or 3.50A of the Act;

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

Code means the *Road Traffic Code 2000*;

costs means all expenses directly associated with reinstatement or replacement, and includes administrative expenses associated with reinstatement or replacement;

Council means the council of the local government;

crossover means a crossing giving access from a public thoroughfare to—

- (a) private land; or
- (b) a private thoroughfare serving private land;

determination means a determination made under clause 2.1;

district means the district of the local government;

emergency vehicle has the meaning given to it by the Code;

entertainment means—

- (a) the action of providing or being provided with amusement or enjoyment; or
- (b) an event, performance, or activity designed to entertain others;

footpath has the meaning given to it in the *Road Traffic Code 2000*;

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;

garden means any part of a thoroughfare planted, developed or treated, otherwise than as a lawn, with one or more plants;

hire includes offer to hire and expose for hire;

intersection has the meaning given to it in the *Road Traffic Code 2000*;

kerb includes the edge of a carriageway;

lawn means any part of a thoroughfare which is planted only with grass, or with a similar plant, but will include any other plant provided that it has been planted by the local government;

licence means a licence, permit or approval issued under this local law;

licence document means a licence document issued under this local law;

licensed premises has the same meaning as is given to it in section 3 of the *Liquor Control Act*;

licence holder means a person who holds a licence;

liquor has the meaning given to it in section 3 of the *Liquor Control Act*;

Liquor Control Act means the *Liquor Control Act 1988*;

local government means the Shire of Kent;

local government property means anything except a thoroughfare—

- (a) which belongs to or is leased by 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;

local public notice has the meaning given to it in section 1.7 of the Act;

lot has the meaning given to it in the *Planning and Development Act 2005*;

market means a collection of stalls, stands or displays erected for the purpose of selling or hiring goods or services or carrying out any other transaction;

nuisance means any activity, thing, condition, circumstance or state of affairs caused or contributed to by a person which—

- (a) is injurious or dangerous to the health or safety of another person of normal susceptibility; or
- (b) which has a disturbing effect on the state of reasonable physical, mental or social well being of another person;

owner or occupier, in relation to land, has the meaning given to it in section 1.4 of the Act, but does not include the local government;

owner where used in relation to—

- (a) a vehicle licensed under the *Road Traffic (Vehicles) Act 2012*, means the person in whose name the vehicle has been registered under the *Road Traffic (Vehicles) Act 2012*; and

(b) any other vehicle, means the person who owns, or is entitled to possession of that vehicle;
park in relation to a vehicle, has the meaning given to it by the Code;

permitted verge treatment means any one of the treatments described in clause 6.7(3), and includes any reticulation pipes and sprinklers;

person does not include the local government;

public notice means such notice as the local government considers necessary—

- (a) stipulating duration and placement of notices as is considered relevant to inform the community;
- (b) not requiring compliance with local public notice under section 1.7 of the Act; and
- (c) which may be placed by the local government as a public notice on the local government's website or other means of informing the public;

public place means—

- (a) a thoroughfare;
- (b) any local government property; or
- (c) a place to which the public have access;

repealed local law means a local law repealed under clause 1.4;

restricted local government property means local government property which by its nature or by sign erected by the local government property does not have public access, and includes—

- (a) a building used as a residence and the whole of the land on which it is situated;
- (b) a non-residential building occupied under an agreement with the local government and the whole or identified portion of the land on which it is situated;
- (c) land occupied under an agreement with the local government; and
- (d) buildings or land restricted by the local government for municipal purposes to ensure public safety, or for community interest or benefit;

sell includes—

- (a) offer or attempt to sell;
- (b) display for sale;
- (c) send, forward or deliver for sale or on sale;
- (d) barter or exchange;
- (e) dispose, by lot or chance or by auction;
- (f) supply, or offer, agree or attempt to supply—
 - (i) in circumstances which the supplier derives or would be likely to derive a direct or indirect pecuniary benefit; or
 - (ii) gratuitously, but with a view to gaining or maintaining custom or other commercial advantage; or
- (g) authorise, direct, cause or permit to be done any act referred to in this definition;

set fee refers to fees and charges imposed and determined by the local government under and in accordance with sections 6.16 to 6.19 of the Act;

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

special purpose vehicle has the meaning given to it by the Code;

stall means a movable or temporarily fixed structure, stand or table in, on or from which goods or services are sold and includes a vehicle;

street tree means any tree planted or self sown in a thoroughfare, of an appropriate species and in an appropriate location, for the purposes of contributing to the appearance of the thoroughfare;

thoroughfare has the meaning given to it by the Act;

townsite means the following townsites constituted under section 26(2) of the *Land Administration Act 1997*—

- (a) Nyabing; and
- (b) Pingrup;

trading means selling or hiring goods or services and includes the setting up of a stall and conducting business at a stall;

UAV means unmanned aircraft, other than a balloon or kite;

vehicle includes—

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

but excludes—

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

verge means that part of a thoroughfare between the carriageway and the land which abuts the thoroughfare, but does not include any footpath; and

waste includes matter—

- (a) whether liquid, solid, gaseous or radioactive and whether useful or useless, which is discharged into the environment; or
- (b) prescribed by regulations under the *Waste Avoidance and Resource Recovery Act 2007* to be waste.

1.7 Interpretation

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

1.8 Assistance animals

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

1.9 Overriding power to hire and agree

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

PART 2—DETERMINATIONS IN RESPECT OF LOCAL GOVERNMENT PROPERTY

2.1 Determinations as to use of local government property

The Council may make a determination in accordance with clause 2.2—

- (a) setting aside specified local government property for the pursuit of all or any of the activities referred to in clause 2.7;
- (b) prohibiting a person from pursuing all or any of the activities referred to in clause 2.8 on specified local government property;
- (c) as to the matters in clauses 2.7(2) and 2.8(2); and
- (d) as to any matter ancillary or necessary to give effect to a determination.

2.2 Procedure for making a determination

- (1) The local government is to give local public notice of the intention to make a determination.
- (2) The local public notice referred to in subclause (1) is to state that—
 - (a) the Council intends to make a determination, the purpose and effect of which is summarised in the notice;
 - (b) a copy of the proposed determination may be inspected and obtained from the offices of the local government; and
 - (c) submissions in writing about the proposed determination may be lodged with the local government within 21 days after the date of publication.
- (3) If no submissions are received in accordance with subclause (2)(c), the Council is to decide to—
 - (a) give local public notice that the proposed determination has effect as a determination on and from the date of publication;
 - (b) amend the proposed determination, in which case subclause (5) is to apply; or
 - (c) not continue with the proposed determination.
- (4) If submissions are received in accordance with subclause (2)(c), the Council is to—
 - (a) consider those submissions; and
 - (b) decide—
 - (i) whether or not to amend the proposed determination; or
 - (ii) whether or not to continue with the proposed determination.
- (5) If the Council decides to amend the proposed determination, local public notice is to be given—
 - (a) of the effect of the amendments; and
 - (b) that the proposed determination has effect as a determination on and from the date of publication.
- (6) If the Council decides not to amend the proposed determination, local public notice is to be given that the proposed determination has effect as a determination on and from the date of publication.
- (7) A proposed determination is to have effect as a determination on and from the date of publication of the local public notice referred to in subclauses (3), (5) and (6).
- (8) A decision under subclause (3) or (4) is not to be delegated by the Council.

2.3 Discretion to erect sign

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

2.4 Determination to be complied with

A person shall comply with a determination.

2.5 Register of determinations

- (1) The local government is to keep a register of determinations made under clause 2.1, and of any amendments to or revocations of determinations made under clause 2.6.
- (2) Sections 5.94 and 5.95 of the Act apply to the register referred to in subclause (1) and for that purpose the register is to be taken to be information within section 5.94(u)(i) of the Act.

2.6 Amendment or revocation of a determination

- (1) The Council may amend or revoke a determination.
- (2) The provisions of clause 2.2 are to apply to an amendment of a determination as if the amendment were a proposed determination.
- (3) If the Council revokes a determination local public notice is to be given of the revocation and the determination is to cease to have effect on the date of publication.

2.7 Activities which may be pursued on specified local government property

- (1) A determination may provide that specified local government property is set aside as an area on which a person may—
- (a) take, ride or drive a vehicle, or a particular class of vehicle;
 - (b) use a UAV;
 - (c) use a children's playground provided that the person is under an age specified in the determination, but the determination is not to apply to a person having the charge of a person under the specified age;
 - (d) launch, beach or leave a boat;
 - (e) take or use a boat, or a particular class of boat;
 - (f) deposit refuse, rubbish or liquid waste, whether or not of particular classes, and whether or not in specified areas of that local government property;
 - (g) play or practise—
 - (i) golf or archery;
 - (ii) pistol or rifle shooting, but subject to the compliance of that person with the *Firearms Act 1973*; or
 - (iii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property; and
 - (h) ride a bicycle, a skateboard, rollerblades, a sandboard or a similar device.
- (2) A determination may specify the extent to which and the manner in which an activity referred to in subclause (1) may be pursued and in particular—
- (a) the days and times during which the activity may be pursued;
 - (b) that an activity may be pursued on a class of local government property, specified local government property or all local government property;
 - (c) that an activity is to be taken to be prohibited on all local government property other than that specified in the determination;
 - (d) may limit the activity to a class of vehicles, equipment or things, or may extend it to all vehicles, equipment or things;
 - (e) may specify that the activity can be pursued by a class of persons or all persons; and
 - (f) may distinguish between different classes of the activity.

2.8 Activities which may be prohibited on specified local government property

- (1) A determination may provide that a person is prohibited from pursuing all or any of the following activities on specified local government property—
- (a) riding a bicycle, a skateboard, rollerblades, a sandboard or a similar device;
 - (b) taking, riding or driving a vehicle on the property or a particular class of vehicle;
 - (c) riding or driving a vehicle of a particular class or any vehicle above a specified speed;
 - (d) taking or using a boat, or a particular class of boat;
 - (e) the playing or practice of—
 - (i) golf, archery, pistol shooting or rifle shooting; or
 - (ii) a similar activity, specified in the determination, involving the use of a projectile which, in the opinion of the local government may cause injury or damage to a person or property;
 - (f) the playing or practice of any ball game which may cause detriment to the property or any fauna on the property; and
 - (g) the traversing of land which in the opinion of the local government has environmental value warranting such protection, either absolutely or except by paths provided for that purpose.
- (2) A determination may specify the extent to which and the manner in which a person is prohibited from pursuing an activity referred to in subclause (1) and, in particular—
- (a) the days and times during which the activity is prohibited;

- (b) that an activity is prohibited on a class of local government property, specified local government property or all local government property;
- (c) that an activity is prohibited in respect of a class of vehicles, equipment or things, or all vehicles, equipment or things;
- (d) that an activity is prohibited in respect of a class of persons or all persons; and
- (e) may distinguish between different classes of the activity.

2.9 Sign under repealed local law taken to be determination

(1) Where a sign erected on local government property has been erected under a repealed local law, then it is to be taken to be and have effect as a determination on and from the commencement day, except to the extent that the sign is inconsistent with any provision of this local law or any determination made under clause 2.1.

(2) Clause 2.5 does not apply to a sign referred to in subclause (1).

PART 3—ACTIVITIES ON LOCAL GOVERNMENT PROPERTY REQUIRING A LICENCE

3.1 Activities requiring a licence

(1) A person shall not without a licence—

- (a) subject to subclause (3) hire local government property;
- (b) advertise anything by any means on local government property;
- (c) erect, on local government property a structure for public amusement or for any performance, whether for gain or otherwise;
- (d) teach, coach or train, for profit, any person in any facility which is local government property;
- (e) plant any plant or sow any seeds on local government property;
- (f) carry on any trading on local government property unless the trading is conducted—
 - (i) with the consent of a person who holds a licence to conduct a function, and where the trading is carried on under and in accordance with the licence; or
 - (ii) by a person who has a licence or permit to carry on trading on local government property under any written law;
- (g) conduct or set up a market on local government property or public place;
- (h) unless an employee of the local government in the course of her or his duties or on an area set aside for that purpose—
 - (i) drive or ride or take any vehicle on to local government property; or
 - (ii) park or stop any vehicle on local government property;
- (i) conduct a function or entertainment event on local government property;
- (j) 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;
- (k) light a fire on local government property except in a facility provided for that purpose;
- (l) parachute, hang glide, abseil or base jump from or on to local government property;
- (m) erect a building or a refuelling site on local government property;
- (n) make any excavation on or erect or remove any fence on local government property;
- (o) 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;
- (p) depasture any horse, sheep, cattle, goat, camel, ass or mule on local government property;
- (q) conduct or take part in any gambling game or contest or bet, or offer to bet, publicly;
- (r) erect, install, operate or use any broadcasting, public address system, loudspeaker or other device for the amplification of sound on local government property; or
- (s) film or make a recording as part of or for commercial gain on local government property.

(2) An authorised person may exempt a person from compliance with subclause (1) on the application of that person.

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

3.2 Licence to erect structures or camp

(1) In this clause—

camp unless the context requires otherwise has the same meaning as given to it in section 5 of the *Caravan Parks and Camping Grounds Act 1995*;

caravan has the same meaning as given to it in section 5 of the *Caravan Parks and Camping Grounds Act 1995*;

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

park home has the same meaning as given to it in section 5 of the *Caravan Parks and Camping Grounds Act 1995*; and

structure includes a caravan, park home, or camp.

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

3.3 Licence required for possession and consumption of liquor

- (1) A person shall not offer for sale, consume, have in her or his possession or under her or his control on local government property, any liquor unless—
- (a) permitted under the *Liquor Control Act*; and
 - (b) a licence has been obtained for that purpose from the local government.
- (2) Subclause (1) does not apply where the liquor is in a sealed container.

PART 4—BEHAVIOUR ON LOCAL GOVERNMENT PROPERTY

4.1 Application

In this Part—

local government property includes any structure, facility or item constructed or owned by the local government which may be situated on land not under the local government's management.

4.2 Restricted local government property

Nothing in this local law is to be construed as—

- (a) permitting access to or activities by the public on restricted local government property without the express approval—
 - (i) in the case of a building used as a residence and the whole of the land on which it is situated, by the occupier or authorised representative of the occupier;
 - (ii) in the case of a non-residential building occupied under an agreement with the local government, the building and the whole of the land on which it is situated, by the person occupying the building;
 - (iii) in the case of land occupied under an agreement with the local government, by the person occupying the land; and
 - (iv) in the case of a building or land restricted by the local government for municipal purposes to ensure public safety, or for community interest or benefit, by an authorised person; and
- (b) limiting the right of the occupier of restricted local government property to full use of that property for their private enjoyment as permitted by law or by agreement with the local government.

4.3 Behaviour which interferes with others

In or on any local government property, a person shall not, behave in a manner which—

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

4.4 Behaviour detrimental to property

A person shall not behave in or on local government property in a way which is or might be detrimental to the property, including but not limited to—

- (a) removing any thing from the local government property including 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, including a plant, a seat provided for the use of any person or a building.

4.5 No unauthorised entry to function

- (1) A person shall not enter local government property on such days or during such times as the property is set aside for a function, except—
- (a) through the proper entrance for that purpose; and
 - (b) on payment of any fee chargeable for admission as determined by the hirer at the time.
- (2) An authorised person may exempt a person from compliance with subclause (1)(b).

4.6 Taking or injuring fauna

(1) 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 unless it has been shed or discarded by the fauna in a normal or natural manner.

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

4.7 Flora

(1) In this clause—

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

(2) On or above any local government property unless authorised to do so under a written law or with the written approval of an authorised person, a person shall not—

- (a) remove, damage or interfere with any flora; or
- (b) plant or deposit any flora.

4.8 Animals

Unless otherwise approved by an authorised person or authorised by other written law, a person shall not on any local government property—

- (a) tether any animal other than a dog, to an object or tree; or
- (b) permit any animal other than a dog or cat, to enter unless authorised by a licence.

4.9 Waste

A person shall not deposit or discard waste on local government property except—

- (a) in a place or receptacle set aside by an authorised person for that purpose; and
- (b) in accordance with any conditions that may be specified on the receptacle or a sign.

4.10 Vehicles on local government property

(1) Unless authorised by a licence or determination, a person shall not take or cause a vehicle to be taken onto or driven on local government property unless—

- (a) subject to subclause (3), the local government property is clearly designated as a road, access way, or car park;
- (b) the vehicle is driven by a local government employee, authorised person or contractor engaged by the local government, who is engaged in—
 - (i) providing a service or making a delivery in connection with the local government property; or
 - (ii) maintaining the local government property;
- (c) the person is driving an emergency vehicle or special purpose vehicle in the course of his or her duties;
- (d) the vehicle is—
 - (i) used in accordance with the conditions set down by the local government or an authorised person; and
 - (ii) of a type allowed to be taken onto the local government property by the local government or an authorised person; or
- (e) the vehicle is a motorised wheelchair, and the driver of that vehicle is a person with a disability.

(2) A person shall not drive a vehicle or allow a vehicle to be driven on local government property at a speed exceeding 20 kilometres per hour or as otherwise indicated by a sign, or in such a manner as to cause danger to any person.

(3) Other than in accordance with subclause (1)(b), (c), (d) or (e), a person shall not drive a vehicle on local government property or part of it that is being used for a function for which a licence has been obtained unless permitted to do so by the licence holder or an authorised person.

4.11 UAVs

A person shall not use a UAV on or from local government property except where a licence or determination specifies a particular local government property.

4.12 Archery, pistol or rifle shooting

A person shall not play or practise archery, pistol or rifle shooting on local government property except on land which is reserved by the local government for that purpose, or as otherwise provided by a determination or licence.

4.13 Playing or practising golf

A person shall not play or practise golf on local government property except where a licence or determination specifies a particular local government property.

4.14 Prohibition relating to bicycles, skateboards etc. on local government property

Unless the local government property is clearly identified for the purpose or with the approval of an authorised person, a person shall not, use or ride a bicycle or wheeled recreational device, skateboard or roller-blades, or sand board or similar devices on any local government property—

- (a) inside, or on the curtilage to, a building;
- (b) which has been prepared or is intended for another purpose; or
- (c) in or on a lakebed or waterway.

PART 5—MATTERS RELATING TO PARTICULAR LOCAL GOVERNMENT PROPERTY**5.1 No entry to fenced, closed or restricted local government property**

- (1) Unless that person is authorised to do so by an authorised person, a person shall not enter onto—
- (a) local government property which has been fenced off or closed to the public by a sign or otherwise unless that person is authorised to do so by the local government; or
 - (b) restricted local government property except in accordance with clause 4.2.
- (2) Nothing in this local law is to be construed as preventing the access necessary by persons empowered to do so under a written law.

5.2 Only specified gender to use entry of toilet block or change room

- (1) Where a sign on a toilet block or change room specifies that a particular entry of the toilet block or change room is to be used by—
- (a) females—then a person of the male gender shall not use that entry of the toilet block or change room;
 - (b) males—then a person of the female gender shall not use that entry of the toilet block or change room; or
 - (c) families—then, where the toilet block or change room is being used by a family, only an immediate member of that family may use that entry of the toilet block or change room.
- (2) Subclause (1)(a) and (b) does not apply to a child, when accompanied by a parent, guardian or caregiver, where the child is—
- (a) under the age of 8 years; or
 - (b) otherwise permitted by an authorised person to use the relevant entry.

5.3 Use of shower or bath facilities

A person may use a shower or bath facility in change rooms only on conditions that—

- (a) the facilities shall be used by the person only for the purpose of cleansing, bathing and washing themselves; and
- (b) the facilities shall not be used for the purpose of laundering of clothing or washing of other articles.

PART 6—ACTIVITIES IN THOROUGHFARES*Division 1—General***6.1 General prohibitions**

A person shall not—

- (a) plant, or allow to remain, in a thoroughfare a plant that is or may become an obstruction to a reasonable sight line for a driver of any vehicle negotiating or using the thoroughfare;
- (b) damage a lawn or a garden, or remove any plant or part of a plant from a lawn or a garden, in a thoroughfare unless—
 - (i) the person is the owner or the occupier of the lot abutting that portion of the thoroughfare and the lawn or the garden or the particular plant has not been installed or planted by the local government; or
 - (ii) the person is acting under the authority of a written law;
- (c) damage, or remove a street tree, or part of a street tree, irrespective of whether it was planted by the owner or occupier of the lot abutting the thoroughfare or by the local government, unless—
 - (i) the damage to, or removal of, the street tree is authorised by an authorised person in writing; or
 - (ii) the person is acting under authority of written law;
- (d) except as permitted by this local law place, or allow to be planted, placed or remain, on a thoroughfare any thing (except water) that—
 - (i) obstructs the thoroughfare; or
 - (ii) results in a hazard for any person using the thoroughfare;

- (e) unless at the direction of an authorised person, damage, remove or interfere with any part of a thoroughfare, or any structure erected on a thoroughfare, by the local government or a person acting under the authority of a written law; or
- (f) play or participate in any game or sport so as to cause danger to any person or thing or unreasonably impede the movement of vehicles or persons on a thoroughfare.

6.2 Activities allowed with a licence

(1) A person shall not, without a licence—

- (a) dig or otherwise create a trench through or under a kerb or footpath;
- (b) throw, place or deposit any thing on a verge except for removal by the local government under a bulk rubbish collection, and then only in accordance with the terms and conditions and during the period of time advertised in connection with that collection by the local government;
- (c) cause any obstruction to a vehicle or a person using a thoroughfare;
- (d) cause any obstruction to a water channel or a water course in a thoroughfare;
- (e) throw, place or drain offensive, noxious or dangerous fluid onto a thoroughfare;
- (f) damage a thoroughfare;
- (g) fell or damage any street tree;
- (h) fell any tree onto a thoroughfare;
- (i) light any fire or burn any thing on a thoroughfare other than in a stove or fireplace provided for that purpose;
- (j) unless installing, or in order to maintain, a permitted verge treatment—
 - (i) lay pipes under or provide taps on any verge; or
 - (ii) place or install, on any part of a thoroughfare, any thing such as gravel, stone, flagstone, cement, concrete slabs, blocks, bricks, pebbles, plastic sheeting, kerbing, wood chips, bark or sawdust;
- (k) provide, erect, install or use in or on any building, structure or land abutting on a thoroughfare any hoist or other thing for use over the thoroughfare;
- (l) on a thoroughfare, park, use anything or do anything so as to create a nuisance;
- (m) place or cause to be placed on a thoroughfare a bulk rubbish container;
- (n) interfere with the soil of, or anything in, a thoroughfare or take anything from a thoroughfare;
- (o) conduct or carry on any trading on a thoroughfare;
- (p) conduct, carry on or set up a market on a thoroughfare; or
- (q) conduct or carry on an entertainment event on a thoroughfare.

(2) An authorised person may exempt a person from compliance with subclause (1) on the application of that person.

6.3 Assignment of numbers

(1) In this clause—

number means a number with or without an alphabetical suffix indicating the street address of land as assigned by the local government from time to time, in accordance with this local law.

(2) An authorised person may assign a number to a lot in the district and may assign another number to the lot instead of that previously assigned.

6.4 No driving on closed thoroughfare

A person shall not drive or take a vehicle on a thoroughfare wholly or partially closed under section 3.50 or 3.50A of the Act unless—

- (a) it is in accordance with any limit or exception specified in the order made under section 3.50 of the Act; or
- (b) the person has first obtained a licence.

6.5 Fencing of public place—Item 4(1) of Division 1, Schedule 3.1 of Act

A public place, as that term is defined in clause 1.6, is specified as a public place for the purpose of item 4(1) of Division 1 of Schedule 3.1 of the Act.

Division 2—Permitted verge treatments

6.6 Application

This Division only applies to townsites.

6.7 Permitted verge treatments

- (1) A person shall not install or maintain a verge treatment which is not a permitted verge treatment.
- (2) An owner or occupier of land which abuts on a verge may install a permitted verge treatment, on that part of the verge directly in front of her or his land.
- (3) A permitted verge treatment is—
 - (a) the planting and maintenance of a lawn;

- (b) the planting and maintenance of a garden provided that—
 - (i) clear sight visibility is maintained at all times for a person using the abutting thoroughfare in the vicinity of an intersection or bend in the thoroughfare or using a driveway on land adjacent to the thoroughfare for access to or from the thoroughfare;
 - (ii) where there is no footpath, a pedestrian has safe and clear access of a minimum width of 2m along that part of the verge immediately adjacent to the kerb;
 - (iii) it does not include a wall or built structure; and
 - (iv) is not of a thorny, poisonous or hazardous nature;
 - (c) subject to subclause (4), the installation of material which does not detract from the amenity of the area, including but not limited to—
 - (i) bituminous surface or in-situ concrete, subject to reduction of area shedding of storm water or flooding;
 - (ii) use of paving bricks or concrete slabs; and
 - (iii) all forms of loose aggregate materials such as pebbles, stones and gravel, not larger than 50mm and contained within the verge area at all times; and
 - (d) other treatment approved by the local government.
- (4) Where installation of material which would create a hard surface has been installed or is intended, an authorised person may by written notice, require—
- (a) a reduction of area covered or to be covered, if shedding of storm water or flooding is likely to cause a nuisance to neighbours or users of a thoroughfare; and
 - (b) an area of open space to a maximum of 1m from the edge of a street trees.
- (5) The owner and occupier of the lot abutting a verge treatment referred to in subclause (1) are each to be taken to have installed and maintained that verge treatment for the purposes of this clause and clause 6.9.

6.8 Obligations of owner or occupier

An owner or occupier who installs or maintains a permitted verge treatment shall—

- (a) keep the permitted verge treatment in a good and tidy condition and, where the verge treatment is a garden or lawn, ensure that a footpath on the verge and a carriageway adjoining the verge is not obstructed by the verge treatment;
- (b) ensure that clear sight visibility is maintained at all times for a person using the abutting thoroughfare in the vicinity of an intersection or bend in a carriageway, or using a driveway on land adjacent to the thoroughfare for access to or from the thoroughfare;
- (c) not place any obstruction on or around the verge treatment;
- (d) not disturb a footpath on the verge;
- (e) ensure that the verge treatment does not damage or obstruct a drain, manhole, galley, inspection pit, channel, kerb or tree planted by the local government; and
- (f) ensure that any sprinklers or pipes installed to irrigate a verge treatment—
 - (i) do not protrude above the level of the lawn or verge treatment when not in use;
 - (ii) are not used at such times so as to cause unreasonable inconvenience to pedestrians or other persons; and
 - (iii) do not otherwise present a hazard to pedestrians or other persons.

6.9 Transitional provision

(1) In this clause—

former provisions means the provisions of the repealed local laws which permitted certain types of verge treatments, whether with or without the consent of the local government.

(2) A verge treatment is to be taken to be a permitted verge treatment for so long as the verge treatment remains of the same type and continues to comply with the former provisions which—

- (a) was installed prior to the commencement day; and
- (b) on the commencement day is a type of verge treatment which was permitted under and complied with the former provisions.

6.10 Power to carry out public works on verge

Where the local government or an authority is empowered to do so under a written law disturbs a verge, the local government or the authority—

- (a) is not liable to compensate any person for that disturbance;
- (b) may backfill with sand, if necessary, any garden or lawn; and
- (c) is not liable to replace or restore any—
 - (i) verge treatment and, in particular, any plant or any material or other hard surface; or
 - (ii) sprinklers, pipes or other reticulation equipment.

*Division 3—Vehicle crossovers***6.11 Temporary crossovers**

(1) Where it is likely that works on a lot will involve vehicles leaving a thoroughfare and entering the lot, the person responsible for the works shall obtain a licence for the construction of a temporary crossover to protect the existing carriageway, kerb, drains, footpath, existing materials and street trees, where—

- (a) a crossover does not exist; or
- (b) a crossover does exist, but the nature of the vehicles and their loads is such that they are likely to cause damage to the crossover.

(2) The person responsible for the works in subclause (1) is to be taken to be—

- (a) the builder named on the building permit issued under the *Building Act 2011*, if one has been issued in relation to the works; or
- (b) the owner of the lot, if no building permit has been issued under the *Building Act 2011* in relation to the works.

(3) If an authorised person approves an application for a licence for the purpose of subclause (1), the licence is taken to be issued on the condition that until such time as the temporary crossover is removed, the licence holder shall keep the temporary crossover in good repair and in such a condition so as not to create any danger or obstruction to persons using the thoroughfare.

6.12 Removal of redundant crossover

(1) Where works on a lot will result in a crossover no longer giving access to a lot, the crossover is to be removed and the kerb, drain, footpath, verge and any other part of the thoroughfare affected by the removal are to be reinstated to the satisfaction of an authorised person.

(2) An authorised person may give written notice to the owner or occupier of a lot requiring her or him within the period of time stated in the notice to—

- (a) remove any part of or all of a crossover which does not give access to the lot; and
- (b) reinstate the kerb, drain, footpath, verge and any other part of the thoroughfare, which may be affected by the removal.

6.13 Crossovers in unsafe locations

(1) Where a crossover is in an unsafe location, the local government may give notice to the owner or occupier to—

- (a) remove the crossover; or
- (b) make the crossover safe.

(2) In determining whether the crossover is in an unsafe location, the local government shall have regard to—

- (a) any guidelines or advice Main Roads Western Australia sought or published from time to time;
- (b) the usage of the thoroughfare; and
- (c) alternative treatments available to make the crossover safe.

(3) Any notice issued under subclause (1) is to give a minimum period of 28 days to remove or make the crossover safe, provided immediate measures are taken to advise users of the thoroughfare of the circumstances deemed unsafe.

PART 7—ACTIVITIES IN PUBLIC PLACES**7.1 Leaving animal or vehicle in public place**

(1) A person shall not leave an animal or a vehicle, or any part of a vehicle, in a public place so that it obstructs the use of any part of that public place, unless that person has first obtained a licence or is authorised to do so under a written law.

(2) A person does not contravene subclause (1) where the animal is secured or tethered for a period not exceeding 1 hour.

(3) A person does not contravene subclause (1) where the vehicle is left for a period not exceeding 24 hours.

7.2 Prohibitions relating to animals

(1) In this clause, **owner** in relation to an animal includes—

- (a) an owner of it;
- (b) a person in possession of it;
- (c) a person who has control of it; and
- (d) a person who ordinarily occupies the premises where the animal is permitted to stay.

(2) An owner of an animal shall not—

- (a) allow the animal other than a cat to enter or remain for any time on any public place except for the use of the public place as a thoroughfare and unless it is led, ridden or driven;
- (b) allow an animal which has a contagious or infectious disease to be led, ridden or driven in a public place; or
- (c) train or race the animal in a public place.

(3) An owner of a horse shall not lead, ride or drive a horse on a thoroughfare, unless that person does so under a licence or under the authority of a written law.

PART 8—PARKING

8.1 Parking on a carriageway with heavy and long vehicles

(1) Unless engaged in the picking up or setting down of goods, a person shall not park on any part of a thoroughfare in a townsite for any period exceeding 1 hour, a vehicle or any combination of vehicles, that together with any projection on, or load carried by, the vehicle or combination of vehicles, is 7.5 metres or more in length or exceeds a GVM of 4.5 tonnes.

(2) Nothing in this clause affects the operation of any other clause in this local law or any other written law relating to the parking or stopping of vehicles.

8.2 Parking generally

Subject to clause 9.1(2), unless otherwise indicated, parking in a thoroughfare is to be parallel with the edge of the carriageway.

PART 9—SIGNS AND POWERS TO GIVE DIRECTIONS

9.1 Signs installed by the local government

(1) The local government may install a sign in public places specifying any conditions of use which apply to that public place, local government property or thoroughfare.

(2) Where parking of vehicles in a thoroughfare is controlled by a sign, the sign shall be read as applying to that part of the thoroughfare which—

- (a) lies beyond the sign;
- (b) lies between the sign and the next sign beyond that sign; and
- (c) is on that side of the thoroughfare adjacent to the sign.

(3) A person shall comply with a sign erected under subclause (1) or (2).

(4) A condition of use specified on a sign erected under subclause (1) or (2) is to be for the purpose of giving notice of the effect of a provision of this local law.

(5) Clause 2.5 does not apply to a sign referred to in subclause (1) or (2).

9.2 Transitional provision

Where a sign in a public place, on local government property or on a thoroughfare has been erected under a repealed local law then, on and from the commencement day, it is to be taken to be a sign erected under clause 9.1 if—

- (a) the sign specifies a condition of use relating to the thoroughfare which gives notice of the effect of a provision of this local law; and
- (b) the condition of use specified is not inconsistent with any provision of this local law.

9.3 Authorised person to be obeyed

(1) A person on or in local government property or on a thoroughfare that is given a lawful direction by an authorised person shall comply with that direction.

(2) A person shall not obstruct or hinder an authorised person in the performance of that person's duties.

9.4 Refusal of entry and removal

(1) If an authorised person reasonably suspects that a person is breaching, or has just breached, a provision of this local law or any other written law, an authorised person may—

- (a) refuse to allow that person to enter local government property;
- (b) if the person is on local government property, direct the person to leave the local government property; and
- (c) specify a period of up to 30 calendar days within which the person is not to re-enter the local government property.

(2) A person who has been refused entry or who has been directed to leave under subclause (1) shall immediately leave the local government property quickly and peaceably.

(3) If a person fails to comply with subclause (2), an authorised person may remove the person, or arrange for the person to be removed, from the local government property.

(4) An authorised person may reduce the period specified in subclause (1)(c) on application of the person who has been directed not to re-enter local government property.

9.5 Disposal of lost property

An article left on any local government property, and not claimed within a period of 3 months, may be disposed of by an authorised person—

- (a) if the value of the property is reasonably believed to exceed the amount prescribed by regulation 30(3) of the *Local Government (Functions and General) Regulations 1996*, using the process under section 3.58 of the Act for the sale of the article as if it was property referred to in that section;

- (b) if the value of the property is reasonably believed to have a realisable value more than 1% of the amount prescribed by regulation 30(3) of the *Local Government (Functions and General) Regulations 1996* but not exceeding the amount prescribed, by handing the property to the Western Australian Police Force, or
- (c) if the property is reasonably believed to be of less value than that in subclause (b)—
 - (i) by donation to a not for profit body incorporated under the *Associations Incorporations Act 2015*; or
 - (ii) if likely to be of no interest to a not for profit body, in any manner he or she thinks fit.

PART 10—LICENCES

Division 1—Applying for a licence

10.1 Application for licence

- (1) Where a person is required to obtain a licence under this local law, that person shall apply for the licence in accordance with subclause (2).
- (2) An application for a licence 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; and
 - (d) be forwarded to the local government together with any set fee.
- (3) An authorised person may require an applicant to provide additional information reasonably related to an application before determining an application for a licence.
- (4) An authorised person may require an applicant to give public notice of the application for a licence.
- (5) An authorised person may refuse to consider an application for a licence which is not in accordance with subclause (2) or where the requirements of subclause (3) or (4) have not been satisfied.

10.2 Decision on application for licence

- (1) An authorised person may—
 - (a) approve an application for a licence unconditionally or subject to any conditions; or
 - (b) refuse to approve an application for a licence.
- (2) An authorised person approves an application for a licence, written notice of approval is to be issued to the applicant.
- (3) If an authorised person refuses to approve an application for a licence, written notice of that refusal is to be given to the applicant.
- (4) An authorised person may, at any time, amend a condition of approval and the amended condition takes effect when written notice of it is given to the licence holder.

10.3 General restrictions on grant of licence

- (1) An authorised person shall not grant a licence if there are reasonable grounds for believing that the carrying on of the activity to which the application relates would constitute an unacceptable risk to the safety of the public.
- (2) An authorised person shall not grant a licence unless satisfied that—
 - (a) the applicant is capable of carrying on the activity in accordance with this local law and the terms and conditions of the licence;
 - (b) the public place at which the activity is to be provided is suitable for that purpose;
 - (c) a licence or similar authority granted or issued to the applicant has not been cancelled in the period of 5 years before the application is made; and
 - (d) the applicant is a fit and proper person to carry on the activity.

10.4 Amendment of licence

- (1) An authorised person may, by written notice given to the licence holder, amend a licence—
 - (a) imposing any new condition; or
 - (b) change or remove any existing condition.
- (2) An amendment may be made on application made by the licence holder or on the initiative of an authorised person.
- (3) An amendment will come into effect on the day that written notice is given to the licence holder, or some other date as specified in the notice.

10.5 False or misleading statement

A person shall not make a false or misleading statement in connection with an application in respect of a licence under this local law.

*Division 2—Conditions of licences***10.6 Compliance with conditions**

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

10.7 Examples of conditions

(1) Examples of the conditions that an authorised person may impose on a licence under clause 10.2(1)(a) or 10.4(1)(a) are conditions relating to—

- (a) the payment of a set fee;
- (b) compliance with a standard or a policy adopted by the local government;
- (c) the duration and commencement of the licence;
- (d) the commencement of the licence 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 licence which may be required by the local government under any written law;
- (g) the area of the district to which the licence applies;
- (h) where a licence 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 an authorised person.

(2) Examples of the type and content of the conditions on which a licence to hire local government property may be issued include—

- (a) when set 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 an authorised person to cancel a booking during the course of an annual or seasonal booking, if an authorised person sees fit;
- (h) a prohibition on the sale, supply or consumption of liquor unless a liquor licence is first obtained for that purpose under the *Liquor Control Act*;
- (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.

10.8 Imposing conditions under a policy

(1) In this clause—

policy means a local government policy adopted by the Council under section 2.7(2)(b) of the Act containing conditions subject to which an application for a licence may be approved under clause 10.2(1)(a).

(2) Under clause 10.2(1)(a) an authorised person may approve an application subject to conditions by reference to a policy.

(3) An authorised person shall give to the licence holder a copy of the policy or, at the discretion of the authorised person, the part of the policy which is relevant to the application for a licence, with the written notice of approval referred to in clause 10.2(2).

(4) An application for a licence is not to be taken to have been approved subject to the conditions contained in a policy until the authorised person gives the licence holder a copy of the policy or the part of the policy which is relevant to the application.

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

*Division 3—Duration of licences***10.9 Duration of licence**

A licence 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 licence; or
- (b) suspended or cancelled under this Division.

10.10 Renewal of licence

- (1) A licence holder may apply to the local government for the renewal of a licence.
- (2) An application for renewal shall—
 - (a) be in the form determined by the local government;
 - (b) be signed by the licence holder;
 - (c) provide the information required by the form;
 - (d) be forwarded to the local government no later than 28 days before the expiry of the licence, or within a shorter period that the local government in a particular case permits; and
 - (e) be accompanied by any set fee.
- (3) The provisions of this Part that apply to an application for a licence also apply to an application for the renewal of a licence as though it were an application for a licence.

10.11 Transfer of licence

- (1) An application for the transfer of a valid licence is—
 - (a) to be made in writing;
 - (b) to be signed by the licence holder and the proposed transferee of the licence;
 - (c) to include such information as an authorised person may require to enable the application to be determined; and
 - (d) to be forwarded to the local government together with any set fee.
- (2) An authorised person may—
 - (a) approve an application for the transfer of a licence;
 - (b) approve the application subject to any conditions; or
 - (c) refuse to approve the application.
- (3) Where an authorised person approves an application for the transfer of a licence, the transfer may be effected by an endorsement on the licence signed by the authorised person.
- (4) Where an authorised person approves the transfer of a licence, the local government is not required to refund any part of any set fee paid by the former licence holder.

10.12 Suspension of licence

- (1) An authorised person may, subject to clause 10.13, by written notice given to the licence holder, suspend a licence if there are reasonable grounds for believing that—
 - (a) the licence holder has contravened a term or condition of a licence;
 - (b) the licence holder has contravened a provision of this local law; or
 - (c) the continued provision of the activity authorised by the licence constitutes or will constitute an unacceptable risk to the safety, health or welfare of the public.
- (2) The suspension notice shall—
 - (a) state the day, or the day and time, on or at which the suspension takes effect;
 - (b) state the reasons for the authorised person's decision to suspend the licence;
 - (c) where appropriate, indicate what steps need to be taken to ensure that there is compliance with the relevant provision, term or condition or that there is no longer a risk as described in subclause (1)(c); and
 - (d) inform the licence holder that the licence holder has a right to apply under the Act for a review of the decision to suspend the licence.

10.13 Proposed suspension

- (1) If an authorised person proposes to suspend a licence under clause 10.12(1), the authorised person shall give written notice to the licence holder of the proposed suspension.
- (2) The notice shall—
 - (a) state that the authorised person proposes to suspend the licence;
 - (b) state the reasons for the proposed suspension; and
 - (c) inform the licence holder that the licence holder is entitled to make representation to the authorised person in respect of the proposed suspension within 7 days after the day on which the licence holder is given the notice.
- (3) In considering whether to suspend the licence, the authorised person shall have regard to any representations made by the licence holder within the period referred to in subclause (2)(c).

10.14 Revocation of suspension

- (1) An authorised person shall by written notice given to the licence holder, revoke the suspension of a licence if the authorised person is satisfied that the steps specified in the suspension notice have been taken.
- (2) An authorised person may, by written notice given to the licence holder, revoke the suspension of the licence if it is appropriate to do so in the circumstances of a particular case.

10.15 Period of suspension

The suspension of a licence has effect on the day, or the day and time, specified in the suspension notice until one of the following happens—

- (a) the suspension is revoked under clause 10.14;
- (b) the licence is cancelled under clause 10.16 or expires; or
- (c) the licence is surrendered in accordance with the provisions of this local law.

10.16 Cancellation of licence

A licence may be cancelled by an authorised person if—

- (a) the licence was obtained improperly;
- (b) the licence holder has persistently or frequently contravened a term or condition of the licence, or a provision of this local law, whether or not the licence is or has been suspended on the grounds of a contravention; or
- (c) there are reasonable grounds for believing that the continued provision of the activity constitutes or would constitute an unacceptable risk to the safety of the public, whether or not the licence has been suspended on the grounds of that risk.

10.17 Surrender of licence

A licence holder may, at any time by notice in writing to the local government, surrender the licence.

Division 4—Responsibilities of licence holders and others

10.18—Production of licence

A licence holder shall produce to an authorised person her or his licence immediately after being required to do so by that authorised person.

10.19 Production of licence document for amendment

If an authorised person amends or renews a licence, the licence holder shall, if required by an authorised person, produce the licence document to the authorised person for amendment within the period specified by the authorised person.

10.20 Return of licence document if licence no longer in effect

(1) The person who was the licence holder shall as soon as practicable return the licence document to the local government if a licence—

- (a) has expired or has not been renewed;
- (b) has been suspended or cancelled; or
- (c) has been surrendered.

(2) On the cancellation of a licence under clause 10.16 the licence holder is to be taken to have forfeited any fees paid in respect of the licence.

10.21 Other responsibilities of licence holder

A licence holder shall in respect of local government property to which the licence relates—

- (a) ensure that an authorised person has unobstructed access to the local government property for the purpose of inspecting the property or enforcing any provision of this local law;
- (b) comply with an instruction from an authorised person to take the action specified in the instruction for the purpose of maintaining public safety;
- (c) leave the local government property in a clean and tidy condition after its use;
- (d) report any damage or defacement of the local government property to an authorised person; and
- (e) take all reasonable action to prevent the consumption of any liquor on the local government property unless the licence allows it and a licence has been obtained under the Liquor Control Act for that purpose.

10.22 Advertising

A person shall not advertise, or otherwise hold out in any way, that the person conducts a commercial activity in any public place unless that person holds a licence authorising that commercial activity.

PART 11—NOTICES

11.1 Notice to remedy non-compliance

Where any thing is required to be done or not permitted to be done by this local law, an authorised person may give written notice—

- (a) to the owner or the occupier of the property or property which abuts that portion of the thoroughfare where the thing has been done or not done; or
- (b) to any other person who may be responsible for the thing done or not done, requiring the person to comply with the requirements of this local law.

11.2 Notice regarding damage

A person who unlawfully removes, damages or interferes with local government property or portion of a thoroughfare commits an offence and may be given a notice in accordance with clause 11.3.

11.3 Notice requirements

(1) A notice given under this Part shall—

- (a) be in writing;
 - (b) given to the person referred to in clause 11.1 or 11.2 as the case may be;
 - (c) specify the reason for giving the notice;
 - (d) the action that is required to be undertaken; and
 - (e) the time within which the work or action is to be undertaken.
- (2) At the local government's discretion, the action that may be required to be undertaken is—
- (a) to take or cease such action as may be required for compliance with this local law;
 - (b) reinstate the property or thing to the state it was in before the removal, damage or interference;
 - (c) replace that property or thing; or
 - (d) pay for the costs of reinstatement or replacement.

11.4 Offence to fail to comply with notice

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

11.5 Local government may undertake requirements of notice

If a person fails to comply with a notice referred to in clauses 11.1 or 11.2, the local government may—

- (a) do the thing specified in the notice, including replace the property, or reinstate the property to the state it was in before the removal, damage or interference;
- (b) take whatever remedial action it considers appropriate to put the local government in the position it would have been in if the breach or failure had not occurred; and
- (c) recover all costs from the person, as a debt.

11.6 Entry into private land

This local law is subject to sections 3.25, 3.27 and schedules 3.1 and 3.2 of the *Local Government Act 1995* and any power of entry exercised by the local government under this local law is subject to Part 3, Division 3, Subdivision 3 of the Act.

PART 12—OBJECTIONS AND REVIEW

12.1 Objection and review rights

Division 1 of Part 9 of the Act applies to a decision under this local law in respect of the grant, renewal, transfer, amendment, suspension or cancellation of a licence or consent.

PART 13—OFFENCES AND PENALTIES

13.1 Offences and general penalty

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

13.2 General penalty

A person who commits an offence under this local law is liable, on 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.

13.3 Prescribed offences

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

13.4 Form of infringement notices

- (1) For the purposes of this local law—
- (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the *Local Government (Functions and General) Regulations 1996*;
 - (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 *Local Government (Functions and General) Regulations 1996*; 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 *Local Government (Functions and General) Regulations 1996*.
- (2) Where an infringement notice is given under section 9.16 of the Act in respect of an alleged offence against clause 2.4, the notice is to contain a description of the alleged offence.

13.5 Evidence of a determination

- (1) In any legal proceedings, evidence of a determination may be given by tendering the register referred to in clause 2.5 or a certified copy of an extract from the register.
- (2) Unless the contrary is proved, it is to be presumed that the determination was properly made and that every requirement for it to be made and have effect has been satisfied.
- (3) Subclause (2) does not make valid a determination that has not been properly made.

SCHEDULE 1—PRESCRIBED OFFENCES

[clause 13.2]

Item	Clause	Nature of offence	Modified penalty \$
Part 2—Determination in respect of local government property			
1	2.4	Failure to comply with a determination	100
Part 3—Activities on local government property			
2	3.1	Undertaking activity on local government property without a licence	100
3	3.2(3)	Camping on local government property or erecting an unauthorised structure	100
4	3.3(1)	Failure to obtain licence to possess, consume or sell liquor	100
Part 4—Behaviour on local government property and thoroughfares			
5	4.3	Behaviour interfering with others	100
6	4.4	Behaviour detrimental to property	200
7	4.5	Unauthorised entry to function	100
8	4.6(2)	Taking or injuring fauna without authorisation	200
9	4.7(2)	Removing, damaging or depositing flora without authorisation	200
10	4.8	Animal on local government property without a licence	100
11	4.9	Improper disposal of waste on local government property	100
12	4.10(1)	Unauthorised vehicle on local government property	100
13	4.10(2)	Unauthorised driving of a vehicle at more than 20km/hr on local government property	100
14	4.10(3)	Unauthorised driving of a vehicle on local government property during a function	100
15	4.11	Unauthorised use of a UAV	50
16	4.12	Unauthorised archery, pistol or rifle shooting on local government property	100
17	4.13	Unauthorised playing or practising golf on local government property	100
18	4.14	Unauthorised use of bicycle, skateboard etc. on local government property	50
Part 5—Matters relating to particular local government property			
19	5.1	Unauthorised entry to fenced, closed or restricted local government property	200
20	5.2(1)	Unauthorised entry to gender specific toilet block or change room	100
21	5.3	Unauthorised use of toilet block or change room	100
Part 6—Activities in thoroughfares			
22	6.1(a)	Planting or allowing plant or verge treatment in thoroughfare to become a sightline hazard	100
23	6.1(b)	Damaging a lawn or garden in a thoroughfare	100
24	6.1(c)	Damaging or removing whole or part of a street tree without authorisation	200
25	6.1(d)	Obstruction of or permitting a hazard in a thoroughfare	100
26	6.1(e)	Damaging, removing or interfering with thoroughfare, part of thoroughfare, sign or structure in a thoroughfare without authorisation	100
27	6.1(f)	Playing games in thoroughfare so as to impede vehicles or persons	100
28	6.2(1) (a), (d), (e), (f), (g), (j)	Unauthorised activity in a thoroughfare causing damage	200
29	6.2(1) (b), (c), (h), (i), (k), (l), (m), (n), (o), (p), (q)	Unauthorised activity in a thoroughfare causing inconvenience	100
30	6.4	Driving on a closed thoroughfare	100

Item	Clause	Nature of offence	Modified penalty \$
31	6.7(1)	Unauthorised verge treatment	100
32	6.8 (a), (b), (d), (e)	Failure to keep permitted verge treatment in good and tidy condition, obstruct a thoroughfare, footpath, drain, or driveway	100
33	6.8(c)	Placing an obstruction on or around a verge treatment	50
34	6.8(f)	Failure to ensure sprinklers or reticulation pipes do not protrude, do not cause inconvenience to pedestrians, or present a hazard	100
35	6.11(1)	Failure to obtain licence for a temporary crossover	200
36	6.12	Failure to remove redundant crossover or reinstate kerb, drain, footpath, verge or thoroughfare	200
37	6.13	Failure to remove crossover in unsafe location	500
Part 7—Activities in public places			
38	7.1(1)	Animal or vehicle obstructing public place without authorisation	100
39	7.2(2)	Animal in public place when not led, ridden or driven	100
40	7.2(3)	Horse being led, ridden or driven in a thoroughfare without authorisation	100
Part 8—Parking			
41	8.1(1)	Parking a heavy or overlength vehicle in a townsite for more than 1 hour	100
42	8.2	Failure to park parallel to edge of carriageway unless indicated	100
Part 9—Signs and powers to give directions			
43	9.1(2)	Failure to comply with condition of use indicated by a sign	100
44	9.3(1)	Failure to comply with direction of authorised person	100
45	9.3(2)	Obstruction or hindrance of an authorised person	100
46	9.4(1)(c)	Failure to comply with period of refusal or suspension	200
47	9.4(2)	Failure to leave a venue when instructed by an authorised person	200
Part 10—Licencing			
48	10.1	Failure to obtain a licence when required	100
49	10.5	False or misleading statement in application for a licence	200
50	10.6	Failure to comply with licence condition	100
51	10.18	Failure to produce licence for inspection when required	100
52	10.19	Failure to produce licence for amendment when required	100
53	10.20	Failure to return licence when no longer in effect	100
54	10.21	Failure to comply with other responsibilities of licence holder	100
55	10.22	Advertising of commercial activity in a public space without holding a licence	200
Part 11—Notices			
56	11.4	Failure to comply with notice	100
Part 13—Offences and penalties			
57	13.2	Offence not elsewhere specified	100

Dated 20 September 2023

The Common Seal of the Shire of Kent was affixed by authority of a resolution of Council in the presence of—

SCOTT CROSBY, President.
CHRISTIE SMITH, Chief Executive Officer.

11 October 2023.