



Western
Australian
Government

Gazette

ISSN 2204-4264 (online)

767

PERTH, MONDAY, 8 APRIL 2024 No. 34 SPECIAL

PUBLISHED BY AUTHORITY GEOFF O. LAWN, GOVERNMENT PRINTER
© STATE OF WESTERN AUSTRALIA

SHIRE OF ESPERANCE

LOCAL GOVERNMENT ACT 1995
CEMETERIES ACT 1986

CEMETERIES LOCAL LAW 2024

LOCAL GOVERNMENT ACT 1995
CAT ACT 2011

CAT LOCAL LAW 2024

LOCAL GOVERNMENT ACT 1995
DOG ACT 1976

DOG LOCAL LAW 2024

**LOCAL GOVERNMENT ACT 1995
CEMETERIES ACT 1986**

SHIRE OF ESPERANCE

CEMETERIES LOCAL LAW 2024

TABLE OF CONTENTS

PART 1—PRELIMINARY	771
1.1 Short title	771
1.2 Commencement.....	771
1.3 Application	771
1.4 Repeal.....	771
1.5 Definitions.....	771
PART 2—ADMINISTRATION.....	772
<i>Division 1—General.....</i>	<i>772</i>
2.1 Powers and functions of CEO.....	772
<i>Division 2—Right of Burial.....</i>	<i>772</i>
2.2 Issuing Grants	772
2.3 Right of holder.....	772
2.4 Renewal of Grant	772
2.5 Replacement of Grant.....	772
2.6 Transfer of Grant.....	772
2.7 Exercising the rights of holder.....	772
PART 3—APPLICATION FOR FUNERALS	772
3.1 Application for burial.....	772
3.2 Applications to be accompanied by certificates	772
3.3 Certificate of identification.....	773
3.4 Minimum notice required.....	773
3.5 Fixing times for Funeral.....	773
3.6 Receipt of application for Funeral.....	773
3.7 Times for burials	773
PART 4—FUNERAL DIRECTORS	773
4.1 Directing a Funeral.....	773
4.2 Funeral Director’s licence.....	773
4.3 Funeral Director’s licence expiry	773
4.4 Responsibilities of holder of Funeral Director’s licence	773
4.5 Cancellation of Funeral Director’s licence	773
4.6 Single Funeral Permits	774
PART 5—FUNERALS.....	774
<i>Division 1—General.....</i>	<i>774</i>
5.1 Requirements for funerals and coffins.....	774
5.2 Funeral processions	774
5.3 Vehicle entry restricted	774
5.4 Vehicle access and speed limitations	774
5.5 Offenders may be ordered to leave.....	774
5.6 Conduct of Funeral by Board	775
<i>Division 2—Placement of Ashes.....</i>	<i>775</i>
5.7 Disposal of ashes.....	775
PART 6—BURIALS.....	775
6.1 Depth of graves	775
6.2 Re-opening a grave	775
6.3 Disinterring a coffin.....	775
6.4 Exhumation.....	775
6.5 Opening a coffin.....	775

PART 7—MEMORIALS AND OTHER WORK	776
<i>Division 1—General</i>	776
7.1 Application for monumental work.....	776
7.2 Placement of monumental work.....	776
7.3 Removal of rubbish.....	776
7.4 Operation of work.....	776
7.5 Removal of sand, soil or loam.....	776
7.6 Hours of work.....	776
7.7 Unfinished work.....	776
7.8 Use of wood.....	776
7.9 Plants and trees.....	776
7.10 Supervision.....	776
7.11 Australian War Graves.....	776
7.12 Placing of glass domes and vases.....	776
<i>Division 2—Lawn Section</i>	776
7.13 Specification of monuments.....	776
7.14 Headstones.....	777
<i>Division 3—Memorial Plaque Section</i>	777
7.15 Requirements of a memorial plaque.....	777
<i>Division 4—Licensing of Monumental Masons</i>	777
7.16 Monumental Mason’s licence.....	777
7.17 Expiry Date, non– transferability.....	777
7.18 Carrying out monumental work.....	777
7.19 Responsibilities of the Holder of a Monumental Mason’s licence.....	777
7.20 Cancellation of a Monumental Mason’s licence.....	777
PART 8—GENERAL	777
8.1 Animals.....	777
8.2 Assistance animal.....	777
8.3 Damaging and removing of objects.....	778
8.4 Withered flowers.....	778
8.5 Littering and vandalism.....	778
8.6 Advertising.....	778
8.7 Obeying signs and directions.....	778
8.8 No benefits or gratuities.....	778
8.9 Entry.....	778
8.10 Firearms.....	778
8.11 Recording on film or video.....	778
8.12 Camping.....	778
8.13 Lighting fires.....	778
8.14 Removal from the Cemetery.....	778
PART 9—OFFENCES AND MODIFIED PENALTIES	778
9.1 General.....	778
9.2 Modified Penalties.....	778
SCHEDULE 1—MODIFIED PENALTIES	779
SCHEDULE 2—INFRINGEMENT NOTICE	779
SCHEDULE 3—WITHDRAWAL OF INFRINGEMENT NOTICE	780

LOCAL GOVERNMENT ACT 1995
CEMETERIES ACT 1986

SHIRE OF ESPERANCE

CEMETERIES LOCAL LAW 2024

Under the powers conferred on it by the *Cemeteries Act 1986* and the *Local Government Act 1995* and under all other enabling powers, the Council of the Shire of Esperance resolved on 27 February 2024 to make the following local law.

PART 1—PRELIMINARY

1.1 Short title

This local law may be cited as the Shire of Esperance *Cemeteries Local Law 2024*

1.2 Commencement

This local law comes into operation 14 days after the day on which it is published in the *Government Gazette*.

1.3 Application

This local law applies throughout the district.

1.4 Repeal

The Shire of Esperance *Cemeteries Local Law 2023* published in the *Government Gazette* on 11 July 2023 is repealed.

1.5 Definitions

(1) In this local law—

Act means the *Cemeteries Act 1986*;

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

authorised officer means an employee of the Board authorised by the Board for the purposes of performing any function or exercising any power conferred upon an authorised officer by this local law;

Board means the Shire of Esperance;

cemetery means any cemetery which the Governor by order has vested under the care, control and management of the Board.

CEO means the chief executive officer for the time being, of the Board;

Commissioner of Police means a Commissioner of Police for the time being appointed under the *Police Act 1892* and includes a person for the time being acting in that capacity in the absence of the Commissioner of Police.

Defence Force means Australian Defence Force as defined in the *Defence Force Act 1903* (Cth).

funeral means the burial or cremation of a dead body;

Funeral Director means a person holding a current funeral director's licence;

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

holder in relation to a grant of right of burial includes a person for the time being appearing to the Board to be the holder of the grant;

monumental mason means a person holding a current monumental mason's licence;

monumental mason's licence means a licence issued by the Board;

monumental work when a term is used as an abstract noun shall include the erection, alteration or removal of or other working upon a monument on a grave;

military grave means a grave eligible for commemoration by the Office of Australian War Graves;

niche wall means a structure for the placement of a container of ashes in a compartment secured with a covering memorial plaque;

right of burial means the right to use a specified area of a cemetery for burial;

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

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;

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

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

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

PART 2—ADMINISTRATION*Division 1—General***2.1 Powers and functions of CEO**

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

*Division 2—Right of Burial***2.2 Issuing Grants**

The Board may, upon the written application of a person and upon payment of a set fee issue that person with a grant for a term of twenty five (25) years.

2.3 Right of holder

- (1) Subject to this local law, to the prior approval of the Board and to the terms and conditions (if any) imposed by the Board, a grant confers on the holder, during the term of the grant, an exclusive right—
 - (a) to be buried in a grave specified in the grant; and
 - (b) to carry out monumental works on the gravesite specified in the grant.
- (2) The Board, in its absolute discretion, may determine from time to time the number of dead bodies or ashes which may be placed in the grave.
- (3) The Board or an authorised officer may request the holder to produce the grant before the exercise of any of the rights referred to in subclause (1) and the holder shall forthwith comply with that request.
- (4) If the location stipulated in the grant of right of burial is significantly and adversely affected prior to or at the time of burial by unforeseen conditions the Board may allocate any other gravesite of the grantee's choosing that is not already subject to a grant.

2.4 Renewal of Grant

- (1) Where, at any time during the term of a grant, a holder—
 - (a) makes written application; and
 - (b) pays a set fee;
- (2) the Board must renew the grant for a further term of twenty five (25) years commencing on the expiry date of the grant.
- (3) The set fee for the issue of a new grant pursuant to this clause shall be determined by the Board from time to time.
- (4) The Board may request the holder to deliver an existing grant to it prior to issuing a new grant.
- (5) The holder shall forthwith upon receiving a request by the Board in accordance with sub-rule (3) deliver the existing grant to the Board.

2.5 Replacement of Grant

- (1) The Board may—
 - (a) upon the written application of a holder; and
 - (b) upon the production of evidence to the satisfaction of the Board, issue a new grant to replace a grant which is lost or destroyed.
- (2) Notwithstanding subclause (1), the Board may prior to issuing a replacement grant, require the holder to make a statutory declaration in a form determined by the Board.
- (3) The replacement grant issued by the Board shall be deemed to be the original grant.

2.6 Transfer of Grant

A holder who desires to transfer a grant to another person shall make an application to the Board in a form determined by the board and upon receipt of the application the Board may grant permission in accordance with section 26 of the Act.

2.7 Exercising the rights of holder

If evidence is produced in writing to the satisfaction of the Board that a holder is unavailable or not immediately ascertainable, or has died and has not specifically bequeathed a grant, then the rights conferred upon that holder may be exercised by a holder's personal representative or a person acting expressly on behalf of a personal representative. If those persons are unavailable or not immediately ascertainable, the Board may approve any other person.

PART 3—APPLICATION FOR FUNERALS**3.1 Application for burial**

- (1) A person may apply for approval to bury a dead body in the cemetery in the form determined by the Board from time to time.
- (2) An application under subclause (1) is to be accompanied by the set fee.

3.2 Applications to be accompanied by certificates

All applications referred to in clause 3.1 shall be accompanied by either a medical certificate of death or a Coroner's order of burial, and a certificate issued under clause 3.3, in respect of the body.

3.3 Certificate of identification

After a dead body is placed in a coffin and prior to a dead body being removed to the cemetery, a person who personally knew the deceased shall identify the dead body and shall complete a certificate of identification in the form determined by the Board from time to time, unless—

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

then the Funeral Director shall complete a certificate in the form determined by the Board from time to time.

3.4 Minimum notice required

All bookings to hold a funeral shall be made with the Board at least twenty four (24) hours prior to the time proposed for burial on the application, otherwise an extra charge may be made.

3.5 Fixing times for Funeral

The time fixed for a funeral is at the discretion of the Board.

3.6 Receipt of application for Funeral

Where an application is received by the Board in accordance with clause 3.1 or 3.2, then subject to any other provision of this local law, the Board shall—

- (a) fix a time for a funeral; and
- (b) prepare a grave.

3.7 Times for burials

A person shall not carry out a burial—

- (a) on a gazetted public holiday in the State of Western Australia; or
- (b) outside of the hours of 10:00am—3:00pm on a weekday; or
- (c) except with the written permission of the Board.

PART 4—FUNERAL DIRECTORS

4.1 Directing a Funeral

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

- (a) the funeral director;
- (b) an employee of the funeral director; or
- (c) a holder of a single funeral permit.

4.2 Funeral Director's licence

- (1) The Board may upon the receipt of an application in writing by a fit person in a form determined by the Board and upon payment of a set fee, issue to an applicant a funeral director's licence authorising a holder to direct funerals within a cemetery at such times and on such days and subject to such conditions as the Board shall specify and in compliance with the provisions of this Local law.
- (2) If the application referred to in subclause (1) is approved by the Board, the Board shall issue to the applicant a licence in a form determined by the Board.
- (3) A person who is the holder of a current funeral director's licence may apply for a new licence for the following year by lodging with the Board an application form and payment of the set fee.

4.3 Funeral Director's licence expiry

A funeral director's licence—

- (a) shall expire on the 30th day of June in each year or when a licence is cancelled pursuant to clause 4.5, whichever shall occur sooner; and
- (b) is not transferable.

4.4 Responsibilities of holder of Funeral Director's licence

A holder of a funeral director's licence shall be responsible for the compliance by every person purporting to be authorised to direct a funeral within a cemetery pursuant to that licence with—

- (a) all the requirements of—
 - (i) the licence,
 - (ii) this Local law; and
 - (iii) the Act; and
- (b) the conditions imposed by the Board in respect of that licence.

4.5 Cancellation of Funeral Director's licence

- (1) The Board may, by notice in writing to a holder of a funeral director's licence, cancel a licence if—
 - (a) the holder of the licence or any employee of the holder has committed a breach of this Local law, the Act or any of the conditions upon which the licence was issued;

- (b) in the opinion of the Board, the conduct of the holder of the funeral director's licence or any employee of the holder in directing or attempting to direct a funeral within a cemetery is inappropriate or unbecoming;
 - (c) the holder of the funeral director's licence has purported to transfer the licence issued to that holder;
 - (d) the funeral director's licence was issued erroneously or in consequence of a false or fraudulent document, statement or representation;
 - (e) the fee for the funeral director's licence is due and unpaid;
 - (f) the holder of the funeral director's licence is convicted of an offence against this Act or this Local law; or
 - (g) the Board is no longer satisfied that the holder of the funeral director's licence—
 - (i) is of good repute and is fit to hold the funeral director's licence; or
 - (ii) has suitable facilities and equipment for handling and storing dead bodies and conducting funerals.
- (2) Upon the cancellation of the licence pursuant to this clause, no part of any fee paid for the issue of that licence is refundable by the Board.

4.6 Single Funeral Permits

- (1) The Board may upon receipt of an application in writing by a person in a form determined by the Board and upon payment of a set fee issue to an applicant a single funeral permit authorising a holder to direct a funeral of the person named in a permit within a cemetery at such time and subject to such conditions as the Board shall specify upon the issue of that permit or in this local law.
- (2) Every application for the single funeral permit made under section 20 or 21 of the Act shall include coffin specifications and details of a vehicle transporting a dead body to a gravesite.
- (3) The Board may refuse an application for the single funeral permit if, in the opinion of the Board, either a coffin's 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 on any other grounds.

PART 5—FUNERALS

Division 1—General

5.1 Requirements for funerals and coffins

A person shall not bring a dead body into the cemetery unless—

- (a) the Board has approved an application for the burial of that dead body in accordance with Part 3 of this local law;
- (b) it is enclosed in a coffin which in the opinion of the Board is structurally sound and bears the name of the deceased person indelibly inscribed in legible characters on a plate on the coffin's lid; and
- (c) under the plate referred to in paragraph (b) there is a substantive lead strip bearing the surname of the deceased person stamped in legible characters, each character being not less than 10 mm in height.

5.2 Funeral processions

The time fixed by the Board for any burial shall be the time at which the funeral procession is to arrive at the cemetery gates.

5.3 Vehicle entry restricted

Every funeral procession shall enter by the principal entrance, and no vehicle except the following shall be permitted to enter the cemetery—

- (a) hearse;
- (b) official mourning coaches;
- (c) vehicles with an ACROD parking permit;
- (d) wheelchairs of motorised wheelchairs; or
- (e) vehicles with the prior approval by—
 - (i) the CEO;
 - (ii) an authorised officer; or
 - (iii) the funeral director;

5.4 Vehicle access and speed limitations

Vehicles shall proceed within the cemetery by the constructed roadway or other areas designated for the use of vehicles and shall not exceed the speed of 20km per hour.

5.5 Offenders may be ordered to leave

A person committing an offence under clause 5.4 may be ordered to leave the cemetery by the CEO or an authorised officer.

5.6 Conduct of Funeral by Board

When conducting a funeral under section 22 of the Act the Board may—

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

Division 2—Placement of Ashes

5.7 Disposal of ashes

- (1) The personal representative of a deceased person whose body has been cremated may apply, in an application under clause 3.1 or otherwise, for permission to dispose of the ashes in the cemetery and upon payment of the set fee to the Board.
- (2) Subject to subclauses (3) and (4), a person shall not place the ashes of a deceased person in the cemetery.
- (3) An authorised officer may place the ashes of a deceased person in a cemetery in accordance with the Board approval provided—
 - (a) the person requesting the placement of the ashes has the permission of the Board; and
 - (b) the ashes are placed within an area set aside for that purpose by the Board.
- (4) An authorised officer may place the ashes of a deceased person within a grave in accordance with the Board approval, provided the person requesting the placement of the ashes has the written permission of the Board and the approval of the holder of the right of burial of the grave.

PART 6—BURIALS

6.1 Depth of graves

- (1) A person shall not bury a coffin within the 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 750mm, unless that person has the permission of an authorised officer; or
 - (b) in any circumstances less than 600mm.
- (2) The permission of the authorised officer in subclause (1)(a) will only be granted where in the opinion of the authorised officer exceptional circumstances require granting of that permission.

6.2 Re-opening a grave

- (1) Subject to subclause (2), if for the purpose of a re-opening a grave in a cemetery the Board finds it necessary to remove a monument, edging, titles, plants, grasses, shrubs or other like matter from the grave, then a person ordering a re-opening of that grave shall bear the cost of the removal and any necessary reinstatement.
- (2) If a Minister orders the exhumation of a body in accordance with section 58 of the Act, then the Minister may further order how and by whom the costs referred to in subclause (1) shall be met.

6.3 Disinterring a coffin

- (1) Subject to subclause (2), a person shall not disinter a coffin in a cemetery for the purposes of reburial within twelve (12) months after the date of its interment.
- (2) Subclause (1), shall not apply where the coffin is disinterred for the purposes of an exhumation of a dead body and the exhumation is ordered or authorised pursuant to the Act.

6.4 Exhumation

A person shall not disinter a coffin in a cemetery for exhumation of a dead body unless—

- (a) the exhumation is ordered or authorised pursuant to the Act; or
- (b) a holder of a grant of right of burial has applied in writing to the Board requesting the exhumation and the Board has authorised the exhumation.

6.5 Opening a coffin

A person shall not open a coffin in a cemetery unless—

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

PART 7—MEMORIALS AND OTHER WORK*Division 1—General***7.1 Application for monumental work**

A Board may require the written consent of the holder of the right of burial of the grave to accompany an application under section 30 of the Act.

7.2 Placement of monumental work

Every memorial shall be placed on proper and substantial foundations.

7.3 Removal of rubbish

All refuse, rubbish or surplus material remaining after memorial works are completed under a permit issued under section 30 of the Act shall be immediately removed from the cemetery by the person carrying out the same.

7.4 Operation of work

All material required in the erection and completion of any work shall, as far as possible, be prepared before being taken to the cemetery, and all materials required by tradesmen shall be admitted at such entrance as the CEO or an authorised officer shall direct.

7.5 Removal of sand, soil or loam

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

7.6 Hours of work

Persons shall not be permitted to carry out memorial or other work on graves within the cemetery other than during the hours of 8.00am and 6.00pm on weekdays, and 8.00am and noon on Saturdays, without the written permission of the Board.

7.7 Unfinished work

Should any work by masons or others be not completed before 6pm on weekdays and noon on Saturdays, they shall be required to leave the work in a neat and safe condition to the satisfaction of the CEO or an authorised officer.

7.8 Use of wood

No wooden fence, railing, cross or other wooden erection shall be allowed on or around any grave, other than as a temporary marker and with the prior approval of the Board.

7.9 Plants and trees

No trees or shrubs shall be planted on any grave or in the cemetery except within a memorial forest or with the approval of the Board.

7.10 Supervision

All workers, whether employed by the Board or by any other person, shall at all times whilst within the boundaries of the cemetery be subject to the supervision of the CEO or an authorised officer and shall obey such directions as the CEO or an authorised officer may give.

7.11 Australian War Graves

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

- (a) may place a 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.

7.12 Placing of glass domes and vases

A person shall not place glass domes, vases or other grave ornaments—

- (a) outside the perimeter of a grave in the cemetery as defined in the plans kept and maintained under section 40 (2) of the Act; or
- (b) on the lawn in an area set aside by the Board as a lawn or a memorial plaque section.

*Division 2—Lawn Section***7.13 Specification of monuments**

All monuments in the lawn section of a cemetery shall—

- (a) be made of natural stone or other durable material approved by the Board; and
- (b) be placed upon a base of natural stone; and
- (c) comply with the following specifications—
 - (i) the overall height of the monument above the original surface of the grave shall not exceed 1.0m;
 - (ii) the height of the base of the monument above the original surface of the grave shall not be less than 150mm nor more than 450mm;
 - (iii) the width of the base of the monument shall not exceed 940mm;
 - (iv) the depth of the base of the monument shall not exceed 355mm; and
- (d) have foundations extending to the bottom of the grave unless concrete beam foundations are provided by the Board.

- (2) An admiralty bronze memorial plaque may be attached to a monument erected or being erected in the lawn section of the cemetery.
- (3) A person shall not display any trade names or marks upon any monument erected within the lawn section of the cemetery.

7.14 Headstones

In the lawn section of the cemetery, that part of a headstone above its base shall not extend horizontally beyond that base.

Division 3—Memorial Plaque Section

7.15 Requirements of a memorial plaque

- (1) All memorial plaques placed in a memorial plaque section of the cemetery shall—
 - (a) be made of admiralty bronze or any other material approved by the Board; and
 - (b) not be less than the dimensions 178mm x 102mm, nor more than 330mm x 330mm; and
- (2) All memorial plaques made of admiralty bronze shall—
 - (a) not exceed 20mm in thickness; and
 - (b) be placed upon a base mounting approved by the Board.
- (3) All memorial plaques made of stone shall—
 - (a) not exceed 50mm in thickness placed upon a base mounting approved by the Board; or
 - (b) not be less than 100mm in thickness if it is not to be placed upon a base mounting.

Division 4—Licensing of Monumental Masons

7.16 Monumental Mason's licence

- (1) The Board may upon receipt of an application in writing by any person and upon payment of the set fee issue to the applicant a monumental mason's licence.
- (2) A licence issued under subclause (1) authorises the holder to carry out monumental works within the cemetery subject to the provisions of this local law and such conditions as the Board shall specify upon the issue of that licence.

7.17 Expiry Date, non-transferability

A monumental mason's licence—

- (a) shall, subject to clause 7.20, be valid from the date specified therein until the 30th day of June next following; and
- (b) is not transferable.

7.18 Carrying out monumental work

A person shall not carry out monumental work within the cemetery unless that person—

- (a) is the holder of a current monumental mason's licence issued pursuant to clause 7.16 or does so as the employee of a person who holds such a licence; or
- (b) is authorised by the Board to do so.

7.19 Responsibilities of the Holder of a Monumental Mason's licence

The holder of a monumental mason's licence shall be responsible for the compliance by every person purporting to be authorised to carry out monumental works within the cemetery pursuant to that licence with all the requirements and conditions of the licence, this local law, the Act and any other written law which may affect the carrying out of monumental works.

7.20 Cancellation of a Monumental Mason's licence

- (1) The Board may by notice in writing to the holder of a monumental mason's licence terminate the licence on any of the following grounds—
 - (a) that the holder of the licence has committed a breach of the requirements and conditions of the licence, this local law, the Act or any other written law which may affect the carrying out of monumental works;
 - (b) that, in the opinion of the Board, the conduct of the holder of the licence or any person in the employ of that holder in carrying out or attempting to carry out any works within the cemetery, is inappropriate or unbecoming.
- (2) Upon the termination of a monumental mason's licence under this clause no part of any fee paid for the issue of that licence is refundable by the Board.

PART 8—GENERAL

8.1 Animals

Subject to clause 8.2, a person shall not bring an animal into or permit an animal to enter or remain in the cemetery, other than with the approval of the CEO or an authorised officer.

8.2 Assistance animal

Clause 8.1 shall not apply to an 'assistance animal', as defined in section 9(2) of the *Disability Discrimination Act 1992 (Cth)*.

8.3 Damaging and removing of objects

Subject to clause 8.4, a person shall not damage, remove or pick any tree, plant, shrub or flower in the cemetery or any other object or thing on any grave or memorial or which is the property of the Board without the permission of the Board.

8.4 Withered flowers

A person may remove withered flowers from a grave or memorial and these are to be placed in a receptacle provided by the Board for that purpose.

8.5 Littering and vandalism

A person shall not—

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

8.6 Advertising

- (1) A person shall not carry on or advertise any trade, business or profession within the cemetery without the prior written approval of the Board.
- (2) The Board may consider and grant approval subject to such conditions as the Board thinks fit.

8.7 Obeying signs and directions

A person shall obey all signs displayed, marked, placed or erected by the Board within the cemetery and any other lawful direction by the CEO or an authorised officer.

8.8 No benefits or gratuities

A person employed by the Board shall not accept any gratuities or receive any financial benefit from any work undertaken within a cemetery other than the remuneration or benefit paid or given to that person by the Board.

8.9 Entry

A person shall not enter or remain within a cemetery other than during the hours between sunrise and sunset except with the approval of the Board or an authorised person.

8.10 Firearms

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

8.11 Recording or filming

A person shall not record or film a funeral or memorial within the cemetery without the prior approval of the next of kin of the deceased person whose funeral or memorial is being held.

8.12 Camping

A person shall not camp in or upon a cemetery.

8.13 Lighting fires

A person shall not light a fire within a cemetery without the prior approval of the Board.

8.14 Removal from the Cemetery

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

PART 9—OFFENCES AND MODIFIED PENALTIES**9.1 General**

A person who commits a breach of any provisions of this local law commits an offence and shall on conviction be liable to a penalty not exceeding \$500.00 and if the offence is a continuing one to a further penalty not exceeding \$20.00 for every day or part of a day during which the offence has continued.

9.2 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 prescribed form of the infringement notice referred to in Section 63(1) of the Act is set out in Schedule 2.
- (4) The prescribed form of the notice withdrawing an infringement notice referred to in Section 63(3) of the Act is set out in Schedule 3.

SCHEDULE 1—MODIFIED PENALTIES

[cl. 9.2]

SHIRE OF ESPERANCE CEMETERIES LOCAL LAW

Item No.	Clause	Nature of Offence	Modified Penalty
1	5.4	Exceeding speed limit	\$50.00
2	5.4	Unauthorised use—driving of vehicles	\$50.00
3	7.3	Placing and removal of rubbish and surplus materials	\$50.00
4	7.5	Unauthorised use of sand, earth or materials taken from another part of the cemetery.	\$50.00
5	7.7	Leaving uncompleted works in an untidy or unsafe condition	\$50.00
6	8.1	Unauthorised bringing of an Animal or permitting animal to remain in cemetery.	\$50.00
7	8.3	Damaging and removing objects.	\$50.00
8	8.5	Littering or vandalism	\$50.00
9	8.6	Unauthorised advertising, and/or trading	\$50.00
10	8.7	Disobeying sign or lawful direction	\$50.00

SCHEDULE 2—INFRINGEMENT NOTICE

[cl. 9.2(3)]

SHIRE OF ESPERANCE CEMETERIES LOCAL LAW

To: _____ (Name)
 _____ (Address)

It is alleged that at _____ : _____ hours on the _____ day of _____ 2022

at: _____

you committed the offence indicated below by an (x) in breach of clause of the Shire of Esperance Local Law—Cemeteries

 (Authorised Person)

Offence: _____
 \$ _____

You may dispose of this matter—

*By payment of the penalty as shown within 21 days of the date of this notice (or the date of the giving of this notice if that is a different date) to the Chief Executive Officer of the Shire of Esperance, Windich Street, Esperance WA 6450.

Please make cheques payable to Shire of Esperance.

Payments by mail should be addressed to: The Chief Executive Officer
 Shire of Esperance
 PO Box 507
 ESPERANCE WA 6450

If the penalty is not paid within the time specified, then a complaint of the alleged offence may be made and heard and determined by a court.

SCHEDULE 3—WITHDRAWAL OF INFRINGEMENT NOTICE

[cl. 9.2(4)]

SHIRE OF ESPERANCE CEMETERIES LOCAL LAW

No. _____ Date: _____

To: _____ (1)

Infringement Notice Number: _____ Dated: _____

For the alleged offence of: _____ (2)

Penalty: _____ (3) is withdrawn.

(Delete whichever does not apply)

* No further action will be taken.

* It is proposed to institute court proceedings for the alleged offence.

.....
(1) Insert name and address of alleged offender.

(2) Insert short particulars of offence alleged.

(3) Insert amount of penalty prescribed.

(Authorised Person)

.....
Dated this 11th day of March 2024.

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

RONALD CHAMBERS, Shire President.
SHANE BURGE, Chief Executive Officer.

**LOCAL GOVERNMENT ACT 1995
CAT ACT 2011**

SHIRE OF ESPERANCE

CAT LOCAL LAW 2024

TABLE OF CONTENTS

PART 1—PRELIMINARY	783
1.1 Short Title.....	783
1.2 Commencement	783
1.3 Application.....	783
1.4 Repeal	783
1.5 Definitions	783
PART 2—CAT CONTROL	784
2.1 Cat not to be a nuisance.....	784
2.2 Cat prohibited areas.....	784
PART 3—PERMITS FOR KEEPING CATS	784
3.1 Interpretation	784
3.2 Cats for which a permit is required.....	784
3.3 Application for permit	785
3.4 Refusal to determine application.....	785
3.5 Factors relevant to determination of application.....	785
3.6 Decision on application	785
3.7 Conditions.....	786
3.8 Duration of permit.....	786
3.9 Revocation.....	786
3.10 Permit not transferable.....	786
3.11 Permit to be kept at the premises and available for view	786
PART 4—FEES, CHARGES AND COSTS	786
4.1 Fees, Charges and Costs	786
PART 5—OBJECTIONS AND REVIEW	786
5.1 Objection and appeal rights	786
PART 6—ENFORCEMENT.....	786
6.1 Offences.....	786
6.2 Prescribed offences	786
6.3 Forms	787
6.4 Serving of infringement notices	787
SCHEDULE 1—PLACES WHERE CATS ARE PROHIBITED ABSOLUTELY	787
SCHEDULE 2—MODIFIED PENALTIES	787
SCHEDULE 3—FORMS.....	788

LOCAL GOVERNMENT ACT 1995
CAT ACT 2011

SHIRE OF ESPERANCE

CAT LOCAL LAW 2024

Under the powers conferred on it by the *Cat Act 2011* and the *Local Government Act 1995* and under all other enabling powers, the Council of the Shire of Esperance resolved on 27 February 2024 to make the following local law.

PART 1—PRELIMINARY

1.1 Short Title

This local law may be cited as the Shire of Esperance *Cat Local Law 2024*.

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 Esperance *Cat Local Law 2022* published in the *Government Gazette* on 8 March 2023 is repealed.

1.5 Definitions

In this local law unless the context otherwise requires—

Act means the *Cat Act 2011*;

applicant means the occupier of the premises who makes an application for a permit under this local law;

authorised person means a person appointed by the local government to perform the functions conferred on an authorised person under this local law;

cat means an animal of the species *felis catus* or a hybrid of that species;

cat management facility means—

- (a) a facility operated by a local government that is, or may be, used for keeping cats; or
- (b) a facility for keeping cats that is operated by a person or body prescribed; or
- (c) a facility for keeping cats that is operated by a person or body approved in writing by a local government;

cattery means any premises where more than 3 cats are boarded, housed or trained temporarily, usually for profit, and where the occupier of the premises is not the ordinary keeper of the cats;

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;

grouped dwelling (commonly referred to as a duplexes, villas or townhouses) means a dwelling that is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above the other, except where special conditions of landscape or topography dictate otherwise, and includes a dwelling on a survey strata with common property.

local government means the Shire of Esperance;

multiple dwelling (often called flats, apartments or units) means a dwelling in a group of more than one dwelling on a lot where any part of a dwelling is vertically above part of any other but—

- (a) does not include a grouped dwelling; and
- (b) includes any dwellings above the ground floor in a mixed use development.

nuisance means behaviour that includes where a cat—

- (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;
- (c) interference which causes material damage to land or other property on the land affected by the interference; or
- (d) injurious or dangerous to the health of any person or domestic animal.

owner in relation to a cat means any of the following persons—

- (a) the owner of the cat as defined in the Act;
- (b) a person by whom the cat is ordinarily kept;
- (c) a person who has or appears to have immediate custody or control of the cat;
- (d) a person who keeps the cat, or has the cat in her or his possession for the time being;
- (e) a person who occupies any premises in which a cat is ordinarily kept or ordinarily permitted to live; or
- (f) a permit holder of a permit which relates to the cat;
- (g) the holder of an exemption issued in relation to the cat.

permit means a permit issued by the local government under clause 3.6;

permit holder means a person who holds a valid permit under clause 3.6;

person liable for the control of means each of the following in relation to a cat—

- (a) the registered owners of the cat;
- (b) the owner of the cat;
- (c) the occupier of any premises where the cat is ordinarily kept or ordinarily permitted to live; or
- (d) a person who has the cat in their possession or under their control, but does not include a registered veterinary surgeon, or a person acting on their behalf, in the course of their professional practice;

premises includes the following—

- (a) land (whether or not vacant);
- (b) the whole or part of a building or structure (whether of a permanent or temporary nature); and
- (c) a vehicle.

public place includes any place to which the public lawfully has access;

RSPCA means the Royal Society for the Prevention of Cruelty to Animals (Inc) of Western Australia;

Schedule means a schedule to this local law;

Scheme means a local planning scheme of the local government made by it under the *Planning and Development Act 2005* and its antecedents; and

single dwelling means a house that stands alone on its own parcel of land.

PART 2—CAT CONTROL

2.1 Cat not to be a nuisance

- (1) An owner must not allow a cat to be or create a nuisance.
- (2) Where in the opinion of an authorised person, a cat is creating a nuisance, the local government may give written notice to the owner of the cat requiring that person to abate the nuisance.
- (3) When a nuisance has occurred and a notice to abate the nuisance is given, the notice remains in force for the period specified by the local government in the notice which must not exceed twenty eight (28) days.
- (4) A person given a notice to abate the nuisance must comply with the notice within the period specified in the notice.

2.2 Cat prohibited areas

- (1) Unless in accordance with written authorisation from the local government a cat must not be in a cat prohibited area, as provided for in Schedule 1, at any time.
- (2) If a cat is in a cat prohibited area contrary to subclause (1), the owner of the cat commits an offence.
- (3) An authorised person may seize and remove, or direct the seizure and removal of a cat from a cat prohibited area, pursuant to the Act.

PART 3—PERMITS FOR KEEPING CATS

3.1 Interpretation

In this Part, and for the purposes of applying the definition of *cattery* in Part 3— *cat* does not include a cat less than 6 months old.

3.2 Cats for which a permit is required

- (1) Subject to clause 3.2(2) a person is required to have a permit—
 - (a) to keep more than two(2) cats on any single dwelling or grouped dwelling premises to a maximum of six (6) cats;
 - (b) to keep more than two (2) cats on any multiple dwelling property to a maximum of three (3) cats; or
 - (c) to use any premises as a cattery.
- (2) A permit is not required under clause 3.2(1) if the premises concerned are—

- (a) a refuge of the RSPCA or any other animal welfare organisation;
- (b) a cat management facility which has been approved by the local government;
- (c) a veterinary surgery; or
- (d) a pet shop;

3.3 Application for permit

- (1) An application for a permit under clause 3.2 must be—
 - (a) made in writing by an occupier of premises in relation to those premises;
 - (b) in a form approved by the local government, describing and specifying the number of cats to be kept on the premises;
 - (c) accompanied by a brief reason and justification for the request;
 - (d) accompanied by the plans of the premises to which the application relates to the specification and satisfaction of the local government;
 - (e) accompanied by the consent in writing of the owner of the premises, where the occupier is not the owner of the premises to which the application relates; and
 - (f) accompanied by the application fee for the permit determined by the local government from time to time.
- (2) In determining an application for a permit pursuant to subclause (1) the local government may consider such matters as it deems appropriate and may request the applicant—
 - (a) consult with nearby landowners and/or occupiers;
 - (b) advise nearby landowners and/or occupiers that they may make submissions to the local government on the application for a permit within fourteen (14) days of receiving that advice, before determining the application for the permit; or
 - (c) provide such further or other information as deemed necessary in order for it to make a determination.

3.4 Refusal to determine application

The local government may refuse to determine an application for a permit if it is not made in accordance with clauses 3.3(1) and 3.3(2).

3.5 Factors relevant to determination of application

- (1) In determining an application for a permit the local government may have regard to—
 - (a) the reasons and justification provided for the request;
 - (b) the physical suitability of the premises for the proposed use;
 - (c) the suitability of the zoning of the premises under any Scheme which applies to the premises for the use;
 - (d) the environmental sensitivity and general nature of the location surrounding the premises for the proposed use;
 - (e) the structural suitability of any enclosure in which any cat is to be kept;
 - (f) the likelihood of a cat causing a nuisance, inconvenience or annoyance to the occupiers of adjoining land;
 - (g) the likely effect on the amenity of the surrounding area of the proposed use;
 - (h) the likely effect on the local environment, including any pollution or other environment damage which may be caused by the use;
 - (i) any submissions received under clause 3.5(2)(a) within the time specified in clause 3.5(2)(b); and
 - (j) such other factors which the local government may consider to be relevant in the circumstances of the particular case.
- (2) The local government may require an applicant to—
 - (a) consult with other nearby landowners; and
 - (b) advise other adjoining landowners that they may make submissions to the local government on the application for the permit within fourteen (14) days of receiving that advice, before determining the application for the permit.
- (3) The local government may specify the extent of the consultation with nearby residents, as specified in clause 3.5(2)(a) and may specify which properties should be consulted.

3.6 Decision on application

- (1) The local government may—
 - (a) approve an application for a permit, as it was submitted, in which case it must approve it subject to the conditions in clause 3.7 and may approve it subject to any other conditions it considers fit;
 - (b) approve an application, but specify an alternative number of cats permitted to be housed at the address; or
 - (c) refuse to approve an application for a permit.

- (2) If the local government approves an application under subclause (1), then it must issue to the applicant a permit in the form determined by the CEO.
- (3) If the local government refuses to approve an application under subclause (1), then it must advise the applicant accordingly in writing.

3.7 Conditions

- (1) Every permit is issued subject to the following conditions—
 - (a) each cat kept on the premises to which the permit relates must comply with the requirements of this local law;
 - (b) the permit holder will provide adequate space for the exercise of the cats; and
 - (c) the premises must be maintained in good order and in a clean and sanitary condition.
- (2) In addition to permit conditions issued under this clause, additional conditions may be applied, as the local government considers appropriate.
- (3) The permit holder who fails to comply with a condition of a permit commits an offence.

3.8 Duration of permit

Unless otherwise specified, in a condition on a permit, a permit commences on the date of issue and is valid until—

- (a) it is revoked;
- (b) the cat is deceased; or
- (c) the permit holder ceases to reside at the premises to which the permit relates.

3.9 Revocation

The local government may revoke a permit if the permit holder fails to observe any provision of this local law or a condition of a permit.

3.10 Permit not transferable

A permit is not transferable either in relation to the permit holder or the premises.

3.11 Permit to be kept at the premises and available for view

A permit issued by the local government must be kept at the premises to which it applies and must be provided to an authorised person on demand. In the case of a registered cattery, the permit must be displayed in a prominent place within the premises.

PART 4—FEES, CHARGES AND COSTS

4.1 Fees, Charges and Costs

The following are to be imposed and determined by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995*—

- (a) the charges to be levied under section 31(1)(a) of the Act relating to the removing and impounding of a cat;
- (b) the charges to be levied under section 31(1)(b) of the Act relating to keeping and caring for a cat;
- (c) the costs incurred by the operator of a cat management facility under section 31(1)(c) of the Act for the microchipping of a cat prior to release if so required under section 33 of the Act;
- (d) the cost incurred by the operator of a cat management facility under section 31(1)(d) of the Act for the sterilisation of a cat if so required under section 33 of the Act; and
- (e) the costs of the destruction and the disposal of a cat under section 34 of the Act.

PART 5—OBJECTIONS AND REVIEW

5.1 Objection and appeal rights

Any person who is aggrieved by the conditions imposed in relation to a permit, the revocation of a permit, or by the refusal of the local government to grant a permit may object to or appeal against the decision pursuant to the *Local Government Act 1995* (Part 9, Division 1—Objections and Review).

PART 6—ENFORCEMENT

6.1 Offences

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

6.2 Prescribed offences

- (1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of section 62(2) of the Act.
- (2) The amount appearing in the final column of Schedule 2 directly opposite a clause specified in that Schedule is the modified penalty for an offence against that clause.

6.3 Forms

- (1) The issue of infringement notices, their withdrawal and the payment of modified penalties are dealt with in Division 4 of Part 4 of the Act.
- (2) An infringement notice given under section 62 of the Act is to be in the form of Form 6 of Schedule 1 of the *Cat Regulations 2012*.
- (3) A notice sent under section 65 of the Act withdrawing an infringement notice is to be in the form of Form 7 of Schedule 1 of the *Cat Regulations 2012*.

6.4 Serving of infringement notices

- (1) An infringement notice served under section 62 of the Act or this local law may be given to a person by way of one of the following
 - (a) personally;
 - (b) by registered mail addressed to the person;
 - (c) by leaving it for the person at her or his address; or
 - (d) by email.

SCHEDULE 1—PLACES WHERE CATS ARE PROHIBITED ABSOLUTELY

[Clause 2.3]

Table 1—Locations where cats are prohibited absolutely

RESERVE NUMBER	DESCRIPTION
27318	Esperance Foreshore
27626	Skroly Park
41097	Tjaltjraak Boodja Park
23043	Lake Monjingup Reserve
31112, 41141	Dempster Head
31540 25891	West Beach and Blue Haven
35201	Bandy Creek
32337	Munglinup Beach
40943	Quagi Beach
39409	Alexander Bay
40772	Kennedys Beach
3805	Israelite Bay
3473	Esperance Cemetery
4181	Common
24284	Sand Reserve
38227	Esperance Golf Club
28099	Newtown Oval
42818	Pink Lake Reserve
33660	Lot 1967 Stearne Road

SCHEDULE 2—MODIFIED PENALTIES

[Clause 6.2]

Table 2—Modified Penalties

Item	Clause	Offence	Modified Penalty
1	2.1(4)	Cat not to be a nuisance	\$200
2	2.2	Cat in cat prohibited area	\$200
3	3.2(1)(a) & (b)	Keeping more than prescribed number of cats without a permit	\$200
4	3.2(1)(c)	Keeping a cattery without a permit	\$200
5	3.7(3)	Failure to comply with permit condition	\$200

SCHEDULE 3—FORMS

[Clause 3.3(1)(b)]

APPLICATION FOR A PERMIT TO KEEP CATS
SHIRE OF ESPERANCE CAT LOCAL LAW 2022
APPLICATION FOR A PERMIT TO KEEP CATS

I/we (full name).....
of (postal address).....
(telphone number)
(facsimile number)..... (E-mail address).....
Apply for a permit to keep cats at (address of premises).....

For (number and breed of cats).....
(insert name of person)..... will be residing at the premises on and from (insert date)

The application must be—

- (a) accompanied by a brief reason and justification for the request;
(b) accompanied by the plans of the premises to which the application relates to the specification and satisfaction of the local government;
(c) accompanied by the consent in writing of the owner of the premises, where the occupier is not the owner of the premises to which the application relates; and
(d) accompanied by the application fee for the permit determined by the local government from time to time.

Signature of applicant.....

Date.....

OFFICE USE ONLY

Application fee paid on..... (Date)

Dated this 11th day of March 2024.

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

RONALD CHAMBERS, Shire President.
SHANE BURGE, Chief Executive Officer.

**LOCAL GOVERNMENT ACT 1995
DOG ACT 1976**

SHIRE OF ESPERANCE

DOG LOCAL LAW 2024

TABLE OF CONTENTS

PART 1—PRELIMINARY	791
1.1 Short title.....	791
1.2 Commencement	791
1.3 Application.....	791
1.4 Repeal	791
1.5 Definitions	791
PART 2—IMPOUNDING OF DOGS.....	792
2.1 Charges and costs.....	792
PART 3—REQUIREMENTS AND LIMITATIONS ON THE KEEPING OF DOGS.....	792
3.1 Dogs to be confined.....	792
3.2 Limitation on the number of dogs.....	792
PART 4—APPROVED KENNEL ESTABLISHMENT	792
4.1 Interpretation	792
4.2 Application for licence for approved kennel establishment.....	792
4.3 Notice of proposed use.....	793
4.4 Exemption from notice requirements	793
4.5 When application can be determined	793
4.6 Determination of application	793
4.7 Where application cannot be approved.....	793
4.8 Conditions of approval	794
4.9 Compliance with conditions of approval.....	794
4.10 Fees	794
4.11 Form of licence.....	794
4.12 Period of licence.....	794
4.13 Variation or cancellation of licence.....	794
4.14 Transfer	794
4.15 Notification	794
4.16 Inspection of kennel establishment	795
PART 5—MISCELLANEOUS	795
5.1 Offence to excrete	795
PART 6—ENFORCEMENT.....	795
6.1 Interpretation	795
6.2 Modified penalties	795
6.3 Issue of infringement notice.....	795
6.4 Failure to pay modified penalty.....	795
6.5 Payment of modified penalty	795
6.6 Withdrawal of infringement notice.....	795
6.7 Service.....	795
6.8 Penalty	796
SCHEDULE 1—APPLICATION FOR A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT	796
SCHEDULE 2—CONDITIONS OF A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT	797
SCHEDULE 3—OFFENCES IN RESPECT OF WHICH MODIFIED PENALTY APPLIES	798

LOCAL GOVERNMENT ACT 1995
DOG ACT 1976

SHIRE OF ESPERANCE

DOG LOCAL LAW 2024

Under the powers conferred on it by the *Dog Act 1976* and the *Local Government Act 1995* and under all other enabling powers, the Council of the Shire of Esperance resolved on 27 February 2024 to make the following local law.

PART 1—PRELIMINARY

1.1 Short title

This local law may be cited as the Shire of Esperance *Dog Local Law 2024*

1.2 Commencement

This local law comes into operation 14 days after the day on which it is published in the *Government Gazette*.

1.3 Application

This local law applies throughout the district.

1.4 Repeal

The Shire of Esperance *Dog Local Law 2022* published in the *Government Gazette* on 8 March 2023 is repealed.

1.5 Definitions

In this local law—

Act means the *Dog Act 1976*;

application means the completed form lodged by an applicant as required by this local law;

applicant means the owner or occupier of premises who makes an application for a permit under this local law;

assistance dogs has the meaning given to it in the Act;

authorised person means a person appointed under the *Local Government Act 1995* section 9.10(2) to be an authorised person the purpose of this Act; or a person designated as an authorised officer under the *Public Health Act 2016* section 24(1) for the purposes of this Act;

CEO means the Chief Executive Officer of the local government;

Council means the Council of the Shire of Esperance;

dangerous dog has the meaning given to it in the Act;

development approval means an approval issued under the local planning scheme as amended from time to time;

district means the district of the local government;

dog management facility established by the local government under section 11 of the Act and used for the purposes of keeping dogs seized or impounded under the Act or this local Law.

kennel establishment means the kennel, yard and premises used to house a dog for commercial purposes, gain or reward.

local government means the Shire of Esperance;

local planning scheme means a local planning scheme made by the local government under the *Planning and Development Act 2005* which applies throughout the whole or a part of the district;

LG Act means the *Local Government Act 1995*;

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

microchip means an identification device of a prescribed type that is capable of being implanted in a dog and is designed to record information in a way that can be electronically retrieved;

premises has the same meaning given in the Act;

public place has the same meaning given in the Act;

Regulations means the *Dog Regulations 2013*;

schedule means a schedule in this local law;

seized means a dog seized by an authorised person, but not having been placed in a pound;

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

valid in relation to a licence issued under this local law means current and for which all the associated fees have been paid in full.

PART 2—IMPOUNDING OF DOGS

2.1 Charges and costs

The following are to be imposed and determined by the local government under sections 6.16 to 6.19 of the LG Act—

- (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 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 by the CEO;
- (c) the cost of implantation of a microchip referred to in section 30A(3) of the Act; and
- (d) the costs of the destruction and the disposal of a dog referred to in section 29(15) of the Act.

PART 3—REQUIREMENTS AND LIMITATIONS ON THE 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 an effective operational 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) An occupier who fails to comply with subclause (1) commits an offence.
- (3) Notwithstanding subclause (1) and (2), the confinement of dangerous dogs is dealt with in the Act and Regulations.

3.2 Limitation on the number of dogs

- (1) This clause does not apply to dangerous dogs (declared) or dangerous dogs (restricted breeds).
- (2) This clause does not apply to premises which have been—
 - (a) licenced under Part 4 as an approved Kennel Establishment; or
 - (b) granted an exemption under section 26(3) of the Act.
- (3) For the purpose of section 26(4) of the Act, a person must not, without a permit, keep or permit to be kept—
 - (a) on premises situated on a lot having an area of 4 hectares or more—4 dogs over the ages of 3 months and the young of those dogs under that age; or
 - (b) on premises situated on any other lot—2 dogs over the age of 3 months and the young of those dogs under that age.

PART 4—APPROVED KENNEL ESTABLISHMENT

4.1 Interpretation

In this Part and in Schedule 2—

adjoining when used in relation to land or premises means any land or premises which have a common boundary or portion of a boundary with a lot or is separated from that lot by a right-of-way, pedestrian access way, access leg of a battle-axe lot or the equivalent not more than 6 metres in width;

fit and proper person means a person who does not have an unspent conviction under the *Animal Welfare Act 2002* or a history of contravention of the Act

licence means a licence to keep an approved kennel establishment on premises;

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

transferee means a person who applies for the transfer of a licence to him or her under clause 4.14 of this local law.

4.2 Application for licence for approved kennel establishment

An application for a licence must be made in the form of that in Schedule 1, and 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 4.3;

- (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 the local government or CEO, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare;
- (d) a written acknowledgment that the applicant has read and agrees to comply with any code of practice relating to the keeping of dogs adopted or nominated by the local government;
- (e) the fee for the application for a licence referred to in clause 4.10(1) of this local law; and
- (f) a copy of a Development Approval issued by the local government under a local planning scheme.

4.3 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) once in a newspaper circulating in the district; and
 - (b) to the owner and occupiers of any premises adjoining the premises.
- (2) The notices in subclause (1) must specify that—
 - (a) any written submissions as to the proposed use are to be lodged with the CEO within 14 days of the date the notice is given; and
 - (b) the application and plans and specifications may be inspected at the offices of the local government.
- (3) Where—
 - (a) the notices given under subclause (1) do not clearly identify the premises; or
 - (b) a notice given under subclause (1) (a) is of a size or in a location in the newspaper which, in the opinion of the CEO, would fail to serve the purpose of notifying persons of the proposed use of the premises,

then the local government may refuse to determine the application for a licence until the notices or notice, as the case may be, is given in accordance with its directions.

4.4 Exemption from notice requirements

Where 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,

under a local planning scheme, then the requirements of clauses 4.2(b), 4.3 and 4.5(a) do not apply in respect of the application for a licence.

4.5 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 4.2;
- (b) the applicant submits proof that the notices referred to in clause 4.3(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 4.3(2)(a) on the proposed use of the premises.

4.6 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 4.8;
- (b) any written submissions received within the time specified in clause 4.3(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 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.

4.7 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; or
- (c) if the applicant is not a fit and proper person to keep an approved kennel establishment.

4.8 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.

4.9 Compliance with conditions of approval

- (1) A licensee who does not comply with the conditions of licence commits an offence.
- (2) Notwithstanding clause 6.8, the penalty under this clause is \$5000 and where the offence is of a continuing nature, an additional daily penalty of \$100.

4.10 Fees

- (1) On lodging an application for a licence, the applicant is to pay a fee to the local government.
- (2) On the issue or renewal of a licence, the licensee is to pay a fee to the local government.
- (3) On lodging an application for the transfer of a valid licence, the transferee is to pay a fee to the local government.
- (4) The fees referred to in subclauses (1) to (3) are to be imposed and determined by the local government under sections 6.16 to 6.19 of the LG Act.

4.11 Form of licence

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

4.12 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 fee referred to in clause 4.10(2) 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.

4.13 Variation or cancellation of licence

- (1) The local government may through a written notice to the licensee 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;
 - (c) following a breach of the *Animal Welfare Act 2002* or the *Public Health Act 2016*; or
 - (d) if the licensee is not a fit and proper 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), (c) and (d) of subclause (2), the date determined under section 27(6) of the Act.
- (4) If a licence is cancelled the fee paid for that licence is not refundable for the term of the licence that has not yet expired.

4.14 Transfer

- (1) An application for the transfer of a valid licence from the licensee to another person must be—
 - (a) made in the form determined by the local government;
 - (b) made by the transferee;
 - (c) made with the written consent of the licensee; and
 - (d) 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; and
 - (ii) the fee for the application for the transfer of a licence referred to in clause 4.10(3).
- (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 4.15(b), the transferee becomes the licensee of the licence for the purposes of this local law.

4.15 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 4.13(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 4.13(2)(a); and
- (g) a licensee of the cancellation of a licence under paragraphs (b), (c) or (d) of clause 4.13(2), which notice is to be given in accordance with section 27(6) of the Act.

4.16 Inspection of kennel establishment

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

PART 5—MISCELLANEOUS

5.1 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.

PART 6—ENFORCEMENT

6.1 Interpretation

In this Part—

infringement notice means the notice referred to in clause 6.3; and

notice of withdrawal means the notice referred to in clause 6.6(1).

6.2 Modified penalties

- (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 third column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if—
 - (a) the dog is not a dangerous dog; or
 - (b) the dog is a dangerous dog, but an amount does not appear in the fourth column directly opposite that offence.
- (3) 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 a dangerous dog.

6.3 Issue of infringement notice

Where an authorised person has reason to believe that a person has committed an offence in respect of which a modified penalty may be imposed, he or she may issue to that person a notice.

6.4 Failure to pay modified penalty

Where a person who has received an infringement notice fails to pay the modified penalty within the time specified in the notice, or within such further time as allowed by the CEO, he or she is deemed to have declined to have the offence dealt with by way of a modified penalty.

6.5 Payment of modified penalty

A person who has received an infringement notice may, within the time specified in that notice or within such further time as may in any particular case be allowed by the CEO, send or deliver to the local government the amount of the penalty, with or without a reply as to the circumstances giving rise to the offence, and the local government may appropriate that amount in satisfaction of the penalty and issue an acknowledgment of receipt.

6.6 Withdrawal of infringement notice

- (1) Whether or not the modified penalty has been paid, an authorised person may withdraw an infringement notice by sending a notice.
- (2) A person authorised to issue an infringement notice under clause 6.3 cannot sign or send a notice of withdrawal.

6.7 Service

An infringement notice or a notice of withdrawal may be served on a person personally, or by leaving it at or posting it to her or his address as ascertained from her or him, or as recorded by the local government under the Act, or as ascertained from inquiries made by the local government.

6.8 Penalty

Any person who contravenes any provision of this local law or fails to comply with a notice issued under this local law commits an offence, to a penalty—

- (a) not exceeding \$5,000; or
- (b) \$100 for each day or part of a day.

SCHEDULE 1—APPLICATION FOR A LICENCE FOR AN APPROVED KENNEL ESTABLISHMENT

[clause 4.2]

I/we (full name).....
 of (postal address).....

 (telephone number)
 (facsimile number)..... (E-mail address).....
 Apply for a licence for an approved kennel establishment at (address of premises).....

For (number and breed of dogs)
 (insert name of person)..... will be residing at the premises on and from (insert date)

 (insert name of person)..... will be residing (sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare) at
 (insert address of residence) on and from
 (insert date).

Attached are—

- (a) a site plan of the premises showing the location of the kennel establishment and yards and all other buildings and structures and fences;
- (b) plans and specifications of the kennel establishment;
- (c) copy of notice of proposed use to appear in newspaper;
- (d) copy of notice of proposed use to be given to adjoining premises;
- (e) 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; and
- (f) if the person in item (e) is not the applicant, written evidence that the person is a person in charge of the dogs.

I confirm that I have read and agree to comply with the Code of Practice known as....., in the keeping of dogs at the proposed kennel establishment.

Signature of applicant.....

Date.....

*delete where inapplicable.

Note: a licence if issued will have effect for a period of 12 months—section 27(5) of the *Dog Act 1976*.

OFFICE USE ONLY

Application fee paid on..... (Date)

**SCHEDULE 2—CONDITIONS OF A LICENCE FOR AN
APPROVED KENNEL ESTABLISHMENT**

[clause 4.8(1)]

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

- (a) each kennel establishment, unless it is fully enclosed, must have a yard attached to it;
- (b) each kennel establishment 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 establishment 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 establishment 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 establishment 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 establishment or group of kennel establishment must be at least twice the floor area of the kennel establishment or group of kennel establishment to which it is attached;
- (f) The upper surface of the kennel establishment 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 establishment 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 establishment 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 establishment;
- (j) from the floor, the lowest internal height of a kennel establishment must be, whichever is the lesser of—
 - (i) 2m; or
 - (ii) 4 times the height of the breed of dog in the kennel establishment, 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 establishment 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 establishment must be kept in good condition;
- (m) the roof of each kennel establishment must be constructed of impervious material;
- (n) all kennel establishment 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 establishment 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—OFFENCES IN RESPECT OF WHICH MODIFIED PENALTY APPLIES

[clause 6.2]

Table 1—Modified Penalties

Offence	Nature of offence	Modified penalty \$	Dangerous Dog Modified Penalty \$
3.1	Failing to provide means for effectively confining a dog	200	400
3.2 (3)	Keeping more than prescribed number of dogs without a permit	100	200
4.9	Failing to comply with the conditions of a licence	200	200
5.1(2)	Dog excreting in public place	200	200

Dated this 11th day of March 2024.

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

RONALD CHAMBERS, Shire President.
SHANE BURGE, Chief Executive Officer.
