

**CEMETERIES ACT 1986  
LOCAL GOVERNMENT ACT 1995**

SHIRE OF CUNDERDIN

**CEMETERY LOCAL LAW 2015**

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 Cunderdin resolved on 19<sup>th</sup> March 2015 to make the following local law.

**PART 1—PRELIMINARY**

**1.1 Citation**

This local law is cited as the *Shire of Cunderdin Cemetery Local Law 2015*.

**1.2 Commencement**

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

**1.3 Repeal of local law**

The following local laws are repealed-

- (a) *By-Laws relating to Cunderdin Public Cemetery – Reserve No. 14531 and Meckering Public Cemetery – Reserve No. 14624*, as published in the *Government Gazette* on 6 February 1969;
- (b) *The Municipality of the Shire of Cunderdin By-Law for the Control and Management of the Cunderdin and Meckering Public Cemeteries*, as published in the *Government Gazette* on 8 February 1972.

**1.4 Purpose and effect**

- (1) The purpose of this local law is to provide for the orderly management of those Cemeteries in accordance with established plans and to create offences for inappropriate behaviour within cemetery grounds.
- (2) The effect of this local law is that all persons in the administration of the cemeteries, burying deceased in the cemeteries, or otherwise providing services to or making use of the cemeteries, are to comply with the provisions of this Local Law.

**1.5 Application**

This local law applies to the Cunderdin Cemetery (Reserve No. 14531) and Meckering Cemetery (Reserve No. 14624) located in the district.

**1.6 Interpretation**

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

**Act** means the *Cemeteries Act 1986*;

**animal** means any animal;

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

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

**cemetery** means any one or any part of the public cemeteries in the district of the local government, which the Governor, by order, has placed under the care control and management of the local government;

**CEO** means the Chief Executive Officer of the local government;

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

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

**funeral director** means a person holding a current funeral director's licence;

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

**grave** means a specified area of the cemetery for burial;

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

**holder** in relation to a grant includes-

- (a) a person issued with a grant by the local government;
- (b) a person for the time being appearing to the local government to be the holder of a grant;

**local government** means the Shire of Cunderdin;

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

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

**Minister** means the Minister for Local Government;

**monument** includes a tombstone, vault, enclosure or other approved form of memorial;

**monumental mason** means a person, firm or company holding a current monumental mason's licence;

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

**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;

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

**set fee** refers to fees and charges set by a resolution of the local government in accordance with sections 6.16 to 6.19 of the *Local Government Act 1995* and published in the *Government Gazette*, under section 53 of the Act;

**single funeral permit** means a permit issued by the local government 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; and

**vehicle** has the same meaning as is given to that word in the *Road Traffic Act 1974*, as amended from time to time, and includes trail bikes, beach buggies and other recreational vehicles licensed or unlicensed, but excludes a wheel chair being used by a physically impaired person.

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

## PART 2—ADMINISTRATION

### 2.1 Powers and functions of CEO

Subject to any directions given by the local government, the CEO shall exercise all the powers and functions of the local government in respect of the cemeteries.

## PART 3—APPLICATION FOR FUNERALS

### 3.1 Grant of right of burial

The local government may issue to a person a grant of right of burial, for the term specified in the Act from time to time, upon –

- (a) written application by that person; and
- (b) payment of the set fee.

### **3.2 Application for burial**

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

### **3.3 Applications to be accompanied by certificates etc**

All applications referred to in clause 3.2 shall be accompanied by either a medical certificate of death or a Coroner's order of burial, and a certificate issued under clause 3.4, in respect of the body.

### **3.4 Certificate of identification**

- (1) After a dead body is placed in a coffin and prior to a dead body being removed to the cemetery, a person who personally knew the deceased shall identify the dead body and shall complete a certificate of identification in the form determined by the local government from time to time, unless—
  - (a) in the opinion of the funeral director, the dead body is not in a fit state to be viewed; or
  - (b) after reasonable effort the funeral director is unable to arrange for a person to identify the dead body.
- (2) Where—
  - (a) in the opinion of the funeral director, the dead body is not in a fit state to be viewed; or
  - (b) after reasonable effort the funeral director is unable to arrange for a person to identify the dead body,

then the funeral director shall complete a certificate in the form determined by the local government from time to time.

### **3.5 Minimum notice required**

All bookings to hold a funeral shall be made with the local government at least 2 working days prior to the time proposed for burial on the application, otherwise an extra charge may be made.

### **3.6 Time for burials**

- (1) Subject to subclause (2), a person shall only carry out a burial between the hours of 6:00 a.m. and 6:00 p.m. Monday to Sunday.
- (2) A person shall not carry out a burial –
  - (a) on Christmas Day; or
  - (b) on Good Friday.

## **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 cemetery 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 local government may, upon the receipt of an application in writing in the form determined by the local government 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 local government 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 local government, the local government shall issue to the applicant a licence in the form determined by the local government.
- (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 local government an application form and upon payment of the set fee.

#### **4.3 Funeral director's licence expiry**

A funeral director's licence shall expire on 30 June in each year.

#### **4.4 Cancellation of a funeral director's licence**

- (1) The local government 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 local government, the conduct of the holder of the funeral director's licence or any employee of the holder in directing or attempting to direct 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 the local law; or
  - (g) the local government 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 subclause (1), no part of any fee paid for the issue of that licence is refundable by the local government.

#### **4.5 Application for a single funeral permit**

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

#### **4.6 Application may be refused**

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

#### **4.7 Review of decision**

An aggrieved person whose licence has been cancelled or suspended under this part may appeal to the State Administrative Tribunal against a decision of the local government under this part and in the manner stated in section 19 of the Act.

## **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 local government 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 local government is structurally sound and bears the name of the deceased person indelibly inscribed in legible characters on a plate on the coffin's lid; and
- (c) under the plate referred to in paragraph (b) there is a substantive lead strip bearing the surname of the deceased person stamped in legible characters, each character being not less than 10mm in height.

#### **5.2 Funeral processions**

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

#### **5.3 Vehicle access and speed limitations**

- (1) Subject to subclause (2), every funeral procession shall enter by the principal entrance, and no vehicle except the hearse, and official mourning coaches, shall be permitted to enter the interment area.
- (2) This clause shall not apply to persons using wheelchairs or motorised wheelchairs.
- (3) 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 indicated by signs.

#### **5.4 Offenders may be ordered to leave**

A person committing an offence under subclause 5.3(3) may be ordered to leave the cemetery by the CEO or an authorised officer.

#### **5.5 Conduct of funeral by local government**

When conducting a funeral under section 22 of the Act the local government 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) bury a dead body within cemeteries under the delegation of the local government and in conjunction with the Act;
- (e) specify an area in the cemetery where the dead body is to be buried or the ashes placed;
- (f) conduct the funeral notwithstanding the failure of a person to make any application or to obtain any consent required under this local law;
- (g) do or require anything which it considers is necessary or convenient for the conduct of a funeral by it.

### ***Division 2—Placement of Ashes***

#### **5.6 Disposal of Ashes**

- (1) A 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 the local government may grant permission for the ashes to be disposed of by one of the following methods—
  - (a) niche wall;

- (b) scattering to the winds; or
  - (c) other memorials approved by the local government.
- (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 local government's approval provided—
- (a) the person requesting the placement of the ashes has the permission of the local government; and
  - (b) the ashes are placed within an area set aside for that purpose by the local government.
- (4) An authorised officer may place the ashes of a deceased person within a grave in accordance with the local government approval, provided the person requesting the placement of the ashes has the written permission of the local government and the approval of the holder of the right of burial of the grave.

## **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 the local government or an authorised officer; or
  - (b) any circumstances less than 600mm.
- (2) The permission of the local government or the authorised officer in subclause (1)(a) will only be granted where in the opinion of the local government or 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 re-opening a grave in the cemetery, the local government finds it necessary to remove plants, grass, shrubs or other like matter from the grave, then the person ordering the re-opening of that grave shall bear the cost of the removal and any necessary reinstatement.
- (2) If the Minister orders the exhumation of a body in accordance with section 58 of the Act, then the Minister may further order how and by whom the cost referred to in subclause (1) should be met.

### **6.3 Exhumation of a coffin**

- (1) Subject to subclause (2), a person shall not exhume a coffin in the cemetery for the purposes of re-burial 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 must have applied in writing to the local government requesting the exhumation and the local government has authorised the exhumation.

### **6.4 Opening of coffin**

- (1) A person shall not open a coffin in the cemetery unless –
- (a) the coffin is opened for the purposes of the exhumation of a dead body; or
  - (b) that person has produced to the local government an order signed by the Commission of Police and the local government has approved the opening of that coffin.

## **PART 7—MEMORIALS AND OTHER WORK**

### *Division 1—General*

#### **7.1 Application for monumental work**

The local government 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 as determined by the local government.

#### **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 local government.

#### **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 8.00 a.m. and 6.00 p.m. on weekdays, and 8.00 a.m. and noon on Saturdays, without the written permission of the local government.

#### **7.7 Unfinished work**

Should any work by masons or others be not completed before 6:00 p.m. 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 without the prior approval of the local government.

#### **7.9 Plants and trees**

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

#### **7.10 Supervision**

All workers, whether employed by the local government 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 Minor maintenance and repair works**

Persons shall be permitted to carry out minor maintenance and repair works, not of a structural nature, such as cleaning, touch up painting, etc on graves, without seeking the approval of the local government.

#### **7.12 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.

#### **7.13 Placing of glass domes and vases**

A person shall not place glass domes, vases or other grave ornaments outside the perimeter of a grave in the cemetery as defined in the plans kept and maintained under section 40(2) of the Act.

### ***Division 2—Memorial Plaque Section***

#### **7.14 Requirements of a memorial plaque**

All memorials, placed in a memorial plaque section of the cemetery set aside by the local government, shall be supplied by the local government.

### ***Division 3—Licensing of Monumental Masons***

#### **7.15 Monumental mason's licence**

- (1) The local government may, upon receipt of an application in writing by any person and upon payment of the set fee issue to the applicant a 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 local government shall specify upon the issue of that licence.

#### **7.16 Expiry date, non-transferability**

A monumental mason's licence—

- (a) shall, subject to clause 7.19, be valid from the date specified therein until 30 June the next following year; and
- (b) is not transferable.

#### **7.17 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 7.15 or does so as the employee of a person who holds such a licence;
- (b) is authorised by the local government to do so; or
- (c) has received from the local government permission to do so during a funeral service.

#### **7.18 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, and any other written law which may affect the carrying out of monumental works.

#### **7.19 Cancellation of a monumental mason's licence**

- (1) The local government 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, or any other written law which may affect the carrying out of monumental works;
  - (b) that, in the opinion of the local government, 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; or
  - (c) that the holder of the licence has purported to transfer the licence issued to that holder.
- (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 local government.

## **PART 8—GENERAL**

### **8.1 Animals and guide dogs**

- (1) 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.



- (2) Subclause (1) is subject to section 8 of the *Dog Act 1976*, section 66J of the *Equal Opportunity Act 1986*, and does not apply to assistance animals as defined under section 9(2) of the *Disability Discrimination Act 1992* (Commonwealth).

### **8.2 Damaging and removing of objects**

Subject to clause 8.3(3), a person shall not damage, remove or pick any tree, plant, shrub or flower in the cemetery or any other object or thing on any grave or memorial or which is the property of the local government without the permission of the local government.

### **8.3 Flowers**

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

### **8.4 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.

### **8.5 Advertising**

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

### **8.6 Obeying signs and directions**

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

### **8.7 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 local government, the CEO or an authorised officer is inappropriate in the cemetery may in the addition to any penalty provided by this local law, be ordered to leave the cemetery by the local government, the CEO or an authorised officer.

### **8.8 Fireworks or firearms**

- (1) A person shall not bring or discharge any fireworks within the cemetery.
- (2) A person shall not bring or discharge any firearms within the cemetery.

## **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 and if the offence is a continuing one to a further penalty not exceeding \$20 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 the Schedule 1 is set out in the column 4 of the 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 – Prescribed offences**

**MODIFIED PENALTIES**

[Clause 9.2(1)&(2)]

Item No.	Clause	Nature of Offence	Modified Penalty
1	5.3(3)	Exceeding speed limit	\$100
2	5.3(3)	Not driving on constructed vehicle roadways	\$100
3	7.3	Not removing rubbish and surplus materials	\$100
4	7.7	Leaving uncompleted works in an untidy or unsafe condition	\$100
5	8.1(1)	Animal within cemetery	\$100
6	8.4	Littering and vandalism	\$100
7	8.5	Unauthorised advertising or trading	\$100
8	8.6	Disobeying sign or lawful direction	\$100
9		All other offences not specified	\$100

**Schedule 2 – Form 1**

**INFRINGEMENT NOTICE**

[cl. 9.2(3)]

TO: \_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

It is alleged that at \_\_\_\_\_:\_\_\_\_\_ hours on \_\_\_\_\_ day  
of \_\_\_\_\_ 20\_\_\_\_\_ at \_\_\_\_\_

you committed the offence indicated below by an (x) in breach of clause ..... of the *Shire of Cunderdin Cemetery Local Law 2015*.

\_\_\_\_\_  
(Authorised Officer)

**Offence**

- Animal within cemetery
- Not removing rubbish and surplus materials
- Exceeding speed limit
- Leaving uncompleted works in an untidy or unsafe condition
- Littering and vandalism
- Unauthorised advertising or trading
- Not driving on constructed vehicle areas
- Disobeying sign or lawful direction

Other 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 Cunderdin at Lundy Avenue Cunderdin between the hours of 9:00 a.m. to 4.30 p.m. Monday to Friday.

Please make cheques payable to the Shire of Cunderdin. Payments by mail should be addressed to—  
The Chief Executive Officer  
Shire of Cunderdin  
PO Box 100  
CUNDERDIN WA 6407

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 – Form 2**

**WITHDRAWAL OF INFRINGEMENT NOTICE**

[clause 9.2(4)]

No. \_\_\_\_\_

Date \_\_\_\_/\_\_\_\_/\_\_\_\_

To <sup>[1]</sup> \_\_\_\_\_

Infringement Notice No \_\_\_\_\_ dated \_\_\_\_/\_\_\_\_/\_\_\_\_ for the alleged offence of <sup>[2]</sup> \_\_\_\_\_

Penalty <sup>[3]</sup> \$ \_\_\_\_\_ 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 Officer)

Dated 17<sup>th</sup> April 2015

The Common Seal of the Shire of Cunderdin was affixed by authority of a resolution of the Council in the presence of-



*R G GIBSONE*  
R G GIBSONE, Shire President

*P T NAYLOR*  
P T NAYLOR, Chief Executive Officer