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CEMETERIES ACT 1986
LOCAL GOVERNMENT ACT 1995
Shire of Derby/West Kimberley
Cemeteries Amendment Local Law 2011

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 Derby/West Kimberley resolved on 16th December, 2010 to make the following local law

1. Citation

This local law is the *Shire of Derby/West Kimberley Cemeteries Amendment Local Law 2011*.

2. Commencement

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

3. Principal local law

In this local law, the *Shire of Derby/West Kimberley Local Law relating to the Derby and Fitzroy Crossing Public Cemeteries* published in the *Government Gazette* on 3 July 2001, is referred to as the principal local law. The principal local law is amended.

4. Clause 1.2 amended

In clause 1.2—

(a) in alphabetical order of the terms being defined, insert the definition—

"Act" means the *Cemeteries Act 1986*;

(b) in the definition "Board" delete "[insert name of local government]" and insert "Shire of Derby/West Kimberley".

5. Redesignation in Part 3

Redesignate clauses "3.3", "3.4" and "3.5" as clauses "3.2", "3.3" and "3.4" respectively.

6. Clause 3.2 amended

In clause 3.2—

(a) delete "clauses 3.1 and 3.2" and insert "clause 3.1".

(b) delete "under clause 3.4" and insert "under clause 3.3".

7. Clause 7.8 amended

Delete clause 7.8 and insert—

7.8 Use of Wood

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

(2) A wooden cross may be erected as a memorial with the prior written approval of the Board.

8. Redesignations in Part 7

In Part 7—

(a) redesignate Division "4" as Division "2".

(b) redesignate clauses "7.16" to "7.20" as clauses "7.13" to "7.17" respectively.

9. Clause 7.14 amended

In clause 7.14(a) delete "clause 7.20" and insert "clause 7.17".

10. Clause 7.15 amended

In clause 7.15(a) delete "clause 7.16" and insert "clause 7.13".

11. Clause 7.17 amended

In clause 7.17 delete sub-clause (3).

Dated: 31st March, 2011.

The Common Seal of the Shire of Derby/West Kimberley was affixed under the authority of a resolution of Council in the presence of—

E. M. ARCHER, Shire President.

S. BURGE, Chief Executive Officer.

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**CEMETERIES ACT 1986
LOCAL GOVERNMENT ACT 1995**

SHIRE OF DERBY/WEST KIMBERLEY

CEMETERIES LOCAL LAW 2001

(This local law is the Model Local Law as adopted by reference on 31 May 2001 and published in the Government Gazette on 3 July 2001 with the amendments made by the adoption incorporated.)

(This copy includes the 2010 proposed amendments as set out in the Cemeteries Amendment Local Law 2010.)

**CEMETERIES ACT 1986
LOCAL GOVERNMENT ACT 1995**

CEMETERIES LOCAL LAW 2001

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**CEMETERIES ACT 1986
LOCAL GOVERNMENT ACT 1986**

SHIRE OF DERBY/WEST KIMBERLEY

CEMETERIES LOCAL LAW 2001

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 Derby/West Kimberley resolved on the 31 May 2001 to make the following local law.

PART 1 - PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Derby/West Kimberley Cemeteries Local Law. 2001*.

1.2 Interpretation

In this Local Law unless the context otherwise requires:

“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;

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

“Funeral Director” means a person holding a current funeral director’s licence;

“Board” means the Shire of Derby/West Kimberley;

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

“monumental mason” means a person holding a current monumental mason’s licence;

“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.

1.3 Repeal

The following Local Law is repealed:-

The Local Laws relating to Derby Public Cemetery – Reserve No 1227 and Fitzroy Crossing Public Cemetery – Reserve No 29060, published in the *Government Gazette* of 26 May 1971, as amended.

PART 2 - ADMINISTRATION

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.

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 etc

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

(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 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.

(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 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 hours prior to the time proposed for burial on the application, otherwise an extra charge may be made.

PART 4 - FUNERAL DIRECTORS

4.1 Funeral Director's Licence Expiry

A funeral director's licence shall expire on the 30th day of June in each year.

4.2 Single Funeral Permits

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.

4.3 Application Refusal

The Board may refuse an application for a single funeral permit if, in the opinion of the Board, either the coffin specifications or the details of the vehicle transporting the dead

body to the gravesite are not structurally sound or are otherwise inadequate or inappropriate, or 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, 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 Entry Restricted

- (1) Subject to clause 5.3(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 cemetery.
- (2) This clause shall not apply to persons using wheelchairs or motorised wheelchairs.

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 25km per hour.

5.5 Offenders may be Expelled

A person committing an offence under clause 5.4 may be expelled from 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;
- (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 3 - Placement of Ashes

5.12 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 the Board may grant permission for the ashes to be disposed of by one of the following methods:

Niche Wall

Family Grave

Scattering to the Winds

Other memorials approved by the Board

(2) Subject to sub-clauses (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 sub-clause (1) (a) will only be granted where in the opinion of the authorised officer exceptional circumstances require granting of that permission.

6.2 Mausoleum, etc

(1) A person other than the Board shall not construct a brick grave, crypt, vault or mausoleum within the cemetery.

(2) A person may request the Board to construct a vault or mausoleum within the cemetery which vault or mausoleum shall at all times remain the property of the Board.

(3) An application under subclause (2) shall be in writing and shall be accompanied by payment of the set fee.

(4) A person shall not place a dead body in a mausoleum except:-

(a) in a closed coffin; and

(b) in a soundly constructed chamber; and

(c) in accordance with sub-clause (5).

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

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

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

(2) A wooden cross may be erected as a memorial with the prior written approval of the Board.

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 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 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 4 - Licensing of Monumental Masons

7.13 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 sub-clause (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.

7.14 Expiry Date, Non-Transferability

A monumental mason's licence:

- (a) shall, subject to clause 7.17, be valid from the date specified therein until the 30th day of June next following; and
- (b) is not transferable.

7.15 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 7.13 or does so as the employee of a person who holds such a licence; or
- (b) is authorised by the Board to do so.

7.16 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.

7.17 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; 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 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 Guide Dogs

Clause 8.1 shall not apply to a hearing impaired person or a person who is blind or partially blind and is accompanied by a hearing or guide dog.

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;
- (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

A person shall not carry on or advertise any trade, business or profession within the cemetery without the prior written approval of the Board which consent may be granted 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 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 the First Schedule are offences which may be dealt with under section 63 of the Act.
- (2) The modified penalty payable in respect of an offence specified in the First Schedule is set out in the fourth column of the First Schedule.
- (3) The prescribed form of the infringement notice referred to in section 63(1) of the Act is set out in the Second Schedule.
- (4) The prescribed form of the notice withdrawing an infringement notice referred to in section 63(3) of the Act is set out in the Third Schedule.

First Schedule

Cemeteries Act 1986

Shire of Derby/West Kimberley Cemeteries Local Law 2001

Modified Penalties

Item No.	Clause	Nature of Offence	Modified Penalty
1	5.4	Excessive speed	\$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	7.7	Leaving uncompleted works in an untidy or unsafe condition	\$50.00
5	8.1	Animal at large	\$50.00
6	8.5	Dumping of Rubbish	\$50.00
7	8.6	Unauthorised advertising, and/or trading	\$50.00
8	8.7	Disobeying sign or lawful direction	\$50.00

Second Schedule
Cemeteries Act, 1986
Shire of Derby/West Kimberley
Cemeteries Local Law 2001

Infringement Notice

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
[insert name of Local Law]

(Authorised Person)

Offence

- Animal at large
- Dumping rubbish
- Excessive speed in vehicle
- Leaving uncompleted works in an untidy or unsafe condition
- Non removal of rubbish
- Unauthorised advertising or trading
- Unauthorised vehicle use
- 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 **[insert name of Local Government]** at **[insert address of Local Government]** between the hours of 9am to 4.30pm Monday to Friday.

Please make cheques payable to **[insert name of Local Government]**. Payments by mail should be addressed to:

The Chief Executive Officer
[insert name of Local Government]
[insert address of Local Government]

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.

Third Schedule
Cemeteries Act, 1986
Shire of Derby/West Kimberley
Cemeteries Local Law 2001

Withdrawal of Infringement Notice

No. _____

Date ____/____/____

To

(1) _____

Infringement Notice No _____ 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 20th day of June 2001

The Common Seal of the Shire of Derby/West Kimberley was hereunto affixed by authority of a decision of the Council in the presence of –

E. M. ARCHER, President.
J. P. THROSSELL, Chief Executive Officer