CEMETERIES ACT 1986
LOCAL GOVERNMENT ACT 1995

SHIRE OF MINGENEW

CEMETERIES LOCAL LAW 2017

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 Mingenew resolved on 20 September 2017 to make the following local law.

Part 1 – Preliminary

1.1 Citation
This local law may be cited as the *Shire of Mingenew Cemeteries Local Law 2017.*

1.2 Application
This local law applies to the Mingenew Townsite Cemetery located in the district.

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

1.4 Repeal
The *By-laws of the Mingenew Public Cemetery* published in the *Government Gazette* on 27 November 1953 is repealed.

1.5 Interpretation
In this local law, unless the context otherwise requires –
Act means the *Cemeteries Act 1986*;

AS means an Australian Standard published by Standards Australia as amended from time to time that is available at www.standards.org.au and should be used as the contextual reference;

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 appointed 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 local government of the Shire of Mingenew;

CEO means the Chief Executive Officer, for the time being, of the Board who is also Chief Executive Officer of the Shire of Mingenew;

district means the district of the local government;

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

local government means the district of the Shire of Mingenew;

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; and

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

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 or dispose of ashes 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 a funeral director, the dead body is not in a fit state to be viewed; or

(b) after reasonable effort the funeral director is unable to arrange for a person to identify the dead body.

(2) A funeral director shall complete a certificate in the form determined by the Board from time to time, where –

(a) in the opinion of the funeral director, the dead body is not in a fit state to be viewed; or

(b) after reasonable effort the funeral director is unable to arrange for a person to identify the dead body.

3.4 Minimum notice required

All bookings to hold a funeral shall be made with the Board at least 24 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 30 June of 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

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

5.4 Vehicle access and speed limitations
(1) A person shall drive a vehicle on a vehicular access way or the constructed roadway or other areas designated for the use of vehicles within the cemetery, unless otherwise authorised by the CEO.
(2) A person driving a vehicle, within a cemetery, shall not exceed the speed limit of 25 km per hour, and shall comply with the signs and directions in the cemetery.

5.5 Offenders may be ordered to leave
(1) A person committing an offence under clause 5.4 may be ordered to leave the cemetery by the CEO or an authorised officer.
(2) A person who has been ordered to leave the cemetery by the CEO or an authorised officer is to leave immediately in a peaceful manner and not cause a disruption or be a nuisance to the funeral congregation or ceremony or procession.

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; or

(f) do or require anything which it considers is necessary or convenient for the conduct of a funeral by it.

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, the Board may grant permission for the ashes to be disposed of by one of the following methods -

Niche wall
Memorial wall
Garden of remembrance
Ground niche
Memorial rose, tree or shrub
Memorial desk
Other memorials approved by the Board
Granite seat
Family grave
Book of remembrance
Scattering of ashes to the winds
Family shrub
Memorial gardens

(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 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.

5.8 Ashes held by the Board

(1) If at the expiration of 6 months from the date of cremation at a cemetery –

(a) the ashes of the deceased person have not been claimed; or

(b) no arrangements have been made for the placement of the ashes of a deceased person by the personal representative, then the Board may dispose of the ashes in the cemetery by any of the methods listed in clause 5.7.

(2) If prior to the expiration of 6 months from the date of cremation the personal representative of the deceased person requests the Board to store the ashes of the deceased person, and pays to the Board the set fee monthly in advance for such storage, the Board shall store the ashes in safe custody.

(3) Notwithstanding subclause (2), should the personal representative default in the payment of the fee referred to in subclause (2), the Board may dispose of the ashes in the cemetery by any of the methods listed in clause 5.7.

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 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 subclause (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 6.00pm 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 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 –

(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

(1) All monuments in the lawn section of a cemetery shall –

(a) be made of natural stone; 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 1.05 m;

(ii) the height of the base of the monument above the original surface of the grave shall not be less than 150 mm nor more than 450 mm;

(iii) the width of the base of the monument shall not exceed 1.20 m;

(iv) the depth of the base of the monument shall not exceed 300 mm; 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 380 mm x 280 mm, nor more than 560 mm x 305 mm.

(2) All memorial plaques made of admiralty bronze shall –

(a) not exceed 20 mm 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 50 mm in thickness placed upon a base mounting approved by the Board; or

(b) not be less than 100 mm 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 be valid from the date specified therein until 30 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
(b) is an employee of a person who holds such a licence; or
(c) 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; 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 an ***assistance animal*** as defined in section 9(2) of the *Disability Discrimination Act 1992* or with the approval of the CEO or an authorised officer.

8.2 Damaging and removing of objects
Subject to clause 8.3, 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 Board without the permission of the Board.

8.3 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.

8.4 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

(1) A person shall not advertise or carry on 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.

8.6 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.

8.7 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 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 the 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

Item No.	Clause	Nature of Offence	Modified Penalty
1	5.4(1)	Not driving vehicle on vehicular access way or constructed roadways or within designated areas	$50.00
2	5.4(2)	Exceeding speed limit	$50.00
3	7.3	Non removal of rubbish and surplus materials	$50.00
4	7.5	Unauthorised use of sand, earth or other material taken from the cemetery	$50.00
5	7.7	Leaving uncompleted works in an untidy or unsafe condition	$50.00
6	8.1	Unauthorised bringing in of animal into cemetery or permitting animal to remain in cemetery	$50.00
7	8.3	Damaging and removing of objects	$50.00
8	8.4	Littering and vandalism	$50.00
9	8.5	Unauthorised advertising, and/or trading	$50.00
10	8.7	Disobeying sign or lawful direction	$50.00

Schedule 2 – Infringement Notice

[Clause 9.2(3)]
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 *Shire of Mingenew Cemeteries Local Law 2017.*

_____
(Authorised Person)
Offence

- ☐ Not driving vehicle on vehicular access way or designated areas
- ☐ Exceeding speed limit
- ☐ Not removing rubbish and surplus materials
- ☐ Unauthorised use of materials taken from the cemetery
- ☐ Leaving uncompleted works in an untidy or unsafe condition
- ☐ Unauthorised animal in cemetery
- ☐ Damaging and removing of objects
- ☐ Littering and vandalism
- ☐ Unauthorised advertising and/or trading
- ☐ 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 Mingenew at 22 Victoria Street MINGENEW WA 6522 between the hours of 9am to 4.30pm, Monday to Friday. Please make cheques payable to Shire of Mingenew. Payments by mail should be addressed to **–**

The Chief Executive Officer
Shire of Mingenew
22 Victoria Street (PO Box 120) MINGENEW WA 6522

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 – Infringement Withdrawal Notice

[Clause 9.2(4)]

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.

_____

(Authorised Person)

[1] Insert name and address of alleged offender.

[2] Insert short particulars of offence alleged.

[3] Insert amount of penalty prescribed.

_____

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

Mrs MICHELLE BAGLEY, Shire President

Mr MARTIN WHITELY, Chief Executive Officer

Dated: 04 October 2017.

_____

The Common Seal of the Shire of Mingenew was affixed by authority of a resolution of the Council in the presence of:

Cr Michelle BAGLEY
Shire President

Mr M WHITELY
Chief Executive Officer

Dated: 4 / 10 /2017