

**CEMETERIES ACT 1986
LOCAL GOVERNMENT ACT 1995**

SHIRE OF YORK

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 York resolved on the 27 April 2011, to make the following local law.

1. Citation

This local law is cited as the *Shire of York 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 York Cemeteries Local Law 1999* published in the *Government Gazette* on 22 February 2000 is referred to as the principal local law. The principal local law is amended.

4. Part 1 Clause 1.2 amended

- (1) Delete the definitions “**mausoleum**”, “**set fee**” and “**vault**” and insert –

Act means the *Cemeteries Act 1986*;

animal means any animal;

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

cemetery means any one of 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 Board;

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;

grant means a grant issued by the Board, 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 Board;

(b) a person for the time being appearing to the Board to be the holder of a grant;

local government means the Shire of York;

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

Minister means the Minister for Local Government;

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 Board 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; and

- (2) Delete the definition “**CEO**” and insert-

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

- (3) In the definition “**single funeral permit**”, delete “;” and insert “.”.
- (4) After subclause (1) insert-
 - (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.
 - (3) Where a term is not defined in this local law, the Act or Regulations, the term is to be taken from the Oxford Dictionary.

5. New clauses 1.2 and 1.3

After clause 1.1 insert –

1.2 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.

1.3 Application

This local law applies to the York Public Cemetery (Reserve No. 20628) located in the district of the Shire of York.

6. Part 3 New Clause 3.1

After the Title “**PART 3 APPLICATION FOR FUNERALS**”, insert–

3.1 Grant of right of burial

The Board 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.

7. Clause 3.2 deleted

Delete Clause 3.2.

8. Clause 3.3 amended

- (1) Delete “clauses 3.1 and”.
- (2) Delete “3.3” and insert “3.4”.

9. New Clause 3.6 inserted

After clause 3.5 insert–

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.

10. Clause 4.1 amended

Delete the words “the 30th day of” and insert “30”.

11. Clause 4.2 amended

Delete the heading and insert-

Application for a single funeral permit

11. Clause 5.2 amended

Delete “3.1” and insert “3.2”.

12. Clause 5.3 amended

(1) In the clause title delete “**Entry Restricted**” and insert “**access and speed limitations**”.

(2) After subclause (2), insert-

(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.

13. Clause 5.4 deleted

Delete clause 5.4.

14. Clause 5.5 deleted

Delete clause 5.5.

15. Clause 5.6 amended

Delete paragraph (d) and insert –

(d) bury a dead body within the cemetery under delegation of the Shire of York and in conjunction with the Act;

16. Division 3 amended

Renumber “*Division 3*” to “*Division 2*”.

17. Clause 6.1 amended

Delete clause 6.1 and insert –

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 not less than 750 mm.

(2) A person, with the permission of the CEO or authorised officer may bury a coffin so that the distance from the top of the coffin to the original surface of the ground is not less than 600 mm.

(3) The permission of the authorised officer in subclause (2) will only be granted where in the opinion of the authorised officer exceptional circumstances require granting of that permission.

18. Clause 6.2 amended

Delete clause 6.2 and insert-

6.2 Re-opening a grave

(1) Subject to subclause (2), if for the purpose of re-opening a grave in the cemetery, the Board finds it necessary to remove plants, grass, shrubs or other like matter from the grave, then the person ordering the re-opening of that grave shall bear the cost of the removal and any necessary reinstatement.

(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.

19. New Clauses 6.3 and 6.4 inserted

After clause 6.2 insert–

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 twelve (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 Board requesting the exhumation and the Board 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 Board an order signed by the Commission of Police and the Board has approved the opening of that coffin.

20. Clause 7.6 amended

- (1) Delete “8:00am” where it appears and insert “8:00 a.m.”.
- (2) Delete “6:00pm” and insert “6:00 p.m.”.

21. Clause 7.7 amended

Delete “6pm” and insert “6:00 p.m.”.

22. Clause 7.8 amended

Delete “, other than as a temporary marker and with” and insert “without”.

23. New Clause 7.11 inserted

After clause 7.10, insert–

7.11 Minor maintenance and repair works

Persons shall be permitted to carry 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 Board.

24. Clause 7.12 amended

Delete “40 (2)” and insert “40(2)”.

25. Division 2 deleted

Delete all of Division 2.

26. Division 3 title amended

Delete “3” and insert “2”.

27. Clause 7.15 amended

- (1) In subclause (1)(b), delete “380mm x 280mm, nor more than 560mm x 305mm” and insert “380 mm x 280 mm, nor more than 560 mm x 305 mm”.
- (2) In subclause (2), delete “20mm” and insert “20 mm”.
- (3) In subclause (3)(a), delete “50mm” and insert “50 mm”.
- (4) In subclause (3)(b), delete “100mm “ and insert “100 mm”.

28. Division 4 title amended

Delete "4" and insert "3".

29. Clause 7.16 amended

In subclause (2) delete-

- (1) "sub-clause" and insert "subclause";
- (2) "Local Law" and insert "local law".

30. Clause 7.17 amended

- (1) Delete the number "20" and substitute the number "19".
- (2) Delete "the 30th day of" and insert "30".

31. Clause 7.18 amended

Delete "16" and insert "15".

32. Clause 7.19 amended

Delete "Local Law, the Act" and insert "local law".

33. Clause 7.20 amended

- (1) In subclause (1)(a), delete "Local Law, the Act" and insert "local law".
- (2) Delete subclause (3).

34. Clause 8.1 amended

- (1) In the clause title insert "and guide dogs" after the word "Animals".
- (2) Delete "clause 8.2" and insert "section 8 of the *Dog Act 1976* and section 66J of the *Equal Opportunity Act 1986*".

35. Clause 8.2 deleted

Delete clause 8.2.

36. Clause 8.3 amended

Delete "8.4" and insert "8.3(3)".

37. Clause 8.4 amended

Delete clause 8.4 and insert-

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 Board.
- (3) 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.

38. New Clause 8.8 inserted

Insert-

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 except in the case of a military funeral when firearms may be brought into the cemetery and discharged by members of the Defence Force.

39. Clause 9.1 amended

Delete "Local Law" and insert "local law".

40. Clause 9.2 amended

- (1) In subclauses (1) and (2), delete the words "First Schedule" where they appear and

insert "Schedule 1".

(2) In subclause (3) delete "Second Schedule" and insert "Schedule 2".

(3) In subclause (4) delete "Third Schedule" and insert "Schedule 3".

41. First Schedule amended

Delete the First Schedule and insert –

Schedule 1 – Prescribed offences

MODIFIED PENALTIES

[cl. 9.2(1)&(2)]

Item No.	Clause	Nature of Offence	Modified Penalty
1	5.3	Exceeding speed limit	\$100.00
2	5.3	Not driving on constructed vehicle areas	\$100.00
3	7.3	Not removing rubbish and surplus materials	\$100.00
4	7.7	Leaving uncompleted works in an untidy or unsafe condition	\$100.00
5	8.1(1)	Animal within cemetery	\$100.00
6	8.4	Littering and vandalism	\$100.00
7	8.5	Unauthorised advertising or trading	\$100.00
8	8.6	Disobeying sign or lawful direction	\$100.00
9		All other offences not specified	\$100.00

42. Second Schedule amended

Delete the second schedule and insert-

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 York Cemeteries Local Law 1999*.

(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 York at 1 Joaquina Street, York between the hours of 9:00 a.m. to 4.30 p.m. Monday to Friday.

Please make cheques payable to the Shire of York. Payments by mail should be addressed to—

The Chief Executive Officer
Shire of York
PO Box 22
YORK WA 6302

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.

43. Third Schedule amended

- (1) Delete the title and insert-

Schedule 3 – Form 2

WITHDRAWAL OF INFRINGEMENT NOTICE

[cl. 9.2(4)]

- (2) Delete “Person” and insert “officer”.

44. Various references to “funeral director” amended

Amend the provisions listed in the Table as set out in the Table.

Part	Division	Clause	Delete	Insert
1		1.4	Funeral Director	“funeral director”
3		3.4(1)(a)	Funeral Director	“funeral director”
3		3.4(1)(b)	Funeral Director	“funeral director”
3		3.4(2)(a)	Funeral Director	“funeral director”
3		3.4(2)(b)	Funeral Director	“funeral director”
3		3.4(2)	Funeral Director	“funeral director”

45. Various clause titles amended

Amend the provisions listed in the Table as set out in the Table.

Part	Division	Clause	Delete	Insert
2		2.1	Powers and Functions of CEO	“Powers and functions of CEO”
3		3.1	Application for Burial	“Application for burial”
3		3.3	Application to be Accompanied by Certificates etc	“Application to be accompanied by certificates etc”
3		3.4	Certificate of identification	“Certificate of identification”
3		3.5	Minimum Notice Required	“Minimum notice required”
4		4.1	Funeral Director’s Licence Expiry	“Funeral director’s licence expiry”
4		4.3	Application Refusal	“Application may be refused”
5	1	5.1	Requirements for Funerals and Coffins	“Requirements for funerals and coffins”
5	1	5.2	Funeral Processions	“Funeral processions”
5	1	5.6	Conduct of Funeral by Board	“Conduct of funeral by Board”
5	2	5.12	Disposal of Ashes	“Disposal of ashes”
7	1	7.1	Application for Monumental Work	“Application for monumental work”
7	1	7.2	Placement of Monumental Work	“Placement of monumental work”
7	1	7.3	Removal of Rubbish	“Removal of rubbish”
7	1	7.4	Operation of Work	“Operation of work”
7	1	7.5	Removal of Sand, Soil or Loam	“Removal of sand, soil or loam”
7	1	7.6	Hours of Work	“Hours of work”
7	1	7.7	Unfinished Work	“Unfinished work”
7	1	7.8	Use of Wood	“Use of wood”
7	1	7.9	Plants and Trees	“Plants and trees”
7	1	7.12	Placing of Glass Domes and Vases	“Placing of glass domes and vases”
7	3	7.15	Requirements of a Memorial Plaque	“Requirements of a memorial plaque”
7	3	7.16	Monumental Mason’s Licence	“Monumental mason’s licence”
7	3	7.17	Expiry Date, Non-Transferability	“Expiry date, non-transferability”
7	3	7.18	Carrying out Monumental Work	“Carrying out monumental work”
7	3	7.19	Responsibilities of the Holder of a Monumental Mason’s Licence	“Responsibilities of the holder of a monumental mason’s licence”
7	3	7.20	Cancellation of a Monumental Mason’s Licence	“Cancellation of a monumental mason’s licence”
8		8.3	Damaging and Removing Objects	“Damaging and removing objects”
8		8.5	Littering and Vandalism	“Littering and vandalism”
8		8.7	Obeying Signs and Directions	“Obeying signs and directions”
8		8.8	Removal from the Cemetery	“Removal from the cemetery”
9		9.2	Modified Penalties	“Modified penalties”

46. Redesignation of divisions and clauses

(1) Designations “1.2” through to “1.3” are re-designated “1.4” through to “1.5”.

- (2) Designation "3.1" is re-designated "3.2".
- (3) Designation "5.6" is re-designated "5.4".
- (4) Designation "5.12" is redesignated "5.5".
- (5) Designations "7.11" through to "7.12" are redesignated "7.12" through to "7.13" respectively.
- (6) In Part 7 "*Division 2*" is redesignated "*Division 3*".
- (7) Designations "7.15" through to "7.20" are redesignated "7.14" through to "7.19" respectively.
- (8) Designations "8.3" through to "8.8" are redesignated "8.2" through to "8.7" respectively.

47. Arrangement amended

The arrangement is amended as follows –

- (1) After designation "1.1", insert-
 - a. "1.2 Purpose and effect"; and
 - b. "1.3 Application".
- (2) Designations "1.2" through to "1.3" are re-designated "1.4" through to "1.5".
- (3) Before designation "3.1", insert "3.1 Grant right of burial" and redesignate "3.1" to "3.2".
- (4) Delete designation "3.2".
- (5) After designation "3.5" insert "3.6 Time for Burials".
- (6) Delete the title in designation 4.2 and insert "Application for a single funeral permit".
- (7) Amend the title in designation 4.3 by deleting "Refusal" and insert "may be refused".
- (8) Delete the title designation 5.3 and insert "Vehicle access and speed limitations".
- (9) Delete designations "5.4" and "5.5".
- (10) Designation "5.6" is redesignated "5.4".
- (11) "*Division 3*" is redesignated "*Division 2*".
- (12) Designation "5.12" is redesignated "5.5".
- (13) Delete designation "6.2" and insert "6.2 Re-opening a Grave".
- (14) After designation 6.2 insert–
 - (a) "6.3 Exhumation of a Coffin"; and
 - (b) "6.4 Opening of a Coffin".
- (15) After designation 7.10, insert "7.11 Minor Maintenance and Repair Works".
- (16) Designations "7.11" through to "7.12" are redesignated "7.12" to "7.13" respectively.
- (17) Delete "*Division 2 – Lawn Section*".
- (18) Delete designation "7.14".
- (19) "*Division 3*" is redesignated "*Division 2*".
- (20) Designations "7.15" through to "7.20" are redesignated "7.14" to "7.19" respectively.
- (21) "*Division 4*" is redesignated "*Division 3*".
- (22) Delete designation 8.1 and insert "Animals and guide dogs".
- (23) Delete designation "8.2".
- (24) In designation "8.4" delete "Withered".
- (25) Designations "8.3" through to "8.8" are redesignated "8.2" to "8.7" respectively.
- (26) After redesignation 8.7, insert "8.8 Fireworks or firearms".
- (27) Delete "**First Schedule**" and insert "**Schedule 1 – Modified penalties**".
- (28) Delete "**Second Schedule**" and insert "**Schedule 2 – Form 1 – Infringement notice**".
- (29) Delete "**Third Schedule**" and insert "**Schedule 3 – Form 2 – Withdrawal of infringement notice**".

Dated 27 April 2011.

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

J P HOOPER, Shire President.

R P HOOPER, Chief Executive Officer.