

**CEMETERIES ACT 1986
LOCAL GOVERNMENT ACT 1995**

SHIRE OF MENZIES

CEMETERIES LOCAL LAW 2021

Consolidated to 15 July 2022

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CEMETERIES LOCAL LAW 2021

Consolidated to 15 July 2022

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 Menzies resolved on 25 November 2021 to adopt the following local law.

PART 1 - PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Menzies Cemeteries Local Law 2021*.

1.2 Commencement

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

1.3 Application

This local law applies to the cemeteries and cemetery reserves located in the district specified in clause 3.1(1) and (2).

1.4 Definitions

In this local law, unless the context otherwise requires –

Act means the *Cemeteries Act 1986*;

administrator means –

- (a) the administrator or executor of an estate of a deceased person;
- (b) the person who, by law or 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;

ashes means so much of the remains of a dead body after the due processes of cremation;

authorised person means a person appointed under section 9.10 of the *Local Government Act 1995* for the purposes of performing any function or exercising any power conferred upon an authorised person by this local law;

Board means the local government;

burial means burial of a dead body;

cemetery means a cemetery specified in clause 3.1(1) or (2);

CEO means the Chief Executive Officer of the Board;

commemorative works means a grave cover, headstone, memorial, memorial plaque, monument and includes any base upon which the commemorative work may be placed;

district means the district of the local government;

grave cover means a covering a grave of durable material whether permeable or impermeable;

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

interment of ashes includes, as the case may be –

- (a) placement of ashes in a grave, niche wall or under a commemorative plaque; or
- (b) scattering of ashes;

local government means the Shire of Menzies;

mausoleum means a burial chamber 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;

memorial has the meaning set out in the Act;

memorial plaque means a panel, plate or tablet designed or used for purposes of bearing a commemorative inscription;

memorial work means to install, repair, renovate or remove a memorial;

monument means a sculpture, statue, cover of a grave or other form of memorial approved by the Board commemorating a grave or the placement of ashes, other than a headstone or memorial plaque;

set fee refers to fees and charges set by resolution of the Board and published in the *Government Gazette*, under section 53 of the Act;

standard grave means a grave which does not exceed 2.4m long, 1.2m wide and 2.1m deep; and

vault means a below ground lined grave with one or more sealed compartments.

PART 2 - ADMINISTRATION

2.1 Powers and functions of CEO

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

PART 3 - BURIALS

3.1 Burials

- (1) In accordance with the Cemeteries (Menzies and Kookynie Cemeteries) Order 2016 the following cemeteries are closed to burials –
 - (a) Kookynie Cemetery (Reserve 7839); and
 - (b) Menzies Cemetery (Reserve 3348).
- (2) Burials are not permitted in the following historical cemetery reserves –
 - (a) Yerilla Reserve 3738;
 - (b) Goongarrie Reserve 3780;
 - (c) Tampa Reserve 4096;
 - (d) Niagara Reserve 4560;
 - (e) Yerilla Reserve 4587;
 - (f) Mulwarrie Reserve 7609;
 - (g) Edjudina Reserve 8679;
 - (h) Daveyhurst Reserve 9453;
 - (i) Mount Ida Reserve 9672;
 - (j) Pinjin Reserve 10843; and
 - (k) Comet Vale Reserve 11107.
- (3) Burials within the Shire of Menzies are permitted only in accordance with sections 12 or 43(2) of the Act.
- (4) Where a burial is approved under subclause (3) and is to be undertaken by the Board, the burial shall be –
 - (a) at the expense of the administrator; and
 - (b) the expense shall be calculated in accordance with the set fee; and
 - (c) on the agreed date at the agreed time.

3.2 Minimum notice required

An application for a burial shall be made to the Board at least one week prior to the day proposed for burial, otherwise an extra charge may be made.

3.3 Vaults and mausoleums

A person shall not construct a vault or mausoleum within the cemetery, except with the specific approval by resolution of the Board.

3.4 Re-opening a grave

A person shall not reopen a grave without the approval of the Board.

PART 4 - INTERMENT OF ASHES

4.1 Interment of ashes

- (1) An administrator may apply for approval for interment of ashes in a cemetery listed in clause 3.1(1).
- (2) Interment of ashes in the cemetery reserves listed in clause 3.1(2) is –
 - (a) subject to the appropriateness of the interment as determined by the Board; and
 - (b) not permitted in a grave.
- (3) An application under subclause (1) shall be accompanied by the set fee.
- (4) Where an interment is approved under subclause (1) and is to be undertaken by the Board, the interment shall be –
 - (a) at the expense of the administrator; and
 - (b) the expense shall be calculated in accordance with the set fee; and
 - (c) if specified, on the agreed date at the agreed time.

4.2 Applications to be accompanied by statement

An application under clause 4.1(1) shall be accompanied by a statement by an administrator of –

- (a) identity of the ashes to be interred; and
- (b) such other information as may be required by the Board.

4.3 Minimum notice required

An application for interment of ashes in a grave shall be made to the Board at least one week prior to the day proposed for interment, otherwise an extra charge may be made.

4.4 Refusal of application

- (1) The Board shall refuse an application for approval for the interment of ashes –
 - (a) if the ashes are not being scattered; or
 - (b) if the ashes are not being interred as otherwise approve by the Board; or
 - (c) if the ashes are to be interred in an existing gravesite of a person in a cemetery listed in clause 3.1(1) and the ashes are to be interred do not have a direct and readily identifiable association with the person buried, as deemed appropriate by the Board; or
 - (d) on any other grounds considered appropriate.
- (2) If the Board refuses to approve an application under subclause (1), written notice of the refusal is to be given to the applicant.

4.5 Ashes not to be held by the Board

The Board shall not accept custody of ashes of a deceased person.

PART 5 - MEMORIAL SERVICES

5.1 Memorial services or processions

Upon application, the Board may approve under such conditions as deemed appropriate, and with or without a burial or interment or broadcasting of ashes –

- (a) the conduct of a memorial service; or
- (b) a procession.

PART 6 - MEMORIALS

6.1 Application to place memorial

- (1) An administrator may apply for approval of the Board for commemorative works in a cemetery listed in clause 3.1(1).
- (2) An administrator may apply for approval by resolution of the Board for commemorative works in a cemetery listed in clause 3.1(2).
- (3) An application under subclause (1) or (2) shall be accompanied by the set fee.
- (4) The Board may require an application for a memorial made under section 30 of the Act, to be accompanied by the written consent of –
 - (a) the holder of the right of burial of the grave;
 - (b) an administrator of a deceased person; or
 - (c) other person to the satisfaction of the Board.
- (5) Where written consent under subclause (4) is not able to be produced, the Board may approve with or without conditions or decline an application in its absolute discretion.
- (6) If the Board refuses to approve an application under subclause (5), written notice of that refusal is to be provided to the applicant.

6.2 Requirement for commemorative works

- (1) Commemorative works shall comply with such requirements and conditions as may be imposed by resolution the Board, including but not limited to –
 - (a) grave cover –
 - (i) dimensions not to exceed the width and length of a standard grave without approval under clause 6.3(3);
 - (ii) thickness not to exceed 150mm; and
 - (iii) materials;
 - (b) headstone, memorials and bases, monuments –
 - (i) dimensions not to extend beyond any grave cover in place, its base or dimensions of a standard grave if no grave cover is in place;
 - (ii) height; and
 - (iii) materials;
 - (c) plaques –
 - (i) maximum dimensions;
 - (ii) dimensions shall not extend beyond any base upon which the plaque is mounted; and
 - (iii) materials;
 - (d) gravesite boundary, whether kerbing, loose or cemented rock, or fencing –
 - (i) dimensions not to exceed the width and length of a standard grave without approval under clause 6.3(3);
 - (ii) height; and
 - (iii) materials.
- (2) Where commemorative works are approved under subclause (1) and are to be undertaken by the Board, the commemorative works shall be –
 - (a) at the expense of the administrator; and
 - (b) the expense shall be calculated in accordance with the set fee; and
 - (c) if specified, on the agreed date at the agreed time.

[Clause 6.2 amended by Government Gazette No. 110 of 2022]

6.3 Limitation on dimensions of memorials

- (1) No part of any commemorative works, including any kerbing, boundary marker or enclosure is to extend beyond the dimensions of a standard grave.
- (2) No part of a headstone, memorial plaque or monument above its base shall extend horizontally beyond its base.
- (3) Notwithstanding subclause (1), on request of an administrator, the Board may approve commemorative works over multiple adjoining gravesites –

- (a) where the persons interred are of the same family; or
- (b) for another acceptable reason.

6.4 Display of trade names not allowed

A person shall not display any trade names or marks on commemorative works.

6.5 Use of wood

No wooden fence, railing or construction other than a cross, shall be allowed on or around a grave, other than –

- (a) as a temporary marker; or
- (b) with the approval of the Board.

6.6 Placing of grave ornaments

- (1) A person shall not place vases or other grave ornaments –
 - (a) outside the perimeter of a standard grave; or
 - (b) outside of an area set aside by the Board as a memorial plaque section.
- (2) The use of glass, porcelain, ceramics or pottery is not permitted, other than that already in place at commencement of this local law.

6.7 Carrying out commemorative works

- (1) A person shall not carry out commemorative works within the cemetery without the approval of the Board to do so under clause 6.1.
- (2) All material required in the erection and completion of any commemorative works shall be prepared before being taken to the cemetery.
- (3) The Board may place restrictions on the hours of work, access to the cemetery or other matters considered appropriate.
- (4) Work is not permitted to be left unattended in an untidy or unsafe state.

[Clause 6.7 amended by Government Gazette No. 110 of 2022]

6.8 Australian War Graves

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

- (a) may place a complying 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.

PART 7 - OTHER WORK

7.1 Numbering of graves

A person shall not install commemorative works on a grave unless the number of that grave is, depending on the area where the grave is located, indelibly and legibly inscribed either on the base of the head of the monument or on the base of the headstone, or if this is not practicable, on the kerbing at the foot of the grave.

7.2 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 construction of any memorial or other work, or cause any material to be removed from the cemetery except with the approval of the Board.

7.3 Removal of rubbish

All refuse, rubbish or surplus material remaining after approved memorial works are completed shall be immediately removed from the cemetery by the person carrying out the same.

7.4 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 Board.

7.5 Supervision

All workers, whether employed by the Board or by any other person, shall at all times while within the boundaries of the cemetery be subject to the supervision of the Board and shall obey any directions of the Board or authorised person.

7.6 Hours of work

Except in accordance with the permission of an authorised person, a person shall not carry out memorial or other work within the cemetery –

- (a) during a funeral; or
- (b) outside the hours approved by the Board.

7.7 Unfinished work

A person who does not complete any work within the approved hours shall leave the work in a neat and safe condition to the satisfaction of the Board or an authorised person.

PART 8 - GENERAL

8.1 Assistance animals

A person shall not bring an animal into or allow an animal to enter or remain in a cemetery, other than –

- (a) an 'assistance animal' as defined in section 9(2) of the *Disability Discrimination Act 1992* (Commonwealth); or
- (b) with the approval of the Board or an authorised person.

[Clause 8.1 amended by Government Gazette No. 110 of 2022]

8.2 Littering, vandalism or removal of objects

Without the approval of the Board or an authorised person, a person shall not –

- (a) damage, remove or pick any tree, plant, shrub or flower;
- (b) damage, deface or interfere with any monument or gravesite in any manner whatsoever;
- (c) damage or interfere with any property, object or infrastructure which is the property of the Board or other person;
- (d) break or cause to be broken any glass, ceramic or other material in or upon a cemetery;
- (e) discard, deposit, leave or cause to be discarded, deposited or left any refuse or litter in a cemetery other than in a receptacle provided for that purpose.

[Clause 8.2 amended by Government Gazette No. 110 of 2022]

8.3 Withered flowers

Notwithstanding clause 8.2 a person may remove withered flowers from a grave or memorial and these are to be disposed of in an appropriate manner.

8.4 Signs and directions of the Board

A person shall obey –

- (a) all signs displayed, marked, placed or erected by the Board within a cemetery; and
- (b) any other lawful direction by the Board or authorised person.

8.5 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 or an authorised person is inappropriate in a cemetery may in addition to any penalty provided by this local law be directed to leave the cemetery by the Board or an authorised person.

8.6 Liability for damage or works required to comply

Where a person commits a breach of this local law the Board may by written notice to that person require that person within the time required in the notice to, at the option of the Board –

- (a) pay the costs of reinstating the property to the state it was in prior to the occurrence of the damage;
- (b) pay the costs of replacing that property;
- (c) pay the costs of works required to comply with this local law; or
- (d) carry out works required to comply with this local law.

8.7 Offence to fail to comply with notice

Whenever the Board gives a notice under this local law requiring a person to do any thing, if a person fails to comply with the notice, that person commits an offence.

8.8 Board may undertake requirements of notice

Where a person fails to comply with a notice referred to in clause 8.6, the Board may do the thing specified in the notice and recover from the person to whom the notice was given, as a debt, the costs incurred in so doing.

PART 9 - OFFENCES AND MODIFIED PENALTIES

9.1 General penalties

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 Schedule 1 is set out in the fourth column of Schedule 1.
- (3) The infringement notice referred to in section 63(1) of the Act shall be in the form set out in Schedule 2.
- (4) The notice withdrawing an infringement notice referred to in section 63(3) of the Act shall be in the form set out in Schedule 3.

[Clause 9.2 amended by Government Gazette No. 110 of 2022]

Schedule 1 – Modified Penalties

[cl.9.2]

Item	Clause	Nature of offence	Modified Penalty \$
1	3.3	Unauthorised construction of vault or mausoleum	50
2	3.4	Unauthorised reopening of a grave	50
3	4.1(1)	Unauthorised disposal of ashes in a cemetery listed in clause 3.1(1)	50
4	4.1(2)	Unauthorised disposal of ashes in a cemetery listed in clause 3.1(2)	50
5	5.1(a)	Holding a memorial service without permission	50
6	5.1(b)	Conducting a procession without permission	50
7	6.2(1)	Failure to comply with conditions of approval	50

8	6.4	Use of trade name or mark on a memorial	50
9	6.5	Use of wood without approval	50
10	6.6	Unauthorised placing of grave ornaments	50
11	6.7(1)	Unauthorised carrying out of commemorative works	50
12	6.7(3)	Works carried out during unauthorised times	50
13	6.7(4)	Failure to leave uncompleted works in a tidy and safe condition	50
14	7.1	Failure to inscribe grave number on commemorative works	50
15	7.2	Unauthorised use of materials taken from within the cemetery	50
16	7.3	Failure to remove rubbish and surplus materials	50
17	7.4	Unauthorised planting of tree or shrub	50
18	7.5	Failure to comply with direction of authorised person	50
19	7.6(b)	Failure to comply with approved hours of work	50
20	7.7	Failure to leave uncompleted works in a tidy and safe condition	50
21	8.2	Littering or damage	50
22	8.3	Failure to dispose of withered flowers appropriately	50
23	8.4	Failure to obey sign or lawful direction within cemetery	50
24	8.5	Failure to comply with order to leave cemetery	50
25	8.7	Failure to comply with notice within specified period	50
26	9.2(2)	Offences not elsewhere specified	50

Schedule 2 – Infringement Notice
[cl. 9.2(3)]
Shire of Menzies

INFRINGEMENT NUMBER –		
To:		
Address:		
	It is alleged that –	
At –		
On –	Day	Date
Name of cemetery or cemetery reserve –		as defined in clause 3.1 of the Shire of Menzies Cemeteries Local Law 2021
	You committed the following offence –	
Contrary to –	Shire of Menzies Cemeteries Local Law 2021	
Schedule 1 reference –	Item No. –	Clause –
Offence –		
Brief description –		

The modified penalty for the offence is –	\$
	If you do not wish to have a complaint of the alleged offence heard and determined by a court, the amount of the modified penalty may be paid at the Shire of Menzies within a period of 28 days after the giving of this notice.
Name of authorised person –	
Position –	
Signature –	
Date –	
	Payments may be made – a) by EFT (contact Shire office for details) b) In person at – Shire of Menzies, 124 Shenton Street, Menzies during business hours c) By mail to – Shire of Menzies PO Box 4, Menzies 6436 Please make cheques payable to Shire of Menzies.

Schedule 3 – Withdrawal of Infringement Notice
 [cl. 9.2(4)]
Shire of Menzies

To –	
Address –	
	It is advised that –
Infringement Notice No. –	
Dated –	
For the alleged offence of –	
	has been withdrawn.
The modified penalty of –	\$
Reason for withdrawal –	No further action will be taken.
(Delete whichever does not apply)	It is proposed to institute court proceedings for the alleged offence
Name of authorised person –	
Position –	
Signature –	

Date –	
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Dated 25 November 2021

The Common Seal of the Shire of Menzies was affixed by authority of a resolution of Council in the presence of –

G. DWYER, President

B JOINER, Chief Executive Officer

Notes to this administrative compilation –

1. Original local law published in *Government Gazette* No.4 on 12 January 2022
2. Amended as published in *Government Gazette* No.110 on 15 July 2022