

**McKINLAY SHIRE COUNCIL
LOCAL LAW NO. 2
(CEMETERIES)**

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PART 1 - PRELIMINARY

1. Citation

This local law may be cited as *Local Law No. 2 (Cemeteries)*.

2. Objects

The objects of this local law are to:

- (a) ensure that interment procedures for bodies and ashes and other remains of deceased persons are consistent with the health and safety of the community; and
- (b) provide for safe and proper interment other than in a cemetery; and
- (c) ensure that adequate records are maintained for interments within a cemetery; and
- (d) provide for the efficient operation, control and maintenance of local government cemeteries.

3. Relationship with other laws

- (1) This local law is in addition to, and does not derogate from other laws about the control of cemeteries.
- (2) This local law is to be read with the provisions of the *Land Act 1994* relating to cemeteries and is subject to those provisions.

4. Definitions

In this local law:

"cemetery" means any premises used or intended for use for the interment of the deceased and includes any funeral chapel or parlour or columbarium erected on such premises and work in connection therewith;

"columbarium" means a wall or walls constructed for the purpose of interment of an urn containing the ashes of a deceased person;

"development approval" means a development approval issued under the *Integrated Planning Act 1997*;

"local government cemetery" means a cemetery owned by or under the control of the local government and includes:

- (a) a monumental cemetery; and
- (b) a lawn cemetery; and
- (c) a columbarium; and
- (d) a vault including a vault above or below the ground; and

- (e) a garden of remembrance;

"garden of remembrance" means any cemetery or part thereof set aside for the burial of ashes;

"interment" includes burial of the body of a deceased person and placement in a niche of the ashes of a deceased person;

"lawn cemetery" means any cemetery or part thereof set aside exclusively for the erection of a headstone or plaque:

- (a) on an individual concrete base;
- (b) on a continuous concrete beam located at the head of the grave.

"memorial" means anything erected or placed within a cemetery to mark a grave or commemorate a deceased person and includes a monument or other structure, headstone, grave plaque, lawn plaque, inscription plate, vase, or ornament;

"monumental cemetery" means any cemetery or part thereof where the grave sites are completely covered by a concrete slab, tiles or granite;

"person responsible" in relation to a burial or interment means the undertaker engaged by the representatives of the deceased person to arrange the burial or interment or, if there is no undertaker so engaged, the legal personal representative of the deceased or the next of kin of the deceased;

"planning scheme" means the Planning Scheme of McKinlay Shire Council;

"vault" means the lining of a grave or graves by means of bricks and mortar or concrete liners cemented together so that the floor, walls and ceiling of the grave are completely covered and sealed and includes a walk in room or rooms constructed either above or below ground level and a chapel.

PART 2 - LOCAL GOVERNMENT APPROVALS

5. Approval required

- (1) An application is required for approval to:
 - (a) bury a deceased person in a place other than a cemetery; or
 - (b) disinter the body, ashes or other remains of a deceased person who has been buried in a local government cemetery or at a place other than a cemetery or remove the ashes of a deceased person from a columbarium or vault in a local government cemetery, for purposes other than those provided in section 17 of the *Coroners Act*; or
 - (c) bury a deceased person in a local government cemetery including the erection of a memorial; or
 - (d) in a local government cemetery move or disturb a coffin or reopen a grave for a further burial; or

- (e) place the ashes or other remains of a deceased person in a columbarium, vault or grave in a local government cemetery including the erection of a memorial; or
 - (f) construct or erect a private vault or columbarium in a local government cemetery; or
 - (g) perform any customary or religious ceremony in the burial of a deceased person in a local government cemetery, in accordance with a particular custom or religious denomination to which the deceased belonged (including personally closing or covering in the grave of a deceased person on burial); or
 - (h) conduct a funeral in a local government cemetery, by a person other than an undertaker; or
 - (i) scatter ashes within the local government area.
- (2) An application for approval must be:
- (a) accompanied by written proof of death if application is being made under subsection (1)(a), (c) or (e); and
 - (b) signed by the owner of the land if application is being made under subsection (1)(a) or (b) (only where at a place other than a local government cemetery).
- (3) A person must not carry out any of the activities mentioned in subsection (1) except in accordance with a current approval issued under this local law for that purpose.
- Maximum Penalty - 50 penalty units
- (4) If a development approval is required for any activities mentioned in subsection (1) an approval is not required under this local law.

6. Compliance with conditions

Unless otherwise specified in this local law, the holder of an approval issued under section 5 must ensure that the conditions of approval are complied with.

Maximum Penalty - 50 penalty units

PART 3 - BURIAL OTHER THAN IN A CEMETERY

7. Criteria for approval

The local government may grant approval under subsection 5(1)(a) only if it is satisfied that:

- (a) there is a special, family, personal or historical association between the deceased person and the place at which it is sought to bury the body of that person; and

- (b) the burial can be effected consistently with the objects of this local law; and
- (c) any other matter specified by local law policies are complied with.

8. Subject matter for conditions

- (1) An approval may be granted on conditions the local government considers appropriate.
- (2) The conditions of approval may, for example:
 - (a) regulate the manner of preparation of the grave; and
 - (b) stipulate the day on which and the hours between which the burial may be performed; and
 - (c) require the giving of notice of preparation of the grave to enable the local government to enter land and inspect the grave before the burial; and
 - (d) require the erection of a marker or means of identification on or around the grave and stipulate the information required to be recorded on it.
- (3) The local government may by local law policy prescribe conditions that may be imposed on an approval.

9. Body buried without approval

- (1) If, after commencement of this local law, the body of a deceased person is buried at a place other than a cemetery in breach of this Part, the local government may, by written notice to:
 - (a) the owner of the land concerned; or
 - (b) the person responsible for such burial; or
 - (c) the next of kin or legal personal representative of such deceased person;require that, within the specified time, the body be removed and buried in a cemetery and that the land concerned be restored as near as is practicable to its previous condition.
- (2) The person to whom a notice is issued under subsection (1) must comply with the notice within the specified time.

Maximum Penalty - 50 penalty units

10. Local government's powers on default

- (1) Where the requirements of a notice given under section 9 are not complied with within the specified time, the local government may take steps to have the requirements of the notice carried out.¹
- (2) In taking action under subsection (1) the local government may do whatever it considers necessary to achieve the result which would have been achieved had the notice been complied with.
- (3) The local government's costs of taking action under subsection (1) are recoverable as a debt from the person to whom the notice is given.

PART 4 - DISINTERMENT

11. Criteria for approval

- (1) The local government may grant approval under subsection 5(1)(b) only if it is satisfied that the body ashes or other remains will be disinterred and re-buried in a manner consistent with the objects of this local law.
- (2) Where approval is given under subsection (1):
 - (a) if there are any monuments on the grave, the monuments are to be removed by the person responsible;
 - (b) the grave is to be opened and closed by the local government or by an undertaker approved by the local government; and
 - (c) the coffin, body, ashes or other remains disinterred by the person responsible, under the supervision and to the satisfaction of local government or an undertaker approved by the local government.

PART 5 - PROVISIONS APPLICABLE TO CEMETERIES

12. Prescribed standards

- (1) The local government may by local law policy prescribe standards and requirements to be observed in respect of the operations of every cemetery including:
 - (a) minimum depth of graves for adults and children; and
 - (b) minimum length and width of graves for adults and children; and
 - (c) minimum depth between the top of a coffin and the surface of the ground; and
 - (d) minimum clearance between the sides of a coffin and the sides of a grave; and

¹Chapter 15, Parts 4 and 5, *Local Government Act 1993*.

- (e) maximum number of bodies which may be buried in a single grave.
- (2) Despite anything in this local law standards and requirements mentioned in subsection (1) may be varied by the local government in relation to any particular burial in a local government cemetery where, in the local government's opinion:
- (a) compliance with the standards and requirements is impossible or impracticable because of flooding, wet ground, rock or any other reason; and
 - (b) the burial can nevertheless be effected consistently with the objects of this local law; and
 - (c) subsection (1) is not contravened if the standards and requirements as so varied are observed with respect to the burial concerned.
- (3) If subsection (1) applies, a copy of those standards and requirements must be given to:
- (a) the owner of the land on which a cemetery is located; and
 - (b) the holder of an approval on issue of an approval to which those matters apply.
- (4) The owner of land on which a cemetery is located and to whom a copy of those standards and requirements is given must ensure that the standards and requirements are complied with.

Maximum Penalty - 50 penalty units

- (5) The holder of an approval to whom a copy of those standards and requirements is given must ensure that the standards and requirements are complied with.

Maximum Penalty - 50 penalty units

13. Records to be maintained

- (1) In respect of every cemetery, there must be made and retained records of:
- (a) the names of all deceased persons buried or whose ashes or other remains are interred in the cemetery; and
 - (b) the date of interment; and
 - (c) the specific place of interment within the cemetery; and
 - (d) any dealing with or concerning the body, ashes or other remains of the deceased person after interment including disinterment.
- (2) Records made and retained pursuant to subsection (1) must:
- (a) not be destroyed or otherwise disposed of without the written approval of the local government; and

- (b) be kept at:
 - i) some part of the cemetery to which they relate; or
 - ii) another specified place approved by the local government; and
- (c) be open to inspection by the public on payment of a prescribed fee at all times when the place at which the records are kept is attended by some person.

14. Responsibility for compliance

The owner of land used as a cemetery (other than a local government cemetery) must ensure that section 13 is complied with.

Maximum Penalty - 50 penalty units

PART 6 - ESTABLISHMENT AND MAINTENANCE OF LOCAL GOVERNMENT CEMETERIES

15. Power to establish

- (1) The local government may, subject to the *Integrated Planning Act 1997*, establish a local government cemetery including:
 - (a) a lawn plaque cemetery; or
 - (b) a headstone cemetery; or
 - (c) a lawn cemetery; or
 - (d) a columbarium; or
 - (e) a vault including a vault above or below the ground; or
 - (f) a garden of remembrance; or
 - (g) other structures and improvements the local government considers appropriate.
- (2) The local government may close a local government cemetery to further burials or the placement of further ashes.

16. Maintenance

- (1) The local government may maintain a local government cemetery including all graves and memorials therein in such manner and to such extent as it thinks fit.
- (2) The local government is not under a duty to any person or to persons generally to maintain a local government cemetery or any part of a local government cemetery in any particular order, repair or condition.

17. Repairs or removal by local government

- (1) The local government may repair or remove any grave or memorial:
 - (a) if the repair or removal is necessary for public health or safety; or
 - (b) which in the opinion of the local government is in a state of disrepair; or
 - (c) which in the case of a memorial has been placed on the wrong grave site.
- (2) The local government:
 - (a) is not required to but may replace or reinstate a grave or memorial dealt with under subsection (1) including the placement of the memorial on the correct grave site; and
 - (b) has no liability to any person in respect of a grave or memorial dealt with under subsection (1) or replaced or reinstated under paragraph (a).

18. Regulation by local government

- (1) In addition to the local government's powers under section 12, the local government may by local law policy prescribe standards and requirements to be observed in respect of the operations of every local government cemetery including:
 - (a) the hours during which a local government cemetery is open to the public; and
 - (b) the hours for the performance of burials in a local government cemetery; and
 - (c) the position of graves in a local government cemetery; and
 - (d) minimum and maximum sizes and required construction standards for coffins; and
 - (e) requirements for memorials including maximum sizes and approved and prohibited types of memorial; and
 - (f) reservation of grave sites or niches in a columbarium or vault by persons in anticipation of their death; and
 - (g) the placing of flowers and tokens on graves or memorials including the prohibition of artificial flowers.
- (2) If subsection (1) applies, the local government may cause to be erected a notice showing these matters at each public entrance to the local government cemetery to which the matters apply and a copy of those standards and requirements must be given to the holder of an approval on issue of an approval to which those matters apply.
- (3) Failure to comply with a notice erected under subsection (2) is an offence.

Maximum Penalty - 50 penalty units

- (4) The holder of an approval to whom is given a copy of those standards and requirements must ensure that the standards and requirements are complied with.

Maximum Penalty - 50 penalty units

PART 7 - BURIAL IN LOCAL GOVERNMENT CEMETERIES

19. Grant of burial rights

The local government may enter into contracts giving rights to burial sites or other rights relating to the placement of human remains in a local government cemetery.

20. Memorial

- (1) An application for a memorial as part of an application under subsection 5(1)(c) may be refused if the design, appearance, impact, or wording of a proposed memorial contravenes the local government's requirements.
- (2) A person must not erect or install a memorial relating to a deceased person whose body is buried in a local government cemetery:
 - (a) unless that person has been guided to the actual site by the local government; and
 - (b) unless the memorial conforms with the details of any required development approval.

Maximum Penalty - 50 penalty units

21. Preparation of graves

- (1) When an application under subsection 5(1)(c) or 5(1)(d) has been approved, the local government must use its best endeavours to have the required grave dug and available for use at the required time.
- (2) Notwithstanding subsection (1), the local government may, at the time of receipt of the application or at any later time, advise the person responsible that, by reason of weather, ground condition, difficulty of excavation or any other reason:
 - (a) the grave will not be ready until a later hour in the day proposed for the burial or a day later than that proposed for the burial; or
 - (b) the burial must take place in another grave plot or at another local government cemetery.

22. Transport of body

A person must not bring a body into a local government cemetery for burial unless it is:

- (a) brought in for the purpose of burial pursuant to an approval under this local law; and
- (b) contained in a coffin of sound construction with an identifying name plate.

Maximum Penalty - 20 penalty units

23. Prohibitions after burial

The local government may approve an application under subsection 5(1)(d):

- (a) in any case, within 6 days of the last burial or after 12 months of the last burial; or
- (b) upon being satisfied that such reopening would not be likely to give rise to a health hazard.

PART 8 - PLACEMENT OF ASHES IN COLUMBARIUM OR VAULT IN A LOCAL GOVERNMENT CEMETERY

24. Memorial

- (1) An application for a memorial as part of an application under subsection 5(1)(e) may be refused if the design, appearance, impact or wording of a proposed memorial contravenes the local government's requirements.
- (2) A person must not erect or install a memorial relating to a person whose ashes or other remains are placed in a columbarium, vault or grave:
 - (a) unless that person has been guided to the actual site by the local government; and
 - (b) unless the memorial conforms with the details of any required development approval.
- (3) The local government may require that any inscription plate to be erected in a local government cemetery:
 - (a) be of uniform quality and construction as prescribed by the local government; and
 - (b) be supplied by the local government on payment of the prescribed fee.

25. Regulation of columbaria, vaults and graves

- (1) A person must not place or cause to be placed ashes or other remains in a columbarium vault or grave unless contained in a sealed receptacle.

Maximum Penalty - 50 penalty units

- (2) A person must not allow ashes or other remains to remain in a columbarium or vault unless a memorial identifying the same is affixed to or adjacent to the niche in which they are placed.

Maximum Penalty - 50 penalty units

- (3) If ashes or other remains are placed or found in a columbarium or vault:
 - (a) contrary to subsection (1) or subsection (2); or

- (b) otherwise in breach of this local law,

the local government may remove and dispose of the ashes or other remains without giving notice to any person.

26. Removal of ashes

An application for approval under subsection 5(1)(b) must be made by:

- (a) the next of kin or legal personal representative of the deceased; or
- (b) if accepted by the local government, some other person with a proper interest in the affairs of the deceased person.

27. Private vaults

- (1) The conditions of approval imposed on an application under subsection 5(1)(f) may, for example require:
 - (a) approval of the design and materials of construction of the columbarium or vault (as a separate approval to any approval required under the *Integrated Planning Act 1997* or any other law); and
 - (b) the maintenance and repair of the columbarium or vault by a person other than the local government; and
 - (c) the demolition and removal of the columbarium or vault by the local government if it falls into a state of disrepair.
- (2) Any approval issued under subsection (1) terminates upon the death of the holder of the approval (or the last of them, if more than one).

PART 9 - CONDUCT IN LOCAL GOVERNMENT CEMETERIES

28. Supervision of burials

- (1) The person responsible for a burial or the employees and agents of that person must comply with any direction given by an authorised person with respect to the burial.
- (2) Failure to comply with a direction given under subsection (1) is an offence.

Maximum Penalty - 20 penalty units

29. Supervision generally

- (1) A person in a local government cemetery must comply with a direction given by the local government.
- (2) Failure to comply with a direction given under subsection (1) is an offence.

Maximum penalty - 20 penalty units

30. Funerals

- (1) All funerals in a local government cemetery must be conducted by an undertaker or the holder of an approval issued under Section 5(1)(h).
- (2) The next of kin and legal personal representative of the deceased must ensure that subsection (1) is complied with.

Maximum Penalty - 50 penalty units

31. Prohibited conduct

- (1) A person must not enter or be within a local government cemetery other than during the hours which the cemetery is open to the public.

Maximum Penalty - 50 penalty units

- (2) A person must not, within a local government cemetery:

- (a) have or depasture any animal (other than for ceremonial purposes associated with a burial); or

Maximum Penalty - 50 penalty units

- (b) sell or buy any article or thing; or

Maximum Penalty - 50 penalty units

- (c) distribute or put up any handbill, card, circular or advertisement; or

Maximum Penalty - 50 penalty units

- (d) damage a building wall or fence; or

Maximum Penalty - 50 penalty units

- (e) damage any tree, shrub or plant; or

Maximum Penalty - 50 penalty units

- (f) take part in any meeting other than of a religious or commemorative nature; or

Maximum Penalty - 50 penalty units

- (g) disturb or interfere with a funeral service; or

Maximum Penalty - 50 penalty units

- (h) discharge a firearm except at a military funeral or other recognised type of funeral service ordinarily involving such discharge; or

Maximum Penalty - 50 penalty units

- (i) damage or interfere with any grave or memorial or with any flowers or tokens placed thereon; or

Maximum Penalty - 50 penalty units

- (j) ride or drive or give approval to be ridden or driven any animal or vehicle otherwise than upon a pavement surfaced roadway.

Maximum Penalty - 50 penalty units

32. Removal of persons

- (1) An authorised person may direct any person found committing an offence against this part to leave a local government cemetery forthwith.
- (2) Failure to comply with a direction given under subsection (1) is an offence.

Maximum Penalty - 20 penalty units

PART 10 - PERFORMING CEREMONY ACCORDING TO CUSTOM OR DENOMINATION

33. Application for approval

An application for an approval under Subsection 5(1)(g) must specify the particular custom or religious denomination to which the proposal relates.

34. Criteria for approval

The local government must consider every application for an approval under subsection 5(1)(g) having regard to the following criteria:

- (a) the suitability of the land for the proposal having regard to:
 - i) flood immunity; and
 - ii) ground and soil conditions; and
 - iii) topography; and
 - iv) environmental matters; and
- (b) public health and safety (including the health and safety of all persons involved in the burial or in the vicinity of the grave such as local government employees and mourners); and
- (c) any other matter specified by local law policy.

35. Subject matter for conditions

- (1) An approval may be granted on conditions the local government considers appropriate.
- (2) The conditions of approval may for example:

- (a) regulate the manner in which the proposal is to be carried out including:
 - i) use of equipment; and
 - ii) amount and type of soil to be used; and
 - iii) minimum distance required to be kept from the grave; and
 - iv) supervision of the proposal or other involvement by the local government; and
 - (b) require the holder of the approval to give the local government an indemnity against claims that may result from the carrying out of the proposal; and
 - (c) relate to public health and safety (including the health and safety of all persons involved in the burial or in the vicinity of the grave such as local government employees and mourners).
- (3) The local government may by local law policy prescribe conditions that may be imposed in an approval.

PART 11 - ENFORCEMENT

36. Notice to remedy breach

- (1) If there is occurring or has occurred a breach of this local law or a condition of approval, the local government may by written notice require either the person in breach or the owner of land from which the body, ashes or other remains of a deceased person have been disinterred as set out in section 5(1)(b), as the case may be to:
- (a) remedy the breach; or
 - (b) do such work and undertake such action as is specified in the notice, within the specified time.
- (2) The person to whom the notice is given must comply with the notice within the specified time.

Maximum Penalty - 50 penalty units

37. Local government's powers on default

Where the requirements of a notice given under section 36 are not complied with within the time specified in the notice, the local government may if practicable carry out the requirements of the notice in which event its costs of so doing are recoverable as a debt from the person to whom the notice is given.²

²See Chapter 15, Parts 4 and 5, local government Act 1993.

PART 12 - MISCELLANEOUS

38. Local law policies

The local government may make local law policies in relation to those matters about which this local law specifically allows for the making of local law policies.