

**LOCAL GOVERNMENT ACT 1995
CAT ACT 2011**

SHIRE OF KENT

ANIMALS, ENVIRONMENT AND NUISANCE LOCAL LAW 2023

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**LOCAL GOVERNMENT ACT 1995
CAT ACT 2011**

SHIRE OF KENT

ANIMALS, ENVIRONMENT AND NUISANCE LOCAL LAW 2023

Under the powers conferred by the *Local Government Act 1995*, the *Cat Act 2011* and under all other powers enabling it, the Council of the Shire of Kent resolved on _____ 2023 to make the following local law.

PART 1 - PRELIMINARY

1.1 Citation

This local law may be cited as the *Shire of Kent Animals, Environment and Nuisance Local Law 2023*.

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 throughout the district.

1.4 Repeal

The following local laws are repealed –

- (a) the Shire of Kent *Local Laws Relating to the Removal of Refuse, Rubbish, Litter, Derelict Vehicles; Vehicle Bodies and other Materials or Things* published in the *Government Gazette* on 23 March 1998; and
- (b) *Shire of Kent Cat Control Local Law* published in the *Government Gazette* on 23 March 1998.

1.5 Terms Used

(1) In this local law, unless the context specifies otherwise –

Act means the *Local Government Act 1995*;

affiliated person means a person who is a member of a poultry or pigeon club incorporated under the *Associations Incorporation Act 2015*;

amusement means anything usually conducted for amusement at a fair, a carnival or a show, whether conducted at a fair, a carnival or a show or elsewhere;

authorised person means a person authorised by the local government to perform any of the functions under this local law and includes the CEO;

aviary bird means any bird, other than poultry or pigeons, kept, or usually kept in an aviary or cage;

birds includes poultry;

builder means the holder of a building permit issued in respect of building works on a building site or a person in control of a building site;

Building Code means the latest edition of the Building Code of Australia published by, or on behalf of, the Australian Building Codes Board, as amended from time to time, but not including explanatory information published with the Building Code;

building permit has the meaning given to it by the *Building Act 2011*;

building site means any lot for which a building permit is current;

CEO means the Chief Executive Officer of the local government;

Code of Practice—Pigeon Keeping means the document entitled *A Code of Practice – May 1994 – Pigeon Keeping and Pigeon Racing* published in May 1994 by the Pigeon Racing Federation of WA (Incorporated) and the Independent Racing Pigeon Federation (Incorporated), as amended from time to time;

cow includes an ox, calf or bull;

development has the meaning given to it in the *Planning and Development Act 2005*;

development approval means a development approval under a local planning scheme;

development site includes any lot or lots for which there is currently a development or subdivision approval, and any lot or lots upon which construction work, earthworks, clearing of scrub, trees or overgrowth or any other site works are taking or have taken place;

district means the district of the local government;

disused means, in relation to any thing whatsoever, that the thing –

(a) is not in use for the purpose for which it was designed or appears to have been designed or intended; or

(b) has been stored or left stationary on land in the district for more than 1 month;

dust means any visible granular or particulate material which has or has the potential to become airborne and includes organic and non-organic matter and sand, but does not include smoke;

EHO means an Environmental Health Officer appointed by the local government;

equipment means equipment, machinery or vehicles used for, or in connection with, the development of land;

food premises includes the meaning of “food” as given under section 9 of the *Food Act 2008* and the meaning of “food business”, as given under section 10 of the *Food Act 2008*;

general industry zone means any area zoned “General Industry” under a local planning scheme;

horse means a stallion, mare, gelding, shetland pony, pony, colt or foal, and includes an ass, mule, donkey and any beast of whatever description used for burden or draught or for carrying persons;

land includes any building or structure on the land;

licence means a licence, permit or approval issued under this local law;

licence holder means a person who holds a valid licence;

light industry zone means any area zoned “Light Industry” under a local planning scheme

liquid waste means waste from any process or activity that is in liquid form and includes paint, fuel, grease, fat, oil, degreaser solvent, detergent, chemical, animal waste, food waste, effluent and all discharges of liquid to land, air or water that are not otherwise authorised by a written law but does not include uncontaminated stormwater;

livestock means any horse, cow, sheep, goat, swine, buffalo, deer, camel, llama or alpaca;

livestock vehicle means a vehicle that contains livestock or previously has been used for the carriage of livestock;

local government means the Shire of Kent;

local planning scheme has the meaning given to it by the *Planning and Development Act 2005*;

lot has the meaning given to it by the *Planning and Development Act 2005*;

miniature horse means a horse which meets the standard and height for a miniature horse as described by the Miniature Horse Association of Australia Inc;

miniature pig means a pig that does not exceed 650 millimetres in height as an adult and weighs less than 55 kilograms;

mixed used zone means any area zoned “Mixed Use” under an local planning scheme

nuisance means –

(a) an activity or condition which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;

(b) an unreasonable interference with the use and enjoyment of a person of his or her ownership or occupation of land; or

(c) interference which causes material damage to land or other property on the land affected by the interference;

occupier means any person who is in control of any land or part of any land or authorised by the owner, lessee, licensee or any other person empowered to exercise control in relation to land to perform any work in relation to any land and includes a builder or contractor;

owner has the meaning given in section 1.4 of the Act;

pigeon includes homing pigeons and other domesticated breeds of the species *Columba livia*, but does not include native pigeons or doves whether or not the keeping of such birds is subject to the approval of the Department of Biodiversity, Conservation and Attractions;

poultry includes fowls, roosters, ducks, peafowls, turkeys, geese, guinea fowls, pheasants and other birds commonly kept for the production of eggs or meat for domestic consumption;

public notice means such notice as the local government considers necessary –

- (a) stipulating duration and placement of notices as is considered relevant to inform the community,
- (b) not requiring compliance with local public notice under section 1.7 of the Local Government Act; and
- (c) the local government may place the notice given as a public notice on the local government's website or other means of informing the public;

refuse means any waste material including bricks, lime, cement, concrete, rubble, stones, iron, timber, tiles, bags, plastics, ashes, vegetation, timber, wood or metal shavings, sawdust, and waste food, and includes any broken, used, derelict or discarded matter;

Regulations means the *Local Government (Functions and General) Regulations 1996*;

residential building has the meaning given to it in the Residential Design Codes of Western Australia as amended;

residential zone includes any area zoned under a local planning scheme as –

- (i) "Residential";
- (ii) "Mixed" where the land use or intended use, is predominantly for residential purposes as determined by an authorised person;
- (iii) "Special" or "Cultural and Natural Resource" within a townsite where the land use or intended use is aligned and consistent with residential purposes as determined by an authorised person

rural zone means any area zoned "under a local planning scheme as –

- (a) "Rural";
- (b) "Rural Smallholding"; or
- (c) "Special" or "Cultural and Natural Resource" outside a townsite where the land use or intended use is aligned and consistent with rural purposes as determined by an authorised person;

rural residential zone means any area zoned "Rural Residential" under a local planning scheme;

sand means granules or particles of rock, earth, clay, loam, silt and any other granular, particulate or like material including dust and gravel;

Schedule means a schedule to this local law;

set fee means a fee or charge made by the local government under sections 6.16 to 6.19 of the Act;

stormwater means any naturally occurring water that results from rainfall on or around a site, or water flowing onto the site;

subdivision approval means a subdivision approval under the *Planning and Development Act 2005*;

thoroughfare has the meaning given to it in section 1.4 of the Act;

townsite means the following townsites constituted under section 26(2) of the *Land Administration Act 1997* –

- (a) Nyabing; and
- (b) Pingrup; and

truck means a motor vehicle having a tare weight in excess of 3,000 kilograms;

unreasonable noise has the meaning given to it by the *Environmental Protection Act 1986*;

vectors of disease means an arthropod or rodent that transmits, by biological or mechanical means, an infectious agent from a source or reservoir to a person, and includes fleas, bedbugs, crab lice, body lice and head lice;

vermin includes rats, mice, flies, fleas, mites, lice, cockroaches and any other animal, whether vertebrate or invertebrate, which is known to be a vector of disease or likely to cause damage to human food, habitation or possessions; and

written notice means a written notice issued in accordance with Part 9.

- (2) Any other expression used in this local law and not defined herein shall have the meaning given to it in the Act.
- (3) Where, in this local law, a duty, obligation or liability is imposed on an "owner or occupier" the duty shall be deemed to be imposed jointly and severally on each owner and occupier.

PART 2 - KEEPING OF ANIMALS

2.1 Interpretation

In this Part, unless the context otherwise requires –

animal includes cats, dogs, rabbits and ferrets or the like;

catteries are premises registered for the breeding or caring of cats; and
member of a cat organisation means a person referred to in the *Cat Regulations 2012* regulation 23(c).

2.2 Cleanliness

An owner or occupier of premises in or on which a dog, cat or other animal is kept shall –

- (a) keep the premises free from excrement, filth, food waste and all other matter which is or is likely to become offensive or injurious to health, or to attract rats or other vectors of disease;
- (b) when so directed by an EHO, clean and disinfect the premises; and
- (c) keep the premises, so far as possible, free from flies or other vectors of disease, by spraying with a residual insecticide or other effective means.

2.3 Animal enclosures

- (1) A person shall not keep or cause, or permit to be kept, any animals on premises which are not effectively drained or of which the drainage flows to the walls or foundations of any building.
- (2) The owner or occupier of premises where animals are kept shall, when given written notice, pave, grade and drain the floors of all structures and the surface of the ground of all enclosures used for the keeping of animals.

2.4 Cats

- (1) Subject to clause 2.5, a person shall not keep more than 3 cats over the age of 6 months on premises on any land within the district, without a licence from the local government.
- (2) An owner or occupier of premises may apply to the local government for exemption from the requirements of subclause (1).
- (3) The local government shall not grant a licence under subclause (2) unless it is satisfied that the number of cats to be kept will not be a nuisance or injurious or dangerous to health.
- (4) An exemption granted under this clause shall specify –
 - (a) the owner or occupier to whom the exemption applies;
 - (b) the premises to which the exemption applies; and
 - (c) the maximum number of cats which may be kept on the premises; and
- (d) A person who is granted an exemption under subclause (2) may be subject to conditions, including but not limited to –
 - (i) replacement of a cat not permitted if it dies or is permanently removed from the premises not being permitted;
 - (ii) each cat shall be contained on the premises unless under the effective control of a person;
 - (iii) the licence holder will provide adequate space for the exercise of the cats;
 - (iv) the premises shall be maintained in good order and in a clean and sanitary condition; and
 - (v) such other conditions, as the local government considers appropriate.

2.5 Conditions for keeping cats

- (1) The occupier of any premises shall not keep a cattery on those premises, unless the cattery is registered with the local government and the occupier has complied with the following conditions –
 - (a) the occupier shall obtain a licence from the local government to establish a cattery;
 - (b) upon receiving a licence to establish a cattery, the occupier shall apply for registration of the cattery in the form determined by the local government;
 - (c) the occupier shall have paid, to the local government, the annual registration set fee;
 - (d) the occupier shall provide, for every cat, a properly constructed shelter with an enclosure, which shall comply with the following conditions –
 - (i) every shelter shall have a floor area of not less than 0.50 square metres for every cat over the age of 3 months old that may be kept therein; and
 - (ii) the area of the enclosure appurtenant to any shelter or group of shelters forming a cattery shall not be less than 3 times the area of the shelter or group of shelters to which it is appurtenant;
 - (e) every shelter or enclosure shall be at least 10 metres from the boundary of any land not in the same ownership or possession, or at least 10 metres from any dwelling, church, schoolroom, hall,

- factory, dairy or premises wherein food is manufactured, packed or prepared for human consumption; and
- (f) all enclosures, yards, runs and shelters within which cats are kept shall be maintained at all times in a clean condition and free from vectors of disease and shall at any time be cleaned, disinfected or otherwise dealt with as an EHO may direct.
- (2) A certificate of registration of a cattery issued by the local government shall –
- (a) be in the form approved by local government; and
- (b) expire on 30 June next after the date of its issue.

2.6 Keeping of fauna

- (1) In this clause –

fauna means any animal, bird or reptile indigenous to or which periodically migrates to any State or Territory of the Commonwealth or the territorial waters of the Commonwealth and includes in relation to any such animal –

- (a) any class of animal or individual member;
- (b) the eggs or larvae; or
- (c) the carcass, skin, plumage or fur unless it has been shed or discarded by the fauna in a normal or natural manner.
- (2) Notwithstanding the provisions of this Part, a person may keep fauna for the period and under such conditions as may be authorised by the department of the Public Service principally assisting in the administration of the *Conservation and Land Management Act 1984*.

PART 3 - KEEPING OF BIRDS

3.1 Keeping of poultry and pigeons in a residential or mixed use zone

- (1) An owner or occupier of premises in a residential or mixed use zone shall not keep or permit to be kept on the premises –
- (a) more than 12 poultry; and
- (b) more than 12 pigeons unless the owner or occupier is an affiliated person in which case the maximum number of pigeons may be increased to 100.
- (2) An owner or occupier of premises in a residential or mixed use zone may apply to the local government to vary the requirements of subclause (1).

3.2 Conditions for keeping of poultry

- (1) A person who keeps poultry or permits poultry to be kept shall ensure that –
- (a) no poultry shall be kept less than 5 metres from any residential building on the land;
- (b) no poultry is able to approach within –
- (i) 9 metres of the property's primary public thoroughfare;
- (ii) 3 metres of any other public thoroughfare; or
- (iii) 15 metres of a neighbouring residential building, public building or premises where people are employed or premises where food is stored, prepared, manufactured or sold.
- (c) all structures or enclosures within which poultry are kept are maintained at all times in a clean condition; and
- (d) where the structure has an impervious floor, it is laid with a fall to the front of at least 1 in 50.
- (2) An owner or occupier of a premises who keeps poultry or permits poultry to be kept may apply to the local government to vary the requirements of subclause (1)(b) or (d).

3.3 Roosters, geese, turkeys and peafowl

- (1) An owner or occupier of premises in a residential or mixed use zone shall not keep or permit to be kept on the premises –
- (a) roosters;
- (b) geese;
- (c) turkeys;
- (d) peafowls; or
- (e) guinea fowl.

- (2) An owner or occupier of premises in a residential or mixed use zone may apply to the local government to vary the requirements of subclause (1).

3.4 Conditions for keeping of pigeons

- (1) A person who keeps pigeons, or permits pigeons to be kept, shall ensure that –
- (a) all pigeons are kept in a properly constructed pigeon loft, except where registered homing pigeons are freed for exercise;
 - (b) all structures or enclosures within which pigeons are kept are maintained at all times in a clean condition;
 - (c) no opening to a pigeon loft, including openings for ventilation, is within 9 metres of any residential building; and
 - (d) no opening to a pigeon loft, including openings for ventilation, is within –
 - (i) 9 metres of a public thoroughfare; or
 - (ii) 15 metres of a neighbouring residential building, public building or premises where people are employed or premises where food is stored, prepared, manufactured or sold.
- (2) An affiliated person who keeps pigeons, or permits pigeons to be kept, shall do so in accordance with the Code of Practice – Pigeon Keeping, subject to the provisions of this local law.

3.5 Restrictions on pigeon nesting and perching

The local government may order an owner or occupier of a house on or in which pigeons are, or are in the habit of nesting or perching, to take adequate steps to prevent them from continuing to do so.

3.6 Conditions of keeping aviary birds

A person who keeps, or permits to be kept, aviary birds shall ensure that –

- (a) the aviary or cage in which the birds are kept is located at least 1 metre from any lot boundary and at least 5 metres from a residential building on any other lot;
- (b) there is a floor beneath the roofed area of the aviary or cage which is constructed of smooth, impervious material with a gradient of at least 1 in 50 to the front of the aviary or cage;
- (c) the aviary or cage is kept in clean condition and good repair at all times;
- (d) all feed for the birds other than that intended for immediate consumption is stored in vermin proof containers; and
- (e) effective measures are taken to prevent the attraction or harbourage of vermin.

3.7 Nuisance caused by birds

An owner or occupier of land shall not keep any bird or birds which –

- (a) are or create a nuisance; or
- (b) emit an unreasonable noise.

PART 4 - KEEPING OF FARM ANIMALS

4.1 Interpretation

In this Part, unless the context otherwise requires –

approved animal means any farm animal which is the subject of a licence;

farm animal includes a sheep, cow, goat, horse (excluding a miniature horse), deer, alpaca, pig (excluding a miniature pig) or any other animal so classified by the local government; and

manure receptacle means a receptacle constructed of smooth, impervious material and in such a manner as to be easily cleaned, which has a tight fitting lid or cover to prevent the release of odours and prevent the entry of vectors of disease or vermin;

4.2 Licence required to keep farm animals

Subject to clause 4.4, an owner or occupier of land shall not keep, or allow to be kept, any farm animal unless –

- (a) in accordance with a valid licence authorising the keeping of such a farm animal issued in relation to the land pursuant to clause 4.3; or
- (b) in a rural or rural residential zone and in accordance with the provisions of any local planning

scheme applicable to that zone.

4.3 Application for a licence to keep farm animals

In addition to the requirements of clause 8.1, an application for a licence required by clause 4.2(a) shall include the following information –

- (a) a plan of the property, at a scale not less than 1:200, with dimensions clearly marked, showing where it is proposed that the animal is to be kept and the distance of that location from any residential building, public building or premises where people are employed or premises where food is stored, prepared, manufactured or sold.;
- (b) a sketch plan, at a scale of 1:100, indicating the nature of the shelter or housing to be provided for the animal;
- (c) a detailed written plan for the management of manure which addresses—
 - (i) control of flies and other vermin;
 - (ii) disease prevention; and
 - (iii) prevention of nuisance odours; and
- (d) the appropriate set fees.

4.4 Determination of application to keep farm animals

- (1) Subject to clauses 4.5 and 8.2(1)(a), the local government may –
 - (a) refuse to determine an application for a licence which does not comply with clause 4.3;
 - (b) approve an application for a licence subject to such conditions as it considers appropriate; or
 - (c) refuse to approve an application for a licence.
- (2) Where an application for a licence is approved subject to conditions, the licence holder shall comply with those conditions or cause compliance with those conditions.
- (3) Where the local government approves an application under subclause (1)(b), it is to issue to the applicant a licence in the form determined by the local government.
- (4) A licence is valid from the date of issue until 30 June the following year, unless it is cancelled prior to that date under this local law.

4.5 Conditions of licence to keep farm animals

- (1) A licence shall not be granted pursuant to clause 4.4 –
 - (a) unless the land for which the licence is sought is of such dimensions and configuration as will permit the subject animal to be confined in a minimum cleared area of 150 square metres and prevented from approaching within 15 metres of any residential building, public building or premises where people are employed or premises where food is stored, prepared, manufactured or sold.;
 - (b) in the case of a horse (other than a miniature horse) or cow, unless the land for which the licence is sought has a minimum area of 1 hectare;
 - (c) for the keeping of any pig (other than a miniature pig).
- (2) The local government shall take into account the opinions of occupiers of adjoining properties in determining whether to grant a licence for the keeping of a farm animal.
- (3) A licence to keep a farm animal may be issued subject to conditions, including –
 - (a) that a stable or shelter is provided for housing the approved animal;
 - (b) that a manure receptacle is provided in a position convenient to the shelter or place where the approved animal is kept, and that the receptacle is used for the receipt of all manure produced on the premises; and
 - (c) any other conditions that the local government considers necessary for the protection of the health and amenity of the neighbourhood.

4.6 Requirements for keeping farm animals

- (1) An owner or occupier of premises upon which a farm animal or farm animals are kept, shall –
 - (a) maintain the place or places where the animals are kept in clean condition;
 - (b) ensure that any farm animal or farm animals kept on the premises does not cause or constitute a nuisance;
 - (c) maintain the premises free from flies or other vermin by spraying with residual insecticide or other

effective means;

(d) if a manure receptacle is required to be used –

- (i) cause all manure produced on the premises to be collected daily and placed in the receptacle;
- (ii) cause the receptacle to be emptied as often as is necessary to prevent it becoming offensive or a breeding place for flies or other vermin, but in any case at least once a week; and
- (iii) keep the lid of the receptacle closed except when manure is being deposited or removed; and

(e) not permit any farm animal to approach within 15 metres of any residential building, public building or premises where people are employed or premises where food is stored, prepared, manufactured or sold..

(2) An owner or occupier of premises in a rural or rural smallholding zone shall not keep more than 6 pigs other than on premises registered as a piggery pursuant to the provisions of the *Health (Miscellaneous Provisions) Act 2011*, except with a licence from the local government.

4.7 Keeping a miniature horse

(1) An owner or occupier of a premises may keep only a sterilised miniature horse on land of not less than 1,000 square metres in area provided it is registered with the local government and the annual registration set fee is paid.

(2) An owner or occupier of premises shall –

- (a) not keep more than one miniature horse on land zoned residential or mixed use without a licence from the local government or an authorised person; and
- (b) not permit a miniature horse to come within 9 metres of any residential building, public building or premises where people are employed or premises where food is stored, prepared, manufactured or sold.

(3) The local government or an authorised person may prohibit the keeping of a miniature horse on any land or may state the conditions under which a miniature horse may be kept.

4.8 Keeping a miniature pig

(1) Except for a miniature pig, and subject to subclause (2) no person shall keep a pig or pigs, in a townsite.

(2) A person shall not keep a miniature pig in any residential, mixed use or rural residential zone without a licence from the local government or an authorised person.

(3) An owner or occupier of premises where a miniature pig is kept shall –

- (a) only keep a sterilised animal and retain written proof of its sterilisation;
- (b) confine the animal on the property at all times;
- (c) ensure the animal does not cause a nuisance to any neighbour regarding noise, dust, or odour;
- (d) maintain documentary evidence that the animal's veterinary treatment against roundworm and tapeworm is current; and
- (e) not permit the animal to come within 9 metres of any residential building, public building or premises where people are employed or premises where food is stored, prepared, manufactured or sold.

(4) The local government or an authorised person may prohibit the keeping of a miniature pig on any land, or state the conditions under which the miniature pig may be kept.

4.9 Requirements for farm animal shelters

(1) Any stable, enclosure or shelter provided for the keeping of farm animals, whether or not a licence is required for the keeping of such farm animals pursuant to clause 4.4, shall –

- (a) not be situated within 15 metres of any residential building, public building or premises where people are employed or premises where food is stored, prepared, manufactured or sold.;
- (b) not be situated within 1 metre of any lot boundary;
- (c) be constructed of materials approved by an authorised person;
- (d) have on each side of the building between the wall and roof a clear opening of at least
- (e) 150 millimetres in height, and of sufficient length, to provide adequate ventilation to the

- (f) stable, enclosure or shelter;
 - (g) when required by the local government have a separate stall for each horse, cow or other approved animal, the shortest dimension of which shall be at least twice the length of the animal housed therein; and
 - (h) subject to subclause (2), have a floor, the upper surface of which shall –
 - (i) be raised at least 75 millimetres above the surface of the surrounding ground;
 - (ii) be constructed of cement, concrete or other similar impervious material; and
 - (iii) have a fall of 1 in 100 to a drain which shall empty into a trapped gully situated outside the stable or shelter.
- (2) A stable or shelter constructed with a sand floor may be approved by an authorised person subject to –
- (a) the site being well drained, with the sand floor being at least 1.5 metres above the highest known ground water level;
 - (b) a 300 millimetre thick bed of crushed limestone being laid under the sand of the stable;
 - (c) the sand, whether natural or imported, being clean, coarse and free from dust;
 - (d) footings to the stable or shelter being a minimum of 450 millimetres below ground level; and
 - (e) the design of the stable allowing for the access of small earthmoving machinery, such as a skid steer loader, into each stall to maintain the correct floor height.
- (3) An owner or occupier of any land upon which a stable or shelter is located must ensure that the stable or shelter complies in all respects with the requirements of subclause (1), and, where the licence referred to in subclause (2) has been granted, with the requirements of subclause (2).

4.10 Livestock not to stray

The owner or person in charge of livestock shall not permit that livestock to stray or to be at large in a thoroughfare, public place or upon private property without the consent of the property owner.

4.11 Property to be fenced

The owner or occupier of property on which livestock is kept, shall cause the property or a portion of the property to be fenced in a manner capable of confining the livestock, to that portion where the livestock is kept.

PART 5 - BUILDING, DEVELOPMENT AND LAND CARE

5.1 Application of this Part

This Part applies only within the townsites.

5.2 Provision of refuse receptacles

The owner or occupier of a building site or development site shall at all times provide and maintain a refuse receptacle, available for use on the site, which includes a suitable cover, to the satisfaction of an authorised person, of such design as will –

- (a) contain any refuse likely to be produced on the site; and
- (b) prevent refuse being blown from the receptacle by wind.

5.3 Control of refuse

- (1) From the time of commencement of works on a building site or development site until the time of completion of such work, the owner or occupier of the site shall –
 - (a) ensure all refuse on the site is placed and contained in the refuse receptacle and prevented from being blown from the site by wind;
 - (b) keep the site free from any refuse;
 - (c) maintain the verge, footpath and any other reserve, immediately adjacent to the site, free of refuse from the site; and
 - (d) ensure the refuse receptacle is emptied when full.
- (2) The owner or occupier of a building site or development site shall ensure that within 2 days of completion of works on the site, the site and the verge and footpath immediately adjacent to it, is cleared of all refuse and all refuse receptacles are removed from the site.

5.4 Prohibited activities for prevention of dust and liquid waste

- (1) An owner and or occupier of land must take reasonable steps or measures to –
 - (a) stabilise dust on the land;
 - (b) contain all liquid waste on the land; and
 - (c) ensure no dust or liquid waste is released or escapes from the land, whether by means of wind, water or any other cause.
- (2) Subclause (1)(c) does not apply to land where the primary activity is broad acre farming.
- (3) Where the local government forms the opinion that an owner or occupier has not complied with subclause (1) the local government may give written notice requiring the owner and or occupier to do one or more of the following –
 - (a) comply with subclause (1)(a) or (1)(b);
 - (b) clean up and properly dispose of any released or escaped dust or liquid waste;
 - (c) clean up and make good any damage resulting from the released or escaped dust or liquid waste; and
 - (d) take effective measures to stop any further release or escape of dust or liquid waste.
- (4) Where written notice is issued under subclause (3), the requirements of the notice must be complied with in the period as is specified in the notice.
- (5) Where the local government forms the opinion that dust or liquid waste has escaped or has been released from an activity undertaken on land or as a consequence of the use of equipment on land, the local government may give written notice requiring that the activity or use of equipment on the land be ceased immediately, for such period as is specified in the notice on –
 - (a) any owner or occupier of the land; or
 - (b) any operator of equipment on the land.
- (6) Where the local government is of the opinion that dust or liquid waste may be released or escape as a result of an activity which is likely to be carried out from any land, the local government may give to the owner and or occupier written notice providing that the activity may only be carried on subject to conditions specified in the notice.

5.5 Dust management

If an owner or occupier of land intends to undertake any work involving the clearing of land, from which any sand or dust is likely to be released whether by means of wind, water or any other cause, the local government may require the owner, occupier or builder to –

- (a) submit a Dust Management Plan in accordance with the Department of Water and Environmental Management document “A guideline for managing the impacts of dust and associated contaminants from land development sites, contaminated sites remediation and other related activities” (March 2011), or any updated version of this document; and
- (b) obtain written approval of the Dust Management Plan from an authorised person before commencement of any work.

5.6 Removal of refuse and disused materials

- (1) The owner or occupier of a lot shall not keep, or permit to remain on the lot, any refuse, rubbish or disused material of whatever nature or kind which in the opinion of the local government or an authorised person is likely to give the lot an untidy appearance and does not conform with the general appearance of other land in that particular part of the district.
- (2) The local government or an authorised person may give written notice to the owner or occupier of a lot requiring the removal of refuse, rubbish or disused material from the lot within the time specified in the notice.

5.7 Removal of unsightly overgrowth of vegetation

- (1) The owner or occupier of a lot shall not permit to remain on a lot, any unsightly overgrowth of vegetation that gives the lot an untidy appearance and does not conform with the general appearance of other land in that particular part of the district.
- (2) The local government or an authorised person may give written notice to the owner or occupier of a lot requiring the removal of the overgrowth of vegetation within the time specified in the notice.

5.8 Storage of vehicles, vessels and machinery

- (1) The owner or occupier of a lot shall not –
 - (a) store, or allow to remain in public view on any lot, more than 1 vehicle, vessel or machinery (whether licensed or not) in a state of disrepair;
 - (b) store, or allow to remain in public view on any lot, any vehicle, vessel or machinery in a state of disrepair for a period in excess of 1 month;
 - (c) store, or allow to remain in public view on any lot, any vehicle, vessel or machinery parts (including tyres);
 - (d) wreck, dismantle or break up any vehicle, part or body of a vehicle, vessel or machinery except where performed –
 - (i) inside a building; or
 - (ii) within an area enclosed by a fence or wall of not less than 1.8 metres in height and of such a nature as to screen all vehicles, parts or bodies of vehicles, vessels or machinery from the thoroughfare and from adjoining properties; or
 - (e) wreck, dismantle or break up a vehicle, vessel or machinery so as to cause a nuisance.
- (2) Subclause (1) does not apply to land zoned for general industry or light industry under a local planning scheme.

5.9 Disposing of disused refrigerators or similar containers

A person shall not place, leave or dispose of a disused refrigerator, ice chest, ice box, trunk, chest or other similar article having a compartment which has a capacity of 0.04 cubic metres or more on any land without first –

- (a) removing every door and lid and every lock, catch and hinge attached to a door or lid; or
- (b) rendering every door and lid incapable of being fastened.

PART 6 - NUISANCES AND DANGEROUS THINGS

6.1 Application of this Part

This Part applies only within the townsites.

6.2 Use of exterior lights

An owner or occupier of land on which floodlights or other exterior lights are erected or used, shall not allow the floodlights or other exterior lights to shine directly onto any other premises.

6.3 Emission or reflection of light

An owner or occupier of land shall ensure that –

- (a) artificial light is not emitted or reflected from anything on the land so as to illuminate premises outside that land to more than 50 lux; and
- (b) natural light is not reflected from anything on the land so as to create or cause a nuisance to the occupier of any other premises or to a person lawfully using a thoroughfare.

6.4 Notice may require specified action to prevent emission or reflection of light

- (1) The local government may by written notice direct the owner or occupier to take such actions as an authorised person considers necessary within the time specified in the notice where –
 - (a) floodlights or other exterior lights shine directly onto any other premises;
 - (b) artificial light is emitted or reflected from anything on the land so as to illuminate premises outside the land to more than 50 lux; or
 - (c) natural light is reflected from anything on the land so as to create or cause a nuisance to the occupier of any other premises or to a person lawfully using a thoroughfare,
- (2) The notice referred to in subclause (1) may direct that –
 - (a) floodlights or other exterior lights are used only during the hours specified in the notice;
 - (b) the direction in which the lights shine be altered as specified in the notice;
 - (c) any reflective surfaces be painted or otherwise treated so as to abate the nuisance; or
 - (d) any combination of these measures that the local government believes to be appropriate to the

circumstances.

6.5 Burning rubbish, refuse or other material

- (1) A person shall not set fire to rubbish, refuse or other materials unless –
 - (a) a licence has first been obtained from the local government;
 - (b) the person demonstrates to the satisfaction of the local government that reasonable alternatives for the disposal of the rubbish, refuse or other material do not exist and the potential for pollution is low;'
 - (c) the material does not include any plastic, rubber, food scraps or other material likely to cause the generation of smoke or odour in such quantity as to cause a nuisance to other persons;
 - (d) a haze alert has not been issued by the Bureau of Meteorology for the period during which burning is to take place; and
 - (e) the burning complies with the *Bush Fires Act 1954*, any annual fire hazard reduction notice issued by the local government under that Act and any conditions of a licence as determined by the local government.
- (2) Subclause (1) shall not apply to any barbeque, solid fuel water heater, space heater or ovens fired with dry paper, dry wood, synthetic char or charcoal type fuel.
- (3) Subclause (2) is subject to any fire danger rating as determined by the Bureau of Meteorology.

6.6 Burning of cleared vegetation prohibited

An owner or occupier of any building or development site shall ensure that no vegetation or other material cleared from the site is burnt on the site.

6.7 Escape of smoke, fumes, odours and other emissions

An owner or occupier of land or premises shall not cause or permit the escape of smoke, fumes or odours from the land or premises in such quantity or of such a nature as to cause or to be a nuisance to any person.

6.8 Disposal of swimming pool backwash

- (1) The owner or occupier of land on which a swimming pool is constructed shall ensure that all backwash is not permitted to discharge onto or run-off onto adjacent land so as to cause a nuisance, or cause damage to any structures situated on adjacent land.
- (2) Subclause (1) shall not prevent the discharge of swimming pool backwash from a lot into a local government approved stormwater drain or road by a method approved by an authorised person.

6.9 Containment of stormwater

- (1) Subject to subclause (2), the owner or occupier of a lot shall ensure that all stormwater received by any building, house, other structure or any paved or sealed or other surfaced areas including any vehicle access ways on the lot is contained within the lot and is not permitted to discharge onto or run-off onto adjacent land so as to cause a nuisance, or cause damage to any structures situated on adjacent land.
- (2) Subclause (1) shall not prevent the discharge of stormwater from a lot into a local government approved stormwater drain or road.

6.10 Amusements nuisance

A person shall not, without written authorisation from the local government, provide or conduct any amusement on land so as to create or be a nuisance to any owner or occupier of land in the district.

6.11 Restrictions on feeding of birds

- (1) A person shall not feed a bird –
 - (a) so as to cause a nuisance, or
 - (b) with a food or substance that is not a natural food of a bird.
- (2) Where an authorised person forms the opinion that a person has not complied with subclause (1) the authorised person may give the person written notice requiring the person to clean up and properly dispose of any feed or waste products specified in the notice.

6.12 Hazardous trees

- (1) Where a tree on a lot endangers any person or thing on adjoining land, the local government may give written notice to the owner or the occupier of the lot to remove, cut, move or otherwise deal with that tree so as to make the tree safe.
- (2) Where a tree on a lot presents a serious and immediate danger to any person or thing, the local government may take any remedial action it considers appropriate in order to make the tree safe without having given the owner or occupier written notice pursuant to subclause (1).
- (3) The local government reserves its right to recover any costs incurred by the local government for remedial action taken in terms of subclause (2).

PART 7 - VEHICLE NUISANCE

7.1 Livestock vehicles

- (1) A person shall not park a vehicle containing livestock in a townsite for a period in excess of 30 minutes.
- (2) A person shall not park a vehicle which contains or has been used for the carriage of livestock so as to create or be a nuisance to any person, by reason of the odour emanating from the vehicle.
- (3) If a person parks a vehicle containing livestock in a townsite in accordance with subclause (1), then the person does not contravene subclause (2).

7.2 Truck noise from residential land

A person shall not start or drive a truck on land zoned, approved or used for residential purposes between the hours of 10.30 pm and 6.30 am on the following day without first obtaining the written consent of the local government.

PART 8 - LICENCES

8.1 Application for licence

- (1) Where a person is required to obtain a licence under this local law, that person shall apply for the licence in accordance with subclause (2).
- (2) An application for a licence under this local law shall –
 - (a) be in the form determined by the local government;
 - (b) be signed by the applicant;
 - (c) provide the information required; and
 - (d) be forwarded to the local government together with any set fee.
- (3) An authorised person may require an applicant to provide additional information reasonably related to an application before determining an application for a licence.
- (4) An authorised person may require an applicant to give public notice of the application for a licence.
- (5) An authorised person may refuse to consider an application for a licence which is not in accordance with subclause (2) or where the requirements of subclause (3) or (4) have not been satisfied.

8.2 Decision on application for licence

- (1) An authorised person may –
 - (a) approve an application for a licence unconditionally or subject to any conditions; or
 - (b) refuse to approve an application for a licence.
- (2) If an authorised person approves an application for a licence, written notice of approval is to be issued to the applicant.
- (3) If an authorised person refuses to approve an application for a licence, written notice of that refusal is to be given to the applicant.
- (4) An authorised person may, at any time, amend a condition of a licence and the amended condition takes effect when written notice of it is given to the licence holder.

8.3 General restrictions on grant of licence

- (1) An authorised person shall not grant a licence if there are reasonable grounds for believing that the carrying on of the activity to which the application relates would constitute an unacceptable risk to the safety of the public.
- (2) An authorised person shall not grant a licence unless satisfied that –
 - (a) the applicant is capable of carrying on the activity in accordance with this local law and the terms and conditions of the licence;
 - (b) the public place at which the activity is to be provided is suitable for that purpose;
 - (c) a licence or similar authority granted or issued to the applicant has not been cancelled in the period of 5 years before the application is made; and
 - (d) the applicant is considered to be a fit and proper person to carry on the activity.

8.4 Amendment of licence

- (1) An authorised person may, by written notice given to the licence holder, amend a licence –
 - (a) imposing any new condition; or
 - (b) change or remove any existing condition.
- (2) An amendment may be made on application made by the licence holder or on the initiative of an authorised person.
- (3) An amendment will come into effect on the day that written notice is given to the licence holder, or some other date as specified in the notice.

8.5 False or misleading statement

A person shall not make a false or misleading statement in connection with an application in respect of a licence under this local law.

8.6 Compliance with conditions

Where an application for a licence has been approved subject to conditions, the licence holder shall comply with each of those conditions, as amended.

8.7 Duration of licence

- A licence is valid for one year from the date on which it is issued, unless it is –
- (a) otherwise stated in this local law or in the licence; or
 - (b) cancelled under this Division.

8.8 Renewal of licence

- (1) A licence holder may apply to the local government for the renewal of a licence.
- (2) An application for renewal shall –
 - (a) be in the form determined by the local government;
 - (b) be signed by the licence holder;
 - (c) provide the information required by the form;
 - (d) be forwarded to the local government no later than 28 days before the expiry of the licence, or within a shorter period that the local government in a particular case permits; and
 - (e) be accompanied by any set fee.
- (3) The provisions of this Part that apply to an application for a licence also apply to an application for the renewal of a licence as though it were an application for a licence.

8.9 Transfer of licence

- (1) An application for the transfer of a valid licence is –
 - (a) to be made in writing;
 - (b) to be signed by the licence holder and the proposed transferee of the licence;
 - (c) to include such information as an authorised person may require to enable the application to be determined; and
 - (d) to be forwarded to the local government together with any set fee.
- (2) An authorised person may –
 - (a) approve an application for the transfer of a licence;
 - (b) approve the application subject to any conditions; or

- (c) refuse to approve the application.
- (3) Where an authorised person approves an application for the transfer of a licence, the transfer may be effected by an endorsement on the licence signed by the authorised person.
- (4) Where an authorised person approves the transfer of a licence, the local government is not required to refund any part of any set fee paid by the former licence holder.

8.10 Cancellation of licence

A licence may be cancelled by an authorised person if –

- (a) the licence was obtained improperly;
- (b) the licence holder has persistently or frequently contravened a term or condition of the licence, or a provision of this local law; or
- (c) there are reasonable grounds for believing that the continued provision of the activity constitutes or would constitute an unacceptable risk to the safety of the public.

8.11 Surrender of licence

A licence holder may, at any time by notice in writing to the local government, surrender the licence.

8.12 Production of licence

A licence holder shall produce to an authorised person her or his licence immediately after being required to do so by that authorised person.

8.13 Production of licence document for amendment

If an authorised person amends or renews a licence, the licence holder shall, if required by an authorised person, produce the licence document to the authorised person for amendment within the period specified by the authorised person.

8.14 Return of licence document if licence no longer in effect

- (1) The person who was the licence holder shall as soon as practicable return the licence document to the local government if a licence –
 - (a) has expired or has not been renewed;
 - (b) has been cancelled; or
 - (c) has been surrendered.
- (2) On the cancellation of a licence under clause 8.10 the licence holder is to be taken to have forfeited any fees paid in respect of the licence.

PART 9 - NOTICES

9.1 Notice to remedy non-compliance

Where any thing is required to be done or not permitted to be done by this local law, an authorised person may give written notice –

- (a) to the owner or the occupier of the property or property which abuts that portion of the thoroughfare where the thing has been done or not done; or
- (b) to any other person who may be responsible for the thing done or not done, requiring the person to comply with the requirements of this local law.

9.2 Notice requirements

- (1) Written notice given under this Part shall –
 - (a) be in writing;
 - (b) given to the person referred to in clause 9.1;
 - (c) specify the reason for giving the notice;
 - (d) the action that is required to be undertaken; and
 - (e) the time within which the work or action is to be undertaken.
- (2) At the discretion of the local government, the action that may be required to be undertaken is –
 - (a) to take or cease such action as may be required for compliance with this local law;
 - (b) reinstate the property or thing to the state it was in before the removal, damage or interference;

- (c) replace that property or thing; or
- (d) pay for the costs of reinstatement or replacement.

9.3 Offence to fail to comply with notice

A person who fails to comply with written notice given to him or her under this local law commits an offence.

9.4 Local government may undertake requirements of notice

If a person fails to comply with written notice referred to in clause 9.1, the local government may –

- (a) do the thing specified in the notice, including replace the property, or reinstate the property to the state it was in before the removal, damage or interference;
- (b) take whatever remedial action it considers appropriate to put the local government in the position it would have been in if the breach or failure had not occurred; and
- (c) recover all costs from the person, as a debt.

9.5 Entry into private land

This local law is subject to sections 3.25, 3.27 and schedules 3.1 and 3.2 of the *Local Government Act 1995* and any power of entry exercised by the local government under this local law is subject to Part 3, Division 3, Subdivision 3 of the Act.

PART 10 - OBJECTIONS AND APPEALS

10.1 Objections and appeals

Division 1 of Part 9 of the Act applies to a decision under this local law in respect of the grant, renewal, transfer, amendment or cancellation of a licence or consent.

PART 11 - ENFORCEMENT

11.1 Offences

A person who fails to do anything required or directed to be done under this local law, or who does anything which under this local law that person is prohibited from doing, commits an offence.

11.2 General penalty

A person who commits an offence under this local law is liable, on conviction, to a penalty not exceeding \$5,000 and if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of the day during which the offence has continued.

11.3 Prescribed offences

- (1) An offence against a clause specified in Schedule 1 is a prescribed offence for the purposes of section 9.16(1) of the Act.
- (2) The amount of a modified penalty for a prescribed offence is the number specified adjacent to the clause in Schedule 1.

11.4 Form of infringement notices

- (1) For the purposes of this local law –
 - (a) where a vehicle is involved in the commission of an offence, the form of the notice referred to in section 9.13 of the Act is that of Form 1 in Schedule 1 of the Regulations;
 - (b) the form of the infringement notice given under section 9.16 of the Act is that of Form 2 in Schedule 1 of the Regulations; and
 - (c) the form of the notice referred to in section 9.20 of the Act is that of Form 3 in Schedule 1 of the Regulations.
 - (2) Where an infringement notice is given under section 9.16 of the Act in respect of an alleged offence against clause 2.4, the notice is to contain a description of the alleged offence.
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Schedule 1 – Prescribed offences

[clause 11.3]

Item	Clause	Nature of offence	Modified penalty \$
1	2.2(a)	Failure to keep premise free from excrement, filth, food waste and other matter likely to be offensive or injurious to health, attracts, vermin or insects	250
2	2.2(b)	Failure to keep premises clean and disinfected when given written notice	250
3	2.2(c)	Failure to keep premises free of flies, or when given written notice, spray premises with residual insecticide or use other means to kill or repel flies	250
4	2.3	Failure to maintain adequate enclosures	250
5	2.5	Keep, or permit to be kept, any poultry, not in accordance with conditions of these local laws	250
6	2.7	Keep, or suffer to remain in a residential zone, a rooster, turkey, goose or geese, or peafowl	250
7	2.9	Failing to keep cages, enclosures and lofts maintained to minimum standard specified in the Code of Practice	250
8	2.10	Failing to prevent pigeons nesting or perching	250
9	2.11	Failing to keep aviary birds in accordance with conditions of this local law	250
10	2.12	Keeping birds so as to create a nuisance	250
11	2.13(1)	Failure to obtain a licence to keep bees	250
12	2.13(3)	Failure to comply with any obligation when temporarily keeping bees	250
13	2.15	Failure to comply with a condition of a licence to keep bees	250
14	2.20	Creation of a nuisance from keeping of bees or beehives	250
15	2.21	Failure to comply with written notice of local government	250
16	2.21	Failure to comply with written notice to remove bees or beehives for contravention of local law	250
17	2.22	Keeping a farm animal without a valid licence	250
18	2.27	Failure to comply with the conditions for keeping farm animals	250
19	2.28	Keeping a miniature horse on land without a licence	250
20	2.29	Keeping a miniature pig on land without a licence	250
21	2.32(2)	Permitting livestock to stray, or be at large in a thoroughfare, public place or private property without consent	250
22	2.32(1)	Failing to keep property fenced in a manner capable of confining livestock	250
23	3.1	Failure to provide or maintain a refuse receptacle on a building or development site	500
24	3.2	Failure to control refuse on a building or development site	500
25	3.3	Unauthorised storage of materials	500

Item	Clause	Nature of offence	Modified penalty \$
26	3.4	Release or escape of dust or liquid waste from land	500
27	3.5	Commencing works involving clearing of land without an approved Dust Management Plan	500
28	3.6	Burning of cleared vegetation or other material from a building or development site	500
29	3.9(a)	Storing, or allow to remain on land, more than one vehicle, vessel or machinery in a state of disrepair	500
30	3.9(b)	Storing, or allow to remain on land, any vehicle, vessel or machinery in a state of disrepair for a period in excess of 1 month	500
31	3.9(c)	Storing, or allow to remain on land, any vehicle, vessel or machinery parts (including tyres)	500
32	3.9(d)(i)	Wreck, dismantle or break up any vehicle part or body, vessel or machinery not inside a building	500
33	3.9(d)(ii)	Wreck, dismantle or break up any vehicle part or body, vessel or machinery not behind a sufficient fence or wall	500
34	3.9(e)	Wreck, dismantle or break up a vehicle, vessel or machinery so as to cause a nuisance	500

Dated _____ 2023

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

Scott CROSBY, President

Adam SEILER, Chief Executive Officer