

Shire of Capel

Cats Local Law

2017

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LOCAL GOVERNMENT ACT 1995

CAT ACT 2011

SHIRE OF CAPEL

CATS LOCAL LAW 2017

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LOCAL GOVERNMENT ACT 1995

CAT ACT 2011

Shire of Capel

Cats Local Law 2017

Under the powers conferred by the *Cat Act 2011*, the *Local Government Act 1995* and by all other powers enabling it, the Council of the Shire of Capel resolved **ON DATE** to make the following local law.

Part 1 – Preliminary

1.1 Citation

This local law may be cited as the *Shire of Capel Cats Local Law 2017*.

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 Definitions

In this local law unless the context otherwise requires –

Act means the *Cat Act 2011*;

applicant means the occupier of the premises who makes an application for a permit under this local law;

authorised person means a person authorised by the local government to perform the functions conferred on an authorised person under this local law;

cat means an animal of the species *Felis catus* or a hybrid of that species;

cat management facility means –

- (a) a facility operated by a local government that is, or may be, used for keeping cats;
- (b) a facility for keeping cats that is operated by a person or body prescribed; or
- (c) a facility for keeping cats that is operated by a person or body approved in writing by a local government;

cattery means any premises where more than 3 cats are kept, bred, boarded, housed or trained temporarily, whether for profit or otherwise, and where the occupier of the premises is not the ordinary ~~keeper~~ **owner** of the cats;

CEO means the Chief Executive Officer of the local government;

Council means the Council of the local government;

district means the district of the local government;

effective control in relation to a cat means any of the following methods –

- (a) held by a person who is capable of controlling the cat;
- (b) securely tethered;
- (c) secured in a cage; or
- (d) any other means of preventing escape;

grouped dwelling (commonly referred to as a duplex, villa or townhouse) means a dwelling that is one of a group of two or more dwellings on the same lot such that no dwelling is placed wholly or partly vertically above the other, except where special conditions of landscape or topography dictate otherwise, and includes a dwelling on a survey strata with common property;

keeper in relation to a cat means each of the following persons –

- ~~(a) the owner of the cat as defined in the Act;~~
- ~~(b) a person by whom the cat is ordinarily kept;~~
- ~~(c) a person who has or appears to have immediate care or control of the cat;~~
- ~~(d) a person who keeps the cat, or has the cat in her or his possession for the time being;~~
- ~~(e) a person who occupies any premises in which a cat is ordinarily kept or ordinarily permitted to live and has care or control of the cat;~~
- ~~(f) a permit holder of a permit which relates to the cat; or~~
- ~~(g) the holder of an exemption issued in relation to the cat;~~

local government means the Shire of Capel;

multiple dwelling (often called flats, apartments or units) means a dwelling in a group of more than one dwelling on a lot where any part of a dwelling is vertically above part of any other but –

- (a) does not include a grouped dwelling; and
- (b) includes any dwellings above the ground floor in a mixed use development;

nuisance means where a cat –

- ~~(a) excretes or urinates on premises where the cat is not normally resident;~~
- ~~(b) behaves in a manner which is harmful or annoying and which gives rise to legal liability in the tort of public or private nuisance at law;~~
- ~~(c) unreasonably interferes with the use and enjoyment of a person of his or her ownership or occupation of land or premises;~~
- ~~(d) interferes in a manner which causes material damage to land or other property on the land affected by the interference; or~~
- ~~(e) is, or likely to be, injurious or dangerous to the health of any person or domestic or Australian indigenous animal;~~

- (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;**

owner is a person who occupies any premises in which a cat is ordinarily kept or permitted to live and who has care and control of the cat;

permit means a permit issued by the local government under clause 3.6;

permit holder means a person who holds a valid permit under clause 3.6;

premises includes the following –

- (a) land (whether or not vacant);
- (b) the whole or part of a building or structure (whether of a permanent or temporary nature); and
- (c) a vehicle;

RSPCA means the Royal Society for the Prevention of Cruelty to Animals (Inc) of Western Australia;

Schedule means a schedule to this local law; and

Scheme means a planning scheme of the local government made by it under the *Planning and Development Act 2005* and its antecedents.

1.5 Repeal

The Shire of Capel *Local Law Relating to the Keeping and Welfare of Cats* as published in the *Government Gazette* on 3 August 2004 and as amended in the *Government Gazette* on 1 February 2005 is repealed.

Part 2 – Cat control

2.1 ~~Cats in other places~~ nuisance

The owner of a cat, or any other person in care or control of a cat, shall not allow a cat to create a nuisance.

~~(2) A cat shall not be in any prohibited place as identified in Schedule 1.~~

Part 3 – Permits for keeping cats

3.1 Interpretation

In this part, and for the purposes of applying the definition of ‘cattery’, *cat* does not include a cat less than 6 months old.

3.2 Cats for which a permit is required

- (1) Subject to subclause (2) a person is required to have a permit to –
 - (a) keep 3 or more cats on any premises; or
 - (b) use any premises as a cattery or cat management facility.

- (2) A permit is not required under subclause (1) if the premises concerned are –
- (a) a refuge of the RSPCA or any other body prescribed in regulation 4 of the *Cat Regulations 2012*;
 - (b) a cat management facility which has been approved by the local government;
 - (c) a veterinary surgery; or
 - (d) a pet shop.

3.3 Application for permit

An application for a permit under clause 3.2 shall be –

- (a) made in writing by an occupier of the premises in relation to those premises;
- (b) in a form approved by the local government, describing and specifying the number of cats to be kept on the premises;
- (c) accompanied by a brief reason and justification for the request;
- (d) accompanied by the plans of the premises to which the application relates to ~~the specification and satisfaction of the local government~~ **in the form determined by the local government from time to time;**
- (e) accompanied by the consent in writing of the owner of the premises where the occupier is not the owner of the premises to which the application relates; and
- (f) accompanied by the application fee for the permit determined by the local government from time to time.

3.4 Refusal to determine application

The local government may refuse to determine an application for a permit if it is not made in accordance with clause 3.3.

3.5 Factors relevant to the determination of application

- (1) In determining an application for a permit the local government may have regard to –
- (a) the reasons and justification provided for the request;
 - (b) the physical suitability of the premises for the proposed use;
 - (c) the suitability of the zoning of the premises under any Scheme which applies to the premises for the proposed use;
 - (d) the environmental sensitivity and general nature of the location surrounding the premises for the proposed use;
 - (e) the structural suitability of any enclosure in which any cat is to be kept;
 - (f) the likelihood of a cat causing nuisance, inconvenience, or annoyance to the occupiers of adjoining land;
 - (g) the likely effect on the amenity of the surrounding area of the proposed use;
 - (h) the likely effect on the local environment including any pollution or other environmental damage, which may be caused by the use;
 - (i) any submissions received under subclause (2) within the time specified in subclause (2); and
 - (j) such other factors which the local government may consider to be relevant in the circumstances of the particular case.

- (2) The local government may require an applicant to –
- (a) consult with nearby landowners; or
 - (b) advise nearby landowners that they may make submissions to the local government on the application for a permit within 14 days of receiving that advice,
- before determining the application for the permit.
- (3) The local government may specify the extent of consultation with nearby residents, as specified in subclause 3.5(2)(a) and may specify which properties should be consulted.

3.6 Decision on application

- (1) The local government may –
- (a) approve an application for a permit as it was submitted, in which case it shall approve it subject to the conditions in clause 3.7 and may approve it subject to any other conditions it sees fit;
 - (b) approve an application but specify an alternative number of cats permitted to be housed at the address; or
 - (c) refuse to approve an application for a permit.
- (2) If the local government approves an application under subclause (1), then it shall issue a permit to the applicant in the form determined by the CEO.
- (3) If the local government refuses to approve an application under subclause (1) then it shall advise the applicant accordingly in writing.

3.7 Conditions

- (1) Every permit is issued subject to the following conditions –
- (a) each cat kept on the premises to which the permit relates shall comply with the requirements of the Act;
 - (b) each cat shall be contained on the premises unless under the effective control of a person;
 - (c) the permit holder will provide adequate space for the exercise of the cats;
 - (d) the premises shall be maintained in good order and in a clean and sanitary condition; and
 - (e) those conditions contained in Schedule 1.
- (2) In addition to the conditions subject to which a permit is to be issued under this clause, a permit may be issued subject to other conditions, as the local government considers appropriate.

3.8 Compliance with conditions of permit

A permit holder shall comply with each condition of a permit.

3.9 Duration of a permit

Unless otherwise specified in a condition on a permit, a permit commences on the date of issue and expires –

- (a) if it is revoked; or
- (b) the permit holder ceases to reside at the premises to which the permit relates.

3.10 Revocation

The local government may revoke a permit if the permit holder fails to observe any provision of this local law or a condition of a permit.

3.11 Permit not transferable

A permit is not transferrable either in relation to the permit holder or the premises.

3.12 Permit to be kept at premises and available for view

- (1) A permit issued by the local government shall be kept at the premises to which it applies and shall be provided to an authorised person on demand.
- (2) In the case of a registered cattery or cat management facility, the permit shall be displayed in a prominent place within the premises.

Part 4 – Cat prohibited areas

~~4.1 – Designation of cat prohibited areas~~

- ~~(1) The local government may designate land as a cat prohibited area by stating a description of the land in Schedule 1.~~
- ~~(2) In designating land for the purposes of Schedule 1, the local government shall have regard to subclause 2.1(2).~~

Part 4 – Miscellaneous

4.1. Giving of an infringement notice

A notice given under this local law may be given to a person –

- (a) personally;
- (b) by postal mail addressed to the person; or
- (c) by leaving it for the person at her or his address.

Part 5 – Objections and appeals

5.1. Objections and appeal rights

Any person who is aggrieved by the conditions imposed in relation to a permit, the revocation of a permit, or by the refusal of the local government to grant a permit may object or appeal against the decision under Division 1 of Part 9 of the *Local Government Act 1995*.

Part 6 – Offences and penalties

6.1 Offences

- (1) Any 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.
- (2) Unless otherwise specified, any 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 a further penalty not exceeding a fine of \$500 in respect of each day or part of a day during which the offence has continued.

6.2 Prescribed offences

- (1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of section 63 of the Act.
- (2) The amount appearing directly opposite each such offence is the modified penalty in relation to that offence.

6.3 Forms

- (1) The issue of infringement notices, their withdrawal and the payment of modified penalties are dealt with in Division 4 of Part 4 of the Act.
- (2) An infringement notice in respect of an offence against this local law may be given under section 62 of the Act and is to be in the form of Schedule 1, Form 6 of the *Cat Regulations 2012*.
- (3) A notice sent under section 65 of the Act withdrawing an infringement notice is to be in the form of Schedule 1, Form 7 of the *Cat Regulations 2012*.

Schedule 1 – Additional conditions applicable to particular permits

[Clause 3.7]

A. Permit to keep 3 or more cats

Additional conditions

- (1) In the case of a grouped dwelling where there is no suitable dividing fence or multiple dwellings on the same level, the written consent to the application for a permit of the occupier of the adjoining dwellings has been obtained.
- (2) Without the consent of the local government, the permit holder will not substitute or replace any cat that is the subject of a permit once that cat –
 - (a) dies; or
 - (b) is permanently removed from the premises.

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B. Permit to use premises as a Cattery or Cat Management Facility

Additional conditions

- (1) All building enclosures must be structurally sound, have impervious flooring, be well lit and ventilated and otherwise comply with all legislative requirements.
- (2) There is to be a feed room, wash area, isolation cages and maternity section.
- (3) Materials used in structures are to be approved by the local government.
- (4) The internal surfaces of walls are, where possible, to be smooth, free from cracks, crevices and other defects.
- (5) All fixtures, fittings and appliances are to be capable of being easily cleaned, resistant to corrosion and constructed to prevent the harbourage of vermin.
- (6) Washing basins with a minimum of running cold water are to be available to the satisfaction of the local government.
- (7) The maximum number of cats to be kept on the premises stated on the permit is not to be exceeded.
- (8) An ~~entry book~~ **register** is to be kept recording in respect of each cat the –
 - (a) date of admission;
 - (b) date of departure;
 - (c) breed, age, colour and sex; and
 - (d) name and residential address of the ~~keeper~~ **owner**.
- (9) The ~~entry book~~ **register** is to be made available for inspection on the request of an authorised person.
- (10) Enclosures are to be thoroughly cleaned each day and disinfected at least once a week to minimise disease.
- (11) ~~No sick or ailing cat is to be kept on the premises.~~ **Any sick or ailing cat is to be removed from the premises or transferred to an isolation cage separated from other cats kept on the premises.**
- (12) Any other matter which in the opinion of the local government is deemed necessary for the health and wellbeing of any cat, or person, or adjoining premises or the amenity of the area (or any part thereof).

Schedule 2 – Modified penalties

[Clause 7.2]

| Item No. | Clause No. | Nature of Offence | Penalty |
|-----------------|-------------------|--|----------------|
| 1 | 2.1 | Cat causing a nuisance | \$200.00 |
| 2 | 3.2(1) | Failure of a person to hold a permit when required | \$200.00 |
| 3 | 3.8 | Breach of a condition of a permit | \$200.00 |

Dated

The Common Seal of the Shire of Capel)
was affixed by authority of a resolution)
of the Council in the presence of-)

MT SCOTT, President

PF SHEEDY, Chief Executive Officer

Shire of Capel

Dogs Local Law

2017

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DOG ACT 1976
LOCAL GOVERNMENT ACT
SHIRE OF CAPEL
DOGS LOCAL LAW 2017

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DOG ACT 1976

LOCAL GOVERNMENT ACT 1995

Shire of Capel

Dogs Local Law 2017

Under the powers conferred by the *Dog Act 1976*, the *Local Government Act 1995* and under all other powers enabling it, the Council of the Shire of Capel resolved on [*insert date*] to make the following local law.

Part 1 - Preliminary

1.1 Citation

This local law may be cited as the *Shire of Capel Dogs Local Law 2017*.

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 *Shire of Capel Local Laws Relating to Dogs* published in the *Government Gazette* on 22 April 1999 and as amended on 12 November 1999, 14 December 2001, 13 March 2007 and 4 May 2010 is repealed.

1.5 Interpretation

In this local law unless the context otherwise requires –

Act means the *Dog Act 1976*;

~~*authorised person* means a person appointed by the local government to perform all or any of the functions conferred on an authorised person under this local law;~~

***authorised person* means a person who is appointed under section 29 of the Act;**

CEO means the Chief Executive Officer of the local government;

dangerous dog has the meaning given to it under the Act;

district means the district of the local government;

fit and proper person means a person who has been deemed not fit to care for animals by a reputable body such as the RSPCA, or a person who is deemed by an authorised officer not to have the ability or adequate support to undertake the obligations of the licence;

local government means the Shire of Capel;

local planning scheme means a planning scheme made by the local government under the *Planning and Development Act 2005* which applies throughout the whole or a part of the district;

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's 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 has the meaning given to it under section 3 of the Act;

owner has the meaning given to it under section 3 of the Act;

person liable for control of the dog means each of the following –

- (a) the registered owner of the dog; or
- (b) the owner of the dog; or
- (c) the occupier of any premises where the dog is ordinarily kept or ordinarily permitted to live; or
- (d) a person who has the dog in his possession or under his control, but does not include –
- (e) a registered veterinary surgeon, or a person acting on his behalf, in the course of his professional practice; or
- (f) a police officer or other person acting under a statutory duty or in the administration of this Act;

pound keeper means a person authorised by the local government to perform all or any of the functions conferred on a “pound keeper” under this local law and includes the local government's Community Rangers;

premises has the same meaning as in the Act;

Regulations means the *Dog Regulations 2013*;

Schedule means a schedule in this local law; and

thoroughfare has the meaning given to it in section 1.4 of the *Local Government Act 1995*.

Part 2 - Impounding of dogs

2.1 Charges and costs

The following are to be imposed and determined by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995* –

- (a) the charges to be levied under section 29(4) of the Act relating to the seizure and impounding of a dog;

ATTACHMENT 2 TO ITEM 15.1

- (b) the additional fee payable under section 29(4) of the Act where a dog is released at a time or on a day other than those determined under clause 2.2; and
- (c) the costs of the destruction and the disposal of a dog referred to in section 29(15) of the Act.

2.2 Attendance of pound keeper at pound

The pound keeper is to be in attendance at the pound for the release of dogs at the times and on the days of the week as are determined by the CEO.

2.3 Release of impounded dog

- (1) A claim for the release of a dog seized and impounded is to be made to the pound keeper or in the absence of the pound keeper, to the CEO.
- (2) The pound keeper is not to release a dog seized and impounded to any person unless that person has produced, to the satisfaction of the pound keeper, satisfactory evidence –
 - (a) of her or his ownership of the dog or of her or his authority to take delivery of it; or
 - (b) that he or she is the person identified as the owner on a microchip implanted in the dog.

Part 3 - Requirements and limitations on the keeping of dogs

3.1 Dogs to be confined

- (1) An owner and/or occupier of premises on which a dog is kept or a person liable for control of the dog must –
 - (a) cause a portion of the premises on which the dog is kept to be fenced in a manner capable of confining the dog;
 - (b) ensure the fence used to confine the dog and every gate or door in the fence is of a type, height and construction which having regard to the breed, age, size and physical condition of the dog is capable of preventing the dog at all times from passing over, under or through it;
 - (c) ensure that every gate or door in the fence is kept closed at all times when the dog is on the premises (unless the gate is temporarily opened in a manner that ensures that the dog remains confined) and is fitted with a proper latch or other means of fastening it;
 - (d) maintain the fence and all gates and doors in the fence in good order and condition; and
 - (e) where no part of the premises consists of open space, yard or garden or there is no open space or garden or yard of which the occupier has exclusive use or occupation, ensure that other means exist on the premises (other than the tethering of the dog) for effectively confining the dog within the premises.
- (2) Where an occupier fails to comply with subclause (1), he or she commits an offence.

Penalty: Where the dog is a dangerous dog, \$4,000, otherwise \$2,000.

- (3) Notwithstanding subclauses (1) and (2), the confinement of dangerous dogs is dealt with in the Act and Regulations.

3.2 Limitation on the number of dogs

- (1) This clause does not apply to premises which have been –

- (a) licensed under Part 4 as an approved kennel establishment; or
 - (b) granted an exemption under section 26(3) of the Act.
- (2) The limit on the number of dogs which may be kept on any premises for the purpose of section 26(4) of the Act is 2 dogs over the age of 3 months and the young of those dogs under that age.

Part 4 - Approved kennel establishments

4.1 Interpretation

In this Part and in Schedule 2 –

adjoining includes land or premises which have a portion of a common boundary with a lot or is separated from that lot by a public reserve, road, right-of-way, pedestrian access way, access leg of a battle axe lot or the equivalent not more than 6m in width;

licence means a licence to keep an approved kennel establishment on premises;

licensee means the holder of a licence;

premises, in addition to the meaning given to it in section 3 of the Act, means the premises described in the application for a licence; and

transferee means a person who applies for the transfer of a licence to her or him under clause 4.14.

4.2 Application for licence for approved kennel establishment

An application for a licence must be made in the form of that in Schedule 1, and must be lodged with the local government together with –

- (a) plans and specifications of the kennel establishment, including a site plan;
- (b) copies of the notices to be given under clause 4.3;
- (c) written evidence that either the applicant or another person who will have the charge of the dogs, will reside on the premises or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare;
- (d) a written acknowledgement that the applicant has read and agrees to comply with any code of practice relating to the keeping of dogs nominated by the local government; and
- (e) the fee for the application for a licence referred to in clause 4.10(1).

4.3 Notice of proposed use

(1) An applicant for a licence must give notice of the proposed use of the premises as an approved kennel establishment after the application for a licence has been lodged –

- (a) once in a newspaper circulating in the district; and
- (b) to the owners and occupiers of any premises adjoining the premises.

(2) The notices in subclause (1) must specify that –

- (a) any written submissions as to the proposed use are to be lodged with the CEO within 14 days of the date the notice is given; and

- (b) the application and plans and specifications may be inspected at the offices of the local government.

(3) Where –

- (a) the notices given under subclause (1) do not clearly identify the premises; or
- (b) a notice given under subclause (1)(a) is of a size or in a location in the newspaper which, in the opinion of the local government, would fail to serve the purpose of notifying persons of the proposed use of the premises,

then the local government may refuse to determine the application for a licence until the notices or notice, as the case may be, is given in accordance with its directions.

4.4 Exemption from notice requirements

Where an application for a licence is made in respect of premises on which an approved kennel establishment is either a –

- (a) permitted use; or
- (b) use which the local government may approve subject to compliance with specified notice requirements,

under a local planning scheme, then the requirements of clauses 4.2(b), 4.3 and 4.5(a) do not apply in respect of the application for a licence.

4.5 When application can be determined

An application for a licence is not to be determined by the local government until –

- (a) the applicant has complied with clause 4.2;
- (b) the applicant submits proof that the notices referred to in clause 4.3(1) have been given in accordance with that clause; and
- (c) the local government has considered any written submissions received within the time specified in clause 4.3(2)(a) on the proposed use of the premises.

4.6 Determination of application

In determining an application for a licence, the local government is to have regard to –

- (a) the matters referred to in clause 4.7;
- (b) any written submissions received within the time specified in clause 4.3(2)(a) on the proposed use of the premises;
- (c) any economic or social benefits which may be derived by any person in the district if the application for a licence is approved;
- (d) the effect which the kennel establishment may have on the environment or amenity of the neighbourhood;
- (e) whether the approved kennel establishment will create a nuisance for the owners and occupiers of adjoining premises; and
- (f) whether or not the imposition of and compliance with appropriate conditions of a licence will mitigate any adverse effects of the approved kennel establishment identified in the preceding paragraphs.

4.7 Where application cannot be approved

The local government cannot approve an application for a licence where –

- (a) an approved kennel establishment cannot be permitted by the local government on the premises under a local planning scheme; or
- (b) an applicant for a licence or another person who will have the charge of the dogs will not reside on the premises, or, in the opinion of the local government, sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare.

4.8 Conditions of approval

- (1) The local government may approve an application for a licence subject to the conditions contained in Schedule 2 and to such other conditions as the local government considers appropriate.
- (2) In respect of a particular application for a licence, the local government may vary any of the conditions contained in Schedule 2.

4.9 Compliance with conditions of approval

A licensee who does not comply with the conditions of a licence commits an offence.

Penalty: Where a dog involved in the contravention is a dangerous dog, \$4,000 and a daily penalty of \$400; otherwise \$2,000 and a daily penalty of \$200.

4.10 Fees

- (1) On lodging an application for a licence, the applicant is to pay a fee to the local government.
- (2) If a licensee wishes to renew a licence, the licensee is to pay a fee to the local government.
- (3) On lodging an application for the transfer of a valid licence, the transferee is to pay a fee to the local government.
- (4) The fees referred to in subclauses (1) to (3) are to be imposed and determined by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995*.

4.11 Form of licence

- (1) When an application for a licence is approved under this local law, the local government will issue a licence to the applicant.
- (2) The licence is to be in the form determined by the local government from time to time.

4.12 Period of licence

- (1) The period of effect of a licence is set out in section 27(5) of the Act.
- (2) A licence is to be renewed if the fee referred to in clause 4.10(2) is paid to the local government prior to the expiry of the licence.
- (3) On the renewal of a licence the conditions of the licence at the time of its renewal continue to have effect.

4.13 Variation or cancellation of licence

- (1) The local government may vary the conditions of a licence.
- (2) The local government may cancel a licence –
 - (a) on the request of the licensee;
 - (b) following a breach of the Act, the Regulations or this local law; or
 - (c) if the licensee is not a fit and proper person.
- (3) The date a licence is cancelled is to be, in the case of –
 - (a) paragraph (a) of subclause (2), the date requested by the licensee; or
 - (b) paragraphs (b) and (c) of subclause (2), the date determined under section 27(6) of the Act.
- (4) If a licence is cancelled the fee paid for that licence is not refundable for the term of the licence that has not yet expired.

4.14 Transfer

- (1) An application for the transfer of a valid licence from the licensee to another person must be –
 - (a) made in the form determined by the local government;
 - (b) made by the transferee;
 - (c) made with the written consent of the licensee; and
 - (d) lodged with the local government together with –
 - (i) written evidence that a person will reside at or within reasonably close proximity to the premises the subject of the licence; and
 - (ii) the fee for the application for the transfer of a licence referred to in clause 4.10(3).
- (2) The local government is not to determine an application for the transfer of a valid licence until the transferee has complied with subclause (1).
- (3) ~~The local government may approve, whether or not subject to such conditions as it considers appropriate, or refuse to approve an application for the transfer of a valid licence.~~
- (3) **The local government may –**
 - (a) **approve, subject to conditions as it considers appropriate; or**
 - (b) **refuse to approve,**

an application for the transfer of a licence under this clause.
- (4) Where the local government approves an application for the transfer of a valid licence, then on the date of approval, unless otherwise specified in the notice issued under clause 4.15(b), the transferee becomes the licensee of the licence for the purposes of this local law.

4.15 Notification

The local government is to give written notice to –

- (a) an applicant for a licence of the local government's decision on her or his application;

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- (b) a transferee of the local government's decision on her or his application for the transfer of a valid licence;
- (c) a licensee of any variation made under clause 4.13(1);
- (d) a licensee when her or his licence is due for renewal and the manner in which it may be renewed;
- (e) a licensee when her or his licence is renewed;
- (f) a licensee of the cancellation of a licence under clause 4.13(2)(a); and
- (g) a licensee of the cancellation of a licence under paragraphs (b) or (c) of clause 4.13(2), which notice is to be given in accordance with section 27(6) of the Act.

4.16 Inspection of kennel

With the consent of the occupier, an authorised person may inspect an approved kennel establishment at any time.

Part 5 - Miscellaneous

5.1 Offence to excrete

- (1) A dog must not excrete on –
 - (a) any thoroughfare or other public place; or
 - (b) any land which is not a public place without the consent of the occupier.
- (2) Subject to subclause (3), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.
Penalty: \$1,000.
- (3) The person liable for the control of the dog does not commit an offence against subclause (2) if any excreta is removed immediately by that person.

Part 6 - Enforcement

6.1 Interpretation

In this Part –

infringement notice means the notice referred to in clause 6.3; and

notice of withdrawal means the notice referred to in clause 6.6(1).

6.2 Modified penalties

- (1) The offences contained in Schedule 3 are offences in relation to which a modified penalty may be imposed.
- (2) The amount appearing in the ~~third~~ **fourth** column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if –
 - (a) the dog is not a dangerous dog; or
 - (b) the dog is a dangerous dog, but an amount does not appear in the ~~fourth~~ **fifth** column directly opposite that offence.

- (3) The amount appearing in the ~~fourth~~ **fifth** column of Schedule 3 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is a dangerous dog.

6.3 Issue of infringement notice

Where an authorised person has reason to believe that a person has committed an offence in respect of which a modified penalty may be imposed, he or she may issue to that person a notice in the form of ~~Form 8 of Schedule 1 of the Regulations~~ **determined by the local government from time to time.**

6.4 Failure to pay modified penalty

Where a person who has received an infringement notice fails to pay the modified penalty within the time specified in the notice, or within such further time as may in any particular case be allowed by the CEO, he or she is deemed to have declined to have the offence dealt with by way of a modified penalty.

6.5 Payment of modified penalty

A person who has received an infringement notice may, within the time specified in that notice or within such further time as may in any particular case be allowed by the CEO, send or deliver to the local government the amount of the penalty, with or without a reply as to the circumstances giving rise to the offence, and the local government may appropriate that amount in satisfaction of the penalty and issue an acknowledgment.

6.6 Withdrawal of infringement notice

- (1) Whether or not the modified penalty has been paid, an authorised person may withdraw an infringement notice by sending a notice in the form of ~~Form 9 of Schedule 1 of the Regulations~~ **determined by the local government from time to time.**
- (2) A person authorised to issue an infringement notice under clause 6.3 cannot sign or send a notice of withdrawal.

6.7 Service

An infringement notice or a notice of withdrawal may be served on a person personally, or by leaving it at or posting it to her or his address as ascertained from her or him, or as recorded by the local government under the Act, or as ascertained from inquiries made by the local government.

Schedule 1 - Application for a licence for an approved kennel establishment

[Clause 4.2]

I/we (full name)
of (postal address)
(telephone number)
(facsimile number)
(E-mail address)

Apply for a licence for an approved kennel establishment at (address of premises)
.....

For (number and breed of dogs)

* (insert name of person) will be residing at the premises on and from (insert date)

* (insert name of person) will be residing (sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare) at (insert address of residence) on and from (insert date).

Attached are -

- (a) a site plan of the premises showing the location of the kennels and yards and all other buildings and structures and fences;
- (b) plans and specifications of the kennel establishment;
- (c) copy of notice of proposed use to appear in newspaper;
- (d) copy of notice of proposed use to be given to adjoining premises;
- (e) written evidence that a person will reside -
 - (i) at the premises; or
 - (ii) sufficiently close to the premises so as to control the dogs and so as to ensure their health and welfare; and
- (f) if the person in item (e) is not the applicant, written evidence that the person is a person in charge of the dogs.

I confirm that I have read and agree to comply with the Code of Practice known as

....., in the keeping of dogs at the proposed kennel establishment.

Signature of applicant

Date

* delete where inapplicable.

Note: a licence if issued will have effect for a period of 12 months – section 27.5 of the *Dog Act 1976*.

OFFICE USE ONLY

Application fee paid on _____

Schedule 2 - Conditions of a licence for an approved kennel establishment

[Clause 4.8(1)]

An application for a licence for an approved kennel establishment may be approved subject to the following conditions -

- (a) each kennel, unless it is fully enclosed, must have a yard attached to it;
- (b) each kennel and each yard must be at a distance of not less than –
 - (i) ~~25~~ **50**m from the ~~front~~ **any** boundary of the premises ~~and 5m from any other boundary of the premises;~~
 - (ii) ~~10~~ **40**m from any dwelling; and
 - (iii) ~~25~~ **40**m from any church, school room, hall, factory, dairy or premises where food is manufactured, prepared, packed or stored for human consumption;
- (c) each yard for a kennel must be kept securely fenced with a fence constructed of link mesh or netting or other materials approved by the local government;
- (d) the minimum floor area for each kennel must be calculated at 2.5 times the length of the breed of dog (when it is fully grown), squared, times the number of dogs to be housed in the kennel and the length of the dog is to be determined by measuring from the base of the tail to the front of its shoulder;
- (e) the floor area of the yard attached to any kennel or group of kennels must be at least twice the floor area of the kennel or group of kennels to which it is attached;
- (f) the upper surface of the kennel floor must be –
 - (i) at least 100mm above the surface of the surrounding ground;
 - (ii) smooth so as to facilitate cleaning;
 - (iii) rigid;
 - (iv) durable;
 - (v) slip resistant;
 - (vi) resistant to corrosion;
 - (vii) non-toxic;
 - (viii) impervious;
 - (ix) free from cracks, crevices and other defects; and
 - (x) finished to a surface having a fall of not less than 1 in 100 to a spoon drain which in turn must lead to a suitably sized diameter sewerage pipe which must be properly laid, ventilated and trapped in accordance with the health requirements of the local government;
- (g) all kennel floor washings must pass through the drain in item (f)(x) and must be piped to approved apparatus for the treatment of sewage in accordance with the health requirements of the local government;
- (h) the kennel floor must have a durable upstand rising 75mm above the floor level from the junction of the floor and external and internal walls, or internal walls must be so constructed as to have a minimum clearance of 50mm from the underside of the bottom plate to the floor;
- (i) where a yard is to be floored, the floor must be constructed in the same manner as the floor of any kennel;

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- (j) from the floor, the lowest internal height of a kennel must be, whichever is the lesser of –
 - (i) 2m; or
 - (ii) 4 times the height of the breed of dog in the kennel, when it is fully grown, measured from the floor to the uppermost tip of its shoulders while in a stationary upright position;
- (k) the walls of each kennel must be constructed of concrete, brick, stone or framing sheathed internally and externally with good quality new zincalume or new pre-finished colour coated steel sheeting or new fibrous cement sheeting or other durable material approved by the local government;
- (l) all external surfaces of each kennel must be kept in good condition;
- (m) the roof of each kennel must be constructed of impervious material;
- (n) all kennels and yards and drinking vessels must be maintained in a clean condition and must be cleaned and disinfected when so ordered by an authorised person;
- (o) all refuse, faeces and food waste must be disposed of daily into the approved apparatus for the treatment of sewage;
- (p) noise, odours, fleas, flies and other vectors of disease must be effectively controlled;
- (q) suitable water must be available at the kennel via a properly supported standpipe and tap; and
- (r) the licensee or the person nominated in the application for a licence, must, in accordance with the application for the licence, continue to reside –
 - (i) at the premises; or
 - (ii) in the opinion of the local government, sufficiently close to the premises so as to control the dogs, and to ensure their health and welfare.

Schedule 3 - Offences for which modified penalty applies

[Clause 6.2]

| Item | Clause | Nature of offence | Modified penalty \$ | Dangerous dog Modified penalty |
|-------------|---------------|--|--------------------------------|---|
| 1 | 3.1(2) | Failing to provide means for effectively confining a dog | 50 | 200 |
| 2 | 4.9 | Failing to comply with the conditions of a licence | 200 | |
| 3 | 5.1(2) | Dog excreting in prohibited place | 100 | |

Dated _____ 2017

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

MT SCOTT, President

PF SHEEDY, Chief Executive Officer