

SHIRE OF SERPENTINE JARRAHDALE

PROPOSED DOGS LOCAL LAW 2023

DOG ACT 1976

LOCAL GOVERNMENT ACT 1995

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DOG ACT 1976

LOCAL GOVERNMENT ACT 1995

SHIRE OF SERPENTINE JARRAHDALE

DOGS LOCAL LAW 2023

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 Serpentine Jarrahdale* resolved on *[insert date]* to make the following local law.

PART 1 – DEFINITIONS AND OPERATION

1.1 Citation

This local law may be cited as the *Shire of Serpentine Jarrahdale Dogs 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 *Shire of Serpentine Jarrahdale Local Law Relating to the Keeping of Dogs* published in the *Government Gazette* on 13 February 2004 is hereby repealed.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;

CEO means the Chief Executive Officer of the local government;

dangerous dog means a dog which is the subject of a declaration under section 33E of the Act declaring it to be a dangerous dog;

district means the district of the local government;

dog exercise area means an area set aside by the local government under section 31(3A) of the Act;

foster carer means a person who has a dog or dogs placed in their care by a registered animal rescue body;

local government means the Shire of Serpentine Jarrahdale;

local planning scheme means a local 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.

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;

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, maintenance and impounding of a dog; and
- (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 occupier of premises on which a dog is kept 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) A person who fails to comply with clause 3.1(1) of this local law commits an offence.
Penalty: \$2,000.
- (3) The confinement of Dangerous Dogs is dealt with in the Act.

3.2 Notice to rectify fencing

- (1) Where an authorised person considers that portion of a premises on which a dog is kept is not sufficiently fenced or secured to confine the dog to that portion of the premises in accordance with clause 3.1(1), the authorised person may give a notice to a person liable for the control of the dog requiring that person to install or modify fencing or implement other specified measures to confine the dog to the relevant portion of the premises in accordance with clause 3.1(1), within the time specified in the notice.
- (2) A person to whom a notice is issued under subclause (1) must comply with the notice during the period in which it has effect.
Penalty: \$5,000.
- (3) This clause does not apply to a dog while that dog is kept at an establishment licensed as an approved kennel establishment under section 27 of the Act.

3.3 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 and clause 3.4 of this local law.

- (2) The limit on the number of dogs which may be kept on any premises is, for the purpose of section 26(4) of the Act –
- (a) in areas zoned under a local planning scheme as urban development, residential, commercial, light industry or general industry, showroom/warehouse, special residential, special rural, rural living A and B, farmlet, special use, conservation zone or any other land usage not listed in 3.3(2)(b)– two (2) dogs over the age of three (3) months and the young of those dogs under that age; or
 - (b) in areas zoned rural under a local planning scheme– four (4) dogs over the age of three (3) months and the young of those dogs under that age.

3.4 Keeping more than the prescribed number of dogs

- (1) A person wishing to keep more than the number of dogs as prescribed in section 3.3(2), but not greater than six (6) dogs on any premises, may apply for an exemption for those premises under section 26(3) of the Act and this clause 3.4.
- (2) An application for exemption shall be made in the form of Schedule 3, and must be lodged with the local government together with the fee for the application for an exemption as referred to in clause 3.4(6).
- (3) In determining an application for exemption the local government is to have regard to:
 - (a) any relevant policy adopted by the local government in respect of the keeping of dogs;
 - (b) the effect which approval of the proposed may have on the environment or amenity of the neighbourhood; and
 - (c) whether approval of the application will create a nuisance for the owners and occupiers of adjoining premises.
- (4) The local government may:
 - (a) approve or refuse an application for exemption; and
 - (b) where it approves an application for exemption may do so subject to any conditions considered appropriate and specified in the approval.
- (5) Where the local government approves an application for exemption the approval:
 - (a) only relates to the premises specified in the application for exemption;
 - (b) is personal to the applicant and may not be transferred to any other person;
 - (c) shall not operate or authorise the keeping of more than six (6) dogs on those premises; and
 - (d) may be revoked or varied at any time by Council.
- (6) The fee for an application for exemption under clause 3.4(1) is to be imposed and determined by the local government under sections 6.16 to 6.19 of the *Local Government Act 1995*.
- (7) The Shire may exempt payment of a permit as detailed in 3.4(6) where an applicant is a bona fide dog foster carer.

PART 4 - APPROVED KENNEL ESTABLISHMENTS

4.1 Interpretation

In this Part and in Schedule 2 –

approved kennel establishment means a kennel establishment approved under section 27(1) of the Act and this Part 4;

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

licensee means the holder of a licence; and

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.

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 the control and maintenance of the dogs, and so as to ensure their health and welfare and;
- (d) a written acknowledgement that the applicant has read and agrees to comply with the conditions detailed within the kennel establishment approval and licence conditions relating to the keeping of dogs detailed by the local government; and
- (e) the fee for the application or renewal for a licence referred to in clause 4.9(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 has been lodged –
 - (a) once in a newspaper circulating in the district; and
 - (b) to the owners and occupiers of any premises adjoining or within the specified distance the premises.
- (2) The notices in subclause (1) must specify–
 - (a) the nature of the proposed use and address of the premises;
 - (b) the number of dogs proposed to be kept;
 - (c) that the application and plans and specifications may be inspected at the offices of the local government; and
 - (d) 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.

4.4 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 4.3;
- (b) the applicant submits proof to the local government that the notices referred to in clause 4.3 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)(d) on the proposed use of the premises.

4.5 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 4.6;
- (b) any written submissions received within the time specified in clause 4.3(2)(d) 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.

4.6 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 land or 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 and, compliance with any conditions of approval.

4.7 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.

4.8 Compliance with conditions of approval

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

Penalty: \$2,000 and a daily penalty of \$200.

4.9 Fees

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

4.10 Form of licence

The licence is to be in the form determined by the local government and is to be issued to the licensee.

4.11 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:
 - (a) an authorised person has undertaken an inspection of the kennel establishment under clause 4.15 and has determined the licensee is not in breach of any condition of the licence at the time of renewal; and
 - (b) the fee referred to in clause 4.9(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.

4.12 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, or the estate of a deceased licensee;
 - (b) following a substantiated breach of the Act, the Regulations, this local law or the licence conditions.
- (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) 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.

4.13 Licence not transferable

- (1) A licence granted under this Part 4 is:
- (a) personal to the applicant and is not transferable to any other person or entity; and
 - (b) is applicable only to the premises described in the application for licence and is not transferable to any other property, premises or land.

4.14 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;
- (b) a licensee of any variation made under clause 4.12(1);
- (c) a licensee when her or his licence is due for renewal and the manner in which it may be renewed;
- (d) a licensee when her or his licence is renewed;
- (e) a licensee of the cancellation of a licence under clause 4.12(2)(a); and
- (f) a licensee of the cancellation of a licence under clause 4.12(2)(b), which notice is to be given in accordance with section 27(6) of the Act.

4.15 Inspection of a kennel establishment

With the consent of the occupier, an authorised person may inspect an approved kennel establishment at any agreed reasonable 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 (4), if a dog excretes contrary to subclause (1), every person liable for the control of the dog at that time commits an offence.
- (3) Notwithstanding clause 6.2(2), the penalty for an offence under this clause is \$2000.
- (4) 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 and disposed of either on private land with the consent of the occupier of that land, or in a suitable waste receptacle.

PART 6 – ENFORCEMENT

6.1 Interpretation

In this Part –

infringement notice means the notice referred to in clause 6.4; and

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

6.2 Offences

- (1) 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.
- (2) Unless otherwise specified, 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.

6.3 Modified penalties

- (1) The offences contained in Schedule 4 are offences in relation to which a modified penalty may be imposed.
- (2) The amount appearing in the third column of Schedule 4 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 column directly opposite that offence.
- (3) The amount appearing in the fourth column of Schedule 4 directly opposite an offence is the modified penalty payable in respect of that offence if the dog is a dangerous dog.

6.4 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 the First Schedule of the Regulations.

6.5 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.

6.6 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.

6.7 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 the First Schedule of the Regulations.
- (2) A person authorised to issue an infringement notice under clause 6.4 cannot sign or send a notice of withdrawal.

6.8 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 Licence conditions, and provisions of the Shire of Serpentine Jarrahdale Dogs Local Law 2023 and Schedules 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.

OFFICE USE ONLY
Application fee paid on [insert date].

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

[clause 4.7(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) 25m from the front boundary of the premises and 5m from any other boundary of the premises;
 - (ii) 10m from any dwelling; and
 - (iii) 25m 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;
- (j) from the floor, the lowest internal height of a kennel must be, whichever is the lesser of -
 - (i) 2m; or
 - (ii) four 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 – Exemption application to keep more than two dogs
[clause 3.4(2)]

I/we (full name)

of (postal address)

(telephone number)

(E-mail address)

Apply for an exemption to keep more than two dogs at

(address of premises).....

Lot No:.....Property Size.....

Area the dogs have access to (yard, house, patio etc).....

DETAILS AND NUMBERS OF DOGS TO BE KEPT

	Breed	Age	Sex	Sterilised Y/N
1	_____	_____	_____	_____
2	_____	_____	_____	_____
3	_____	_____	_____	_____
4	_____	_____	_____	_____
5	_____	_____	_____	_____
6	_____	_____	_____	_____

Reason for the exemption.....

Signature of applicants

Date

OFFICE USE ONLY Application fee paid on

Officer.....

