

WESTERN AUSTRALIA
LOCAL GOVERNMENT ACT 1995
BIOSECURITY AND AGRICULTURE MANAGEMENT ACT 2007

SHIRE OF PINGELLY
PEST PLANTS LOCAL LAW 2027

Under the powers conferred by the Local Government Act 1995, the Biosecurity and Agriculture Management Act 2007 and under all other powers enabling it, the Council of the Shire of Pingelly resolved on _____ to make the following local law.

PART 1 — PRELIMINARY

1.1 Citation

This local law may be cited as the Shire of Pingelly Pest Plants Local Law 2027.

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The Shire of Pingelly Pest Plant Local Laws 2003, published in the Government Gazette on 10 June 2003, are repealed.

1.5 Relationship with the Act

- (1) This local law is made under, and gives effect to, section 193 of the Act.
- (2) This local law does not apply to an organism that is a declared pest under section 22 of the Act, to the extent that Division 3 of Part 2 of the Act applies to that organism.
- (3) A plant is not a pest plant for the purposes of this local law while it is a declared pest for the district.

1.6 Terms used

In this local law unless the context otherwise requires—

Act means the Biosecurity and Agriculture Management Act 2007;

authorised person means a person appointed by the CEO under section 9.10 of the Local Government Act 1995 to perform any of the functions of an authorised person under this local law;

CEO means the Chief Executive Officer of the local government;

control in relation to a pest plant, includes to destroy, eradicate, contain, suppress or otherwise prevent the establishment or spread of the pest plant;

declared pest has the meaning given to it in the Act;

district means the district of the local government;

land means any land within the district, and includes a thoroughfare and other local government property;

local government means the Shire of Pingelly;

notice means a notice given under clause 2.5;

occupier has the meaning given to it in section 1.4 of the Local Government Act 1995;

owner has the meaning given to it in section 1.4 of the Local Government Act 1995;

pest plant means a plant described in Schedule 1;

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

set fee means a fee determined by the local government in accordance with sections 6.16 to 6.19 of the Local Government Act 1995;

Schedule means a Schedule to this local law.

PART 2 — PEST PLANTS

2.1 Pest plants

Every plant described in Schedule 1 is a pest plant for the purposes of this local law.

2.2 Declaration of pest plants

- (1) Schedule 1 may be amended, in accordance with section 3.12 of the Local Government Act 1995, to add or remove a plant, where the local government considers that the plant is likely to adversely affect—
 - (a) the environment of the district;
 - (b) the value of property in the district; or
 - (c) the health, comfort or convenience of the inhabitants of the district.
- (2) The CEO is to keep Schedule 1 up to date and make a current copy available for inspection by members of the public during the ordinary office hours of the local government.

2.3 Compliance with a notice

- (1) The owner or occupier of land to whom a notice is given under clause 2.5 must control the pest plant in the manner, and within the period, specified in the notice.
- (2) Subclause (1) does not require a person to control a pest plant that is growing on land in a manner, or to an extent, approved by the local government for the purpose of research, education or another purpose the local government considers appropriate.

2.4 Recurring notices

A notice may require a pest plant to be controlled on a recurring basis, including by specifying a date, or a period, in each year by which, or during which, the pest plant is to be controlled. A notice of that kind remains in force for the period stated in it, unless the local government withdraws it by written notice to the person to whom it was given.

2.5 Notice to treat a pest plant

- (1) Where the local government reasonably believes that a pest plant is growing on land, the local government may give a notice to the owner or occupier of the land requiring the owner or occupier to control the pest plant within the period, and in the manner, specified in the notice.
- (2) A notice given under subclause (1) is to specify—
 - (a) the pest plant to which the notice relates;
 - (b) the land on which the pest plant is growing;
 - (c) the action required to be taken to control the pest plant; and
 - (d) a reasonable period, being not less than 14 days from the date of the notice, within which the action is to be taken, unless the local government reasonably considers a shorter period is necessary because of the risk of the pest plant seeding or spreading.
- (3) The local government may extend the period specified in a notice given under subclause (1), on the application of the owner or occupier, where the local government considers it reasonable to do so.
- (4) This clause does not authorise a notice to be given to an owner of land referred to in section 8(1)(d) of the Act.

PART 3 — ENFORCEMENT

3.1 Powers of entry

- (1) An authorised person may, at any reasonable time, enter land for the purpose of—
 - (a) determining whether a pest plant is growing on the land;
 - (b) determining whether a notice given under clause 2.5 has been complied with; or
 - (c) exercising a power under clause 3.2.
- (2) A power of entry exercised under this clause is subject to sections 3.25 and 3.27 and Schedules 3.1 and 3.2 of the Local Government Act 1995.

3.2 Failure to comply with a notice

- (1) If an owner or occupier does not comply with a notice given under clause 2.5 within the period specified in the notice (or that period as extended under clause 2.5(3)), an authorised person may enter the land to which the notice relates and control the pest plant, or arrange for the pest plant to be controlled.
- (2) Before exercising a power under subclause (1), an authorised person is to give the owner or occupier reasonable notice of the intention to do so, unless the local government reasonably considers that the risk of the pest plant seeding or spreading before that notice could be given and acted upon outweighs the giving of that notice.

3.3 Recovery of expenses

The local government may recover, as a debt, from the owner or occupier of land, the expense reasonably incurred by the local government in controlling a pest plant under clause 3.2.

3.4 Objections and review

Division 1 of Part 9 of the Local Government Act 1995 applies to a decision of the local government to give a notice under clause 2.5.

PART 4 — OFFENCES AND PENALTIES

4.1 Offences

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

4.2 General penalty

A person who commits an offence under this local law is liable, on conviction, to a penalty not exceeding \$10,000 and, if the offence is of a continuing nature, to an additional penalty not exceeding \$500 for each day or part of a day during which the offence has continued.

4.3 Prescribed offences

- (1) An offence against a clause specified in Schedule 2 is a prescribed offence for the purposes of section 9.16(1) of the Local Government Act 1995.
- (2) The amount of the modified penalty for a prescribed offence is that specified adjacent to the clause in Schedule 2.

4.4 Form of notices

For the purposes of this local law—

- (a) the form of the infringement notice referred to in section 9.17 of the Local Government Act 1995 is Form 2 in Schedule 1 of the Regulations; and
- (b) the form of the withdrawal of an infringement notice referred to in section 9.20 of the Local Government Act 1995 is Form 3 in Schedule 1 of the Regulations.

SCHEDULE 1 — PEST PLANTS

[Clause 2.1]

Common name	Scientific name
Caltrop	<i>Tribulus terrestris</i>
Afghan Thistle	<i>Solanum hoplopetalum</i>
Common Heliotrope	<i>Heliotropium europaeum</i>
Doublegee	<i>Emex australis</i>
Horehound	<i>Marrubium vulgare</i>
Watsonia	<i>Watsonia meriana</i> var. <i>bulbillifera</i>
African Lovegrass	<i>Eragrostis curvula</i>

SCHEDULE 2 — PRESCRIBED OFFENCES

[Clause 4.3]

Clause	Nature of offence	Modified penalty
2.3(1)	Failure to comply with a notice to control a pest plant	\$500

DECLARATION

Dated this _____ day of _____ 2027.

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

JACKIE MCBURNEY, Shire President

ANDREW DOVER, Chief Executive Officer