

MOIRA SHIRE COUNCIL

**RECREATION RESERVES LOCAL LAW 2009
(No. 2 of 2009)**

PART 1 - PRELIMINARY PROVISIONS

1. Title

This Local Law may be cited as the ***Recreation Reserves Local Law 2009 (No2 of 2009)***.

2. Purpose

The objectives of this Local Law are to provide for the:

- (a) care, protection and management of the reserves;
- (b) preservation of good order and decency in the reserves;
- (c) safety of persons in or occupying or using the reserves or any part thereof; and
- (d) the general peace, order and good government of the municipal district.

3. Authorising provision

This Local Law is made in accordance of the provisions of sections 5, 91 and 111 of the **Local Government Act 1989**.

4. Commencement, revocation and areas of operation

This Local Law:

- (a) commences operation on 2 October 2009; and
- (b) unless sooner revoked this Local Law ceases to operate on 1 October 2019; and
- (c) applies to all recreation reserves under the care and management of the Council.

5. Repeal of other Local Laws and Regulations

From the date of operation of this Local Law any other local laws or regulations previously approved governing Recreation Reserves cease to operate and are repealed.

6. Definitions

“Act”	means the Local Government Act 1989.
“appointed person”	means an officer of the committee or a person appointed in writing by the committee as an appointed person for the purposes of this Local Law.
“authorised officer”	means an authorised officer appointed under section 224 of the Local Government Act 1989.
“camp”	means (a) to erect, occupy or use a tent or any similar form of accommodation; or (b) to erect, park, occupy or use a caravan, camper van, vehicle or other movable form or temporary structure of accommodation.
“Committee”	means the committee of management appointed to manage a reserve under section 86 of the Local Government Act 1989.
“Council”	means Moira Shire Council.
“permit”	includes any authority, approval, consent permission granted or issued by the Committee in accordance with this local law.
“reserve”	means any land in the municipal district, excluding a road, that is: (a) owned, occupied, managed or controlled by Council or a Special Committee of Council; and (b) is dedicated or used for cultural, recreational, entertainment or sporting purposes and includes an area or facility designated by a sign as a reserve or park ; and (c) includes any structure, fixture, fitting and garden located on or at the land.
“vehicle”	has the same meaning as the Road Safety Act 1986.

7. Application of this local law

- (1) This local law does not apply to any of the following persons when acting in the course of that person's duties:
- (a) member of the Committee;
 - (b) an appointed person; or
 - (c) an authorised officer.

- (2) A person acting in accordance with a permit granted or issued under the local law is not subject to this local law, to the extent that the activities authorised by that permit are inconsistent with this local law.

PART 2 – POWERS OF COMMITTEE

8. Committee may erect buildings and carry out works

The Committee may erect buildings and carry out works to provide facilities or services on the reserve provided the consent required is obtained in accordance with clause 15 of this local law.

9. Issuing, compliance production and cancellation of permits

- (1) The Committee may issue a permit for any purpose for which a permit is required under Part 3.
- (2) A permit issued under sub-clause (1) authorises the holder to enter and use the reserve –
 - (a) for the purpose specified in the permit; and
 - (b) for the period specified in the permit; and
 - (c) subject to any terms and conditions in respect of that entry or use determined by the Committee and specified in the permit.
- (3) The holder of any current permit must comply with any terms and conditions of that permit.
- (4) The Committee or authorised officer may revoke or cancel a permit at any time.
- (5) Upon revocation or cancellation of a permit under sub-clause 4, the Committee or authorised officer must, where practicable, notify the permit holder in writing of the revocation or cancellation of the permit within a reasonable time after the revocation and cancellation.
- (6) A person who holds a permit issued under this Part must produce the permit for inspection when requested to do so by the committee, an authorised officer or appointed person.

10. Fees and charges

- (1) The reserves are open to the public free of charge except where otherwise determined by the Committee in accordance with sub-clause (2).
- (2) The Committee may determine such reasonable fees that it considers necessary for entry to the reserve or use of improvements, services or facilities in the reserve.

- (3) If the committee has determined that a fee is payable for entry to the reserve or use of improvements, services or facilities in the reserve under sub-clause (2), the Committee must cause notices to be displayed in such a place and manner that the particulars are reasonably likely to be seen by persons about to enter the reserve or use the improvements, services or facilities in the reserve, indicating the fee payable for entry to the reserve or use of the improvements, services or facilities in the reserve.
- (4) A person must not enter the reserve or use the improvements, services or facilities of the reserve without paying the appropriate fee, if any, determined by the Committee under sub-clause (2).

11. Council or Committee may prohibit or restrict entry to the reserve, entry or access to any part of the reserve or use of the reserve

- (1) The Council or Committee may prohibit or restrict entry to the reserve or access to any part of the reserve or use of the reserve -
 - (a) to a person who is in possession of alcohol;
 - (b) to a person with glass bottles, glass containers or glass utensils in their possession;
 - (c) for reasons of public safety.
- (2) Subject to clause (1), the Council may at its discretion veto any prohibition or restriction imposed by the Committee.
- (3) Any person who contravenes any prohibition or restriction imposed under sub-clause (1) shall be guilty of an offence.

Penalty: \$1,000

PART 3 – USE AND CONTROL OF THE RESERVES

12. Prohibitions and restrictions

- (1) In the reserve a person must not -
 - (a) act contrary to the instruction indicated on any sign, bring any dog, other than a guide dog, or any other animal into, or allow an animal under that person's control to remain in the reserve during an organized event or other activity being conducted under permit terms and conditions.
 - (b) drive, park or leave standing any vehicle;
 - (i) on any footpath; or
 - (ii) on any road, access way or parking area contrary to any sign erected by the Committee;
 - (c) launch, fly, land, control or operate any model aircraft, model helicopter or other similar flying device;
 - (d) erect any building, tent or any other structure or occupy or use any building, tent or other structure or camp within a reserve;

- (e) move or interfere with any sign, notice board, equipment, seat, table, gate, post, fence, facility, building or structure;
- (f) engage in any game or sport likely to cause interference, disturbance, inconvenience or danger to other persons using the reserve for other purposes;
- (g) climb upon any portion of any building, improvement, embellishments, tree, hedge, pole post, mast or other structure;
- (h) interfere with or interrupt any authorised entertainment or activity;
- (i) take, cut, damage, displace, deface or interfere with any timber, tree, shrub, plant, wildflower or other vegetation;
- (j) light or maintain a fire other than in a properly constructed fireplace provided by the committee;
- (k) leave any fire unextinguished.

Penalty: \$1,000

- (2) Sub-clause (1) does not apply to a person who holds a current permit issued under Part 2 which allows that person to engage in the particular activity referred to in sub-clause (1).

13. Commercial Activities

- (1) in a reserve, a person must not -
 - (a) sell or offer any article for sale;
 - (b) display, advertise for sale or trade or hire any article, device, service or thing;
 - (c) solicit or collect money or orders for goods or services or other purposes;
 - (d) give out, distribute, erect, leave, set up or display any handbill, placard, notice, pamphlet, book, paper, advertising matter or any like thing.

Penalty: \$1,000

- (2) Sub-clause (1) does not apply to a person who holds a current permit issued under Part 2 which allows that person to engage in the particular activity referred to in sub-clause (1).

14. Offensive behaviour

In a reserve, a person must not –

- (a) use indecent or obscene language;
- (b) use threatening or abusive words;
- (c) behave in a riotous, indecent, offensive or threatening manner.

Penalty: \$1,000

PART 4 – WORKS AND IMPROVEMENTS

15. Consent

- (1) The Committee must obtain all the necessary approvals and permits and the consent of the Council or the consent of the Council's authorised delegate before undertaking any works or improvements on the reserve.
- (2) The consent of the Council or the Council's authorised delegate is not required if the works and improvements are –
 - (a) for the purpose of carrying out repairs or maintenance of structures, facilities and other improvements; or
 - (b) minor works or improvements necessary to keep the reserve in good order or appearance; or
 - (c) works and improvements agreed to under a management or development plan which has been approved by the Council or Council's authorised delegate.

PART 5 – GENERAL

16. Obstruction

A person must not in the reserve obstruct, hinder or interfere with a member of the Committee, an authorised officer or appointed person in the execution of his or her duties in the reserve.

Penalty: \$1,000

17. Direction and direction to leave

- (1) A member of the Committee, appointed person or authorised officer may direct a person in charge of a vehicle to move the vehicle or remove the vehicle from the reserve if –
 - (a) the vehicle is parked or standing contrary to any sign erected in accordance with this local law; or
 - (b) in the opinion of the member of the Committee, appointed person or authorised officer the vehicle is obstructing or likely to obstruct the passage of people or other vehicles in the reserve; or
 - (c) the vehicle is a danger or likely to be danger to people using the reserve; or
 - (d) the vehicle is being driven in a manner which is likely to prejudice the safety of persons or cause injury or damage to property in the reserve.
- (2) A member of the Committee, an appointed person or an authorised officer may direct any person whom that officer believes on reasonable grounds has contravened this local law to leave the reserve or any part of the reserve.
- (3) When directed to do so by a member of the Committee, appointed person or authorised officer, a person must immediately –
 - (a) move a vehicle as directed within the reserve; or

- (b) remove a vehicle from the reserve; or
 - (c) leave the reserve or the part of the reserve.
- (4) Any person who fails to comply with a direction, direction to leave and fails to immediately do so shall be guilty of an offence.

Penalty: \$1,000

PART 6 - ENFORCEMENT AND PENALTIES

18. Delegation

- (1) In accordance with section 114 of the Act, the Council hereby:
- (a) Delegates to the Chief Executive Officer and to each Senior Officer, and to any person for the time being acting for such persons, all the powers, discretions, authorities and considerations of Council under this Local Law including the powers, decorations and authority to issue or refuse permits, fix conditions and durations relevant to such permit, cancel permits, require additional information, apply guidelines or policies of Council, to waive the need for any permit, to waive, fix or reduce fees or charges or to do any act, matter or thing necessary;
 - (b) Delegates to the Team Leader Local Laws, and to any person for the time being acting for that person, the power to issue or refuse permits and apply conditions, exercise directions or require additional information.

19. Power of authorised officers to direct - notice to comply

An authorised officer may, by verbal direction or by written notice given to a person who appears to be in breach of this local law, direct that person to remedy any situation, which constitutes a breach under this local law.

20. Time to comply

- (1) A notice to comply must state the time and date by which the situation must be remedied.
- (2) The time required by a notice to comply must be reasonable in the circumstances having regard to:
- (a) the amount of work involved;
 - (b) the degree of difficulty;
 - (c) the availability of necessary materials or other necessary items;
 - (d) climatic conditions;
 - (e) the degree of risk or potential risk; and
 - (f) any other relevant factor.

21. Failure to comply with a notice to comply

A person who fails to comply with a verbal direction or written notice served on that person is guilty of an offence:

Penalty: \$1,000 for first offence.
\$2,000 for second or subsequent offence
with a daily penalty of \$200 for each day the
offence continued after being found guilty by a
court.

22. Council may remedy breach

An authorised officer, with the consent of Council's Manager Environment, may:

- (1) carry out any work or take action to remove, remedy or rectify a situation which an Infringement Notice, or a Notice to Comply required to be carried out and which was not carried out within the period specified in the Infringement Notice or the notice to comply; and
- (2) recover the costs of the work from the person in breach in any court of competent jurisdiction as a debt.

23. Power of authorised officer to act in urgent circumstances

- (1) In urgent circumstances arising as a result of a failure to comply with a notice to take action to remove, an authorised officer may remedy or rectify a situation without first serving a notice to comply if:
 - (a) the authorised officer considers the circumstances or situation to be sufficiently urgent and that the time involved or difficulties associated with the serving of a notice, may place a person, animal, property or thing at risk or in danger; and
 - (b) wherever practicable, a senior officer is given prior notice of the proposed action.
- (2) In deciding whether circumstances are urgent, an authorised officer must take into consideration, to the extent relevant:
 - (a) whether it is practicable to contact:
 - (i) the person by whose default or permission of sufferance the situation has arisen; or
 - (ii) the owner or the occupier of the premise or property affected; and
 - (b) whether there is an urgent risk or threat to public health, public safety, the environment or animal welfare.
- (3) The action taken by an authorised officer under sub-clause (1) must not extend beyond what is necessary to cause the immediate abatement of, or minimise the risk or danger involved.
- (4) An authorised officer who takes action under sub-clause (1) must ensure that, as soon as practicable:
 - (a) details of the circumstances and remedying action are forwarded to the person on whose behalf the action was taken; and

- (b) a report of the action taken is submitted to the Chief Executive Officer.

24. Power of authorised officer to impound

- (1) If an authorised officer has impounded anything in accordance with this Local Law, the Council may refuse to release it until the appropriate fee or charge for its release has not been paid to the Council.
- (2) The Council may, by resolution, fix charges (generally or specifically) for the purpose of this clause.
- (3) As soon as possible after the impounding and where practicable to do so, the authorised officer must, serve written notice on the owner or person responsible for the item which has been impounded setting out the fees and charges payable and the time by which the item must be retrieved.
- (4) If, after the time required in a notice of impounding, an impounded item is not retrieved, an authorised officer may take action to dispose of the impounded item according to the following principles:
 - (a) where the item has no saleable value, it may be disposed of in the most economical way; and
 - (b) where the item has some saleable value the item may be disposed of either by tender or public auction.
- (5) When the identity or whereabouts of the owner or person responsible for the impounded item is unknown, the authorised officer must take reasonable steps to ascertain the identity or whereabouts of that person and may proceed to dispose of the impounded item in accordance with sub-clause (4) once he or she is satisfied that all reasonable efforts have been made to contact the owner or person responsible for the impounded item.
- (6) Any proceeds from the disposal of impounded items under this Local Law must be paid to the owner or to the person who, in the opinion of the Council, appears to be authorised to receive the money, except for the reasonable costs incurred by the Council in the administration of this Local Law.
- (7) If a person described in sub-clause (6) cannot be identified or located within six months after the date of the notice of impounding, any proceeds of the sale cease to be payable to that person, and may be retained by the Council for municipal purposes.

25. Infringement notices

- (1) An authorised officer of the Council may serve a person an infringement notice in accordance with the provisions of the Infringements Act 2006 and in the form prescribed therein for any offence under this Local Law.

- (2) The fixed penalty in respect of an infringement notice is \$200 unless otherwise prescribed in Schedule 1.

26. Payment of penalty

- (1) A person served with an infringement notice under this Local Law may pay the penalty indicated to the Chief Executive Officer of the Moira Shire Council.
- (2) To avoid prosecution in the Magistrates' Court, the penalty indicated must be paid within 28 days of the date the infringement was issued.
- (3) A person issued with an infringement notice is entitled to disregard the notice and defend the matter in the Magistrates' Court.
- (4) A person served with an infringement notice may apply to the Council for a payment plan to pay the infringement penalty and any prescribed costs in respect to the infringement offence at any time before the expiry of the period for bringing a proceeding in relation to the offence to which the infringement notice relates.

MOIRA SHIRE COUNCIL

SCHEDULE 1

PENALTIES FIXED FOR INFRINGEMENTS

Clause No.	Offence	Penalty \$

Recreation Reserves Local Law 2009
(No.2 of 2009)

This document is issued by the Moira Shire Council.

The **COMMON SEAL** of the)
MOIRA SHIRE COUNCIL)
was affixed hereto by authority)
of the Council on the day)
of2009 in the presence of:)

Chief Executive Officer

Notices of the proposal to make and of the making of this local law were included in the Victoria Government Gazette dated 13 August 2009 and 1 October 2009 respectively.

Public Notice of the proposal to make and confirmation of the making of this Local Law were inserted in the Cobram Courier, Numurkah Leader and Yarrawonga Chronicle newspapers on 12 August 2009 and 30 September 2009 respectively.

A copy of this Local Law was forwarded to the Minister for Local Government on 2 October 2009.

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Gary Arnold

Recreation Reserves Local Law 2009
(No.2 of 2009)

Certification of Local Law No. 2 of 2009

This is to certify that this is a true copy of the Recreation Reserves Local Law 2009 (No. 2 of 2009) of the Moira Shire Council and that we have informed ourselves of the legislative requirements necessary to giving validity to such Local Law and as to our observance and belief that such requirements have been fulfilled. And we further certify that such Local Law came into force on 2 October 2009.

Signed this Day of 2009.

Mayor

Chief Executive Officer