

# LOCAL GOVERNMENT ACT 1995

## *Shire of Irwin*

### **PREVENTION AND ABATEMENT OF SAND DRIFT LOCAL LAW 2004**

Under the powers conferred by the *Local Government Act 1995* and by all other powers enabling it, the Council of the Shire of Irwin resolved on 27<sup>th</sup> July 2004 to make the following local law.

#### **PART 1 – PRELIMINARY**

##### **1.1 Citation**

This local law may be cited as the Shire of Irwin Sand Drift Prevention and Abatement Local Law 2004.

##### **1.2 Definitions**

(a) In this local law unless the context otherwise requires -

“Act” means the *Local Government Act 1995*;

“district” means the district of the Shire of Irwin and includes any area placed under the jurisdiction of the Local Government pursuant to any Act or Regulation;

“local government” means the Shire of Irwin;

“occupier” includes any person who at the time the notice is served is in possession or control of any place or part of any place or authorised by the owner, lessee, licensee or any other person empowered to exercise control in relation to a place to perform any work in relation to any place and without limiting the generality of the foregoing and for the avoidance of doubt includes a builder or contractor;

“person” includes a public body, company or association or other body of persons corporate or unincorporate;

“sand” means any granular material consisting of small eroded fragments of rocks finer than gravel whether or not forming part of a beach, desert or bed of any river and includes dust and organic matter;

“rural land” means land of a surface area exceeding one hectare and which is used for rural purposes.

(b) Where in this local law a duty, obligation or liability is imposed on an “owner or occupier of land or premises”, the duty shall be deemed to be imposed jointly and severally on each of the owner and occupier in relation to the land or premises.

(c) Where under this local law an act is required to be done or forbidden to be done in relation to any land or premises, the owner or occupier of the land or premises has the duty of causing to be done the act so required to be done, or of preventing from being done the act forbidden to be done.

(d) Where this local law refers to the giving of a notice, other than the giving of an infringement notice, no particular form is prescribed and it will be sufficient that the notice be in writing giving sufficient details to enable the owner or occupier to know the offence committed and the measures required to be taken or conditions to be complied with, as the case may be.

### **1.3 Application**

This Local Law applies to all land in the district except rural land.

## **PART 2 - PROHIBITED ACTIVITIES**

- 2.1** Where any sand is released or escapes from land or premises, whether by means of wind, water or any other cause, the owner or occupier of the land or premises commits an offence.

## **PART 3 – SERVING OF NOTICES**

### **3.1 Serving of Notice to Clean up and Make Good Damage etc**

The local government may serve on an owner or occupier of any land or premises in the district from which any sand has been released or has escaped a notice requiring the owner or occupier to clean up and make good any damage or unsightly effects resulting from that release or escape, and where the notice specifies a time or date, the requirements set out in the notice must be completed by the time or date specified.

### **3.2 Serving of Notice Specifying Conditions**

Where the local government is of the opinion that as a result of an activity being carried, or likely to be carried on from any land or premises sand may be released or may escape, the local government may cause to be given to the owner or occupier a notice providing that the activity can only be carried on subject to conditions and specifying the conditions.

### **3.3 Failure to Comply with Notice**

Where an owner or occupier -

- (a) fails to comply with a notice issued pursuant to clause 3.1; or
- (b) fails to comply with any conditions specified pursuant to clause 3.2

the local government may undertake or cause to be undertaken the work specified in the notice.

### **3.4 Local Government may Undertake Work**

- (a) Where the local government pursuant to clause 3.3 undertakes or causes to be undertaken any work or carries out or causes to be carried out any conditions, it may cause to be given to the owner or occupier of the land or premises written notice of the amount expended by the local government in carrying out that work.
- (b) The amount specified in the notice must be paid to the local government within 14 days of the service of the notice.
- (c) If the amount specified is not paid to the local government within 14 days from the service of the notice given under clause 3.4(a), the local government may recover it, as well as the costs of proceedings, and interest thereon, in a court of competent jurisdiction.

### **3.5 Cancellation of Notices**

- (a) Where a notice is served on the owner or occupier of any land or premises and

the owner or occupier satisfies the Local Government within 14 days from the date of the giving of the notice that -

- (i) it was not responsible for the conduct in respect of which the notice was given pursuant to clause 3.1, or the activity in respect of which conditions were imposed pursuant to clause 3.2 as the case may be; and
- (ii) it took all reasonable precautions to prevent the conduct or all reasonable steps to comply with, or cause the conditions to be complied with, as the case may be; and
- (iii) where another person was responsible for the conduct, it identifies the person responsible for the conduct sufficiently to enable the notice to be issued to that person;

the local government may cancel the notice.

- (b) Without derogating from the generality of sub-clause 3.5(a), an owner or occupier will be responsible for the conduct or compliance with conditions within the meaning of sub-clause 3.5(a) if:
  - (i) in the case of conduct, the conduct took place with the owner or occupier's knowledge, consent or approval; or
  - (ii) in the case of conditions, the owner or occupier was aware of the activity in respect of which the conditions were imposed.
- (c) If the local government decides to cancel the notice it may within 28 days from the date of cancellation cause a notice ("the second notice") to be issued to the person identified by the person to whom the notice was originally given as being responsible for the conduct in respect of which the notice was issued.
- (d) Where the second notice is issued pursuant to clause 3.5(c) the provisions of Part 3 shall apply to the second notice on and from the date of service of the notice.

#### **PART 4 – LOCAL GOVERNMENT MAY ENTER LAND OR PREMISES**

##### **4.1 Local Government may enter land or premises**

- (a) The Local Government may lawfully enter upon any land or premises for the purpose of giving effect to, or carrying out, any provision of this local law in accordance with Part 3, Division 3, Subdivision 3 of the Local Government Act 1995.
- (b) A person must not prevent or impede a duly authorised officer or employee of the Local Government from carrying out his or her duties under this local law.

#### **PART 5 – OFFENCES**

##### **5.1 (a) A person who:**

- (i) contravenes clause 2.1;
- (ii) fails to comply with a notice served under clause 3.1;

(iii) carries on an activity without complying with a notice issued under clause 3.2; or

(iv) contravenes clause 4.1 of this local law

commits an offence, in respect of which the Local Government may issue an infringement notice.

(b) A person who commits an offence under sub-clause 5.1(a) is liable to:

(i) a penalty which is not more than \$2,000 and not less than;

(a) in the case of a first such offence, \$200;

(b) in the case of a second such offence, \$400; and

(c) in the case of a third or subsequent such offence, \$1,000 and

(ii) if the offence is of a continuing nature, a daily penalty not exceeding a fine of \$200 in respect of each day or part of a day for which the offence continues.

**5.2** (a) An offence against any provision of this local law is a prescribed offence for the purposes of Section 9.16(1) of the Act.

(b) The amount of the modified penalty for an offence against any provision of this local law is \$200.

## **PART 6 – FORM OF NOTICES**

**6.1** For the purposes of these Local Laws –

(a) The form of the infringement notice referred to in section 9.17 of the *Local Government Act 1995* is to be in or substantially in the form of Form 2 of Schedule 1 of the Local Government (Functions and General) Regulations 1996;

(b) The form of the notice referred to in section 9.20 of the *Local Government Act 1995* is to be in or substantially in the form of Form 3 in Schedule 1 of the Local Government (Functions and General) Regulations 1996.”

Dated 30<sup>th</sup> July 2004

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

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R Parsons  
Shire President

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G Peddie  
Acting Chief Executive Officer