

# Ipswich

## City Council

### *Local Law No. 1* *(Administration) 2013*

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## **Part 1 Preliminary**

### **1 Short title**

This local law may be cited as *Local Law No.1 (Administration) 2013*.

### **1A Commencement**

This local law commences on 1 August 2013

### **2 Object**

The object of this local law is to provide a legal framework for the administration, implementation and enforcement of the local government's local laws and subordinate local laws.

### **3 Definitions—the dictionary**

The dictionary in the Schedule (Dictionary) defines particular words used in this local law.

### **4 Application of local law**

(1) This local law applies to—

- (a) *Local Law No. 2 (Meetings) 2013*, and its subordinate local laws; and
- (b) *Local Law No. 3 (Commercial Licensing) 2013*, and its subordinate local laws; and
- (c) *Local Law No. 4 (Permits) 2013*, and its subordinate local laws; and
- (d) *Local Law No. 5 (Parking) 2013*, and its subordinate local laws; and
- (e) *Local Law No. 6 (Animals) 2013*, and its subordinate local laws; and
- (f) *Local Law No.7 (Local Government Controlled Areas and Roads) 2013*, and its subordinate local laws; and
- (g) *Local Law No 8 (Nuisances and Community Health and Safety) 2013*, and its subordinate local laws.

(2) The powers of the local government contained in, or obligations imposed by, any other local law are in addition to the powers and obligations contained in this local law.

## **Part 2      Applications and approvals**

### **5      Requirements of an application**

- (1) An application for approval of a proposal must be made in the prescribed form.
- (2) The application must be accompanied by—
  - (a) the prescribed fee; and
  - (b) information, documents and materials required under the relevant local law; and
  - (c) such further information, documents or materials specified in a subordinate local law.
- (3) The local government may waive the requirements of section 5(2) (Requirements of an application) of this local law—
  - (a) in an emergency; or
  - (b) if there are special reasons for dispensing with the requirement; or
  - (c) in the circumstances specified in a subordinate local law.

### **6      Determination of an approval**

- (1) If the local government has power under a local law to approve an application, the local government may—
  - (a) approve the application unconditionally; or
  - (b) approve the application subject to conditions; or
  - (c) refuse to approve the application.

*Example –*

If a proposal for which the local government's approval is required may result in damage to property, the local government may, as a condition of giving its approval, require the applicant to give reasonable security (which may include a deposit of money, a bank guarantee or an insurance bond) to ensure that damage is made good.

- (2) However the local government's powers are subject to the provisions of the local law and any relevant subordinate local law.

- (3) The local government must, in deciding how to exercise its power, have regard to any criteria stated in the relevant local law or subordinate local law.

## **7 Proposals requiring multiple approvals**

- (1) If a proposal involves multiple approvals the local government must, if practicable, deal with the subjects on which its approval is required together.
- (2) If the local government decides that an application should be refused on a particular aspect of a proposal for which multiple approvals are required, it may refuse other applications required for the proposal even though other aspects of the proposal for which approval is required may be acceptable to the local government.

## **8 Certification of specified matters**

- (1) A local law may provide that a specified matter is subject to certification by a person specified by the local government.
- (2) If a local law provides that a matter is subject to certification by a person specified by the local government, the local government may accept the certificate from a person with recognised qualifications in the relevant field as evidence that—
- (a) a proposal complies with the requirements of the local law; or
  - (b) a proposal for which approval has been given by the local law has been carried out in accordance with the requirements of the local law.

## **9 Power to change the conditions of an approval or cancel or suspend approval**

- (1) The local government may amend a condition on which its approval has been given under a local law if the amendment is necessary to—<sup>1</sup>
- (a) prevent harm to human health or safety or personal injury; or
  - (b) prevent property damage or a loss of amenity; or
  - (c) prevent environmental harm or environmental nuisance; or

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<sup>1</sup> A change to the conditions of an approval includes a change by omission, substitution or addition (see section 36 (Meaning of commonly used words and expressions) of the *Acts Interpretation Act 1954*).

- (d) prevent a nuisance; or
  - (e) ensure that the proposal complies with the Local Government Act and local laws that regulate the proposal
- (2) Section 9(1) (Power to change the conditions of an approval or cancel or suspend approval) of this local law does not limit the power a local government may have apart from this section to amend a condition of an approval.
- (3) A local government may cancel or suspend an approval—
  - (a) in the circumstances specified in section 9(1) (Power to change the conditions of an approval or cancel or suspend approval) of this local law; or
  - (b) for contravention of a condition of the approval.
- (4) A power given under a local law to cancel an approval includes a power to suspend the approval for a period determined by the local government.

## **10 Procedure to change the conditions of an approval or cancel or suspend approval**

- (1) If the local government is satisfied it is necessary to change a condition of an approval or cancel or suspend an approval under 9(1) (Power to change the conditions of an approval or cancel or suspend approval) of this local law the local government must—
  - (a) give the holder of the approval a written notice stating—
    - (i) the proposed change and the reasons for the change; and
    - (ii) that the holder of the approval may make written representations to the local government about the proposed change; and
    - (iii) the time (at least 10 business days after the notice is given to the holder of the approval) within which the written representations may be made; and

- (b) consider any written representation made by the holder of the approval within the time stated in the notice.
- (3) After considering any written representation made by the holder of the approval, the local government must give to the holder of the approval—
  - (a) if the local government is not satisfied the change is necessary – a written notice stating that it has decided not to change the condition; or
  - (b) if the local government is satisfied that the change is necessary – a written notice stating that it has decided to change the condition including details of the changed condition.
- (4) The changed condition takes effect from the day the written notice was given to the holder of the approval.

## **11 Records of approvals**

The local government must maintain a record of each approval given under a local law.

## **12 Fraud and unlawful possession of an approval**

- (1) A person shall not—
  - (a) in any application, notice or other document made or given to the local government or to an authorised person make a statement that to the person's knowledge is false or misleading; or
  - (b) by a false or misleading statement or representation obtain or attempt to obtain an approval; or
  - (c) furnish any information that to the person's knowledge is false or misleading with respect to particulars required to be furnished in connection with an application for an approval; or
  - (d) forge (within the meaning of the *Criminal Code*) an approval.

Maximum penalty for subsection (1) – 200 penalty units.

- (2) A person shall not have in the person's possession (without reasonable cause for so doing) any article resembling a current approval and calculated to deceive.

Maximum penalty for subsection (2) – 200 penalty units.



- (3) A person shall not –
- (a) use an approval unless it is an approval duly issued to the person; or
  - (b) lend an approval duly issued to the person to another person for use by that other person; or
  - (c) permit or suffer to be used by another person an approval duly issued to that person.

Maximum penalty for subsection (3) – 200 penalty units.

- (4) Unless authorised by or under this local law a person shall not make or cause, permit or allow to be made any endorsement (other than the person's signature) or any addition or alteration or erasure whatsoever on or from any approval.

Maximum penalty for subsection (4) – 200 penalty units.

- (5) An approval in respect to which any act or attempted act referred to in this section has been done shall be null and void.

## **Part 3                      Legal proceedings**

### **Division 1                Evidentiary Aids**

#### **13        Evidentiary provisions**

- (1) The appointment of an authorised person or the authority of an authorised person to do an act under a local law must be presumed unless a party, by reasonable notice to the local government, requires proof of these matters.
- (2) A signature purporting to be the signature of the chief executive officer or an authorised person is evidence of the signature it purports to be.
- (3) A certificate purporting to be signed by the chief executive officer stating that a stated person is or was an authorised person at a time, or during a stated period, is evidence of the matter stated in the certificate.
- (4) A certificate purporting to be signed by the chief executive officer stating any of the following matters is evidence of the matter—
  - (a) a stated document is an appointment or a copy of an appointment; or

- (b) a stated document is a copy of a notice, direction, decision, order, approval or other instrument issued or given under a local law; or
  - (c) on a stated day, or during a stated period, a stated person was or was not the holder of an approval or other instrument issued or given under a local law; or
  - (d) an approval or other instrument –
    - (i) was or was not issued or given for a stated term; or
    - (ii) was or was not in force on a stated day or during a stated period; or
    - (iii) was or was not subject to a stated condition; and
  - (e) on a stated day, an approval was suspended for a stated period or cancelled; or
  - (f) on a stated day, the conditions of an approval were changed; or
  - (g) on a stated day, a stated person was given a stated notice, direction or order under a local law; or
  - (h) a stated document is a copy of a part of a register kept under a local law; or
  - (i) a stated amount is payable under a local law by a stated person and has not been paid; or
  - (j) that a stated method of storage, preservation, handling or transportation of a sample taken under a local law has not materially affected the attributes of the sample; or
  - (k) another matter specified in a subordinate local law.
- (5) In a complaint starting a proceeding, a statement that the matter of the complaint came to the complainant's knowledge on a stated day is evidence of the matter.
- (6) A certificate purporting to be signed by an analyst stating any of the following matters is evidence of the matter—

- (a) the analyst received from a stated person the sample mentioned in the certificate; and
  - (b) the analyst analysed the sample on a stated day and at a stated place; and
  - (c) the results of the analysis and the interpretation of the analysis results.
- (7) Any instrument, equipment or installation that is used by an authorised person or an analyst is taken to be accurate and precise in the absence of evidence to the contrary.
- (8) In a proceeding in which the local government applies to recover the costs and expenses incurred by it, a certificate by the chief executive officer stating that stated costs and expenses were incurred and the way and purpose for which they were incurred is evidence of the matters stated.
- (9) In a proceeding for an offence against a local law, proof of any exemption from any provision of a local law shall be upon the person who seeks to rely on the exemption.
- (10) In a proceeding for an offence against a local law, where the age of any person is material, the court may decide upon its own view and judgment, whether any person charged or present before it has or has not attained any prescribed age, but nothing herein shall be construed to prevent the age of that person being proven.

## **14 Responsibility for acts or omissions of representatives**

- (1) If in a proceeding for an offence against a local law it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (2) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken in a proceeding for an offence against a local law to have been done or omitted to be done also by the person unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

## **15 Joint and several liability**

- (1) If a local law imposes a liability on an owner of property, or a person engaged in a particular activity, and 2 or more persons are the owners of the relevant property, or are jointly engaged in the relevant activity, the liability is joint and several.
- (2) This section applies both to civil liabilities and liabilities enforced by summary proceedings under the *Justices Act 1886*.

## **Division 2 Defences**

### **16 Defence**

It is a defence to any breach or non-compliance of any provision contained in a local law if a person has a lawful excuse or defence.

*Example—*

It is a defence to any breach or non-compliance of any provision contained in a local law if a person was not criminally responsible in accordance with Chapter 5 (Criminal Responsibility) of the Criminal Code.

### **17 General defence of owners**

If a local law makes the owner of property guilty of an offence if a particular act or omission happens with respect to the property, it is a defence for the owner of the property to prove that—

- (a) the act or omission happened without the owner's knowledge or consent; and
- (b) the owner could not, by reasonable diligence, have prevented the act or omission.

## **Division 3        Rewards**

### **18        Rewards**

- (1) The local government may, by public notice, offer a reward for information leading to the conviction of, or finding of guilt in relation to, a person for—
  - (a) an offence involving damage to, or theft of, property of the local government or under the local government's control; or
  - (b) an offence against a local law.
- (2) The amount of the reward, and the conditions on which it is payable, must be decided by the local government.

## **Division 4        Costs**

### **19        Recovery of costs of investigation**

- (1) The court may order a person to pay to the local government the reasonable costs and expenses incurred by the local government in conducting an investigation of an offence under a local law, if—
  - (a) the person is convicted or found to have committed an offence against a local law; and
  - (b) the court convicting the person finds the local government has reasonably incurred costs and expenses in taking a sample or conducting an inspection, test, measurement or analysis during the investigation of the offence; and
  - (c) the local government applies for an order against the person for the payment of the costs and expenses; and
  - (d) the court is satisfied it would be just to make the order in the circumstances of the particular case.
- (2) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

## **Division 5      Service of legal instruments**

### **20      Service of legal instruments**

- (1) The local government may give or serve a legal instrument to or upon—
  - (a) a person by—
    - (i) delivering the legal instrument to the person; or
    - (ii) leaving the legal instrument at the person's address for service; or
    - (iii) forwarding the legal instrument by post in a prepaid letter addressed to the person at the person's address for service; or
    - (iv) forwarding the legal instrument by post in a registered letter addressed to such person at the person's address for service; or
  - (b) a person in that person's capacity as the owner or occupier of premises by —
    - (i) delivering the legal instrument to the person; or
    - (ii) delivering a copy of the legal instrument to a person who is in control of the property; or
    - (iii) if there is no person in control of the property to whom the legal instrument can be given or served, fixing a copy of the legal instrument on some conspicuous part of the property.
  - (c) a person who last used a vehicle that is abandoned on a premises or road by —
    - (i) forwarding the legal instrument by post in a prepaid letter addressed to the person who is the registered owner of the vehicle; or
    - (ii) if the vehicle is unregistered, attaching the legal instrument to the vehicle.
- (2) If the local government has given or served a legal instrument on a person pursuant to section 20(1) (Service of legal instruments) of this local law, it shall be sufficient proof that the legal instrument has been given or served to or upon the person, for an officer of the local government to—

- (a) in the case of a legal instrument given or served to or upon a person pursuant to section 20(1)(a)(iii) (Service of legal instruments) of this local law—
    - (i) produce a copy of the legal instrument; and
    - (ii) give sworn testimony that the legal instrument was properly stamped and addressed and put into the post; and
  - (b) in the case of a legal instrument given or served to or upon a person pursuant to section 20(1)(a)(iv) (Service of legal instruments) of this local law—
    - (i) produce a receipt purporting to be the registered receipt of the registered letter; and
    - (ii) give sworn testimony as to the contents of the registered letter; and
  - (c) in all other cases—
    - (i) produce a copy of the legal instrument; and
    - (ii) give sworn testimony as to the manner in which the legal instrument was given or served to or upon the person.
- (3) If a legal instrument must be given or served to or upon the owner or occupier of a property and the name of the owner or occupier is not known, then the legal instrument shall be deemed to have been properly given or served if—
- (a) the legal instrument is addressed to the owner or occupier of the property by the description of the —owner or —occupier of the property in question (naming them) and without further name or description; and
  - (b) the legal instrument is given or served to or upon the person in accordance with section 20(1) (Service of legal instruments) of this local law.
- (4) A legal instrument forwarded by post in a prepaid letter shall be deemed to have been given or served to or upon the person at the last moment of the day of which the same ought to be delivered at its destination in the ordinary course of the post.

## **Part 4 Powers of council officers**

### **Division 1 Appointment of council officers under local law**

#### **21 Appointment**

- (1) The chief executive officer may appoint a person to be an authorised person and to exercise the powers of an authorised person<sup>2</sup>.
- (2) An appointment made by the chief executive officer may be general or subject to limitations stated in the appointment.

*Example—*

A person may be authorised to exercise the powers of an authorised person under a particular local law but only in relation to a particular public place.

#### **22 Identity cards**

- (1) The local government must issue an identity card to each person appointed to a position provided for under a local law.
- (2) A person must return any identity card and any instrument of appointment to the local government as soon as practicable, but in any event no later than 10 business days, after the termination of their appointment

Maximum penalty for subsection (2) – 50 penalty units

#### **23 Production of identity cards**

- (1) A person exercising a power under section 32 of this local law may exercise the power only if the person—
  - (a) first produces their identity card for the person to inspect; or
  - (b) has their identity card displayed so it is clearly visible.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the person exercising the power must produce the identity card for inspection at the first reasonable opportunity.

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<sup>2</sup> The appointment and powers of authorised persons are provided for in the Act



## **Division 2      Assessment of applications**

### **24      Assessment of proposals**

Before the local government decides an application, an authorised person may—

- (a) inspect any premises, vehicle, equipment, animal, plant or thing to be involved in the proposal; and
- (b) measure, weigh, sample, test, photograph, videotape or otherwise examine anything that may be inspected.

## **Division 3      Investigation and enforcement**

### **25      False, misleading or incomplete documents**

- (1) A person must not give to the local government or a council officer a document containing information that the person knows is false, misleading or incomplete in a material particular.

Maximum penalty for subsection (1) – 50 penalty units.

- (2) Section 25(1) (False, misleading or incomplete documents) of this local law does not apply to a person who, when giving the document—
  - (a) informs the local government or a council officer of the extent to which the document is false, misleading or incomplete; and
  - (b) gives the correct information to the local government or a council officer at the time the person gives the document or as soon as the person becomes aware of the correct information.
- (3) A complaint against a person for an offence against section 25(1) (False, misleading or incomplete documents) of this local law is sufficient if it states that the document was false, misleading or incomplete to the person's knowledge.

## **26 False, misleading or incomplete information**

- (1) A person must not—
- (a) state anything to a local government or a council officer that the person knows is false, misleading or incomplete in a material particular; or
  - (b) omit from a statement made to a local government or a council officer anything without which the statement is, to the person's knowledge, false, misleading or incomplete in a material particular.

Maximum penalty for subsection (1) – 50 penalty units.

- (2) A complaint against a person for an offence against section 26(1)(a) or (b) (False, misleading or incomplete information) of this local law is sufficient if it states that the statement made was false, misleading or incomplete to the person's knowledge.

## **27 Production of documents**

A person who is required under a local law to produce a document must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty – 50 penalty units.

## **28 Production of approval**

- (1) A council officer may ask a person apparently acting under an approval to produce the approval immediately for inspection.
- (2) The person must produce the approval, unless the person has a reasonable excuse for not producing it.

Maximum penalty for subsection (2) – 50 penalty units.

## **29 Analysis of samples**

- (1) The local government may have a sample taken by a council officer under a local law analysed.
- (2) A person must not, with intent to adversely affect the analysis of a thing—
- (a) tamper with the thing before a council officer takes a sample of the thing for analysis; or

- (b) tamper with a sample of a thing after it is taken by a council officer for analysis.

Maximum penalty for subsection (2)– 50 penalty units.

- (3) If a particular method of analysis has been specified under a local law, the local government must follow the method.
- (4) The local government must obtain from the analyst a certificate or report stating the results of the analysis and the interpretation of the analysis results.

### **30 General compliance notice**

- (1) The local government may give a written notice (a **general compliance notice**) to a person who contravenes a local law.
- (2) A general compliance notice may require the person to whom it is given to—
  - (a) stop the contravention, if the contravention is of a continuing or recurrent nature; and
  - (b) perform work or otherwise take specified action to remedy the contravention (including the making of an application for a permit or licence) for or within a reasonable time specified in the compliance notice, whether or not the contravention is of a continuing or recurrent nature.
- (3) A person to whom the general compliance notice is given must comply with the general compliance notice.

Maximum penalty for subsection (3) – 50 penalty units.

### **31 Performance of work and recovery of costs**

- (1) A person who commits an offence under a local law must make good any damage caused directly or indirectly by the commission of the offence.
- (2) The local government may perform work where a person has failed to perform work required to be performed by<sup>3</sup>—
  - (a) section 31(1) (Performance of work) of this local law; or

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<sup>3</sup> The exercise of this power is subject to Chapter 5, Part 2, Division 2 of the *Local Government Act 2009*.

- (b) a compliance notice issued under a local law; or
  - (c) any other provision of a local law.
- (3) The local government may in the course of performing work remove any structure, vehicle, equipment, animal, plant or thing involved in the commission of the offence where<sup>4</sup> the local government is satisfied that there is a risk of—
  - (a) harm to human health or safety or personal injury; or
  - (b) property damage or a loss of amenity; or
  - (c) environmental harm or environmental nuisance.
- (4) The local government must dispose of any material of any nature removed by it pursuant to section 31 (Performance of work) of this local law in accordance with section 41 (Confiscated goods).
- (5) An authorised person may perform the work that the local government is empowered to undertake pursuant to section 31 (Performance of work) of this local law.
- (6) If work to be carried out by the local government under section 31 (Performance of work) is on land of which the local government is not the owner or occupier, the local government may enter the land to perform the work<sup>5</sup>—
  - (a) if the person who has failed to perform the work is the owner or occupier of the land; or
  - (b) if the entry is necessary for the exercise of the local government's jurisdiction.
- (7) If the person who failed to perform the work is the owner of the land, the amount properly and reasonably incurred by the local government to perform the work is recoverable (together with any interest) under Chapter 5, Part 2, Division 2 of the Act.

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<sup>4</sup> The exercise of this power is subject to Chapter 5, Part 2, Division 2 of the *Local Government Act 2009*.

<sup>5</sup> See the powers contained in Chapter 5, Part 2, Division 2 of the Act

- (8) If the person who failed to perform the work is not the owner of the land, the amount properly and reasonably incurred by the local government is recoverable as a debt from the person in default together with interest on the same basis as applies to an owner of the land under Chapter 5, Part 2, Division 2 of the Act.
- (9) The Court may order a person found guilty of an offence under a local law to—
  - (a) perform work required to be performed by—
    - (i) section 31(1) (Performance of work) of this local law; or
    - (ii) a compliance notice issued under this local law; or
    - (iv) a provision of this local law.
  - (b) pay to the local government all costs incurred by the local government in performing the work pursuant to section 31 (Performance of work) of this local law.

## **Division 4            Directions**

### **32    Directions generally**

- (1) A council officer may direct a person committing a breach of a local law to—
  - (a) cease any conduct or activity which constitutes a breach of the local law; and
  - (b) take such action determined by a council officer to ensure that the person does not commit a breach of this local law.
- (2) A person must comply with a direction of a council officer made pursuant to this local law.

Maximum penalty for subsection (2) – 50 penalty units.

## **Division 5          Protection of council officers**

### **33          Protection from liability**

- (1)      A council officer does not incur civil liability for an act or omission done honestly and without negligence under a local law.
- (2)      A liability that would, apart from this section, attach to a council officer attaches instead to the local government.

### **34          Deception of a council officer**

A person must not intentionally mislead or deceive a council officer in the exercise of their authority under a Local Government Act.

Maximum penalty – 50 penalty units.

### **35          Attacking a council officer**

A person must not physically attack a council officer in the exercise of their authority under a Local Government Act.

Maximum penalty – 850 penalty units.

### **36          Use of offensive or offensive language or behaviour**

A person must not in relation to an authorised person who is exercising the powers of an authorised person under a Local Government Act—

- (a)      use language that is insulting, offensive or threatening; or
- (b)      behave in an insulting, offensive or threatening manner.

Maximum penalty – 50 penalty units.

### **37          Impersonation of a council officer**

A person must not impersonate a council officer.

Maximum penalty – 50 penalty units.

## **Part 5                      Miscellaneous**

### **38       Notices**

If a local law empowers a local government to issue a notice to a person requiring the person to do, or to refrain from doing, a particular act, the notice must set out—

- (a)     the provisions of the local law under which the requirement is made;  
         and
- (b)     the time within which compliance is required; and
- (c)     the consequences of contravention of the notice.

### **39       Charges**

- (1)     If a local law provides for the payment of a charge, and does not itself fix the amount of the charge, the charge may be fixed by a resolution of the local government.
- (2)     A resolution fixing a charge may provide for the reimbursement of the charge in appropriate circumstances.

*Example—*

If a person pays a licence fee appropriate to a licence of 1 year's duration but, because of unforeseen circumstances, surrenders the licence within 3 months after it is granted. A resolution might provide that, in such a case, the former licensee is to receive a partial reimbursement of the licence fee.

- (3)     Unless specific provision to the contrary is made in a local law or a resolution fixing a charge, the local government may, in an appropriate case, waive or partially remit a charge.

### **40       Unclaimed goods**

- (1)     The local government may, in accordance with this section, dispose of goods, other than a vehicle, that are left on a local government controlled area or road irrespective of whether the owner of the goods intended to relinquish ownership of the goods.
- (2)     The local government may dispose of the goods—
  - (a)     as the local government sees fit (including by private sale, destruction, restoring or giving away) if—
    - (i)     the goods are perishable; or

- (ii) the goods have no commercial value; or
  - (iii) the value of the goods is so slight that it would not cover the cost of sale; or
  - (iv) the goods cannot be sold at a public auction pursuant to section 40(2)(b) (Unclaimed goods) of this local law;
- (b) by public auction after a period of 1 month in the case of goods not specified in section 40(2)(a) (Unclaimed goods) of this local law.
- (3) If goods are to be sold at public auction, the local government must give public notice of the public auction at least 10 business days before the date of the proposed public auction.
- (4) A person to whom goods are sold under this section (whether by public auction or otherwise) gains a clear title to the goods freed and discharged from the interests of others.
- (5) The local government must apply the proceeds of sale (by public auction or otherwise) in the following manner—
  - (a) first, towards the costs of the storage and sale of the goods; and
  - (b) second, in the payment of any prescribed fee for seizing and holding the property
  - (c) third, if there is an amount owing to an entity under a security interest registered for the property under the *Personal Property Securities Act 2009* (Cwlth) — in payment of the amount owing under the security interest;
  - (d) fourthly, in payment of the balance of the proceeds to the owner of the goods, or if after reasonable inquiry, the owner cannot be ascertained, into the general fund of the local government.
- (6) If, within 6 months after the date of the sale, the former owner of the goods claims the proceeds of the sale of the goods, the net proceeds of the sale must be paid to the former owner but if no valid claim is made to the proceeds within that period, the local government may pay the proceeds of the sale into its general funds.



- (7) This section does not apply to the disposal of goods to the extent that there is an inconsistent provision in legislation<sup>6</sup> (including a provision in a local law) dealing specifically with the disposal of goods of a particular class or type.
- (8) A person may make a successful claim for the return of the goods left in a local government controlled area or road, before disposal of the goods, if the claimant—
- (a) is the owner, a person acting on the owner's behalf or a person claiming a right to possession of the goods; and
  - (b) has applied in writing to the local government for the release from detention of the goods; and
  - (c) has furnished proof to the satisfaction of an authorised person of the claimant's—
    - (i) ownership of the goods; or
    - (ii) right to possession of the goods; or
    - (iii) authority to act on behalf of the owner; and
  - (d) has paid all expenses incurred by the local government in connection with—
    - (i) the removal of the goods from the public place; and
    - (ii) the storage of the goods; and
    - (iii) the costs of sale which have been incurred.
  - (e) has signed a receipt for the delivery of the goods to the claimant.

## **41 Confiscated goods**

- (1) If the local government or an authorised person exercises a power under a local law to remove, confiscate or impound goods, other than a vehicle—
- (a) the property in the goods vests in the local government; and
  - (b) the local government may dispose of the goods under this section.
- (2) The local government may dispose of the goods—

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<sup>6</sup> See section 38A (Local law about seizing and disposing of personal property) ,*Local Government Act 2009*

- (a) as the local government sees fit (including by private sale, destruction, rehousing or giving away) if—
    - (i) the goods are perishable; or
    - (ii) the goods have no commercial value; or
    - (iii) the value of the goods is so slight that it would not cover the cost of sale; or
    - (iv) the goods cannot be sold at a public auction pursuant to section 41(2)(b) (Confiscated goods) of this local law; or
    - (v) the keeping of the goods is causing or is likely to cause a nuisance or a hazard; or
    - (vi) the goods are of a type specified in a subordinate local law; or
  - (b) by public auction after a period of 1 month in the case of goods not specified in section 41(2)(a) (Confiscated goods) of this local law.
- (3) If goods are to be sold at public auction, the local government must give public notice of the public auction at least 10 business days before the date of the proposed public auction.
  - (4) The local government must apply the proceeds of sale (by public auction or otherwise) in the manner prescribed in section 40(5) and 40(6) (Unclaimed goods) of this local law.
  - (5) A person to whom goods are sold under this section (whether by public auction or otherwise) gains a clear title to the goods freed and discharged from the interests of others.

## **42 Interpretation of terms**

- (1) Where a term used in a local law is not defined in the local law, the term shall unless the context otherwise indicates or requires have the meaning given to it by—
  - (a) *Local Law No. 1 (Administration) 2013* where a term is not defined in a subordinate local law; or
  - (b) the *Local Government Act 2009* where the term is not defined in a subordinate local law or *Local Law No. 1 (Administration) 2010*; or

- (c) the Macquarie Dictionary where the term is not defined in a subordinate local law, *Local Law No. 1 (Administration) 2013* or the *Local Government Act 2009*.
- (2) Where a term used in a subordinate local law is not defined in the subordinate local law, the term shall unless the context otherwise indicates or requires have the meaning given to it by—
  - (a) the local law pursuant to which the subordinate local law is made; or
  - (b) *Local Law No. 1 (Administration) 2013* where a term is not defined in the local law pursuant to which the subordinate local law is made; or
  - (c) the *Local Government Act 2009* where the term is not defined in the local law pursuant to which the subordinate local law is made or *Local Law No. 1 (Administration) 2013*; or
  - (d) the Macquarie Dictionary where the term is not defined in the local law pursuant to which the subordinate local law is made, *Local Law No. 1 (Administration) 2013* or the *Local Government Act 2009*.

#### **43 Local laws do not apply to prescribed officer**

Unless otherwise specified in a local law, an offence provision of a local law does not apply to a prescribed officer where the prescribed officer is—

- (a) a council officer who is—
  - (i) an authorised person, acting in the course of their appointment; or
  - (ii) an employee of the local government, acting in the course of their employment; or
  - (iii) a person appointed to a position provided for in a local law, acting in the course of their appointment; or
  - (iv) a person assisting a person referred to in paragraphs (a)(i), (ii) or (iii), acting in the course of assisting the other person; or
- (b) a person appointed as an agent or a contractor of the local government, acting in accordance with the terms of the agency or contract; or
- (c) a police officer acting in the execution of their duty.

## **44 False representation concerning the local government**

A person must not falsely—

- (a) make any representation that the person is the local government; or
- (b) make any representation that the person has the sponsorship or approval of, or an affiliation with, the local government.

Maximum penalty—50 penalty units.

## **Part 6 Review**

### **45 Reviewable decisions**

- (1) This part applies to a decision of the local government or an authorised person regarding an approval, or an application for an approval, made under a local law that makes no provision for the review of decisions made under the local law.
- (2) A decision of the local government or an authorised person under the local law is reviewable unless it is—
  - (a) a decision made by a resolution of the local government; or
  - (b) a decision to dispose of goods that has been implemented; or
  - (c) a decision made on an earlier application under section 46 (Application for review) of this local law.

### **46 Application for review**

- (1) A person who is aggrieved by a reviewable decision<sup>7</sup> may apply to the local government for a review of the decision.
- (2) An application for review of a decision must—
  - (a) be in writing; and
  - (b) state the reasons that the applicant considers the decision should be reviewed; and

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<sup>7</sup> For what constitutes a reviewable decision see section 45 (Reviewable decisions) of this local law.

- (c) be lodged at the public office of the local government within 10 business days after the day on which notice of the decision was given to the applicant or within a further period allowed by the local government (before or after the end of that period).

## **47 Carrying out review**

- (1) The local government must either—
  - (a) carry out a review at a meeting of the local government; or
  - (b) have the review carried out by an authorised person.
- (2) An authorised person who carries out a review under section 47(1)(b) (Carrying out review) of this local law must not be the original decision maker and must be a person who is no less senior than the original decision maker.

## **48 Decision on review**

- (1) On completing a review, the local government or authorised person may confirm, vary or reverse the decision under review.
- (2) The local government or authorised person must give the applicant written notice of the result of the review.
- (3) If the local government or authorised person does not decide an application for review within 40 business days after receiving the application, the local government is taken to have confirmed the decision under review.

# **Part 7 Subordinate local laws**

## **49 Subordinate local laws**

- (1) The local government may make a subordinate local law with respect to—
  - (a) a thing as a structure pursuant to the Schedule (Dictionary) of this local law; and
  - (b) a thing as a vehicle pursuant to the Schedule (Dictionary) of this local law; and
  - (c) the qualifications of a person certifying a matter pursuant to the Schedule (Dictionary) of this local law; and

- (d) the information which is to accompany an application pursuant to section 5(2)(c) (Requirements of an application) of this local law; and
- (e) the circumstances in which the local government may waive the requirements of section 5 (Requirements of an application) of this local law pursuant to section 5(3)(c) (Requirements of an application) of this local law; and
- (f) a matter which may be the subject of a certificate signed by the chief executive officer pursuant to section 13(4)(k) (Evidentiary provisions) of this local law; and
- (g) the types of goods that may be disposed of by the local government pursuant to section 41(2)(a)(vi) (Confiscated goods) of this local law.

## **Part 8      Transition, Savings and Repeals**

### **50      Repeals**

The following Local Laws are repealed —

- Local Law No. 1 (Administration) 1999 , gazetted 9 April 1999

## Schedule Dictionary

section 3

**address for service** means in relation to any person—

- (a) that person's usual or last known place of abode or business; or
- (b) the address for service last notified in writing by that person to the local government; or
- (c) the registered office under or for the purposes of any Act which requires the person to have a registered office.

**analyst** means an appropriately qualified person to undertake the analysis of a sample taken under a local law.

**application** includes a request to the local government under a local law.

**approval** means a consent, permit, licence, authorisation, registration, membership or approval under a Local Government Act or a local law and includes all conditions of a consent, permit, licence, authorisation, registration, membership or approval.

**authorised person** means a person who is authorised under the Act by the local government to exercise the powers of an authorised person under a local law

**building** has the meaning given in the *Building Act 1975*.

**charge** means a cost-recovery fee fixed by the local government pursuant to section 97 (Cost-recovery fees) of the Act and a charge for a service or facility, other than a service or facility for which a cost-recovery fee may be fixed, able to be imposed by the local government pursuant to section 262 (Powers in support of responsibilities) of the Act and includes the prescribed fee as specified in a local law.

**chief executive officer** means the person appointed and employed by the local government as its chief executive officer pursuant to section 194 (Appointing a chief executive officer) of the Act

**corporation** means a corporation as defined in the *Corporations Act 2001 (Cth)* and includes an association as defined in the *Associations Incorporation Act 1981*.

**council officer** means—

- (a) an authorised person; and
- (b) an employee of the local government; and
- (c) a person appointed by the local government to a position provided for in a local law; and

(d) a person assisting a person referred to in paragraphs (a), (b) or (c).

**Court** means the court of law which has jurisdiction to deal with offences under this local law.

**costs of sale** includes—

- (a) all costs incurred or to be incurred associated with the sale, collection and transport of the goods; and
- (b) the costs of any work needed to prepare the goods for sale.

**direction** means a written or oral direction given by a council officer pursuant to section 36 (Directions generally) of this local law.

**environmental harm** has the meaning given in the *Environmental Protection Act 1994*.

**environmental nuisance** has the meaning given in the *Environmental Protection Act 1994*.

**executive officer of a corporation** means a person who is concerned with, or takes part in, the corporation's management whether or not the person is a director or the person's position is given the name of executive officer.

**goods** includes an animal, a plant, a vehicle, an advertisement and an article.

**hazard** means a situation in which there is a potential to cause loss whether it be of life, health or property.

**identity card** means—

- (a) if the person is an authorised person the identity card referred to in section 204 (Identity card for authorised persons) of the Act.
- (b) if the person is not an authorised person the identity card issued by the local government.

**knowledge** includes actual or constructive knowledge.

**land** has the meaning given in the *Sustainable Planning Act 2009*.

**legal instrument** means an approval, notice, order, process, summons or other document required or authorised to be given or served to or upon a person under a local law other than legal instruments to which the *Justices Act 1886* applies.

**local government** means Ipswich City Council.

**Local Government Act** has the meaning given in the Act and includes all approvals granted pursuant to Local Government Acts.



**local government area** has the meaning given in the Act.

**local law** has the meaning in the Act, section 26, and includes a subordinate local law.

**multiple approvals** means the local government's approval of a proposal is required under 2 or more local laws or 2 or more provisions of the same local law.

**nuisance** has the meaning given in *Local Law No. 8 (Nuisances and Community Health and Safety) 2013*.

**occupier** of premises means the person who has the control or management of the premises.

**owner** means in the case of—

- (a) premises – the person for the time being entitled to receive the rent for the premises or would be entitled to receive the rent for it if it were let to a tenant at a rent; and
- (b) property other than premises – the person who has a legal or beneficial interest in the property.

**perform work** includes take action to comply with a Local Government Act and includes work required to be performed pursuant to a legal instrument or an approval.

**plant** means any tree, bush, shrub, grass, fungi, algae or other thing terrestrial or aquatic including all natural parts of it or things naturally produced, of, by or from it.

**police officer** has the same meaning as in the *Police Service Administration Act 1990*.

**premises** means any land, building or structure and includes any part thereof.

**prescribed fee** means the fee prescribed by the local government.

**prescribed form** means the form prescribed by the local government.

**prescribed officer** means—

- (a) a council officer; and
- (b) a person appointed as an agent or a contractor of the local government; and
- (c) a police officer.

**property** means premises, a good or other thing.

**proposal** means an act, matter or thing for which the approval of the local government is sought.

**public notice** means a notice published in a newspaper circulating in the local government area.

**public office** has the meaning given in the Act

**recognised qualifications** in a particular field means qualifications specified by a subordinate local law or approved by the local government as appropriate to a person or body that certifies the matter required by a local law.

**representative** means in the case of—

- (a) a corporation – an executive officer, employee or agent of the corporation; or
- (b) an individual – an employee or agent of the individual.

**reserve** means land which is placed under the control of the local government pursuant to legislation.

*Example—*

This would include a stock route placed under the control of the local government as well as protected areas placed under the control of the local government pursuant to the *Nature Conservation Act 1992*.

**state of mind** of a person includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

**structure** includes a structure as defined under the *Building Act 1975* and any other thing specified in a subordinate local law.

**the Act** means the *Local Government Act 2009*

**trust land** means land dedicated as a reserve or granted in trust under the *Land Act 1994* and for which the local government is the trustee under the *Land Act 1994*.

**vehicle** has the meaning given in the *Transport Operations (Road Use Management) Act 1995* and includes anything specified as a vehicle in a subordinate local law.

## Endnotes

### 1 Index to Endnotes

- 2 Date to which amendments incorporated
- 3 Key
- 4 Table of reprints
- 5 List of legislation
- 6 List of annotations

### 2 Date to which amendments incorporated

### 3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation
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amd	= amended
ch	= chapter
def	= definition
div	= division
hdg	= heading
ins	= inserted
om	= omitted
p	= page
pt	= part
renum	= renumbered
rep	= repealed
s	= section
sch	= schedule
sdiv	= subdivision

### 4 Table of reprints

A reprint is issued upon the commencement of an amending instrument. A reprint is given the date of commencement of the amending instrument.

Table of reprints of this local law – no amendments

### 5 List of Legislation

**Original Local Law**

*Local Law No. 1 (Administration) 2013*

date of gazettal 5 July 2013

**6 List of annotations**