

# **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 –
  - (a) is in addition to and does not derogate from, laws regulating land use planning and development assessment; and
  - (b) applies to each of the local government's local laws subject to any specific provision in a local law that expresses a contrary intention.
- (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 or subordinate local law; and

- (c) in respect of any separate approval relating to the proposal that is required under another law –
  - (i) proof that the applicant holds any separate approval relating to the proposal; or
  - (ii) proof that an application has been made for any separate approval relating to the proposal and advice on the status of that application; or
  - (iii) advice on when an application for any separate approval relating to the proposal will be made.
- (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.

## **5A Request for further information**

- (1) The local government may, by written notice, request the applicant to provide further information or clarification of information, documents or materials included in the application.
- (2) The notice under subsection (1) must state—
  - (a) the grounds on which the request is made; and
  - (b) an outline of the facts and circumstances forming the basis for the grounds; and
  - (c) a detailed description of the information requested; and
  - (d) the date, not less than 7 days after the applicant receives the notice, by which the applicant must provide the information.
- (3) If the applicant does not provide the further information by the stated date—
  - (a) the application lapses; and
  - (b) the local government must give the applicant written notice stating that—
    - (i) under this section the application lapses; and
    - (ii) the applicant may make a new application.

- (4) However, the local government may extend the period for the applicant to provide the further information.

## **5B Assessment of proposals**

- (1) 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.
- (2) An authorised person's powers under subsection (1) must be exercised in accordance with section 132 of the Act to the extent the authorised person needs to enter property.

## **6 Determination of an approval**

- (1) If the local government has power under a local law to approve an application, the local government may by written notice to the applicant—
- (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.

## **6A Conditions of approval**

- (1) An approval may be granted on conditions the local government considers appropriate.
- (2) However, the conditions must—

- (a) be reasonably necessary to ensure that the operation and management of the proposal will be adequate to protect public health, safety and amenity; and
  - (b) be consistent with the purpose of any relevant local law or subordinate local law; and
  - (c) require the approval holder to notify the local government in writing of a suspension or cancellation of a relevant approval for the proposal under an Act within 3 days of the relevant approval being suspended or cancelled.
- (3) Subject to subsection (2), the local government may, by subordinate local law, prescribe conditions that must be imposed on an approval or that will ordinarily be imposed on an approval.

## **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 government 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 a nuisance; or
  - (d) ensure that the proposal complies with the Local Government Act and local laws that regulate the proposal; or
  - (e) to allow for works on roads or local government controlled areas; or
  - (f) to improve access to a road; or
  - (g) to improve the efficiency of vehicle or pedestrian traffic.
- (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; or
  - (c) another approval required for the prescribed activity under an Act has been suspended or cancelled;
  - (d) in undertaking the prescribed activity, the approval holder has failed to comply with a local law or an Act;
  - (e) the approval holder has failed to comply with a notice under section 30 or has failed to comply with a stop order under section 30A;
  - (f) the approval was granted because of a document or representation that was –
    - (i) false or misleading; or
    - (ii) obtained or made in another improper way.

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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*).

- (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.

## **9A Amending conditions at request of approval holder**

- (1) An approval holder may apply to the local government to amend the conditions of an approval.
- (2) The application must be written and state –
  - (a) the proposed amendment; and
  - (b) the reasons for it.
- (3) The local government must consider and decide whether to grant or refuse the application.
- (4) If the local government decides to amend the conditions as requested, the local government must, within 14 days of the decision, give the approval holder written notice of the amended conditions and the day that they take effect.
- (5) If the local government refuses to amend the conditions, the local government must give the approval holder written notice of its decision and reasons for the refusal.
- (6) The local government may amend the conditions of the approval under this section without following the procedure in section 10.

## **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) before taking the proposed action, give the holder of the approval a written notice stating—
    - (i) the proposed action and the reasons for the action; and
    - (ii) that the holder of the approval may make written representations to the local government about the proposed action; 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.
- (2) 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 action is necessary – a written notice stating that it has decided not to take any further action; or
  - (b) if the local government is satisfied that the action is necessary – a written notice stating that it has decided to change, cancel or suspend the approval, including details of the change, suspension or cancellation.
- (3) The change, suspension or cancellation of the approval takes effect from the day the written notice was given to the holder of the approval or a later day stated in the notice.

#### **10A Procedure for immediate suspension of approval**

- (1) Despite section 10, the local government may immediately suspend an approval if the local government believes that continuation of the activity by the approval holder poses—
  - (a) an urgent and serious threat to public health or safety; or
  - (b) an urgent and serious risk of property damage or loss of amenity.
- (2) The suspension—
  - (a) can be effected only by the local government giving a notice to the approval holder about the decision to immediately suspend the approval, together with a notice about proposed action under section 10(1)(a); and
  - (b) operates immediately the notices are given to the approval holder; and
  - (c) continues to operate until the earliest of the following happens—
    - (i) the local government cancels the suspension;
    - (ii) the local government gives the approval holder notice under section 10(2) of its decision after it has considered all submissions made within the stated time;
    - (iii) 14 days have passed since the expiry of the stated time for the making of written submissions;

- (iv) 14 days have passed since the approval holder notifies the local government that it has made its final written submissions.

## **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) provide any information that to the person's knowledge is false or misleading with respect to particulars required to be provided 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; or
  - (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 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 or occupier of property, or a person engaged in a particular activity, and 2 or more persons are the owners or occupiers 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 Authorised persons**

#### **21 Appointment**

An authorised person's instrument of appointment<sup>2</sup> must state the local laws, or the provisions of local laws, for which the person is appointed as an authorised person.

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<sup>2</sup> See the Act, chapter 6, part 6, for the power to appoint authorised persons.

**22      Section not used**

**23      Section not used**

**24      Section not used**

**Division 2      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 or an authorised person 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 or an authorised person 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 or an authorised person 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 Compliance notice for contravention of local law or approval condition**

- (1) Subsection (2) applies if an authorised person is satisfied on reasonable grounds that—
  - (a) a person—
    - (i) is contravening a local law or a condition of an approval; or

- (ii) has contravened a local law or a condition of an approval in circumstances that make it likely the contravention will continue or be repeated; and
- (b) a matter relating to the contravention can be remedied; and
- (c) it is appropriate to give the person an opportunity to remedy the matter.

*Examples for paragraph (b) of matters relating to a contravention that can be remedied—*

- If the contravention relates to a person's failure to take action that is required under a local law or a condition of an approval, then the matter can be remedied by the person taking that action.
  - If the contravention relates to a person taking action that is prohibited under a local law or a condition of an approval, then the matter can be remedied by the person stopping that action.
- (2) The authorised person may give a written notice (a **compliance notice**) to the person (the **recipient**) requiring the person to remedy the contravention.<sup>3</sup>
- (3) The compliance notice must state the following—
- (a) the particular provision of the local law or condition of an approval the authorised person believes is being, or has been, contravened; and
  - (b) briefly, how it is believed the provision of the local law or condition of an approval is being, or has been, contravened; and
  - (c) the time by which the recipient must remedy the contravention; and
  - (d) that it is an offence to fail to comply with the compliance notice; and
  - (e) the maximum penalty for failing to comply with the compliance notice.
- (4) The time under subsection (3)(c) must be reasonable having regard to—
- (a) the action required to remedy the contravention; and
  - (b) the risk to public health and safety and the risk of damage to property or loss of amenity posed by the contravention; and
  - (c) how long the recipient has been aware of the contravention.

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<sup>3</sup> Where a compliance notice is given to the owner of a property and requires action to be taken in relation to that property, then it will constitute a remedial notice under the Act, section 138AA.

- (5) The compliance notice may also state the reasonable steps the authorised person considers necessary to remedy the contravention or avoid further contravention.

*Examples of reasonable steps to avoid further contravention—*

- The repetition of a specified action at stated intervals for a certain period.
  - Stopping taking an action that is prohibited by a local law or condition of an approval.
- (6) The compliance notice must include, or be accompanied by, an information notice.
- (7) The recipient must comply with the compliance notice.

Maximum penalty for subsection (7)—50 penalty units.

### **30A Stop orders**

- (1) An authorised person may give a relevant person an order to immediately stop an activity if the authorised person believes that continuation of the activity poses—
- (a) an urgent and serious threat to public health or safety; or
  - (b) an urgent and serious risk of property damage or loss of amenity.
- (2) An order under this section –
- (a) may be given orally or in writing; and
  - (b) operates until the earliest of the following happens –
    - (i) the expiry of the period, of no more than 3 days, specified by the authorised person when the order is given;
    - (ii) the local government immediately suspends the approval for the activity under section 10A.
- (3) An authorised person must confirm an oral order in writing by the next business day following the giving of the order.
- (4) A person who receives an order under this section must comply with the order.

Maximum penalty for subsection (4) – 50 penalty units.

- (5) This section does not affect the local government's powers under another law.
- (6) In this section—

**relevant person** means the approval holder for the activity or an employee or agent of the approval holder currently conducting the activity.

### **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, including by repairing the damage or restoring any damaged structure, object or thing to its original standard.
- (2) The local government may perform work where a person has failed to perform work required to be performed by<sup>4</sup>—
  - (a) section 31(1) (Performance of work and recovery of costs) of this local law; or
  - (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>5</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.
- (4) The local government must dispose of any material of any nature removed by it pursuant to section 31 (Performance of work and recovery of costs) 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 and recovery of costs) of this local law.
- (6) If work to be carried out by the local government under section 31 (Performance of work and recovery of costs) 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>6</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.

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

<sup>6</sup> See the powers contained in Chapter 5, Part 2, Division 2 of the Act

- (7) The local government may recover the cost of action taken under this section as a debt from the person responsible for the activity.
- (8) 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 and recovery of costs) of this local law; or
    - (ii) a compliance notice issued under this local law; or
    - (iii) 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 and recovery of costs) of this local law.

## **32 Section not used**

## **Division 3 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 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; or
  - (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; and
  - (c) third, to the former owner of the goods.
- (6) If no person establishes a valid claim to the amount to which the former owner is entitled under subsection (5)(c) within 6 months of the date of the sale or disposal, the amount becomes the property of the local government.
- (7) This section does not apply to the disposal of goods to the extent that there is an inconsistent provision in legislation<sup>7</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

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<sup>7</sup> See section 38A (Local law about seizing and disposing of personal property), *Local Government Act 2009*

- (b) has applied in writing to the local government for the release from detention of the goods; and
- (c) has provided 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.
- (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—
  - (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, 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.

### **45A Stay of operation of original decision**

- (1) An application for review under this part does not stay the original decision that is the subject of the application.

- (2) However, the applicant may, immediately after being given notice of the original decision, apply to the Magistrates Court for a stay of the original decision.
- (3) The court may stay the original decision to secure the effectiveness of the review.
- (4) A stay may be granted on conditions the court considers appropriate.

#### **46 Application for review**

- (1) A person who is given, or is entitled to be given, notice of a decision under a local law 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
  - (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 —
  - (a) confirm the original decision; or
  - (b) amend the original decision; or
  - (c) substitute another decision for the original decision.
- (2) The local government or authorised person must give the applicant written notice of the result of the review.

- (3) If the local government's decision is not the decision sought by the applicant, the written notice must also state the reasons for the local government's decision.
- (4) 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

**compliance notice** means a compliance notice given under —

- (a) section 30; or
- (b) another local law that authorises the giving of a compliance notice.

**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.

**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.

**information notice**, for a decision, means a written notice stating the following—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the person to whom the notice is given may apply for a review of the decision within 14 days after the notice is given; and
- (d) how to apply for a review.

**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 government controlled area**—

- (a) means land, facilities and other infrastructure owned, held in trust or otherwise controlled by the local government, other than a road; and

*Examples of local government controlled areas—*

- parks, reserves and recreational areas
- conservation parks
- cemeteries
- local government operated library, including mobile libraries
- local government Chambers and local government offices
- jetties
- a mall

- (b) includes part of a local government controlled area.

**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, local law or compliance notice 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** see the *Planning Act 2016*, schedule 2.

**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*.

**road** means—

- (a) a road as defined in the Act, section 59; and
- (b) a State-controlled road in respect of which the chief executive has given written agreement under the *Transport Operations (Road Use Management) Act 1995*, section 66(5)(b) where that act requires such agreement.

**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

### 2 Date to which amendments incorporated

This reprint includes all amendments that commenced operation on or before 1 November 2019

### 3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation
-----	-------------

amd	= amended
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ch	= chapter
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def	= definition
-----	--------------

div	= division
-----	------------

hdg	= heading
-----	-----------

ins	= inserted
-----	------------

om	= omitted
----	-----------

p	= page
---	--------

pt	= part
----	--------

renum	= renumbered
-------	--------------

rep	= repealed
-----	------------

s	= section
---	-----------

sch	= schedule
-----	------------

sdiv	= subdivision
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## **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 –

Reprint No.	Amending Local Law	Date of commencement
1	<i>Local Law (Amending) Local Law No.1 (Administration) 2019</i>	01.11.2019

## **5 List of Legislation**

### **Original Local Law**

*Local Law No. 1 (Administration)*  
2013 date of gazettal 5 July 2013