Mareeba Shire Council

Local Law No. 1 (Administration) 2018

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Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law No. 1 (Administration) 2018*.

2 Purposes and how they are to be achieved

(1) The purposes of this local law are to provide a legal and procedural framework for the administration, implementation and enforcement of the local government's local laws, subordinate local laws and specified regulatory powers under legislation, and to provide for miscellaneous administrative matters.

(2) The purposes are to be achieved by providing for—

(a) consistent and comprehensive processes for the local government to grant and regulate approvals to undertake prescribed activities; and

(b) authorised persons for enforcing local laws; and

(c) review of certain decisions made under local laws; and

(d) enforcement of local laws; and

(e) matters relating to legal proceedings; and

(f) miscellaneous administrative matters relating to meetings, fees, abandoned goods and seized and impounded items.

3 Definitions—the dictionary

The dictionary in schedule 1 defines particular words used in this local law.

4 Relationship with other laws[1]

This local law is—

(a) 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.

Part 2 Approvals for prescribed activities

5 Meaning of *prescribed activity*

Prescribed activity means—

(a) an activity prescribed in part 1 of schedule 2 and defined in part 2 of schedule 2; or

[1] This local law and any subordinate local law made under it do not apply to the extent of any inconsistency with a law of the State or the Commonwealth. See the Act, section 27.

(b) an activity for which a Local Government Act authorises the local government to grant an approval but does not make any other provision, except provision that is consistent with this part, about the process for the local government to grant the approval.

6 Offence to undertake local law prescribed activity without approval

(1) This section applies to a prescribed activity mentioned in section 5(a) or (b).[2]

(2) A person must not undertake the prescribed activity without a current approval granted by the local government.

Maximum penalty for subsection (2)—

(a) for an activity for which no category has been declared by subordinate local law—50 penalty units; or

(b) for a category 1 activity—50 penalty units; or

(c) for a category 2 activity—200 penalty units; or

(d) for a category 3 activity—500 penalty units.

(3) However, a local government may, by subordinate local law, declare that subsection (2) does not apply to a prescribed activity or a particular activity that is within the category of a prescribed activity.

Examples—

- A subordinate local law may declare that subsection (2) does not apply to installation of a specified type of advertising device (for example, a device prescribed as a 'permitted advertising device'). These permitted advertising devices would not require an approval under this part but other types of advertising devices would continue to require an approval.
- A subordinate local law may declare that subsection (2) does not apply to the operation of a camping ground that meets certain criteria (for example, less than a certain size or in a particular location) or complies with certain conditions. A person operating such a camping ground would therefore not require an approval under this part.
- A subordinate local law may declare that subsection (2) does not apply to the establishment or operation of a temporary home in a particular part of the local government's area.

(4) In this section—

category 1 activity means a prescribed activity that is declared as a category 1 activity by a subordinate local law for this definition.

category 2 activity means a prescribed activity that is declared as a category 2 activity by a subordinate local law for this definition.

category 3 activity means a prescribed activity that is declared as a category 3 activity by a subordinate local law for this definition.

current approval means an approval that is in force and has not been suspended at the time the prescribed activity is being undertaken.

[2] For the offence for undertaking a prescribed activity mentioned in section 5(c) without a current approval, see the relevant Local Government Act that provides for the approval.

7 Approvals for prescribed activities to be obtained under this part

An approval required for a prescribed activity must be obtained under this part.

8 Form of application

(1) An application for the local government's approval of a prescribed activity must be made in a form approved by the local government.

Examples of a form approved by the local government—

A written form or an online application process.

(2) The application must be accompanied by—

(a) documents and materials required under a subordinate local law for this paragraph; and

(b) proof that the applicant currently holds any separate approval relating to the prescribed activity that is required under another law; and

(c) the prescribed fee.

Example for paragraph (a)—

The local government may require an application to include site plans, management plans, relevant consents, evidence of public liability insurance etc.

Example for paragraph (b)—

A prescribed activity may require approvals under another Act in relation to development, building, liquor, carriage of goods, business licensing etc.

(3) The local government may, by written notice, request the applicant to provide further reasonable information or clarification of information, documents or materials included in the application.

(4) The notice under subsection (3) 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.

(5) If the applicant does not, without reasonable excuse, 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.

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

(7) A person must not provide information in or in connection with an application that is, to the person's knowledge, false or misleading in a material particular.

Maximum penalty for subsection (7)—20 penalty units.

9 Local government's discretion in granting approvals

(1) The local government may grant an approval for an applicant to undertake a prescribed activity only if it is satisfied that—

(a) if the prescribed activity requires a separate approval under an Act, a law of the Commonwealth or the local government's planning scheme—the separate approval has been granted; and

(b) the proposed operation and management of the prescribed activity is adequate to protect public health, safety and amenity and prevent environmental harm; and

(c) the grant of the approval would be consistent with the purpose of any relevant local law; and

(d) the proposed operation and management of the prescribed activity would be consistent with any additional criteria prescribed for the activity under a subordinate local law for this paragraph; and

(e) if the application relates to trust land—the grant of the approval would be consistent with the terms and conditions of the trust; and

(f) if the application relates to a prescribed activity mentioned in section 5(b)—the grant of the approval would be consistent with any requirements or criteria specified in the local law in relation to the approval; and

(g) if the application relates to a prescribed activity mentioned in section 5(c)—the grant of the approval would be consistent with any requirements or criteria specified in the relevant Local Government Act in relation to the approval.

Example for paragraph (a)—

An application for commercial use of a local government controlled area that is held in trust by the local government under the *Land Act 1994* may require registration of a trustee lease or issue of a trustee permit prior to the approval being granted for commercial use of the area.

(2) The local government may, by written notice to the applicant—

(a) grant the approval unconditionally; or

(b) grant the approval subject to conditions determined in accordance with section 10; or

(c) refuse to grant the approval.

Examples for paragraph (b)—

- If an application 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 guarantee or an insurance bond) to ensure that the damage is made good.
- The local government may grant an approval subject to the standard conditions imposed on the approval pursuant to a subordinate local law made under section 10(3) of this law.

(3) However, the local government's powers in deciding the application are subject to the provisions of any relevant local law.

(4) The local government must give the applicant an information notice if the local government—

(a) refuses to grant the approval; or

(b) grants the approval subject to a non-standard condition.

(5) In this section—

non-standard condition means a condition that is not prescribed under section 10(3) as a condition that must be imposed on an approval or that will ordinarily be imposed on an approval.

10 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 prescribed activity will be adequate to protect public health, safety and amenity and prevent environmental harm; and

(b) be consistent with the purpose of any relevant local law; and

(c) if the approval is for a prescribed activity mentioned in section 5(b)—be consistent with any requirements or criteria specified in the relevant local law in relation to the approval; and

(d) if the approval is for a prescribed activity mentioned in section 5(c)—be consistent with any requirements or criteria specified in the relevant Local Government Act in relation to the approval;

(e) not conflict with the conditions of any other relevant approval issued under an Act; and

(f) require the approval holder to notify the local government in writing of a suspension or cancellation of a relevant approval for the prescribed activity 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.

(4) To remove any doubt, it is declared that a condition of an approval may authorise an act or omission that—

(a) contravenes a noise standard; or

(b) causes an environmental nuisance.[3]

Example for paragraph (a)—

A condition of an approval for operation of a temporary entertainment event may authorise the operation of an amplifier device at specified times that would otherwise be a contravention of the noise standard in the *Environmental Protection Act 1994*, section 440Y.

(5) In this section—

environmental nuisance see *Environmental Protection Act 1994*, section 15.

noise standard see *Environmental Protection Act 1994*, section 440K.

[3] See *Environmental Protection Act 1994*, schedule 1, section 3(b).

11 Compliance with conditions of approval

(1) A holder of an approval must ensure each condition of the approval is complied with.

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

(2) For a prescribed activity mentioned in section 5(b), this section does not apply if the Act that provides for the local government to grant an approval stipulates a penalty for contravening a condition of the approval.

12 Third party certification

(1) In deciding an application under this part, the local government may accept the certificate of a third party certifier as evidence about any application requirement that is mentioned in a subordinate local law for this subsection.

Example—

A subordinate local law under section 9(1)(d) might specify that a criterion to be met by applicants for approval to operate a public swimming pool is a management plan that complies with the Royal Life Saving Society's *Guidelines for Safe Pool Operation*. A subordinate local law under the current section could state that compliance with this requirement is a matter about which a third party certifier may provide certification. In deciding an application, the local government may then accept a certificate of a third party certifier (approved under a subordinate local law pursuant to subsection (2) – e.g. the Royal Life Saving Society) as evidence that this requirement has been met.

(2) In this section—

third party certifier means—

(a) an individual or organisation declared under a subordinate local law for this paragraph as a third party certifier for particular application requirements; or

(b) an individual or organisation that has the qualifications prescribed under a subordinate local law for this paragraph as necessary to provide a certificate about particular application requirements.

application requirement means a matter that the local government must be satisfied about, or have regard to, before granting an application for approval for a prescribed activity.

13 Term of approval

Unless sooner cancelled or suspended, an approval remains in force for—

(a) the term provided for the prescribed activity under a subordinate local law for this paragraph; or

(b) if there is no term provided for under a subordinate local law—one year from the date the approval is granted.

14 Renewal of approval

(1) An approval holder may, before the end of the term of the approval, apply to the local government to renew or extend the approval for—

(a) a further term provided for the prescribed activity under a subordinate local law for this paragraph; or

(b) if there is no term provided for under a subordinate local law—a further term equal to the current term of the approval.

(2) However, an approval holder may not apply to renew or extend the approval where the local government has given the approval holder reasonable written notice that the approval is one of a class of approvals that the local government does not intend to renew or extend.

Example—

The local government might give notice to the approval holder that, in order to prevent environmental harm to an endangered ecosystem, it does not intend to grant, renew or extend any approvals for the prescribed activity in a specified part of the local government area.

(3) The application under subsection (1) must be—

(a) made in a form approved by the local government; and

(b) accompanied by the prescribed fee.

(4) The local government may, by written notice, request the applicant to provide further reasonable information or clarification of information, documents or materials included in the application.

(5) Section 8(4) to (7) applies to the notice as if it was a notice under section 8(3).

(6) The local government may, by written notice to the applicant—

(a) grant the application; or

(b) grant the application and amend the conditions of the approval; or

(c) refuse the application.

(7) In deciding under subsection (6), the local government may have regard to—

(a) the matters mentioned in section 9(1); and

(b) whether the conditions of the approval are being complied with by the applicant.

(8) The local government must give the applicant an information notice if the local government—

(a) refuses the application; or

(b) grants the application and amends the approval to include non-standard conditions.

(9) The local government may amend the conditions of the approval under subsection (6)(b) without following the procedure in section 18.

(10) If an approval holder applies to renew or extend the approval, the approval remains in force until—

(a) if the application is granted, with or without amendment of the conditions—the date the application is granted; or

(b) if the application is refused and the applicant applies for a review of the decision under part 4—the date the applicant is given notice of the review decision; or

(c) if the application is refused and the applicant has not applied for a review of the decision under part 4—14 days after the applicant is given an information notice under subsection (8).

15 Transfer of approval

(1) The holder of an approval together with another person may apply to the local government for transfer of the approval to the other person (the ***proposed transferee***).[4]

(2) However, an approval cannot be transferred under this section if it is of a category declared as non-transferable under a subordinate local law for this subsection.

(3) The application under subsection (1) must be—

(a) made in a form approved by the local government; and

(b) accompanied by the prescribed fee.

(4) The local government may, by written notice, request the applicant to provide further reasonable information or clarification of information, documents or materials included in the application.

(5) Section 8(4) to (7) applies to the notice as if it was a notice under section 8(3).

(6) The local government may grant an application to transfer an approval only if it is satisfied about the matters mentioned in section 9(1).

(7) The local government may, by written notice to the approval holder and the proposed transferee—

(a) grant the application to transfer the approval; or

(b) refuse the application to transfer the approval.

(8) If the local government decides to grant the application to transfer the approval, the local government may amend the existing conditions of the approval.

(9) The local government may amend the conditions of the approval under subsection (8) without following the procedure in section 18.

(10) The local government must state, in the notice given under subsection (7)(a), any amendments to the conditions of the approval and the day that they take effect.

(11) The local government must give the approval holder and the proposed transferee an information notice if the local government—

(a) refuses the application; or

(b) grants the application and amends the approval to include non-standard conditions.

[4] See the Act, section 97, for the power of a local government to fix cost-recovery fees for approvals.

16 Amending conditions at request of approval holder

(1) An approval holder may apply to the local government to amend the conditions of the 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 an information notice.

(6) The local government may amend the conditions of the approval under this section without following the procedure in section 18.

17 Grounds for amending, suspending or cancelling approval

Each of the following is a ground for amending, suspending or cancelling an approval—

(a) amendment, suspension or cancellation is necessary—

(i) for the protection of public health or safety; or

(ii) to prevent environmental harm; or

(iii) to prevent property damage or loss of amenity; or

(iv) to allow for works on roads or local government controlled areas; or

(v) to improve access to a road; or

(vi) to improve the efficiency of vehicle or pedestrian traffic.

(b) another approval required for the prescribed activity under an Act has been suspended or cancelled;

(c) in undertaking the prescribed activity, the approval holder has failed to comply with a local law or an Act;

(d) the approval holder has failed to comply with a condition of the approval;

(e) the approval holder has failed to comply with a notice under sections 26 or 27 that relates to the conduct of the prescribed activity or has failed to comply with a stop order under section 29;

(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.

18 Procedure for amending, suspending or cancelling approval

(1) This section applies if the local government considers there is a ground under section 17 to amend, suspend or cancel an approval (the ***proposed action***).

(2) Before taking the proposed action, the local government must give the approval holder a written notice (the ***show cause notice***) stating—

(a) the proposed action; and

(b) the grounds for the proposed action; and

(c) an outline of the facts and circumstances that are the basis of the grounds; and

(d) if the proposed action is suspension of the approval, the proposed suspension period; and

(e) that the approval holder may make written submissions, within a stated reasonable time of at least 21 days after the notice is given, why the proposed action should not be taken.

(3) If, after considering all submissions made within the stated time, the local government decides that a ground no longer exists to cancel, amend or suspend the approval, the local government must take no further action about the show cause notice and give written notice to the approval holder about the decision.

(4) If, after considering all submissions made within the stated time, the local government still considers there is a ground to take the proposed action, the local government may—

(a) if the proposed action was to amend the approval—amend the approval; or

(b) if the proposed action was to suspend the approval—suspend the approval for no longer than the period stated in the notice; or

(c) if the proposed action was to cancel the approval—amend the approval, suspend it for a period or cancel it.

(5) If the local government decides to amend, suspend or cancel the approval, the local government must give the approval holder an information notice.

(6) The decision takes effect on the day the written notice mentioned in subsection (3) or (5) is given to the approval holder, or if a later day of effect is stated in the notice, the later day.

(7) This section does not limit the power a local government may have apart from this section to amend, suspend or cancel an approval.

19 Procedure for immediate suspension of approval

(1) Despite section 18, the local government may immediately suspend an approval if the local government believes that continuation of the prescribed 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 environmental harm, 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 show cause notice about proposed action under section 18; 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 18(3) or (5) of its decision about the show cause notice;

(iii) 14 days have passed since the expiry of the stated time for the making of written submissions regarding the show cause notice;

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

Part 3 Authorised persons

20 Appointment

An authorised person's instrument of appointment[5] must state the local laws, or the provisions of local laws, for which the person is appointed as an authorised person.

21 Threatening etc an authorised person[6]

A person must not threaten, insult or use abusive language to an authorised person.

Maximum penalty—20 penalty units.

Part 4 Review of decisions

22 Application for review

(1) A person who is given, or is entitled to be given, an information notice for a decision under a local law (an ***original decision***) may apply to the chief executive officer[7] for a review of the decision under this part.[8]

(2) The application (a ***review application***) must be made within 14 days of—

(a) if the person is given an information notice for the decision—the day the

[5] See the Act, chapter 6, part 6, for the power to appoint authorised persons.

[6] See also the Act, section 149, in relation to obstructing a person enforcing a local government Act and section 150 in relation to impersonating an authorised person.

[7] See definition of ***chief executive officer*** in the Act, schedule 4.

[8] Persons who are aggrieved by a local government decision for which they do not receive, and are not entitled to receive, an information notice may seek redress under the local government's complaints process, which is required by the Act, section 268.

person is given the notice; or

(b) if paragraph (a) does not apply—the day the person otherwise becomes aware of the original decision.

(3) However, the local government may, at any time, extend the time for making a review application.

(4) The review application must be in writing and—

(a) accompanied by a statement of the grounds on which the applicant seeks the review of the decision; and

(b) supported by enough information to enable the local government to decide the application.

23 Review decision

(1) The local government must review the original decision within 28 days after receiving a review application and make a decision (the ***review decision***) to—

(a) confirm the original decision; or

(b) amend the original decision; or

(c) substitute another decision for the original decision.

(2) The application must not be dealt with by—

(a) the person who made the original decision; or

(b) a person in a less senior office than the person who made the original decision, unless the original decision was made by the chief executive officer.

(3) The local government must, within 5 days of making the review decision, give the applicant notice of the decision (the ***review notice***).

(4) If the review decision is not the decision sought by the applicant, the review notice must also state the reasons for the review decision.

(5) If the local government does not give the review notice within the 5 days, the local government is taken to have made a review decision confirming the original decision.

24 Stay of operation of original decision

(1) A review application does not stay the original decision that is the subject of the application.

(2) However, the applicant may, immediately after being given the information notice about 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.

Part 5 Enforcement

25 Production of records

(1) This section applies where an authorised person has entered a property under the Act to find out whether the conditions of an approval have been complied with.[9]

(2) The authorised person may require the occupier of the property to produce for inspection records that are required by the conditions of an approval.

(3) A person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—10 penalty units.

26 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[10] a written notice (a ***compliance notice***) to the person (the ***recipient***) requiring the person to remedy the contravention.[11]

(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.

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[9] See the Act, section 132.

[10] See the *Acts Interpretation Act 1954*, sections 39 and 39A, regarding the service of documents on a person.

[11] 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(1).

(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, the risk of damage to property or loss of amenity and the risk of environmental harm posed by the contravention; and

(c) how long the recipient has been aware of the contravention.

(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.[12]

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

27 Compliance notice authorised by local law

(1) This section applies if—

(a) a local law provides that an authorised person may give a compliance notice to a person;[13] and

(b) the authorised person gives[14] a compliance notice to the person (the ***recipient***).[15]

(2) The compliance notice must state the following—

(a) the provision of the local law that authorises the authorised person to give a compliance notice; and

(b) the specified action that the recipient must take to comply with the notice; and

(c) the time by which the recipient must comply with the notice; and

(d) that it is an offence to fail to comply with the notice; and

(e) the maximum penalty for failing to comply with the notice.

(3) The specified action in subsection (2)(b) must not be inconsistent with action required, by a remedial notice, to be taken under another Local Government Act.

(4) The time under subsection (2)(c) must be reasonable having regard to the risk to public health and safety, the risk of damage to property or loss of amenity and the risk of environmental harm that may result from failure to comply with the notice.

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[12] See also sections 17(e) and 18 regarding the local government's power to amend, suspend or cancel an approval where a notice is not complied with, and the Act, section 142, regarding the local government's power to enter property and take action that is required under a remedial notice.

[13] For example, see *Local Law No.4 (Local Government Controlled Areas, Facilities & Roads) 2018*, section 9(1) (Power to require owner of land adjoining road to fence land) and *Local Law No. 3 (Community & Environmental Management) 2018*, section 10(1) (Pest control notices), section 13(2) (Overgrown allotments), section 14(2) (Accumulation of objects and materials on allotments), section 16(2) (Fire hazards), section 19(2) (Community safety hazards).

[14] See also footnote 10.

[15] See also footnote 11.

(5) The compliance notice must include, or be accompanied by, an information notice.

(6) The recipient must comply with the compliance notice.[16]

Maximum penalty for subsection (6)—50 penalty units.

28 Power to remove and cost recovery

(1) This section applies where—

(a) a structure or other material thing has been brought onto a local government controlled area or road in contravention of a local law; or

(b) a structure has been erected or installed in, on, across, under or over a road in contravention of a local law.

(2) An authorised person may seize (by dismantling if necessary) and impound the structure or thing if its immediate removal is necessary—

(a) in the interests of public health or safety; or

(b) to prevent environmental harm, property damage or loss of amenity.

(3) Where subsection (2) does not apply, an authorised person may seize (by dismantling if necessary) and impound the structure or thing if—

(a) the owner, or person in possession, of the structure or thing has not complied with a compliance notice requiring the owner or person to remove it; and

(b) the time for making an application for review of the compliance notice under section 22 has expired.

(4) The local government may recover the cost of action taken under this section as a debt from the person responsible for the activity mentioned in subsection (1).

(5) In this section—

thing does not include an animal.

29 Stop orders

(1) An authorised person may give a relevant person an order to immediately stop a prescribed 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 environmental harm, 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

[16] See also footnote 12.

prescribed activity under section 19.

(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 prescribed activity or an employee or agent of the approval holder currently conducting the prescribed activity.

Part 6 Legal proceedings

30 Defence of reasonable excuse

If a person is charged with an offence involving a contravention of a local law, it is a defence to prove that the person had a reasonable excuse for the contravention.

31 General defence for owners or occupiers of land

In a proceeding under a local law against the owner or occupier of land for an offence relating to an act or omission with respect to the land, it is a defence for the owner or occupier to prove that—

(a) the act or omission occurred without the owner's or occupier's knowledge or consent; and

(b) the owner or occupier could not, by reasonable diligence, have prevented the act or omission.

32 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*.

33 Rewards

(1) The local government may, by public notice, offer a reward for information leading to the conviction of 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 resolution of the local government.

Part 7 Miscellaneous

34 Maintenance of good order at meetings

(1) A person who is not a member of the local government or a local government committee must not obstruct the proper conduct of a meeting of the local government or committee.

Maximum penalty for subsection (1)—20 penalty units.

(2) If a person (other than a member) obstructs the proper conduct of a meeting of the local government or committee, the chairperson may ask the person to withdraw from the meeting place.

(3) A person asked to withdraw from a meeting place under subsection (2) must immediately withdraw from the place and remain away until the end of the meeting or for a lesser period fixed by the chairperson.

Maximum penalty for subsection (3)—20 penalty units.

(4) If a person contravenes subsection (3), an authorised person may, at the request of the chairperson, exercise reasonable force to remove the person, and keep the person away, from the meeting place.

35 Fees

(1) If a local law provides for payment of a fee, and does not itself fix the amount of the fee, the fee is to be fixed by resolution under the Act, chapter 4, part 2.

(2) A resolution fixing a fee may provide for the reimbursement of the fee in appropriate circumstances.

Example—

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

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

36 Abandoned goods

(1) This section applies where an authorised person considers on reasonable grounds that goods have been abandoned in a local government controlled area or on a road.

(2) The authorised person may seize and impound the goods.

37 Dealing with seized and impounded items

(1) This section applies where—

(a) an authorised person has exercised a power under a local law to seize and impound a structure, thing or goods (an ***impounded item***);[17] or

(b) the local government has impounded an item that has been delivered into its custody pursuant to a local law (also an ***impounded item***) and the local law states that this section is to apply.

(2) However, this section does not apply to an impounded item that is an animal[18]

(3) If the impounded item is perishable, it may be immediately disposed of as the chief executive officer directs and the proceeds applied in accordance with subsection (6).

(4) A person may reclaim the impounded item if—

(a) written application is made to the chief executive officer; and

(b) proof is produced to the satisfaction of the chief executive officer that the applicant is the owner of the item; and

(c) the applicant pays the prescribed fee for the impounding of the item.

(5) At the expiry of 1 month since the date of impounding, the impounded item is forfeited to the local government, which may dispose of the item—

(a) if it has no commercial value or has a value that would not cover the costs of sale of the item—as the chief executive officer directs; or

(b) by sale through—

(i) public auction or tender, following an advertisement published at least 14 days before the date of the proposed sale; or

(ii) an agent of the local government; or

(iii) an enterprise owned by the local government; or

(c) if it has been offered for sale under paragraph (b) but has not been sold within a reasonable period—as the chief executive officer directs.

(6) The proceeds of the sale or disposal of the impounded item must be applied—

(a) firstly, towards the costs of the sale or disposal; and

(b) secondly, towards the prescribed fee for impounding the impounded item; and

(c) thirdly, to the former owner of the impounded item.

(7) If no person establishes a valid claim to the amount to which the former owner is entitled under subsection (6)(c) within 1 year of the date of the sale or disposal, the amount becomes the property of the local government.

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[17] See, for example, section 28 in relation to structures or things brought onto a local government controlled area or road in contravention of a local law and section 36 in relation to abandoned goods.

[18] See *Local Law No.2 (Animal Management) 2018*, part 4, in relation to the seizure of animals. See the *Animal Management (Cats and Dogs) Act 2008* in relation to the seizure of regulated dogs.

38 Repeal

This Local Law repeals—

(a) *Mareeba Shire Council Local Law No. 1 (Administration) 2011;* and

(b) *Mareeba Shire Council Local Law No. 2 (Animal Management) 2011;* and

(c) *Mareeba Shire Council Local Law No. 3 (Community and Environmental Management) 2011;* and

(d) *Mareeba Shire Council Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2011;* and

(e) *Mareeba Shire Council Local Law No. 5 (Parking) 2011.*

Part 8 Subordinate local laws

39 Subordinate local laws

The local government may make subordinate local laws about—

(a) prescribed activities in respect of which the requirement for an approval does not apply;[19] and

(b) the categories of prescribed activities for the purposes of maximum penalties;[20] and

(c) the documents and materials that must accompany an application for an approval;[21] and

(d) additional criteria for the granting of approvals for prescribed activities;[22] and

(e) the conditions that must be imposed on an approval or that will ordinarily be imposed on an approval;[23] and

(f) application requirements for which a third party certifier's certificate may be accepted by the local government;[24] and

(g) the individuals or organisations that are declared as third party certifiers for particular application requirements;[25] and

(h) the qualifications that are necessary for an individual or organisation to provide a third party certificate about particular application requirements;[26] and

(i) the term for which an approval for a prescribed activity remains in force;[27] and

(j) the further term for which an approval for a prescribed activity may be

[19] See section 6(3).
[20] See section 6(4).
[21] See section 8(2)(a).
[22] See section 9(1)(d).
[23] See section 10(3).
[24] See section 12(1).
[25] See section 12(2), definition of ***third party certifier,*** paragraph(a).
[26] See section 12(2), definition of ***third party certifier,*** paragraph(b).
[27] See section 13(a).

renewed or extended;[28] and

(k) categories of approvals that are non-transferable;[29] and

(l) complementary accommodation prescribed as appropriate for caravan parks;[30] and

(m) a State-controlled road to which this local law applies;[31] and

(n) public place activities prescribed as regulated activities on local government controlled areas and roads.[32]

[28] See section 14(1)(a).
[29] See section 15(2).
[30] See schedule 1, definition of ***complementary accommodation***, paragraph (b).
[31] See schedule 1, definition of ***road***, subparagraph (b)(i).
[32] See schedule 2, part 2, definition of ***regulated activities on local government controlled areas and roads***, paragraph (c).

Schedule 1 Dictionary

Section 3

amend for an approval, includes varying a condition, removing a condition or adding a condition.

approval includes a consent, permission, licence, permit or authorisation.

authorised person see the Act, schedule 4[33].

caravan see *Residential Tenancies Act 1994*, section 3A.

complementary accommodation means—

(a) accommodation in an on-site caravan, a cabin or a tent or other structure that can be readily assembled and disassembled; or

(b) other accommodation prescribed under a subordinate local law for this paragraph as appropriate to caravan parks.

compliance notice means a compliance notice given under—

(a) section 26; or

(b) another local law that authorises the giving of a compliance notice.

disturbance, of human remains, includes interfering with remains, removal of remains and opening of a site of burial

DOGIT land means land that is DOGIT land under the *Aboriginal Land Act 1991*, section 13, or the *Torres Strait Islander Land Act 1991*, section 12.

entertainment includes recreation and amusement.

entertainment event means an event that is open to the public for entertainment whether or not a charge for admission is made and whether or not the person who controls admission to the place reserves a right to refuse admission.

environmental harm see *Environmental Protection Act 1994*, section 14.

goods does not include animals.

human remains means the body or part of the body of a deceased person.

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.

Local Government Act see the Act, schedule 4.

local government cemetery means a cemetery under the control of the local government, including a cemetery located on land owned by the local government or on land for which the local government is the trustee.

[33] See also section 20.

***local government controlled area*—**

(a) A local government controlled area *means land, facilities and other infrastructure owned, held in trust or otherwise controlled by the local government, other than a road.*

Examples of local government controlled areas—

- parks, reserves and gazetted foreshores
- camping grounds or caravan parks on land owned or controlled by the local government
- local government swimming pools
- cemeteries
- Council Chambers and local government offices
- jetties.

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

(c) A local government controlled area does not include a residential lot on DOGIT land.

(d) A local government controlled area *means land, facilities and other infrastructure owned, held in trust or otherwise controlled by the local government, other than a road.*

network connection see the Act, section 35(2).

prescribed activity see section 5.

prescribed fee means a cost-recovery fee fixed by the local government, by local law or by resolution, under the Act[34].

property see *Acts Interpretation Act 1954,* section 36.

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

public place see the Act, section 125(5).

residence means human habitation on a short-term or long-term basis.

review decision see section 23(1).

road means—

(a) a road as defined in the Act, section 59; and

(b) a State-controlled road—

(i) prescribed under a subordinate local law for this subparagraph as a road to which this local law applies unless otherwise provided; and

(ii) in respect of which the chief executive has given written agreement under the *Transport Operations (Road Use Management) Act 1995*, section 66(5)(b).

shared facility accommodation means accommodation occupied or available for occupation by residents, in return for payment, on the basis of residents sharing 1 or more of the following facilities—

[34] See the Act, section 97.

(a) dormitories or bedrooms;

(b) toilets;

(c) bathrooms, showers or other bathing facilities;

(d) laundries;

(e) dining facilities;

(f) cooking facilities;

(g) recreation facilities.

show cause notice see section 18(2).

the Act means the *Local Government Act 2009*.

Schedule 2 Prescribed activities

Section 5

Part 1 Prescribed activities

alteration or improvement to local government controlled areas and roads

commercial use of local government controlled areas and roads

establishment or occupation of a temporary home

installation of advertising devices

keeping of animals

operation of camping grounds

operation of cane railways

operation of caravan parks

operation of cemeteries

operation of public swimming pools

operation of shared facility accommodation

operation of temporary entertainment events

undertaking regulated activities regarding human remains

undertaking regulated activities on local government controlled areas and roads

Part 2 Definitions of prescribed activities

alteration or improvement to local government controlled areas and roads[35] means—

1 *Alteration or improvement to local government controlled areas and roads* means—

(a) installing, changing, damaging or removing a structure in a local government controlled area or on a road; or

(b) planting, clearing or damaging of vegetation in a local government controlled area or on a road.

[35] Where a local government controlled area comprises land held on trust by the local government under the *Land Act 1994*, the local government must take account of, and give precedence to, its rights, powers and responsibilities as a trustee under that Act.

2 *Alteration or improvement to local government controlled areas and roads* does not include an alteration or improvement—

(a) that constitutes development under the Planning Act[36]; or

(b) for which a tree clearing permit is required under the *Vegetation Management Act 1999*; or

(c) that involves a network connection; or

(d) for which written approval of the local government is required under section 75 of the Act.

commercial use of local government controlled areas[37] ***and roads*** means the use of a local government controlled area or road for soliciting or carrying on the supply of goods and services (including food or drink) for profit, but does not include the following—

(a) the provision of a public passenger service under the *Transport Operations (Passenger Transport) Act 1994*;

(b) a business on part of a road if the person carrying on the business is authorised by a permit under the *Land Act 1994* to occupy the relevant part of the road for carrying on the business;

(c) a business that a person is authorised to carry on under the *Transport Infrastructure Act 1994*;

(d) using a road for a particular purpose if the use constitutes development under the Planning Act;

(e) operation of a temporary entertainment event;

(f) undertaking a regulated activity on a local government controlled area or road where the activity is the holding of a public place activity.

establishment or occupation of a temporary home means the erection, construction, installation, positioning or placement of a structure used or intended for temporary use as a place of residence but does not include—

(a) a structure for erection which is constituted as development under the Planning Act; or

(b) the establishment or the occupation of a temporary home on or in a camping ground or caravan park.

installation of advertising devices means the installation, erection or display of an advertisement or sign that is visible from a road or other public place.[38]

keeping of animals means the keeping of an animal or animals for which an approval is required under *Local Law No.2 (Animal Management) 2016.*

operation of camping grounds means to permit access to, or use of, a commercial camping ground but does not include a caravan park.

[36] See the definition of ***Planning Act*** in the Act, schedule 4.
[37] See footnote 36.
[38] See the Act, section 37(5), regarding the relationship between a local law about advertising devices and the local government's planning scheme.

operation of cane railways means the operation of a tramway or railway—

(a) operated, entirely or partly, on an access right under the *Sugar Industry Act 1999*, chapter 2, part 4[39]; and

(b) used, or proposed to be used, to transport sugar cane, sugar or sugar cane by-products; and

(c) that does not transport passengers or other freight for reward.

operation of caravan parks means to operate, on a commercial basis, a place for parking and residing in caravans, including a place that provides also for complementary accommodation.

operation of cemeteries means to operate a place for disposing of human remains by—

(a) burial; or

(b) cremation; or

(c) placement in a columbarium, mausoleum or vault.

operation of public swimming pools means the operation of a swimming pool that is made available for use to—

(a) members of the public or a section of the public; or

(b) participants in organised swimming or diving competitions or in training for organised swimming or diving competitions; or

(c) persons who have a commercial relationship with the owner of the pool.

operation of shared facility accommodation means the provision of shared facility accommodation to holiday makers or travellers, but does not include accommodation in a hotel or motel.

operation of temporary entertainment events means the opening to the public, or the preparation for opening to the public, of an entertainment event and for which the opening to the public does not constitute development under the Planning Act.

undertaking regulated activities regarding human remains means undertaking one of the following activities—

(a) disturbance of human remains buried outside a cemetery; or

(b) burial or disposal of human remains (excluding cremated remains) outside a cemetery; or

(c) disturbance of human remains in a local government cemetery.

undertaking regulated activities on local government controlled areas[40] ***and roads*** means undertaking one of the following activities on a local government controlled area or road—

(a) driving or leading of animals to cross a road; or

(b) depositing of goods or materials; or

[39] *Sugar Industry Act 1999*, chapter 2 (Supply contracts and cane access rights), part 4 (Cane access, harvesting and mill supply).
[40] See footnote 36.

(c) holding of a public place activity prescribed under a subordinate local law for this paragraph, excluding the operation of a temporary entertainment event.

Example for paragraph (c)—A subordinate local law may prescribe that a display or information booth in a public park or on a footpath is a regulated activity.