

Mornington Shire Council Local Law No. 1 (Administration) 2016

Contents

- Part 1 Preliminary 3**
 - 1 Short title3
 - 2 Purposes3
 - 3 Definitions—the dictionary.....3
 - 4 Relationship with other laws3

- Part 2 Approvals for prescribed activities 3**
 - 5 Offence to undertake prescribed activity without an approval3
 - 6 Application for approvals of prescribed activities4
 - 7 Deciding an application for an approval5
 - 8 Conditions of approval.....5
 - 9 Compliance with conditions of approval6
 - 10 Changing conditions of an approval6
 - 11 Renewal or transfer of an approval7
 - 12 Independent certification8
 - 13 Term of approval9
 - 14 Amendment, cancellation or suspension of an approval.....9
 - 15 Procedure for immediate suspension of approval10

- Part 3 Authorised persons 10**
 - 16 Appointment10
 - 17 Threatening etc. an authorised person.....10

- Part 4 Review of decision 11**
 - 18 Application for review11
 - 19 Review decision.....11
 - 20 Stay of operation of original decision12

- Part 5 Enforcement 12**
 - 21 Production of records12
 - 22 Compliance notice12
 - 23 Power to remove and cost recovery13
 - 24 Stop orders14

- Part 6 Legal proceedings..... 14**
 - 25 Defence of lawful excuse14
 - 26 General defence for owners or occupiers of land15
 - 27 Joint and several liability15

	28	Rewards	15
Part 7		Miscellaneous.....	15
	29	Maintenance of good order at meetings.....	15
	30	Fees.....	16
	31	Abandoned goods	16
	32	Dealing with seized and impounded items.....	16
Part 8		Subordinate local laws	17
	33	Subordinate local laws	17
Part 9		Transition, savings and repeals.....	18
	34	Repeals	18
Schedule 1		Dictionary.....	19
Schedule 2		Prescribed activities	23

Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law No. 1 (Administration) 2016*.

2 Purposes

The purpose of this local law is to provide a legal and procedural 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 schedule 1 defines particular words used in this local law.

4 Relationship with other laws¹

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 and subordinate local laws subject to any specific provision in a local law that expresses a contrary intention.

Part 2 Approvals for prescribed activities

5 Offence to undertake prescribed activity without an approval

- (1) A person must not undertake a prescribed activity without an approval granted by the local government.

Maximum penalty—

- (a) for a category 1 activity—10 penalty units;
 - (b) for a category 2 activity—20 penalty units;
 - (c) for a category 3 activity—50 penalty units; or
 - (d) for an activity for which no category has been declared by subordinate local law—20 penalty units.
- (2) Subsection (1) does not apply to an activity for which a Local Government Act, other than a local law, authorises the local government to grant an approval.

Example—

It will not apply to approvals required under section 75 of the *Local Government Act 2009*.

- (3) The local government may, by subordinate local law, declare that subsection (1) does not apply to a particular or category of prescribed activity.

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.

Example—

A subordinate local law may declare that subsection (1) 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 that complies with certain conditions. A person operating such a camping ground would therefore not require an approval under this part.

6 Application for approvals of prescribed activities

- (1) An application for an approval of a prescribed activity must be—
 - (a) made in the form approved by the local government;
 - (b) made by the person who will be operating the prescribed activity;
 - (c) include—
 - (i) the name, address and contact telephone number of the applicant;
 - (ii) if the applicant is a corporation, the Australian company number; and
 - (iii) full details of the prescribed activity; and
 - (d) be accompanied by—
 - (i) proof that the applicant currently holds any separate approval required under another law for the prescribed activity;
 - (ii) the prescribed fee;
 - (iii) if the applicant is not the owner of the premises on which the prescribed activity is to be operated, the owner's written consent; and
 - (iv) such other information, materials or documents as the local government may prescribe by subordinate local law.

Example for paragraph (d)(i)—

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

- (2) The local government may, by written notice, request the applicant to provide further reasonable information or clarification of the information, documents or materials included in or accompanying the application.
- (3) If an application is not made in the form or include the information required in subsection (1), the application is not properly made and the local government is not required to consider it.
- (4) If, without reasonable excuse, the applicant does not provide the further information within 14 days from when a written notice is given in subsection (2), the application lapses and the local government is not required to consider it.
- (5) The local government, in its discretion, may extend the period for receipt of information in subsection (3).
- (6) A person must not provide information in or in connection with an application that is, to the person's knowledge, false or misleading.

Maximum penalty for subsection (5)—20 penalty units.

7 Deciding an application for an approval

- (1) By written notice to the applicant, the local government may —
 - (a) approve an application for an approval unconditionally; or
 - (b) approve an application for an approval subject to conditions; or
 - (c) refuse to grant the approval.

Example 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 any damage is made good.

- (2) The criteria which the local government will consider in deciding an application for an approval to undertake a prescribed activity are—
 - (a) if the prescribed activity requires an approval under another law, whether that separate approval is held;
 - (b) the effect of the prescribed activity on the public health, safety or the amenity of the surrounding area;
 - (c) any environmental harm or nuisance which is likely to be caused by the prescribed activity;
 - (d) the physical suitability of the land for the proposed use;
 - (e) if the application relates to land held in trust by the local government, whether the grant of the approval is consistent with the terms and conditions of the trust;
 - (f) whether the prescribed activity is consistent with any additional criteria prescribed for the activity under a subordinate local law; and
 - (g) any other matters which the local government considers relevant to deciding the application.

Example for paragraph (e)—

An application for commercial use of a local government controlled area that is held in trust by the local government may require registration of a lease prior to the approval being granted for commercial use of the area.

- (3) If the local government refuses an application for an approval it must give the applicant an information notice.

8 Conditions of approval

- (1) An approval may be granted on such conditions as the local government considers appropriate.
- (2) In deciding on conditions of an approval, the local government must have regard to whether the conditions—
 - (a) are reasonably necessary to ensure that the operation and management of the prescribed activity will be adequate to protect the public health, safety or amenity of the surrounding area or to prevent environmental harm or nuisance;
 - (b) will be consistent with the purpose of any relevant local law;

- (c) if the approval is for a prescribed activity for which a Local Government Act authorises the local government to grant an approval—are consistent with any requirements or criteria specified in that relevant Local Government Act; and
 - (d) conflict with the conditions of any other relevant approval issued under an Act.
- (3) The local government may specify in a subordinate local law, standard conditions that will be imposed on an approval for a prescribed activity.
 - (4) Subject to subsection (5), any conditions specified in accordance with subsection (3) are deemed to be conditions of the relevant approval regardless of whether or not they are specified on the approval.
 - (5) To the extent of any inconsistency between the standard conditions referred to in subsection (3) and the conditions of approval specified on an approval, the conditions specified on the approval will prevail.

9 Compliance with conditions of approval

- (1) An approval holder must ensure that each condition of an approval is complied with.

Maximum penalty:

- (a) for failure to comply with a condition of an approval for a category 1 activity – 10 penalty units;
 - (b) for failure to comply with a condition of an approval for a category 2 activity – 20 penalty units;
 - (c) for failure to comply with a condition of an approval for a category 3 activity – 50 penalty units; and
 - (d) for failure to comply with a condition of an approval of an activity for which no category has been specified – 20 penalty units.
- (2) This section does not apply to an activity for which a Local Government Act, other than a local law, authorises the local government to grant an approval.

10 Changing conditions of an approval

- (1) An approval holder may apply to the local government to amend the conditions of an approval.
- (2) The application must —
 - (a) be made in the form approved by the local government;
 - (b) be accompanied by the prescribed fee; and
 - (c) include details of the proposed amendment and the reason for seeking the amendment.
- (3) The local government must decide whether to grant or refuse the application.
- (4) If the local government decides to amend the conditions as requested, the local government must give the approval holder a written notice of the amended conditions.

- (5) The amended conditions will take effect when the local government gives the written notice of the amended conditions under subsection (4).
- (6) If the local government refuses to amend the conditions, the local government must give the approval holder an information notice.
- (7) The local government may unilaterally change a condition of an approval if the local government is satisfied the change is urgently necessary to prevent—²
 - (a) harm to human health or safety or personal injury;
 - (b) property damage or a loss of amenity;
 - (c) environmental harm; or
 - (d) a nuisance.
- (8) To change a condition of an approval under subsection (7), the local government must—
 - (a) give the approval holder a written notice stating—
 - (i) the proposed change and the reasons for the change;
 - (ii) that the approval holder may make a written submission to the local government about the proposed change; and
 - (iii) the time, at least 14 days after the notice is given to the approval holder, within which any written submission may be made; and
 - (b) consider any written submission made by the approval holder within the time stated in the notice.
- (9) After considering any written submission made by the approval holder, the local government must give to the approval holder—
 - (a) if the local government is not satisfied the change is necessary — a written notice stating that it has decided not to change the conditions; or
 - (b) if the local government is satisfied that the change is necessary — a written notice stating that it has decided to change the conditions and the details of the changed conditions.
- (10) The changed conditions take effect from the day the notice in subsection (9)(b) is given to the holder of the approval.

11 Renewal or transfer of an approval

- (1) The holder of a approval may make an application to the local government to—
 - (a) renew the approval; or
 - (b) transfer the approval to another person.
- (2) An application to renew or transfer an approval must be—
 - (a) made—
 - (i) by the holder of the approval;
 - (ii) before the expiration of the approval; and
 - (iii) in the form approved by the local government; and

² 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* (Qld)).
CHW_133116_2859722

- (b) accompanied by—
 - (i) the prescribed fee;
 - (ii) for a transfer of approval, the consent of the transferee; and
 - (iii) such other information as is reasonably requested by the local government.
- (3) The local government may decide to—
 - (a) renew or transfer an approval—
 - (i) where the undertaking of the prescribed activity complies with the conditions of the approval and the provisions of this and any relevant local law or subordinate local law; and
 - (ii) subject to such conditions as the local government considers appropriate; or
 - (b) refuse to renew or transfer the approval.
- (4) If the local government refuses to renew or transfer the approval, the local government must give the approval holder an information notice.
- (5) Subject to section 14 of this local law, if an application to renew an approval is made under this section, the approval is taken to continue in force from the day that it would, apart from this section, have expired until the day the application is decided under subsection (3).
- (6) The local government may prescribe, by subordinate local law, categories of prescribed activities for which an approval cannot be transferred.

12 Independent certification

- (1) In deciding an application for an approval, the local government may, in its discretion, accept the certificate of an independent certifier as evidence about any information, document or materials required to be included in or to accompany the application.

Example—

The local government 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*. In deciding an application, the local government may accept a certificate of an independent certifier as evidence that this requirement has been met.

- (2) In this section—

independent certifier means—

 - (a) an individual or organisation who the local government accepts as being a certifier for particular application requirements; or
 - (b) an individual or organisation that has the qualifications accepted by the local government as necessary to provide a certificate about a particular matter that the local government must be satisfied about, or have regard to, before granting an application for an approval for a prescribed activity.

13 Term of approval

Unless sooner cancelled or suspended, an approval for a prescribed activity or a renewal of an approval remains in force for—

- (a) the term specified in the approval or renewal of approval; or
- (b) if there is no term provided for in the approval or renewal of approval—one year from the date the approval or renewal of approval is granted.

14 Amendment, cancellation or suspension of an approval

- (1) The local government may amend, cancel or suspend an approval where—
 - (a) the approval holder agrees to the amendment, cancellation or suspension;
 - (b) the local government reasonably considers the amendment, cancellation or suspension is necessary—
 - (i) for the protection of public health or safety;
 - (ii) to prevent property damage or a loss of amenity;
 - (iii) to prevent environmental harm;
 - (iv) to prevent a nuisance;
 - (v) to allow for works on roads or local government controlled areas;
 - (vi) to improve access to a road; or
 - (vii) to improve the efficiency of vehicle or pedestrian traffic;
 - (c) the approval holder contravenes an Act or a condition of the approval or a local law in undertaking the prescribed activity;
 - (d) another approval required for the prescribed activity under an Act has not been obtained or has been suspended or cancelled;
 - (e) the approval holder has failed to comply with a condition of the approval;
 - (f) the approval was granted on the basis of false or misleading information;
 - (g) the approval holder has failed to comply with a compliance notice issued with respect to the prescribed activity under section 22; or
 - (h) the approval holder has failed to comply with a stop order issued with respect to the prescribed activity under section 24.
- (2) If the local government considers it is necessary to amend, cancel or suspend an approval, other than with the agreement of the approval holder under subsection 14(1)(a), the local government must give the approval holder a written notice (a **show cause notice**) stating—
 - (a) the reasons for the proposed action to amend, cancel or suspend the approval;
 - (b) if the proposed action is suspension, the proposed suspension period; and
 - (c) that the approval holder may make a written submission to the local government about why the proposed action should not be taken within a stated time, at least 14 days after the notice is given to the approval holder.

- (3) After considering any written submissions made by the approval holder, the local government must give to the approval holder—
 - (a) a written notice stating whether or not the local government has decided to amend, suspend or cancel the approval; and
 - (b) if the local government decides to amend, suspend or cancel the approval, an information notice.
- (4) The local government's decision takes effect from the day that written notice is given to the approval holder under subsection (3).

15 Procedure for immediate suspension of approval

- (1) Despite section 14, the local government may immediately suspend an approval if the local government considers that the 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, loss of amenity or nuisance.
- (2) The suspension—
 - (a) can only be effected 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 the proposed action under section 14(2); and
 - (b) operates immediately after the notices referred to in paragraph (a) 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 by written notice to the approval holder; or
 - (ii) the local government gives the approval holder notice under section 14(3) of its decision about the show cause notice,

Part 3 Authorised persons

16 Appointment

- (1) The chief executive officer may appoint a person under the Act to be an authorised person for these local laws.³
- (2) An authorised person's instrument of appointment must state the local laws for which the person is appointed as an authorised person.

17 Threatening etc. an authorised person⁴

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

Maximum penalty—20 penalty units.

³ See the Act, Chapter 6, Part 6, for the power to appoint authorised persons.

⁴ 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.

Part 4 Review of decision

18 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 local government for a review of the decision under this part.⁵
- (2) The application (a **review application**) must be made within 14 days from
 - (a) if the person is given an information notice for the decision—the day the 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) The local government may extend the time referred to in subsection (2) for making a review application.
- (4) The review application must be in writing and be—
 - (a) accompanied by a statement of the grounds on which the applicant seeks a review of the decision; and
 - (b) supported by enough information to enable the local government to decide the application.

19 Review decision

- (1) The local government must review the original decision and make a decision, (the **review decision**), within 28 days from the date of receiving a review application to—
 - (a) confirm the original decision;
 - (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 position 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.

⁵ 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.

20 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 such conditions as the Court considers appropriate.

Part 5 Enforcement

21 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 or are being complied with.⁶
- (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.

22 Compliance notice

- (1) If—
 - (a) an authorised person is satisfied that:
 - (i) a person—
 - A) is contravening a local law or an approval; or
 - B) has contravened a local law or an approval in circumstances that make it likely the contravention will continue or be repeated; and
 - (ii) the contravention can be remedied; and
 - (iii) it is appropriate to give the person an opportunity to remedy the contravention; or
 - (b) a local law provides that an authorised person may give a compliance notice to a person,⁷

the authorised person may give⁸ a written notice (a **compliance notice**) to the person (the **recipient**) requiring the person to remedy the contravention.⁹

⁶ See the Act, section 132.

⁷ For example, see *Local Law No. 3 (Community & Environmental Management) 2016*, 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).

⁸ See the *Acts Interpretation Act 1954* (Qld), sections 39 and 39A, regarding the service of documents on a person.

Examples for paragraph (a)(ii) 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 compliance notice must state the following—

(a) either—

- (i) the particular provision of the local law or approval the authorised person is satisfied is being, or has been, contravened; or
- (ii) the provision of the local law that authorises the authorised person to give a compliance notice; and

(b) briefly, how it is believed the provision of the local law or approval is being, or has been, contravened;

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

(d) the time by which the recipient must remedy the contravention;

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

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

(3) The time under subsection (2)(c) must be reasonable having regard to—

(a) the action required to comply with the notice;

(b) the risk to public health and safety, the risk of damage to property or loss of amenity and the risk of environmental harm or nuisance that may result from a failure to comply with the notice; and

(c) when the contravention occurred.

(4) The recipient must comply with the compliance notice.¹⁰

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

23 Power to remove and cost recovery

(1) This section applies where—

(a) a structure or other material thing, other than an animal, 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), remove and impound the structure or thing if—

⁹ 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 138(2).

¹⁰ See also section 14 regarding the local government's power to amend, suspend or cancel an approval where a notice is not complied and with section 142 of the Act, regarding the local government's power to enter property and take action that is required under a remedial notice.

- (a) its immediate removal is necessary—
 - (i) in the interests of public health or safety; or
 - (ii) to prevent environmental harm, property damage or loss of amenity; or
 - (b) a compliance notice has been given requiring the owner or person in possession of a structure or thing to remove it—
 - (i) the owner, or person in possession of the structure or thing, has not complied with the compliance notice; and
 - (ii) the time for making an application for review of the compliance notice under section 18 has expired.
- (3) 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).

24 Stop orders

- (1) An authorised person may order a person to immediately stop a prescribed activity, whether or not the local government has given an approval for the prescribed activity, if the authorised person believes that the 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, loss of amenity or nuisance.
- (2) An order under this section—
- (a) may be given verbally or in writing; and
 - (b) operates until the earliest of the following happens—
 - (i) the expiry of the period, of no more than 5 days, specified by the authorised person when the order is given; or
 - (ii) the local government cancels or suspends the approval for the prescribed activity under sections 14 or 15.
- (3) An authorised person must confirm a verbal order in writing within 5 days following the giving of the order.
- (4) A person who receives an order under this section must comply with the order.
Maximum penalty —50 penalty units.
- (5) This section does not affect the local government's powers under any other law.

Part 6 Legal proceedings

25 Defence of lawful 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 lawful excuse for the contravention.

26 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.

27 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*.

28 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

29 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 leave the meeting place.
- (3) A person asked to leave a meeting place under subsection (2) must immediately leave the place and remain away until the end of the meeting or for such lesser period specified 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.

- (5) For the purposes of this section "obstruct" includes to disrupt, hinder or interrupt verbally or by conduct.

30 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—

A person pays a fee for an approval with a 1 year term 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 approval holder is entitled 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 its discretion, waive or partially remit a fee.

31 Abandoned goods

- (1) This section applies where an authorised person considers, on reasonable grounds, that goods¹¹ have been abandoned in a local government controlled area or on a road.
- (2) The authorised person may seize and impound the goods.
- (3) This section does not apply if the abandoned good is a vehicle that has been abandoned on a road.¹²

32 Dealing with seized and impounded items

- (1) Despite any other provision of the local laws, if an impounded item is perishable, it may be immediately disposed of as the chief executive officer directs and the proceeds applied in accordance with subsection (4).
- (2) A person may reclaim an impounded item if—
 - (a) written application is made to the chief executive officer;
 - (b) proof is produced to the satisfaction of the chief executive officer that the applicant is the owner of the item or is acting on the owner's behalf; and
 - (c) the applicant pays the prescribed fee for seizing and impounding, of the item.
- (3) If an impounded item is not reclaimed within 28 days of being impounded the local government may dispose of the item—
 - (a) if in the reasonable opinion of the chief executive officer, 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—

¹¹ 'Goods' does not include animals. For seizing and impounding animals, see Part 4 of Local Law No. 2 (Animal Management) 2016

¹² Removal of abandoned vehicles from roads is dealt with under section 100 of the *Transport Operations (Road Use Management) Act 1995*.
CHW_133116_2859722

- (i) public auction or tender, following an advertisement published at least 14 days before the date of the proposed sale;
 - (ii) an agent of the local government; or
 - (iii) if it has been offered for sale under paragraph (b)(i) or (ii) but has not been sold within a reasonable period of time—as the chief executive officer directs.
- (4) The proceeds of the sale or disposal of the impounded item must be applied—
- (a) in accordance with section 38A of the Act if section 38A applies to the disposal of the item; or
 - (b) if subsection (a) does not apply—
 - (i) firstly, towards the costs of the sale or disposal;
 - (ii) secondly, towards the prescribed fee for seizing and impounding the impounded item; and
 - (iii) thirdly, subject to subsection (5), to the former owner of the impounded item.
- (5) If the former owner cannot be located or no person establishes a valid claim to the amount to which the former owner is entitled under subsection (4)(b)(iii) within six months from the date of the sale or disposal, the proceeds become the property of the local government.

Part 8 Subordinate local laws

33 Subordinate local laws

The local government may make subordinate local laws about—

- (a) the categories of prescribed activities for the purposes of maximum penalties;¹³
- (b) prescribed activities in respect of which the requirement for an approval does not apply;¹⁴
- (c) the information, documents or materials that must accompany an application for an approval;¹⁵
- (d) additional criteria for the granting of approvals for prescribed activities;¹⁶
- (e) the standard conditions that will be imposed on an approval;¹⁷
- (f) categories of prescribed activities for which approvals are non-transferable;¹⁸
- (g) complementary accommodation prescribed as appropriate for caravan parks;¹⁹
- (h) a State-controlled road to which this local law applies;²⁰

¹³ See Schedule 1 definition of "category 1 activity", "category 2 activity" and "category 3 activity".

¹⁴ See section 5(3).

¹⁵ See section 6(1)(d)(iv).

¹⁶ See section 7(2)(f).

¹⁷ See section 8(3).

¹⁸ See section 11(6).

¹⁹ See schedule 1, definition of *complementary accommodation*, paragraph (b).

- (i) public place activities prescribed as regulated activities on local government controlled areas and roads;²¹
- (j) declaring a motor vehicle access area;²² and
- (k) declaring a prohibited vehicle.²³

Part 9 Transition, savings and repeals

34 Repeals

The following local laws and subordinate local laws are repealed—

- (a) Local Law No. 3 (Administration) 1999;
- (b) Local Law No. 4 (Control of Nuisances) 1999;
- (c) Local Law Policy No. 1 (Control of Nuisances) 1999;
- (d) Local Law No. 5 (Control of Entry) 2004;
- (e) Local Law No. 7 (Keeping and Control of Animals) 1999;
- (f) Local Law Policy No. 2 (Keeping and Control of Animals) 1999;
- (g) Local Law No. 8 (Impounding of Animals) 1999;
- (h) Local Law Policy No. 3 (Impounding of Animals) 1999;
- (i) Local Law No. 9 (Meetings) 1999;
- (j) Local Law Policy No. 4 (Meetings) 1999;
- (k) Local Law No. 10 (Public Aerodromes) 1999;
- (l) Local Law No. 11 (Cemeteries) 1999;
- (m) Local Law No. 12 (Jetties, Barge Loading Ramps and Boat Ramps) 1999;
and
- (n) Local Law No. 13 (Roads) 1999.

²⁰ See schedule 1, definition of *road*, subparagraph (b)(i).

²¹ See schedule 2, part 2, definition of *undertaking regulated activities on local government controlled areas and roads*, paragraph (c).

²² See schedule 1, definition of *motor vehicle access area*.

²³ See schedule 2, definition of bringing or driving prohibited vehicles onto motor vehicle access areas.

Schedule 1 Dictionary

Section 3

Aboriginal land see the *Aboriginal Land Act 1991*, section 10.

accessible place has the meaning in the *Aboriginal and Torres Strait Island Communities (Justice, Land and Other Matters) Act 1984*.

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

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

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

authorised person see the Act, schedule 4.²⁴

camping means in relation to land, the physical occupation of, or staying overnight on land by a person, whether in accommodation, car or otherwise sleeping out.

caravan see *Residential Tenancies and Rooming Accommodation Act 2008*, section 3A.

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.

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

designated town area means the area defined on the map in Schedule 12 of *Subordinate Local Law No. 2 (Animal Management) 2016*.

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

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.

²⁴ See also section 16.
CHW_133116_2859722

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

goods includes chattels, materials, things and objects, but does not include animals.

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

impounded item means a structure, thing or goods, other than an animal, that—

- (a) an authorised person has seized and impounded pursuant to a power under a local law; or
- (b) has been delivered into the custody of a local government pursuant to a local law and has been impounded by a local government.

independent certifier means—

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

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

- (a) the decision;
- (b) the reasons for the decision;
- (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 area means the local government's local government area as that term is defined in the Act, section 8(2).

local government cemetery means a cemetery owned, held in trust or under another interest or otherwise controlled by the local government.

local government controlled area—

- 1 A *local government controlled area* means land, facilities and other infrastructure owned, held in trust or under another interest or otherwise controlled by the local government, other than a road.

Examples of local government controlled areas—

- parks and reserves
 - local government swimming pools
 - cemeteries
 - Council Chambers and local government offices
 - jetties.
- 2 A *local government controlled area* includes part of a local government controlled area.
 - 3 A *local government controlled area* does not include a residential lot.

motor vehicle access area means an area within a local government controlled area that is—

- (a) a car park or roadway for which there is no sign or traffic control device indicating that vehicles owned by members of the public are excluded; or
- (b) declared under a subordinate local law for this paragraph as a motor vehicle access area.

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

obstruct includes to disrupt, interrupt, hinder or interfere.

prescribed activity means—

- (a) an activity prescribed in part 1 of schedule 2 and defined in part 2 of schedule 2 of this local law; or
- (b) an activity for which a Local Government Act authorises the local government to grant an approval but does not make any provision about the process for the local government to grant the approval.

prescribed fee means a cost-recovery fee fixed by the local government, by local law or by resolution, under the Act.²⁵

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 a place of human habitation on a short-term or long-term basis.

residential lot means a separate parcel of land used for residential purposes.

resident means a member of the community residing in the local government area.

review decision see section 19.

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—

- (a) dormitories or bedrooms;
- (b) toilets;
- (c) bathrooms, showers or other bathing facilities;

²⁵ See the Act, section 97.
CHW_133116_2859722

- (d) laundries;
- (e) dining facilities;
- (f) cooking facilities; or
- (g) recreation facilities.

show cause notice see section 14.

the Act means the *Local Government Act 2009*.

Schedule 2 Prescribed activities

Schedule 1, definition of "prescribed activity"

Part 1 Prescribed activities

alteration or improvement to local government controlled areas and roads
 bringing or driving motor vehicles onto parks or reserves
 bringing or driving prohibited vehicles onto motor vehicle access areas
 camping within a camping site
 commercial use of local government controlled areas and roads
 establishment or occupation of a temporary home
 installation of temporary advertising devices
 keeping of animals
 operation of camping grounds
 operation of caravan parks
 operation of cemeteries
 operation of a pet shop, cattery or kennel
 operation of public swimming pools
 operation of shared facility accommodation
 operation of temporary entertainment events
 undertaking prescribed activities regarding human remains
 undertaking prescribed activities on local government controlled areas and roads

Part 2 Definitions of prescribed activities

*alteration or improvement to local government controlled areas and roads*²⁶
 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;

but not an alteration or improvement—

- (c) that constitutes development under the Planning Act;²⁷
- (d) for which a tree clearing permit is required under the *Vegetation Management Act 1999*;
- (e) that involves a network connection; or

²⁶ 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.

²⁷ See the definition of *Planning Act* in the Act, schedule 4.
 CHW_133116_2859722

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

bringing or driving motor vehicles onto parks or reserves means bringing or driving a motor vehicle onto an area of land designated by the local government under section 12 of *Local Law No. 4 (Indigenous Community Land Management) 2014* as a park or reserve.

bringing or driving prohibited vehicles onto motor vehicle access areas means bringing or driving a motor vehicle, declared by subordinate local law to be a prohibited vehicle, onto a motor vehicle access area.

camping within a camping site in a trust area means camping within an area that is part of—

- (a) a local government controlled area; and
- (b) that the local government has designated, by resolution of the local government, for the purposes of camping.

carrying out works on a road means carrying out works or conducting activities on a road or interfering with a road or its operation including interference with vehicular or pedestrian traffic under section 75(2) of the *Local Government Act 2009*.

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

commercial use of local government controlled areas²⁸ 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 *Sustainable Planning Act 2009*;
- (e) operation of a temporary entertainment event; or
- (f) holding of a public place activity on a local government controlled area or road.

establishment or occupation of a temporary home means the erection, construction, installation, positioning or placement of a structure, tent or vehicle used or intended for temporary use as a place of residence but does not include the establishment or the occupation of a temporary home on or in a camping ground or caravan park.

²⁸ See footnote 27.
CHW_133116_2859722

holding of a public place activity means the holding of a public place activity prescribed under a subordinate local law for this definition, excluding the operation of a temporary entertainment event.

installation of temporary advertising devices means the installation, erection or display of an advertisement or sign that is visible from a road or other public place.²⁹

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.

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;
- (b) cremation; or
- (c) placement in a columbarium, mausoleum or vault.

operation of a pet shop, cattery or kennel means operating—

- (a) a place at which animals are offered for sale on a commercial basis;
- (b) premises used for the keeping, boarding or breeding of cats, on a commercial basis; or
- (c) premises used for keeping, boarding or breeding of dogs, on a commercial basis.

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;
- (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, students, unrelated persons 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 prescribed activities regarding human remains means undertaking one of the following activities—

- (a) burial of a deceased person in the local government cemetery;
- (b) disturbance of human remains in a local government cemetery;

²⁹ See the Act, section 37(5), regarding the relationship between a local law about advertising devices and the local government's planning scheme.
CHW_133116_2859722

- (c) burial or disposal of human remains (excluding cremated remains) outside a cemetery; or
- (d) disturbance of human remains buried outside a cemetery.

undertaking prescribed activities on local government controlled areas³⁰ 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;
- (b) depositing of goods or materials; or
- (c) holding of a public place activity prescribed under a subordinate local law for this paragraph, excluding the operation of a temporary entertainment centre.

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 prescribed activity.

³⁰ See footnote 27.
CHW_133116_2859722