

# Local Law No. 1 (Administration) 2011

## Contents

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<b>Part 1</b>	<b>Preliminary .....</b>	<b>3</b>
	1 Short title .....	3
	2 Purposes and how they are to be achieved .....	3
	3 Definitions—the dictionary .....	3
	4 Relationship with other laws .....	3
<b>Part 2</b>	<b>Approvals for prescribed activities .....</b>	<b>3</b>
	5 Meaning of <i>prescribed activity</i> .....	3
	6 Offence to undertake local law prescribed activity without approval .....	4
	7 Approvals for prescribed activities to be obtained under this part .....	5
	8 Form of application .....	5
	9 Local government's discretion in granting approvals .....	6
	10 Conditions of approval .....	7
	11 Compliance with conditions of approval .....	8
	12 Third party certification .....	8
	13 Term of approval .....	8
	14 Renewal of approval .....	9
	15 Transfer of approval .....	10
	16 Amending conditions at request of approval holder .....	10
	17 Grounds for amending, suspending or cancelling approval .....	11
	18 Procedure for amending, suspending or cancelling approval .....	11
	19 Procedure for immediate suspension of approval .....	12
<b>Part 3</b>	<b>Authorised persons .....</b>	<b>13</b>
	20 Appointment .....	13
	21 Threatening etc an authorised person .....	13
<b>Part 4</b>	<b>Review of decisions .....</b>	<b>13</b>
	22 Application for review .....	13
	23 Review decision .....	14
	24 Stay of operation of original decision .....	14
<b>Part 5</b>	<b>Enforcement .....</b>	<b>14</b>
	25 Production of records .....	14
	26 Compliance notice for contravention of local law or approval condition .....	15
	27 Compliance notice authorised by local law .....	16

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28	Power to remove and cost recovery .....	17
29	Stop orders.....	17
<b>Part 6</b>	<b>Legal proceedings .....</b>	<b>18</b>
30	Defence of reasonable excuse .....	18
31	General defence for owners or occupiers of land .....	18
32	Joint and several liability .....	18
33	Rewards .....	18
<b>Part 7</b>	<b>Miscellaneous .....</b>	<b>19</b>
34	Maintenance of good order at meetings .....	19
35	Fees .....	19
36	Abandoned goods .....	19
37	Dealing with seized and impounded items.....	19
<b>Part 8</b>	<b>Subordinate local laws.....</b>	<b>20</b>
38	Subordinate local laws .....	20
<b>Schedule 1</b>	<b>Dictionary .....</b>	<b>23</b>
<b>Schedule 2</b>	<b>Prescribed activities .....</b>	<b>26</b>

## Part 1 Preliminary

### 1 Short title

This local law may be cited as *Local Law No. 1 (Administration) 2011*.

### 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<sup>1</sup>

This local law—

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

## 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

<sup>1</sup> 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—
- (a) section 5(a); or
  - (b) section 5(b) if the Local Government Act that authorises the local government to grant the approval is a local law.<sup>2</sup>
- (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.

<sup>2</sup> For the offence for undertaking a prescribed activity mentioned in section 5(b) without a current approval if the Local Government Act is not a local law, see the relevant Local Government Act that provides for the approval.

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

## 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—
- 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
  - the proposed operation and management of the prescribed activity is adequate to protect public health, safety and amenity and prevent environmental harm; and
  - if the prescribed activity is the commercial use of a local government controlled area or road—the grant of the approval is consistent with the objective of the local government of restriction of the commercial use of local government controlled areas and roads, where such activities are permitted, in recognition of the fact that the activities may otherwise enjoy an unfair commercial advantage over competitive activities conducted from fixed premises in the local government area for which rates and other charges are paid, and to which planning and other regulatory legislation applies; and
  - 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
  - the grant of the approval would be consistent with the purpose of any relevant local law; and
  - if the application relates to trust land—the grant of the approval would be consistent with the terms and conditions of the trust; and
  - 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 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—
- grant the approval unconditionally; or
  - grant the approval subject to conditions determined in accordance with section 10; or
  - 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 Government Act in relation to the approval; and
  - (d) not conflict with the conditions of any other relevant approval issued under an Act; and
  - (e) 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.<sup>3</sup>

*Example for paragraph (a)—*

A condition of an approval for operation of a temporary entertainment event may authorise the

<sup>3</sup> See *Environmental Protection Act 1994*, schedule 1, section 3(b).