



Noosa Shire Council

Local Law No 1

(Administration) 2015

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Part 1 Preliminary

1 Short title

This local law may be cited as *Noosa Shire Council Local Law No. 1 (Administration) 2015*.

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 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 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—
- (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.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.

² 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—
- (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 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 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.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.

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

- (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 appointment⁵ 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 person⁶

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 officer⁷ 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 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.

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.

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.

⁹ See the Act, section 132.

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 give¹⁰ 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.
- (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.

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 138(2).

- (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 gives¹⁴ 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.
- (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

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) [insert year]*, section 9(2) (Power to require owner of land adjoining road to fence land) and *Local Law No. 3 (Community & Environmental Management) [Insert year]*, 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.

¹⁶ See also footnote 12.

- (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 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 animal¹⁸

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 (Animals) [insert year]*, 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.

- (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.

Part 8 Subordinate local laws

38 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

¹⁹ See section 6(3).

²⁰ See section 6(4).

- (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
- (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 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

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).

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 4³³.

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—

- 1 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.
- 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 on DOGIT land.

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 Act³⁴.

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—

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

³⁴ See the Act, section 97.

- (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 Act³⁶; 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 areas³⁷ 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) [insert year]*.

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 4³⁹; 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 areas⁴⁰ 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
- (c) holding of a public place activity prescribed under a subordinate local law

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.

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.

CERTIFICATION

This and the preceding 28 pages bearing my initials is a certified copy of Noosa Shire Council *Law No. 1 (Administration) 2015*, made in accordance with the provisions of the *Local Government Act 2009*, by Noosa Shire Council by resolution dated _____ 2015.

Brett de Chastel
Chief Executive Officer
Noosa Shire Council



Noosa Shire Council

Local Law No 2

(Animal Management) 2015

Noosa Shire Council Local Law No. 2 (Animal Management) 2015

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Part 1 Preliminary

1 Short title

This local law may be cited as *Noosa Shire Council Local Law No. 2 (Animal Management) 2015*.

2 Purpose and how it is to be achieved

- (1) The purpose of this local law is to regulate and manage the keeping and control of animals in the local government's area in a way that—
 - (a) balances community expectations with the rights of individuals; and
 - (b) protects the community against risks to health and safety; and
 - (c) prevents pollution and other environmental damage; and
 - (d) protects the amenity of the local community and environment.
- (2) The purpose is to be achieved by providing for—
 - (a) the regulation of the keeping of animals in terms of how many, what type, how, and where animals can be kept; and
 - (b) the prescription of minimum standards for keeping animals; and
 - (c) the proper control of animals in public places and koala conservation areas; and
 - (d) the management of dangerous or aggressive animals other than dogs;¹ and
 - (e) the seizure and destruction of animals in certain circumstances; and
 - (f) the establishment and administration of animal pounds.

3 Definitions—the dictionary

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

4 Relationship with other laws²

This local law is—

- (a) in addition to, and does not derogate from—
 - (i) laws regulating the use or development of land; and
 - (ii) other laws about the keeping or control or welfare of animals; and
- (b) to be read with *Local Law No. 1 (Administration) 2015*.

¹ The *Animal Management (Cats and Dogs) Act 2008* provides for the management of **regulated dogs**, comprising declared dangerous dogs, declared menacing dogs and restricted dogs.

² 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 Commonwealth. See the Act, section 27.

Part 2 Keeping of animals

Division 1 Prohibition on keeping animals

5 Prohibition on keeping animals in prescribed circumstances

- (1) The local government may, by subordinate local law, prohibit the keeping of animals in prescribed circumstances.
- (2) The circumstances in which the keeping of animals is prohibited may be specified by reference to 1 or more of the following factors—
 - (a) species;
 - (b) breed;
 - (c) sex;
 - (d) age;
 - (e) number;
 - (f) whether an animal is a restricted dog;³
 - (g) the locality in which the animal would be kept;
 - (h) the nature of the premises in which the animal would be kept, including the size of the enclosure or the size of the allotment.⁴

Example for subsection (2)—

A prohibition may be imposed in relation to keeping certain species or a prescribed number of animals of a certain species in an urban locality.

- (3) A person must not keep an animal in contravention of a prohibition under this section.

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

Division 2 Animals for which approval is required

6 Requirement for approval

- (1) Subject to subsections (3) and (4), the local government may, by subordinate local law, require an approval⁵ for keeping an animal or animals in prescribed circumstances.

³ Section 72(3) of the *Animal Management (Cats and Dogs) Act 2008* provides: “A permit application may be made for more than 1 restricted dog for the same place only if the keeping of more than 1 restricted dog and more than 1 dog of any breed is permitted under a local law.”

⁴ See the *Animal Management (Cats and Dogs) Act 2008*, chapter 4, regarding particular conditions on keeping regulated dogs, including requirements about enclosures.

⁵ Keeping an animal for which an approval is required under this local law is a *prescribed activity* under schedule 2 of *Local Law No. 1 (Administration) 2015*. The process for obtaining an approval for a prescribed activity is set out in part 2 of that local law and section 6 creates an offence for a person undertaking a prescribed activity without a current approval.

- (2) The circumstances in which an approval is required may be specified by reference to 1 or more of the following factors—
 - (a) species;
 - (b) breed;
 - (c) sex;
 - (d) age;
 - (e) number;
 - (f) the locality in which the animal is to be kept, including whether it is an urban or non-urban locality;
 - (g) the nature of the premises in which the animal is to be kept, including the size of the enclosure or the size of the allotment.⁶
- (3) An approval under this section is not required for the keeping of animals on land if the keeping of the animals on the land is authorised by a development approval under the Planning Act⁷.
- (4) Under this section, the local government may not require an approval for keeping a restricted dog.⁸

Division 3 Animals for which desexing is required

7 Requirement to desex an animal

- (1) The local government may, by subordinate local law, require an animal of a particular species or breed to be desexed.
- (2) The subordinate local law may—
 - (a) specify that the requirement for desexing only applies once an animal reaches a certain age; and
 - (b) exempt animals under particular circumstances.

Example for paragraph (b)—

Exemption might be provided for an animal that is owned by a member of a recognised breeders' association for the purposes of breeding or showing.

- (3) A person must not keep an animal that is required to be desexed unless the animal has been desexed.

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

⁶ See note 4.

⁷ See the definition of *Planning Act* in the Act, schedule 4.

⁸ Section 71 of the *Animal Management (Cats and Dogs) Act 2008* requires a permit issued by the local government for a person to own or be responsible for a restricted dog. The processes for the granting of restricted dog permits are set out under chapter 4, part 3 of that Act.

Division 4 Minimum standards

8 Minimum standards for keeping animals

- (1) The local government may, by subordinate local law, specify minimum standards for the keeping of animals or a particular species or breed of animal.
- (2) A person who keeps an animal must ensure that the relevant minimum standards prescribed by a subordinate local law are complied with.⁹

Maximum penalty for subsection (2)—20 penalty units.

- (3) If a person is required to hold an approval to keep an animal, the obligation to comply with the minimum standards prescribed by a subordinate local law is in addition to an obligation imposed by a condition of the approval.

Division 5 Identification of registered cats and dogs

9 Identification for cats and dogs in certain circumstances

The local government may, by subordinate local law, prescribe the identification required by the *Animal Management (Cats and Dogs) Act 2008* for a cat or dog that is at a place other than the address stated in the registration notice for the cat or dog.¹⁰

Part 3 Control of animals

Division 1 Animals in public places

10 Exclusion of animals

- (1) The local government may, by subordinate local law, specify public places where animals, or animals of a particular species or breed, are prohibited.
- (2) The owner or responsible person for an animal must ensure that the animal is not in a public place in contravention of a prohibition specified under subsection (1).

Maximum penalty for subsection (2)—20 penalty units.

- (3) The local government must take reasonable steps to provide notice to members of the public regarding the animals that are prohibited in a particular public place.

- (4) In this section—

reasonable steps include, as a minimum, the display of a notice at a prominent place within the particular public place, stating—

⁹ See also *Animal Management (Cats and Dogs) Act 2008*, schedule 1, sections 4 to 5, regarding the requirements about enclosures for declared dangerous dogs, declared menacing dogs and restricted dogs.

¹⁰ Section 45 of the *Animal Management (Cats and Dogs) Act 2008* requires a person who keeps a cat or dog at a place other than the address in the registration notice to ensure it bears the identification prescribed by the local government under a local law.

- (a) the animals that are prohibited in the place; and
- (b) in general terms, the provisions of subsection (2).

11 Dog off-leash areas

- (1) The local government may, by subordinate local law, designate an area within a public place as an area where a dog is not required to be on a leash (a *dog off-leash area*).
- (2) The local government must take reasonable steps to provide notice to members of the public regarding the designation of an area as a dog off-leash area.
- (3) In this section—
reasonable steps include, as a minimum, the display of a notice at a prominent place within the dog off-leash area indicating the extent of the area.

12 Control of animals in public places¹¹

- (1) The owner or responsible person for an animal must ensure that the animal is not in a public place—
 - (a) unless the animal is under the effective control of someone; and
 - (b) if the animal is a declared dangerous animal¹²—unless the animal is securely restrained to prevent it from—
 - (i) attacking a person or animal; or
 - (ii) acting in a way that causes fear to a person or animal; or
 - (iii) causing damage to property.

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

- (2) The owner or responsible person for a dog that is on heat must ensure that the animal is not in a public place.

Maximum penalty for subsection (2)—20 penalty units.

- (3) An animal is under the *effective control* of someone only if—
 - (a) a person who is physically able to control the animal—
 - (i) is holding it by an appropriate leash, halter or rein; or
 - (ii) has appropriately tethered it to an object fixed to a place from which the object can not be moved by the animal and is continuously supervising the animal; or
 - (iii) has corralled it in a temporary enclosure adequate to contain the animal and is continuously supervising the animal; or

¹¹ See also *Animal Management (Cats and Dogs) Act 2008*, schedule 1, section 3, regarding the requirement for muzzling and effective control of regulated dogs in public and section 93, which applies this requirement where a dog is subject to a proposed declaration notice.

¹² See the definition of *declared dangerous animal* in the schedule.

- (b) the animal is tethered in or on a vehicle and unable to reach beyond the vehicle extremities; or
- (c) the animal is a dog in a dog off-leash area and under the supervision of a person who is able to control the animal by voice command; or
- (d) the animal is participating in, or being exhibited or trained at, an exhibition or an obedience trial supervised by a body recognised for this section by the local government; or
- (e) the animal is a working animal actually engaged in moving livestock and under the supervision of a person who is able to control the animal by voice command.

13 Person in control of dog or prescribed animal to clean up faeces

If a dog or any other animal prescribed by subordinate local law defecates in a public place, the person who has control of the dog or animal must immediately remove and dispose of the faeces in a sanitary way.

Maximum penalty—20 penalty units.

Division 2 Restraint of animals

14 Duty to provide proper enclosure and prevent animal from wandering

- (1) A person who keeps an animal must maintain a proper enclosure to prevent the animal from wandering or escaping from the person's land.¹³

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

- (2) The local government may, by subordinate local law, prescribe requirements for a proper enclosure for an animal or species or breed of animal.
- (3) The owner of the animal must ensure that it is not wandering at large.¹⁴

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

- (4) It is a defence to a prosecution for an offence against subsection (3) for the defendant to prove that—
 - (a) the defendant maintained a proper enclosure for the animal and could not, by the exercise of reasonable diligence, have prevented the escape of the animal; or
 - (b) the animal was wandering at large in circumstances authorised by the conditions of an approval granted under a local law.

Example for paragraph (b)—

The conditions of an approval to keep racing pigeons might authorise the approval holder to release the pigeons from their enclosure for a certain amount of time each day and during official pigeon racing events.

¹³ See also *Animal Management (Cats and Dogs) Act 2008*, schedule 1, sections 4 to 5, regarding the requirements about enclosures for declared dangerous dogs, declared menacing dogs and restricted dogs.

¹⁴ See the definition of *wandering at large* in the schedule.

15 Koala conservation requirements

- (1) The local government may, by subordinate local law, prescribe requirements for keeping a dog on land that is within a koala area.
- (2) The prescribed requirements may relate to—
 - (a) the enclosure in which the dog must be kept between sunset and sunrise; or
 - (b) tethering the dog between sunset and sunrise to prevent it from attacking a koala; or
 - (c) fencing that must be in place to separate dogs from koalas on the land or on a part of the land; or
 - (d) other measures that will be likely to prevent an attack by the dog on a koala between sunset and sunrise.
- (3) A person who keeps a dog on land that is within a koala area must comply with requirements prescribed under this section.

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

- (4) In this section—

koala area means—

- (a) a koala habitat area; or
- (b) an area designated by subordinate local law as a koala area.

koala habitat area means an area designated as a koala habitat by—

- (a) a conservation plan made under the *Nature Conservation Act 1992*; or
- (b) a State planning instrument.

Division 3 Aggressive behaviour by animals other than dogs

16 Limited application of division to dogs¹⁵

- (1) Unless otherwise indicated, this division does not apply in relation to aggressive behaviour by a dog.
- (2) In this section—

aggressive behaviour means attacking, or acting in a way that causes fear to, someone else or another animal.

17 Animals not to attack or cause fear to persons or animals

- (1) A responsible person for an animal must take reasonable steps to ensure the animal does not attack, or act in a way that causes fear to, someone else or another animal.

¹⁵ Aggressive behaviour by dogs is covered by the *Animal Management (Cats and Dogs) Act 2008*, sections 194 to 196.

Maximum penalty for subsection (1)—

- (a) if the attack causes the death of or grievous bodily harm to a person—300 penalty units; or
 - (b) if the attack causes the death of or grievous bodily harm to another animal—100 penalty units; or
 - (c) if the attack causes bodily harm to a person or another animal—50 penalty units; or
 - (d) otherwise—20 penalty units.
- (2) A person must not allow or encourage an animal to attack, or act in a way that causes fear to, a person or another animal.

Maximum penalty for subsection (2)—

- (a) if the attack causes the death of or grievous bodily harm to a person—300 penalty units; or
 - (b) if the attack causes the death of or grievous bodily harm to another animal—100 penalty units; or
 - (c) if the attack causes bodily harm to a person or another animal—50 penalty units; or
 - (d) otherwise—20 penalty units.
- (3) In this section—

allow or encourage, without limiting the *Criminal Code*, sections 7 and 8, includes cause to allow or encourage.

another animal does not include vermin that are not the property of anyone.

Examples of vermin that are someone's property—

- a pet mouse or guinea pig
- vermin that are protected animals under the *Nature Conservation Act 1992*.¹⁶

18 Defences for offence against s 17

It is a defence to a prosecution for an offence against section 17 for the defendant to prove that the animal attacked, or acted in a way that caused fear to, the person or other animal—

- (a) as a result of the animal being attacked, mistreated, teased, or provoked by the person or other animal, including a dog; or
- (b) to protect the responsible person, or a person accompanying the responsible person (the ***accompanying person***), or the responsible person's or accompanying person's property.

¹⁶ See section 83 of that Act.

Division 4 Dangerous animals other than dogs¹⁷

19 Declaration of dangerous animal other than a dog

- (1) A local government may, by subordinate local law, specify criteria for an authorised person to declare an animal other than a dog to be a declared dangerous animal.
- (2) An authorised person may declare an animal other than a dog to be a declared dangerous animal if the animal meets the criteria prescribed by subordinate local law.
- (3) A declaration under subsection (2) takes effect at the time the local government gives the responsible person for the animal an information notice¹⁸ about the declaration.

20 Power to require responsible person for declared dangerous animal to take specified action

An authorised person may, by giving a compliance notice,¹⁹ require the responsible person for a declared dangerous animal to take specified action—

- (a) to warn persons who enter land on which the animal is kept of the presence of a declared dangerous animal on the land; and
- (b) to ensure that the animal remains in secure custody and is unable to attack or cause fear to persons or other animals or cause damage to another person's property.

Part 4 Seizure, impounding or destruction of animals

Division 1 Seizure of animals

21 Seizure of animals

- (1) An authorised person may seize²⁰ an animal, other than a dog,²¹ in the following circumstances—
 - (a) the animal is found wandering at large; or

¹⁷ Dangerous dogs are dealt with in the *Animal Management (Cats and Dogs) Act 2008*.

¹⁸ See the definition of **information notice** in *Local Law No.1 (Administration) 2015*, schedule 1.

¹⁹ See *Local Law No.1 (Administration) 2015*, section 27 regarding the requirements for compliance notices and the offence for not complying with a compliance notice.

²⁰ See the *Local Government Act 2009*, chapter 5, part 2, division 1 in relation to authorised persons' enforcement powers, including entry to land.

²¹ See the *Animal Management (Cats and Dogs) Act 2008*, section 125, for seizure of a dog.

- (b) the responsible person for the animal has not complied with a compliance notice that has been issued in relation to compliance with this local law; or
 - (c) the animal has attacked, threatened to attack, or acted in a way that causes fear to, a person or another animal; or
 - (d) the authorised person considers on reasonable grounds that the animal has been abandoned, left or found on a road in the circumstances mentioned in section 100(12) of the *Transport Operations (Road Use Management) Act 1995*.²²
- (2) An authorised person may seize a dog in the following circumstances—
- (a) the dog is found wandering at large; or
 - (b) the responsible person for the dog has not complied with a compliance notice that has been issued in relation to compliance with this local law; or
 - (c) the authorised person considers on reasonable grounds that the animal has been abandoned, left or found on a road in the circumstances mentioned in section 100(12) of the *Transport Operations (Road Use Management) Act 1995*.
- (3) The authorised person may seize an animal under subsection (1)(a) or a dog under subsection (2)(a) where—
- (a) another person has found the animal or dog wandering at large and delivered it to the authorised person; or
 - (b) an occupier of private land has found the animal or dog wandering at large on the land, taken it under effective control and requested the authorised person to enter the land to seize it.
- (4) However, an authorised person is not obliged to accept the custody of an animal under this section.
- (5) For the purposes of seizing an animal, an authorised person may take any action, including the use of force, which is reasonable in the circumstances to capture or control the animal.

Division 2 Destruction of animal without notice

22 Power to immediately destroy seized animal

- (1) This section applies where an authorised person has seized an animal, other than a regulated dog,²³ under this local law or another law.
- (2) The authorised person may, without notice, immediately destroy the animal if—
 - (a) the authorised person reasonably believes the animal is dangerous and the authorised person can not control it; or

²² The *Transport Operations (Road Use Management) Act 1995*, section 100(13) provides: “If a local law provides for a matter mentioned in subsection (12), subsections (3) to (11) no longer apply in the local government’s area.”

²³ See the *Animal Management (Cats and Dogs) Act 2008*, section 127, for power to destroy a seized regulated dog.

- (b) the animal is significantly suffering as a result of disease, severe emaciation or serious injuries; or
- (c) an owner of the animal has requested the authorised person to destroy it.

Division 3 Return or impounding of animals

23 Immediate return of animal seized wandering at large

- (1) This section applies where—
 - (a) an animal has been seized under section 21(1)(a) or section 21(2)(a); and
 - (b) the authorised person who seizes the animal knows, or can readily find out, the name and address of the owner or responsible person for the animal.
- (2) The authorised person may return the animal to the owner or responsible person.

24 Impounding of seized animal

An authorised person who seizes an animal under this local law or another law may impound the animal at a place of care for animals operated by—

- (a) the local government; or
- (b) another organisation or local government prescribed by subordinate local law.

Example for paragraph (a)—

An animal pound.

Example for paragraph (b)—

A veterinary surgery or an animal refuge.

25 What is a notice of impounding

- (1) A ***notice of impounding*** means a written notice, given to the owner or responsible person for an animal, stating that—
 - (a) the animal has been impounded; and
 - (b) the animal may be reclaimed within the prescribed period provided that—
 - (i) the cost-recovery fee is paid; and
 - (ii) if an approval or registration is required for the keeping of the animal and the owner or responsible person does not have the approval or registration— the approval or registration is obtained; and
 - (iii) if the animal has been seized under section 21(1)(b) or 21(2)(b)— the owner or responsible person has complied with the relevant compliance notice; and
 - (iv) continued retention of the animal is not needed as evidence for a proceeding or proposed proceeding for an offence involving the animal; and

(v) no destruction order has been made for the animal.

(2) In this section—

relevant compliance notice means the compliance notice mentioned in section 21(1)(b) or 21(2)(b).

26 Dealing with animal seized and impounded for wandering at large

(1) Subsection (2) applies where—

- (a) an authorised person has impounded an animal seized under section 21(1)(a) or 21(2)(a); and
- (b) the animal was not a declared dangerous animal at the time of being seized; and
- (c) the authorised person knows, or can readily find out, the name and address of the owner or responsible person for the animal.

(2) The authorised person must give the owner or responsible person a notice of impounding.

(3) Subsection (4) applies where—

- (a) an authorised person has impounded a declared dangerous animal seized under section 21(1)(a); or
- (b) an authorised person has impounded an animal that has been seized more than 3 times during a 12 month period.

(4) The authorised person may—

- (a) give the owner or responsible person for the animal a notice of impounding; or
- (b) make a destruction order for the animal under section 30.

27 Dealing with animal seized and impounded for non-compliance with local law

(1) This section applies where an authorised person has impounded an animal seized under section 21(1)(b) or 21(2)(b).

(2) The authorised person may—

- (a) give the owner or responsible person for the animal a notice of impounding; or
- (b) if the animal was being kept in contravention of section 5 of this local law or is an animal for which an approval cannot be granted under this local law or is an animal for which an application for approval under this local law has been rejected— dispose of the animal under division 5.

28 Dealing with animal seized and impounded for attacking etc a person or another animal

- (1) This section applies where an authorised person has impounded an animal seized under section 21(1)(c).
- (2) The authorised person may²⁴—
 - (a) make a destruction order for the animal under section 30; or
 - (b) give the owner or responsible person a notice of impounding.

29 Reclaiming an impounded animal

- (1) This section applies where—
 - (a) the owner or responsible person for an animal has been given a notice of impounding; or
 - (b) an authorised person does not know, and cannot readily find out, the name and address of an owner or responsible person for the animal.
- (2) The animal may be reclaimed by an owner or responsible person if the owner or responsible person—
 - (a) reclaims the animal within the prescribed period; and
 - (b) pays the cost-recovery fee; and
 - (c) if an approval or registration is required for the keeping of the animal and the owner or responsible person does not have the approval or registration—obtains the approval or registration; and
 - (d) if the responsible person has not complied with a current compliance notice that has been issued in relation to compliance with this local law—complies with the compliance notice.
- (3) However, the animal may not be reclaimed by an owner or responsible person if—
 - (a) continued retention of the animal is needed as evidence for a proceeding or proposed proceeding for an offence involving the animal; or
 - (b) a destruction order has been made for the animal.
- (4) The animal may be reclaimed by an owner or responsible person for the animal if an event as follows happens—
 - (a) if subsection (3)(a) applies—
 - (i) an authorised person advises the owner or responsible person that the animal's continued retention as evidence is no longer required; and
 - (ii) the owner or responsible person has satisfied subsection (2)(b)-(d);
 - (b) if subsection (3)(b) applies—

²⁴ An authorised person may also declare an animal as a declared dangerous animal under section 19 if specified criteria are met.

- (i) an application for a review or an appeal is made relating to the destruction order and, as a result of the review or appeal, the order is no longer in force; and
- (ii) the owner or responsible person has satisfied subsection (2)(b)-(d).

Division 4 Destruction of animal following notice

30 Destruction orders

- (1) An authorised person may make an order (a *destruction order*) stating the person proposes to destroy an animal 14 days after the order is served.
- (2) A destruction order may only be made in 1 or more of the following circumstances—
 - (a) the animal has attacked, threatened to attack, or acted in a way that causes fear to, a person or another animal; or
 - (b) the animal is a declared dangerous animal and was found wandering at large; or
 - (c) the animal has been seized more than 3 times during a 12 month period.
- (3) The destruction order must—
 - (a) be served on a person who owns, or is a responsible person for, the animal; and
 - (b) include or be accompanied by an information notice.²⁵
- (4) If a destruction order is made for the animal, the person may destroy the animal 14 days after the order is served if no review application has been made relating to the decision to make the order.
- (5) If an application for review has been made relating to the decision to make the order, the person may destroy the animal if—
 - (a) the review is finally decided or is otherwise ended; and
 - (b) the order is still in force; and
 - (c) the time allowed for filing a notice of appeal has expired and no notice of appeal has been filed.
- (6) If an appeal is made relating to the decision to make the order, the person may destroy the animal if—
 - (a) the appeal is finally decided or is otherwise ended; and
 - (b) the order is still in force.
- (7) If the animal has been impounded, the owner or responsible person for an animal may reclaim the animal if—

²⁵ See note 17.

- (a) a review relating to the decision to make the order is finally decided or is otherwise ended; and
 - (b) no application for an appeal has been made against the order; and
 - (c) the order is no longer in force; and
 - (d) the owner or responsible person has satisfied section 29(2)(b)-(d).
- (8) If the animal has been impounded, the owner or responsible person for an animal may reclaim the animal if—
- (a) an appeal relating to the decision to make the order is finally decided or is otherwise ended; and
 - (b) the order is no longer in force; and
 - (c) the owner or responsible person has satisfied section 29(2)(b)-(d).
- (9) In this section—

review means a review conducted under the process mentioned in part 4 of *Local Law No.1 (Administration) 2015*.

appeal means an appeal under part 4 of this local law.

Division 5 Disposal of impounded animals

31 Application of this division

This division applies where—

- (a) an impounded animal has not been reclaimed within the prescribed period under section 29(2); or
- (b) if section 29(3)(a) applies— the impounded animal has not been reclaimed within 3 days of an authorised person’s advice to the owner or responsible person that the animal’s continued retention as evidence is no longer required; or
- (c) if section 29(3)(b) applies—the impounded animal has not been reclaimed within 3 days of the completion of a review or appeal that caused a destruction order to no longer be in force; or
- (d) an authorised person has seized an animal mentioned in section 27(2)(b); or
- (e) the owner of an animal has surrendered the animal to the local government.

32 Sale, disposal or destruction of animals

- (1) The local government may—
- (a) offer the animal for sale by public auction or by tender; or
 - (b) if the animal is an animal mentioned in section 27(2)(b) or is of a species, breed or class specified by subordinate local law for this paragraph—
 - (i) sell the animal by private agreement; or

- (ii) dispose of the animal in some other way without destroying it; or
- (iii) destroy the animal.

Example for paragraph (b)—

The subordinate local law might specify dogs, cats and other small domestic animals, for which a public auction or tender might not be practicable.

- (2) An animal may only be sold or disposed of under subsection (1) if the local government is satisfied that this will not result in the animal being kept in contravention of the requirements of this local law.

Examples—

- A pig that has been seized because it is being kept in an urban area in contravention of a prohibition under a subordinate local law could be sold to a person outside the urban area but not to another person in an urban area.
 - An animal that a subordinate local law has prohibited in any part of the local government area could not be sold to a person who resides within the local government area.
 - A declared dangerous animal could only be sold to a person who has complied with any specified requirements for keeping such an animal.
- (3) If an animal is to be offered for sale at a public auction under this section, notice of the time and place of the auction must be exhibited at the local government's public office for at least 2 days before the date of the auction.
 - (4) An amount realised on sale of an impounded animal must be applied—
 - (a) first, towards the costs of the sale; and
 - (b) second, towards the cost-recovery fee for impounding; and
 - (c) third, in payment of the remainder to the former owner of the animal, unless the owner had surrendered the animal to the local government.
 - (5) If no person establishes a valid claim to the amount to which the former owner is entitled under subsection (4)(c) within 1 year of the date of the sale, the amount becomes the property of the local government.
 - (6) If an animal that is offered for sale by public auction or tender is not sold through the auction or tender process, the local government may dispose of the animal as it considers appropriate.

Examples—

- The local government may give the animal away.
- The local government may have the animal destroyed.

Division 6 Other impounding matters

33 Register of impounded animals

- (1) The local government must ensure that a proper record of impounded animals (the *register of impounded animals*) is kept.
- (2) The register of impounded animals must contain the following information about each impounded animal—

- (a) the species, breed and sex of the animal; and
 - (b) the brand, colour, distinguishing markings and features of the animal; and
 - (c) if applicable—the registration number of the animal; and
 - (d) if known—the name and address of the responsible person; and
 - (e) the date and time of seizure and impounding; and
 - (f) the name of the authorised person who impounded the animal; and
 - (g) the reason for the impounding; and
 - (h) a note of any order made by an authorised person relating to the animal; and
 - (i) the date and details of whether the animal was sold, released, destroyed or disposed of in some other way.
- (3) The register of impounded animals must be kept available for public inspection at the place of care for animals or, if the place has no public office, at an office prescribed by subordinate local law.

34 Access to impounded animal

- (1) This section applies to an animal impounded under section 24.
- (2) The local government must allow the owner of the animal to inspect it at any reasonable time, from time to time.
- (3) Subsection (2) does not apply if it is impracticable or would be unreasonable to allow the inspection.
- (4) The inspection must be provided free of charge.

35 Unlawful removal of seized or impounded animal

- (1) A person must not, without the authority of an authorised person, remove or attempt to remove—
 - (a) a seized animal from the custody or control of an authorised person; or
 - (b) an impounded animal from the local government's facility for keeping impounded animals.

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

- (2) Any costs arising from damage or loss caused by a person contravening subsection (1) are recoverable by the local government as a debt.

Part 5 Appeals against destruction orders

36 Who may appeal

An owner or responsible person for an animal the subject of a destruction order may appeal to the Magistrates Court against the decision to make the destruction order.

37 Starting appeal

- (1) An appeal must not be started unless a review of the decision to make the destruction order has been finally decided or otherwise ended.
- (2) An appeal is started by—
 - (a) filing notice of appeal with the Magistrates Court; and
 - (b) serving a copy of the notice of appeal on the local government; and
 - (c) complying with rules of court applicable to the appeal.
- (3) The notice of appeal must be filed within 14 days after the appellant is given notice by the local government about the finalisation of the review of the decision to make a destruction order.
- (4) However, the court may, at any time, extend the time for filing the notice of appeal.
- (5) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

38 Stay of destruction order

Upon filing the notice of appeal, the destruction order is stayed until the court decides the appeal.

39 Hearing procedures

- (1) In deciding an appeal, the Magistrates Court—
 - (a) has the same powers as the local government; and
 - (b) is not bound by the rules of evidence; and
 - (c) must comply with natural justice.
- (2) An appeal is by way of rehearing, unaffected by the decision appealed against.

40 Court's powers on appeal

- (1) In deciding an appeal, the Magistrates Court may—
 - (a) confirm the decision appealed against; or
 - (b) set aside the decision and substitute another decision; or
 - (c) set aside the decision and return the matter to the local government with directions the court considers appropriate.
- (2) If the court substitutes another decision, the substituted decision is, for the purposes of this local law, other than this part, taken to be the decision of the local government.
- (3) An order for the costs of an appeal may only be made against the local government if the court is satisfied that the animal was unlawfully seized or there was no reasonable basis for making the decision subject to the appeal.

41 Appeal to District Court

An appeal lies to a District Court from a decision of the Magistrates Court, but only on a question of law.

Part 6 Miscellaneous

42 Sale of animals

- (1) The local government may, by subordinate local law, specify conditions to be complied with by persons who offer animals, or a particular species of animal, for sale.
- (2) Conditions specified under subsection (1) are in addition to requirements of the *Animal Management (Cats and Dogs) Act 2008* in relation to the supply of cats and dogs.
- (3) A person must not offer or display animals for sale in the area unless the person complies with conditions specified under subsection (1).

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

43 Subordinate local laws

The local government may make subordinate local laws about—

- (a) the circumstances in which the keeping of animals is prohibited;²⁶ or
- (b) the circumstances in which an approval is required for the keeping of animals;²⁷ or
- (c) the circumstances in which desexing of an animal is required;²⁸ or
- (d) minimum standards for keeping animals generally or animals of a particular species or breed;²⁹ or
- (e) the identification for cats and dogs required under the *Animal Management (Cats and Dogs) Act 2008*;³⁰ or
- (f) the exclusion of animals, or animals of a specified species, from public places;³¹ or
- (g) designated dog off-leash areas;³² or

²⁶ See section 5(1).

²⁷ See section 6(1).

²⁸ See section 7(1).

²⁹ See section 8(1).

³⁰ See section 9.

³¹ See section 10(1).

³² See section 11(1).

- (h) animals whose faeces in public places must be removed and disposed of;³³ or
- (i) proper enclosure requirements;³⁴ or
- (j) requirements for keeping a dog within a koala area;³⁵ or
- (k) designation of an area as a koala area;³⁶ or
- (l) the criteria for declaring an animal other than a dog to be a declared dangerous animal;³⁷ or
- (m) the organisation or local government that operates a place or care for impounded animals;³⁸ or
- (n) the species, breed or class of animal that may be disposed of other than by public auction or tender;³⁹ or
- (o) the office at which the register of impounded animals is available for public inspection;⁴⁰ or
- (p) the conditions to be complied with by persons who offer animals, or a particular species of animal, for sale;⁴¹ or
- (q) the exclusion of animals of a particular species from the application of this local law;⁴² or
- (r) the declaration of a species of animal as a declared dangerous animal;⁴³ or
- (s) the period within which an impounded animal may be reclaimed.⁴⁴

³³ See section 13.

³⁴ See section 14(2).

³⁵ See section 15(1).

³⁶ See section 15(4).

³⁷ See section 19(1).

³⁸ See section 24(b).

³⁹ See section 32(1)(b).

⁴⁰ See section 33(3).

⁴¹ See section 42(1).

⁴² See the definition of *animal* in the schedule.

⁴³ See the definition of *declared dangerous animal* in the schedule.

⁴⁴ See the definition of *prescribed period* in the schedule.

Schedule Dictionary

Section 3

animal includes a mammal, fish, bird, reptile, amphibian or insect but does not include an animal of a species excluded by subordinate local law from the application of this local law.

attack, by an animal, means—

- (a) aggressively rushing at or harassing any person or animal; or
- (b) biting, butting, kicking, or otherwise causing physical injury to, a person or an animal; or
- (c) tearing clothing on, or otherwise causing damage to the property in the immediate possession of, a person.

compliance notice means a compliance notice mentioned in *Local Law No.1 (Administration) 2015*, section 27.

cost-recovery fee means the fee fixed by the local government to cover the costs associated with impounding an animal.⁴⁵

declared dangerous animal means an animal—

- (a) of a species declared by subordinate local law as a declared dangerous animal; or
- (b) declared under section 19 of this local law to be a declared dangerous animal.

destroy, an animal, includes causing it to be destroyed.

destruction order see section 30(1).

dog off-leash area see section 11(1).

effective control see section 12(3).

notice of impounding see section 25(1).

owner, of an animal, means

- (a) its registered owner;
- (b) a person who owns the animal, in the sense of it being the person's personal property;
- (c) a person who usually keeps the animal, including through an agent, employee or anyone else;
- (d) if a person mentioned in paragraphs (a) to (c) is a minor—a parent or guardian of the minor.

prescribed period means the period, fixed by subordinate local law, of not less than—

- (a) if the animal is registered with the local government—5 days; or
- (b) if the animal is not registered with the local government—3 days;

and commencing on the day a notice of impounding is given to a person or, if no notice is given to a person, on the day of the seizure.

registered owner, of an animal, means a person recorded as being the owner of the animal in a registry kept by a local government.

⁴⁵ See the Act, section 97 for the power of a local government to fix a cost recovery fee.

responsible person, for an animal, means—

- (a) the person, or the person's employee acting within the scope of the employment, who has immediate control or custody of the animal; or
- (b) the parent or guardian of a minor who has immediate control or custody of the animal; or
- (c) the person who occupies the place at which the animal is usually kept,

but does not include—

- (a) a person who occupies the place at which the animal is usually kept, if someone else who is an adult and lives at the place keeps the animal; or
- (b) a person who has the control or custody of or keeps the animal as an employee of someone else, if the person is acting within the scope of the employment.

restricted dog see *Animal Management (Cats and Dogs) Act 2008*, section 63.

State planning instrument see *Sustainable Planning Act 2009*, schedule 3.

the Act means the *Local Government Act 2009*.

wandering at large means—

- (a) the animal is not under the effective control of someone; and
- (b) the animal is in either—
 - (i) a public place; or
 - (ii) a private place without the consent of the occupier.

CERTIFICATION

This and the preceding 24 pages bearing my initials is a certified copy of Noosa Shire Council *Law No. 2 (Animal Management) 2015*, made in accordance with the provisions of the *Local Government Act 2009*, by Noosa Shire Council by resolution dated _____ 2015.

Brett de Chastel
Chief Executive Officer
Noosa Shire Council



 **NOOSA COUNCIL**

Noosa Shire Council

Local Law No 3

(Community and Environmental Management) 2015

Noosa Shire Council Local Law No. 3 (Community and Environmental Management) 2015

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Part 1 Preliminary

1 Short title

This local law may be cited as *Noosa Shire Council Local Law No. 3 (Community and Environmental Management) 2015*.

2 Purpose and how it is to be achieved

- (1) The purpose of this local law is to protect the environment and public health, safety and amenity within the local government's area.
- (2) The purpose is to be achieved by providing for the elimination or reduction of risks and threats to the environment and public health, safety and amenity resulting from—
 - (a) inadequate protection against animal and plant pests; and
 - (b) vegetation overgrowth; and
 - (c) visual pollution resulting from accumulation of objects and materials; and
 - (d) fires and fire hazards not regulated by State law; and
 - (e) community safety hazards; and
 - (f) noise that exceeds noise standards.

3 Definitions—the dictionary

The dictionary in the schedule 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 for pest management, regulation of fires and environmental protection; and
- (b) to be read with *Local Law No. 1 (Administration) 2015*.

Part 2 Declared local pests

Division 1 Application

5 Application of part

- (1) This part does not apply to—
 - (a) an animal or plant that is a declared pest under the *Land Protection (Pest and Stock Route Management) Act 2002*² or the *Plant Protection Act 1989*³; 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.

² See the *Land Protection (Pest and Stock Route Management) Act 2002*, sections 36 and 37, regarding the declaration of plants and animals as declared pests for the State or part of the State.

³ See the *Plant Protection Act 1989*, section 4, regarding the declaration of pests that are harmful to the growth or quality of crop plants.

(b) noxious fisheries resources or diseased fisheries resources⁴.

(2) In this section—

declared pest see the *Land Protection (Pest and Stock Route Management) Act 2002*, section 8 and the *Plant Protection Act 1989*, section 4.

diseased fisheries resources see the *Fisheries Act 1994*, section 94.

noxious fisheries resources see the *Fisheries Act 1994*, schedule.

Division 2 Declaration of local pests

6 Declaration of local pests

- (1) The local government may, by subordinate local law, declare an animal or plant of a specified species to be a local pest.
- (2) Before the local government makes a declaration under this section, it must consult with the chief executive about the desirability of the declaration.
- (3) A declaration under this section—
 - (a) must be published in a newspaper circulating generally in the local government's area; and
 - (b) comes into force on the date of publication.
- (4) In this section—

chief executive means the chief executive of the department in which the *Land Protection (Pest and Stock Route Management) Act 2002* is administered.

7 Emergency declarations

- (1) This section applies if the local government is satisfied urgent action is needed to avoid or minimise an immediate risk of environmental harm posed by a plant or animal.
- (2) The local government may, by resolution, declare an animal or plant of the relevant species to be a local pest.
- (3) A declaration under this section—
 - (a) must be published in a newspaper circulating generally in the local government's area; and
 - (b) comes into force on the date of publication; and
 - (c) comes to an end three months after the date of publication.
- (4) In this section—

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

⁴ See the *Fisheries Act 1994*, section 94, regarding the declaration of diseased fisheries resources.

8 Application of declaration

A declaration may apply—

- (a) to the whole of the local government's area or in a specified part or parts of the area; and
- (b) generally or only in specified circumstances.

Division 3 Control of local pests

9 Power to search for declared local pests

- (1) This section applies if an authorised person wants to enter a property to search for declared local pests.
- (2) After giving reasonable written notice to the owner and the occupier of the property, the authorised person may—
 - (a) enter the property without the permission of the occupier; and
 - (b) take reasonable action to search for declared local pests.
- (3) However, the authorised person—
 - (a) must, as soon as the authorised person enters the property, inform any occupier of the property—
 - (i) of the reason for entering the property; and
 - (ii) that the authorised person is authorised under this local law to enter the property, excluding a home on the property, without the permission of the occupier; and
 - (b) may enter a home that is on the property only with the permission of the occupier of the relevant part of the property.
- (4) If the occupier gives permission under subsection (3)(b), the authorised person may ask the occupier to sign a document that confirms that the occupier has given permission.

10 Pest control notices

- (1) An authorised person may, by compliance notice⁵ given to the owner of land, require the owner⁶ to take specified action to control declared local pests.
- (2) The specified action may include action to—
 - (a) destroy declared local pests on the land; or
 - (b) minimise the risk of an outbreak of declared local pests on the land; or
 - (b) prevent or minimise seeding or reproduction by declared local pests; or

⁵ See *Local Law No.1 (Administration) 2015*, section 27, regarding the requirements for compliance notices and the offence for not complying with a compliance notice.

⁶ See the Act, section 140, in relation to the owner's right to enter property where the owner is not the occupier to take action to comply with a remedial notice, and section 141, in relation to an occupier's right to recover amounts incurred to satisfy an owner's obligations.

- (c) contain infestation by declared local pests within a localised area; or
 - (d) reduce the density or extent of infestation by declared local pests; or
 - (e) remove harbour provided to declared local pests.
- (3) The notice may require the repetition of a specified action at stated intervals or on the reappearance of the declared local pest within a specified period.

Division 4 Prohibition of sale and propagation

11 Prohibition on sale

A person must not—

- (a) sell or supply a declared local pest; or
- (b) offer or display a declared local pest for sale or supply.

Maximum penalty—50 penalty units.

12 Prohibition on introducing, propagating etc a declared local pest

(1) A person must not—

- (a) introduce, propagate or breed a declared local pest; or
- (b) provide harbour to a declared local pest.

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

(2) However, subsection (1) does not apply to a person who has been prescribed under a subordinate local law for this subsection as exempt from the offence in subsection (1) in relation to a specified pest.

Example of persons that might be exempted from subsection (1) in relation to specified pests—

- Staff of research organisations such as universities or the CSIRO who require a particular pest for research purposes.
- An employee of a circus using a particular pest to provide entertainment to the public.
- Staff of an organisation using a particular pest as part of an education program.
- An employee of a zoo that keeps a particular pest.

(3) In this section—

introduce means to introduce, or cause to introduce, into the local government's area.

Part 3 Overgrown and unsightly allotments

13 Overgrown allotments

- (1) This section applies where an authorised person forms the opinion that an allotment is overgrown with vegetation to such an extent that it—
- (a) has seriously affected the visual amenity of the allotment; or

- (b) is likely to attract or harbour reptiles.
- (2) The authorised person may, by compliance notice⁷ given to the responsible person for the allotment, require the responsible person to clear the vegetation to an extent specified in the notice.
- (3) However, the notice cannot prevent a use of land authorised under the Planning Act⁸ or the *Environmental Protection Act 1994*.
- (4) In this section—
- vegetation** includes a tree, bush, shrub, plant or grass, but does not include vegetation that is protected under a law⁹ of the State or Commonwealth or under the local government's planning scheme.

14 Accumulation of objects and materials on allotments

- (1) This section applies where an authorised person forms the opinion that objects or materials brought on to, or allowed to accumulate on, an allotment—
- (a) have seriously affected the visual amenity of the allotment; or
- (b) are likely to attract or harbour reptiles.

Examples for paragraph (a) of objects and materials that may seriously affect the visual amenity of an allotment—

- Discarded or disused machinery or machinery parts.
- Broken-down or severely rusted vehicles.
- Discarded bottles, containers or packaging.
- Refuse or scrap material.

- (2) The authorised person may, by compliance notice¹⁰ given to the responsible person for the allotment, require the responsible person to—
- (a) remove objects or materials that are causing the circumstance mentioned in subsection (1)(a) or (b); or
- (b) take other specified action to remedy the circumstance mentioned in subsection (1)(a) or (b).

Example of action that might be required under paragraph (b)—

Erecting an appropriate structure (in accordance with requirements under the Planning Act) to screen unsightly objects or materials from public view.

- (3) However, the notice cannot prevent a use of land authorised under the Planning Act or the *Environmental Protection Act 1994*.

⁷ See footnote 5.

⁸ See definition of *Planning Act* in the Act, schedule 4.

⁹ For example, vegetation may be protected under the *Nature Conservation Act 1994*, the *Vegetation Management Act 1999*, the *Planning Act*, the *Queensland Heritage Act 1992*, the *Fisheries Act 1994* and the *Environment Protection and Biodiversity Conservation Act 1999 (Cwlth)*.

¹⁰ See footnote 5.

Part 4 Fires and fire hazards

15 Regulation of lighting and maintaining fires in the open

- (1) This section does not apply to the lighting or maintaining of a fire that is authorised under the *Fire and Rescue Service Act 1990*.¹¹
- (2) The local government may, by subordinate local law, prohibit or restrict the lighting or maintaining of fires in the open in the whole, or designated parts, of the local government's area.

Example—

The subordinate local law might prohibit the lighting of fires, or a particular type of fire, in the open, unless 1 or more of the following conditions is met—

- the fire is contained in an approved incinerator;
 - the fire is established in a specified way and specified precautions are taken to prevent the spread of fire;
 - the fire is lit and extinguished within a specified time.
- (3) A person must comply with a prohibition or restriction imposed under this section.
Maximum penalty for subsection (3)—50 penalty units.
 - (4) A person must not light or maintain a fire if the fire exposes property to the risk of damage or destruction by fire.
Maximum penalty for subsection (4)—50 penalty units.
 - (5) However, a person does not commit an offence under subsection (3) or (4) if the person is authorised or required to light or maintain the fire in the performance of duties under another Act.

16 Fire hazards

- (1) This section applies where an authorised person forms the opinion that a fire hazard exists on an allotment.
- (2) The authorised person may, by compliance notice¹² given to the responsible person for the allotment, require the responsible person to take specified action to reduce or remove the fire hazard.¹³

¹¹ See the *Fire and Rescue Service Act 1990*, section 63, regarding fires authorised by notification, section 65 regarding fires authorised by permit and section 69, regarding notices requiring occupiers to take measures to reduce the risk of fire. For fires authorised by notification under section 63, see the Notification by the Commissioner of Fire and Rescue Service published in the gazette on 6 August 2004.

¹² See footnote 5.

¹³ See also the *Fire and Rescue Service Act 1990*, section 69, under which the Fire Services Commissioner can publish a general notification in the gazette requiring occupiers of land to take measures to reduce the risk of fire occurring or the risk to persons, property or environment in the event of fire occurring.

(3) In this section—

fire hazard means—

- (a) anything that, because of its flammable nature, its position or its quantity, exposes property to significant risk of damage or destruction by fire; or
- (b) a thing that is declared to be a fire hazard under a subordinate local law for this paragraph.

Examples of fire hazards for paragraph (a)—

- Live cinders or hot ash that is not enclosed in a fireplace so constructed as to prevent the escape of cinders or ash.
- A substantial accumulation of grass clippings that is liable to spontaneous combustion.
- Dry vegetation that could be easily ignited or other flammable materials.

Part 5 Community safety hazards

17 What is a community safety hazard

A community safety hazard is—

- (a) a fence or structure on land that, because of its nature or its position, poses a significant risk of causing injury to a person or damage to property; or
- (b) objects or materials on land that are likely to become airborne in periods of high wind in a way that poses a significant risk of causing injury to a person or damage to property; or
- (c) a thing that is declared to be a community safety hazard under a subordinate local law for this paragraph.

Examples of a fence or structure that may be a community safety hazard for paragraph (a)—

- Barbed wire fencing adjoining a public park or reserve or located in an urban area.
- Electric fences adjoining public land.
- An unfenced dam adjacent to a public park or reserve.

18 Power to enter property to inspect for community safety hazards

- (1) This section applies if an authorised person wants to enter a property to inspect it to identify any community safety hazards.
- (2) After giving reasonable written notice to the owner and the occupier of the property, the authorised person may—
 - (a) enter the property without the permission of the occupier; and
 - (b) take reasonable action to inspect the property for community safety hazards.
- (3) However, the authorised person—
 - (a) must, as soon as the authorised person enters the property, inform any occupier of the property—
 - (i) of the reason for entering the property; and

- (ii) that the authorised person is authorised under this local law to enter the property, excluding a home on the property, without the permission of the occupier; and
 - (b) may enter a home that is on the property only with the permission of the occupier of the relevant part of the property.
- (4) If the occupier gives permission under subsection (3)(b), the authorised person may ask the occupier to sign a document that confirms that the occupier has given permission.

19 Removal or reduction of community safety hazards

- (1) This section applies where an authorised person forms the opinion that a community safety hazard exists on an allotment.
- (2) The authorised person may, by compliance notice¹⁴ given to the responsible person for the allotment, require the responsible person to take specified action in relation to the community safety hazard to—
 - (a) remove the hazard; or
 - (b) reduce the level of risk to persons or property.

Example of specified action that might be required under paragraph (b) to reduce the risk to the community from a community safety hazard—

Securing objects or materials that may become airborne in periods of high wind.

20 Prescribed requirements

- (1) The local government may, by subordinate local law, prescribe requirements that must be met by responsible persons relating to specified types of community safety hazards located on the owner's land.

Example of prescribed requirements—

- A requirement to place signs on electric fences or barbed wire fences adjoining public land to warn persons of the risk of injury.
 - A requirement to install and maintain an electric fence in accordance with appropriate standards.
- (2) A responsible person must comply with requirements prescribed under this section.

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

¹⁴ See footnote 5.

Part 6 Noise standards

21 Prescribed noise standards

- (1) This section applies if the local government is the administering authority for the *Environmental Protection Act 1994*, chapter 8, part 3B.¹⁵
- (2) The local government may, by subordinate local law, prescribe a noise standard in the whole, or designated parts, of the local government's area by—
 - (a) prohibiting the making of a stated noise (for example, by reference to the activity making the noise and the time at which the noise is made);¹⁶ and
 - (b) stating the section, in the *Environmental Protection Act 1994*, chapter 8, part 3B, division 3, for which the subordinate local law provision is prescribing a noise standard.¹⁷

Part 7 Miscellaneous

22 Subordinate local laws

The local government may make subordinate local laws about—

- (a) declaring animals or plants of specified species to be local pests;¹⁸ or
- (b) lighting and maintaining of fires in the open;¹⁹ or
- (c) fire hazards;²⁰ or
- (d) community safety hazards;²¹ or
- (e) prescribed requirements relating to community safety hazards;²² or
- (f) prescribed noise standards for the *Environmental Protection Act 1994*.²³

¹⁵ See the *Environmental Protection Act 1994*, section 514, for the making of a regulation to devolve the administration and enforcement of parts of the Act to local governments as the administering authority. The *Environmental Protection Regulation 2008*, section 99, devolves the administration and enforcement of noise standards to local governments. Section 109 of the Regulation declares local government authorised persons to be authorised persons under the *Environmental Protection Act 1994*, section 445(1)(c). Chapter 9 of that Act provides for the investigation and enforcement powers of authorised persons.

¹⁶ See, however, *Local Law No.1 (Administration) 2015*, section 10(4)(a), regarding conditions of approvals that may authorise an act or omission that contravenes a noise standard.

¹⁷ Section 4400(3) provides that a local law that prescribes a noise standard replaces the nominated default noise standard in the *Environmental Protection Act 1994*, chapter 8, part 3B, division 3.

¹⁸ See section 6(1).

¹⁹ See section 15(2).

²⁰ See section 16(3)(b).

²¹ See section 17(c).

²² See section 20(1).

²³ See section 21(2).

Schedule Dictionary

Section 3

allotment means an individual parcel or piece of land.

animal means an organism (other than a human being) that is not a plant and includes eggs and semen.

compliance notice means a compliance notice mentioned in *Local Law No.1 (Administration) 2015*, section 27.

declared local pest means a plant or animal declared to be a pest under section 6 or 7.

plant means vegetation of any type, including its flowers, roots, seeds and other parts.

reasonable written notice means a written notice given at least 7 days before a property is to be entered, that informs the owner and the occupier of the property of—

- (a) the local government's intention to enter the property; and
- (b) the reason for entering the property; and
- (c) the days and times when the property is to be entered.

responsible person means the person who has control or management of the place and includes a person in charge of activities or structures in the place that may result in contravention of this local law.

the Act means the *Local Government Act 2009*.

CERTIFICATION

This and the preceding 12 pages bearing my initials is a certified copy of Noosa Shire Council *Law No. 3 (Community and Environmental Management) 2015*, made in accordance with the provisions of the *Local Government Act 2009*, by Noosa Shire Council by resolution dated _____ 2015.

Brett de Chastel
Chief Executive Officer
Noosa Shire Council



Noosa Shire Council

Local Law No 4

(Local Government Controlled Areas, Facilities and Roads) 2015

Noosa Shire Council Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2015

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Part 1 Preliminary

1 Short title

This local law may be cited as *Noosa Shire Council Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2015*.

2 Purpose and how it is to be achieved

- (1) The purpose of this local law is to—
 - (a) protect the health and safety of persons using local government controlled land, facilities, infrastructure and roads; and
 - (b) preserve features of the natural and built environment and other aspects of the amenity of local government controlled land, facilities, infrastructure and roads.
- (2) The purpose is to be achieved by providing for—
 - (a) the regulation of access to local government controlled areas; and
 - (b) the prohibition or restriction of particular activities on local government controlled areas or roads; and
 - (c) miscellaneous matters affecting roads.

3 Definitions—the dictionary

The dictionary in the schedule 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 laws² regulating the use of trust land and roads; and
- (b) is to be read with *Local Law No. 1 (Administration) 2015*.

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.

² Other legislation that may be relevant in the application of this local law includes the *Land Act 1994*, the *Land Regulation 1995* and the *Land Protection (Pest and Stock Route Management) Act 2002*.

Part 2 Use of local government controlled areas, facilities and roads³

5 Prohibited and restricted activities

- (1) The local government may, by subordinate local law, declare an activity to be—
 - (a) prohibited in a local government controlled area or road (a ***prohibited activity***); or
 - (b) restricted in a local government controlled area or road (a ***restricted activity***).

Example for paragraph (a)—

The local government may declare that the lighting of fires is a prohibited activity in all local government controlled areas, in a particular local government controlled area or in a part of a local government controlled area.

Example for paragraph (b)-

The local government may declare that the playing of sport generally, or the playing of certain sports, is a restricted activity in that it is restricted to particular times of the day, week, month or year in all local government controlled areas, in a particular local government controlled area or in a part of a local government controlled area.

- (2) The local government must take reasonable steps to provide notice to members of the public regarding restricted activities declared for local government controlled areas or roads.
- (3) In this section—

reasonable steps may include the display of a notice at a prominent place within each local government controlled area for which a declaration under subsection (1)(b) has been made, stating—

 - (a) if the declaration relates to the whole area—the restricted activities for the area; and
 - (b) if the declaration relates to a part of the area—the restricted activities and a description of the part of the area to which the declaration applies; and
 - (c) in general terms, the provisions of subsection (4).
- (4) A person must not engage in a prohibited activity or a restricted activity.

Maximum penalty - 20 penalty units

6 Motor vehicle access to local government controlled areas

- (1) A ***motor vehicle access area*** is an area within a local government controlled area that is—

³ *Local Law No. 1 (Administration) 2015* deals with activities on local government controlled areas and roads that require the local government's approval, such as commercial use of local government controlled areas and roads, alterations or improvements to local government controlled areas, and other miscellaneous regulated activities.

- (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.
- (2) For the purposes of *Local Law No.1 (Administration) 2015*, section 5(b), it is a prescribed activity⁴ to bring a motor vehicle onto or drive a motor vehicle on any part of a local government controlled area that is not a motor vehicle access area.
- (3) The local government may, by subordinate local law, declare a specific type of motor vehicle (a ***prohibited vehicle***) as prohibited in a specified motor vehicle access area.
- (4) For the purposes of *Local Law No.1 (Administration) 2015*, section 5(b), it is a prescribed activity⁵ to bring a prohibited vehicle onto or drive a prohibited vehicle on the specified motor vehicle access area.
- (5) However, subsections (2) and (4) do not apply for an emergency vehicle.
- (6) The local government must take reasonable steps to provide notice to members of the public regarding—
 - (a) declarations of motor vehicle access areas under subsection (1)(b); and
 - (b) declarations of prohibited vehicles under subsection (3).
- (7) In this section—

emergency vehicle includes the following—

 - (a) an ambulance;
 - (b) a fire-engine;
 - (c) a police vehicle;
 - (d) another vehicle, including a tow truck, helicopter or mobile crane, if used in circumstances of an emergency.

reasonable steps include, as a minimum, the display of a notice at a prominent place within each declared motor vehicle access area stating—

 - (a) a description of the declared motor vehicle access area; and
 - (b) a description of prohibited vehicles for the area; and
 - (c) in general terms, the provisions of subsections (2) and (4).

7 Opening hours of local government controlled areas

- (1) The local government may, by subordinate local law, declare the times when a local government controlled area is open to the public (the ***opening hours***).
- (2) A person must not enter or remain in a local government controlled area outside

⁴ *Local Law No.1 (Administration) 2015*, section 6, creates an offence for a person to undertake a prescribed activity without a current approval granted by the local government. Section 7 requires that the approval be obtained under part 2 of that local law.

⁵ See footnote 3.

the opening hours unless the person is authorised to do so by the chief executive officer⁶.

Maximum penalty for subsection (2)—20 penalty units.

- (3) If the local government declares the opening hours for a local government controlled area under subsection (1), it must place a notice showing the opening hours at each public entrance to the area.

8 Power of closure of local government controlled areas

- (1) The local government may, by resolution, temporarily close a local government controlled area to public access—
 - (a) to carry out construction, maintenance, repair or restoration work; or
 - (b) to protect the health and safety of a person or the security of a person's property; or
 - (c) because of a fire or other natural disaster; or
 - (d) to conserve or protect the cultural or natural resources of the area or native wildlife.
- (2) A resolution under subsection (1)—
 - (a) must state a period, not greater than 6 months, during which the area will be closed; and
 - (b) must be revoked by the local government as soon as practicable after the local government becomes satisfied that the reason for making the resolution no longer exists.
- (3) The local government may, by subordinate local law, permanently close a local government controlled area to public access for any of the following reasons—
 - (a) the conservation of the cultural or natural resources of the area, including, for example—
 - (i) to protect significant cultural or natural resources; or
 - (ii) to enable the restoration or rehabilitation of the area; or
 - (iii) to protect a breeding area for native wildlife; or
 - (iv) to manage a significant Aboriginal area in the area in a way that is consistent with Aboriginal tradition; or
 - (v) to manage a significant Torres Strait Islander area in the area in a way that is consistent with Island custom;
 - (b) protection of the health and safety of members of the public;
 - (c) protection of a facility or service in the area, including, for example, infrastructure, water supply facilities or power generating equipment;
 - (d) protection of the amenity of an area adjacent to the area;
 - (e) the orderly or proper management of the area.

⁶ See definition of *chief executive officer* in the Act, schedule 4.

- (4) If the local government closes a local government controlled area under subsections (1) or (3), it must place at each public entrance to the area a notice of the closure, including a statement of the duration of the closure.

Example—

If the local government closes an area that is part of a wider local government controlled area, it must place notices at each public entrance to the closed area.

- (5) A person must not enter or remain in a local government controlled area while it is closed to public access under this section, unless the person is authorised to do so by the chief executive officer.

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

- (6) In this section—

significant Aboriginal area see the *Aboriginal Cultural Heritage Act 2003*, section 9.

significant Torres Strait Islander area see the *Torres Strait Islander Cultural Heritage Act 2003*, section 9.

Part 3 Matters affecting roads

9 Power to require owner of land adjoining road to fence land

- (1) This section applies if, in the local government's opinion, it is necessary for land adjoining a road to be fenced to prevent the risk of—
- (a) animals escaping from the land onto the road; or
 - (b) interference with the safe movement of traffic or the safe use of the road.
- (2) The local government may, by giving a compliance notice⁷ to the owner—
- (a) if the land is not currently fenced—require the owner to fence the land; or
 - (b) if a current fence on the land is in disrepair—require the owner to repair or replace the fence.
- (3) The local government may, by subordinate local law, set out the minimum standards with which the fence must comply.
- (4) In this section—
- animal** does not include a native animal, feral animal or pest animal.
- feral animal** see *Animal Care and Protection Act 2001*, section 42.
- pest animal** see *Animal Care and Protection Act 2001*, section 42.

⁷ See *Local Law No.1 (Administration) 2015*, section 27, regarding the requirements for compliance notices.

10 Numbering of premises and allotments adjoining a road⁸

- (1) An owner of land must not adopt a number for a building or allotment that is inconsistent with a numbering system adopted by the local government under this section.

Maximum penalty for subsection (1)—10 penalty units.

- (2) An owner of land (other than vacant land) must display the number allocated so as to be easily identified from the adjoining road.

Maximum penalty for subsection (2)—10 penalty units.

Part 4 Miscellaneous

11 Subordinate local laws

The local government may make subordinate local laws about—

- (a) the declaration of prohibited activities or restricted activities;⁹ or
- (b) the declaration of motor vehicle access areas;¹⁰ or
- (c) the declaration of prohibited vehicles;¹¹ or
- (d) the opening hours for a local government controlled area;¹² or
- (e) closing a local government controlled area to public access;¹³ or
- (f) minimum standards for fences on land adjoining a road.¹⁴

⁸ See the Act, section 60, regarding control of roads by a local government.

⁹ See section 5(1).

¹⁰ See section 6(1).

¹¹ See section 6(3).

¹² See section 7(1).

¹³ See section 8(3).

¹⁴ See section 9(3).

Schedule Dictionary

Section 3

local government controlled area see *Local Law No.1 (Administration) 2015*, schedule 1.

road see *Local Law No.1 (Administration) 2015*, schedule 1.

CERTIFICATION

This and the preceding 8 pages bearing my initials is a certified copy of Noosa Shire Council *Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2015*, made in accordance with the provisions of the *Local Government Act 2009*, by Noosa Shire Council by resolution dated _____ 2015.

Brett de Chastel
Chief Executive Officer
Noosa Shire Council



 **NOOSA COUNCIL**

Noosa Shire Council

Local Law No 5

(Parking) 2015

Noosa Shire Council Local Law No. 5 (Parking) 2015

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Part 1 Preliminary

1 Short title

This local law may be cited as *Noosa Shire Council Local Law No. 5 (Parking) 2015*.

2 Purpose and how it is to be achieved

- (1) The purpose of this local law is to complement the regulated parking provisions in chapter 5, part 6 of the TORUM Act by providing for the exercise of local government powers authorised under that Act.
- (2) The purpose is achieved by providing for—
 - (a) the establishment of traffic areas and off-street regulated parking areas; and
 - (b) lawfully parking contrary to an indication on an official traffic sign with a parking permit or in a loading zone with a commercial vehicle identification label; and
 - (c) the prescribing of infringement notice penalties for minor traffic offences.

3 Definitions—the dictionary

The dictionary in the schedule 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, the TORUM Act, chapter 5, part 6²; and
- (b) to be read with *Local Law No. 1 (Administration) 2015*.

Part 2 Declaration of parking areas for the TORUM Act

5 Declaration of traffic areas

- (1) The local government may, by subordinate local law, declare the whole or a part of its area to be a traffic area.^{3 4}
- (2) The subordinate local law must define the boundaries of the traffic area.

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.

² A local government cannot regulate parking on a State-controlled road unless the written agreement of the chief executive has been obtained under the TORUM Act, section 101(1)(b).

³ See the TORUM Act, sections 102(3)(a) and 102(2)(b).

⁴ The TORUM Act, section 69(4), provides: “A local government may install or remove an official traffic sign that will result in a change to the management of a local government road, of a kind mentioned in the *Transport Planning and Coordination Act 1994*, section 8D(1), only if the chief executive has approved the proposed change under the *Transport Planning and Coordination Act 1994*, section 8D.”

6 Declaration of off-street regulated parking areas

- (1) The local government may, by subordinate local law, declare an area of land controlled⁵ by the local government, including structures on the land, as an off-street regulated parking area.⁶
- (2) The subordinate local law must define the boundaries of the off-street regulated parking area.

Part 3 Parking contrary to parking restriction

7 Parking permits⁷

- (1) The local government may issue a parking permit.⁸
- (2) The local government may prescribe, by subordinate local law, the persons that may be issued with a permit mentioned in subsection (1).
- (3) A vehicle may be parked contrary to an indication on an official traffic sign regulating parking by time or payment of a fee, if the vehicle displays—
 - (a) a parking permit for people with disabilities;⁹ or
 - (b) a permit issued by the local government and valid for the place and time at which the vehicle is parked.

8 Commercial vehicle identification labels¹⁰

- (1) The local government may issue a commercial vehicle identification label.¹¹
- (2) The local government may, by subordinate local law, prescribe vehicles that may be issued with a commercial vehicle identification label.¹²
- (3) A vehicle displaying a current commercial vehicle identification label may be lawfully parked in a loading zone.¹³

⁵ See the TORUM Act, section 104(2).

⁶ See the TORUM Act, sections 104(1)(b) and 101(1)(c).

⁷ See the TORUM Act, section 103(4).

⁸ *Local Law No. 1 (Administration) 2015*, section 5(b), provides that a **prescribed activity** includes “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.” Section 7 of *Local Law No. 1 (Administration) 2015* provides that an approval required for a prescribed activity must be obtained under part 2 of *Local Law No. 1 (Administration) 2015*. As a result, an approval for a parking permit must be obtained under that part.

⁹ Parking permits for people with disabilities are issued under the TORUM Act, section 111, by the chief executive of the department administering the TORUM Act.

¹⁰ See the TORUM Act, section 103(5).

¹¹ *Local Law No. 1 (Administration) 2015*, section 5(b), provides that a **prescribed activity** includes “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.” Section 7 of *Local Law No. 1 (Administration) 2015* provides that an approval required for a prescribed activity must be obtained under part 2 of *Local Law No. 1 (Administration) 2015*. As a result, an approval for a commercial vehicle identification label must be obtained under that part.

¹² The TORUM Act already defines certain vehicles designed for the carriage of goods as commercial vehicles – see schedule 4, definition, **commercial vehicle**.

¹³ See also *Transport Operations (Road Use Management-Road Rules) Regulation 1999*, section 179, relating to drivers who are permitted to stop in a loading zone.

Part 4 Minor traffic offence infringement notice penalties

9 Minor traffic offence infringement notice penalties

- (1) The local government may prescribe, by subordinate local law, an amount (in penalty units) as the infringement notice penalty for a minor traffic offence.¹⁴
- (2) However, a subordinate local law under subsection (1) may not prescribe an amount greater than 5 penalty units.

Part 5 Miscellaneous

10 Subordinate local laws

The local government may make subordinate local laws about—

- (a) the declaration of traffic areas;¹⁵ or
- (b) the declaration of off-street regulated parking areas;¹⁶ or
- (c) the persons who may be issued with a permit to park a vehicle contrary to an indication on an official traffic sign;¹⁷ or
- (d) vehicles that may be issued with a commercial vehicle identification label;¹⁸ or
- (e) infringement notice penalty amounts that apply for minor traffic offences.¹⁹

¹⁴ See the TORUM Act, section 108(1). The maximum penalty for an offence relating to paid parking is 40 penalty units under the TORUM Act, section 106(1). The maximum penalty for other parking offences is 40 penalty units under the TORUM Act, section 74.

¹⁵ See section 5(1).

¹⁶ See section 6.

¹⁷ See section 7(2).

¹⁸ See section 8(2).

¹⁹ See section 9(1).

Schedule Dictionary**Section 3**

commercial vehicle identification label means a label of the type depicted in the Manual of Uniform Traffic Control Devices as a commercial vehicle identification label.

indication, on an official traffic sign, see TORUM Act, schedule 4.

infringement notice penalty means an infringement notice fine under the *State Penalties Enforcement Act 1999*.

minor traffic offence see TORUM Act, section 108(4).

official traffic sign see TORUM Act, schedule 4.

off-street regulated parking area see TORUM Act, schedule 4.

parking permit for people with disabilities see TORUM Act, schedule 4.

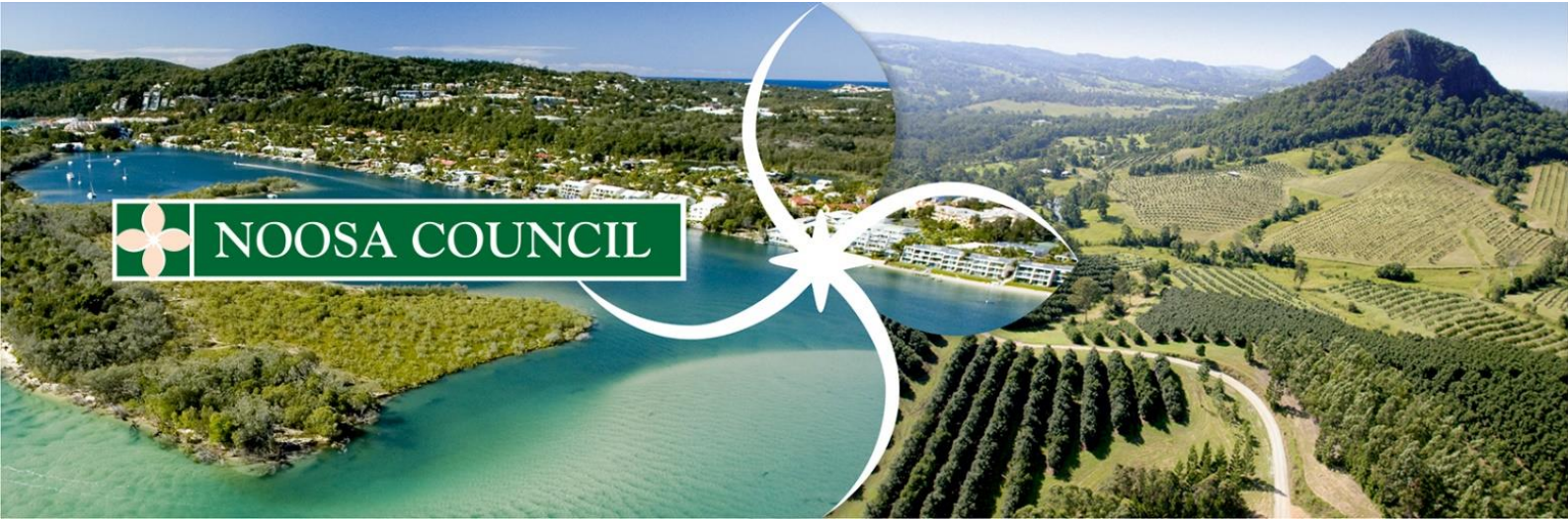
traffic area see TORUM Act, schedule 4.

TORUM Act means the *Transport Operations (Road Use Management) Act 1995*.

CERTIFICATION

This and the preceding 5 pages bearing my initials is a certified copy of Noosa Shire Council *Law No. 5 (Parking) 2015*, made in accordance with the provisions of the *Local Government Act 2009*, by Noosa Shire Council by resolution dated _____ 2015.

Brett de Chastel
Chief Executive Officer
Noosa Shire Council



Noosa Shire Council

Local Law No 6

(Bathing Reserves) 2015

Noosa Shire Council Local Law No. 6 (Bathing Reserves) 2015

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Part 1 Preliminary

1 Short title

This local law may be cited as *Noosa Shire Council Local Law No. 6 (Bathing Reserves) 2015*.

2 Purpose and how it is to be achieved

- (1) The purpose of this local law is to enhance the public safety and convenience of bathing reserves placed under the local government's control¹ through orderly management and regulation of activities within these reserves.
- (2) The purpose is achieved by providing for—
 - (a) the designation and management of safe, supervised bathing areas within bathing reserves; and
 - (b) the regulation of conduct and the use of aquatic equipment within bathing reserves; and
 - (c) the assignment of responsibility to life-saving clubs for managing, patrolling and supervising bathing reserves; and
 - (d) the appointment and powers of authorised persons to manage and enforce the regulation of conduct within bathing reserves.

3 Definitions—the dictionary

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

4 Relationship with other laws²

- (1) This local law is to be read with *Local Law No. 1 (Administration) 2015*.
- (2) However, a reference to an authorised person in *Local Law No. 1 (Administration) 2015* does not include an authorised person appointed under this local law.

Part 2 Bathing reserves

Division 1 Designation of bathing reserves

5 Signs indicating existence of bathing reserve

- (1) If the local government proposes to regulate the use of a bathing reserve under this local law, the local government must erect and maintain signs (*reserve signs*) in prominent positions on or adjacent to the foreshore to indicate the existence of the bathing reserve.
- (2) Reserve signs must be erected at the lateral boundaries of the bathing reserve indicating the position of the boundaries.
- (3) The signs must face both seawards and shorewards.

¹ As declared by gazette notice under the Act.

² 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.

Division 2 **Bathing areas**

6 Bathing areas

- (1) An authorised person may mark out an area (a ***bathing area***) within a bathing reserve.
- (2) The area selected as a bathing area must be the part of the bathing reserve that is, in the authorised person's opinion, the safest and most suitable for bathing in view of the prevailing conditions.
- (3) The bathing area is marked out by placing 2 patrol flags at different points on or adjacent to the foreshore.
- (4) The bathing area consists of the area defined by—
 - (a) an imaginary line between the 2 patrol flags; and
 - (b) lateral boundaries extending seaward from each patrol flag at right angles from the imaginary line; and
 - (c) an outer boundary parallel to, and 200 metres to the seaward side of, the imaginary line.
- (5) Where the boundary of the bathing reserve is less than 200 metres to the seaward side of an imaginary line between the 2 patrol flags, then the boundary of the bathing area shall be the outer boundary of the bathing reserve.
- (6) An authorised person may, in view of prevailing conditions, change the boundaries of a bathing area by changing the position of the patrol flags.
- (7) Patrol flags must not be exhibited if the bathing area is not under surveillance by a life-saving patrol.

7 Flags to inform bathers about prevailing conditions

- (1) This section applies if—
 - (a) an authorised person has marked out a bathing area under section 6; and
 - (b) in the authorised person's opinion, there are potentially hazardous conditions prevailing within the bathing area.
- (2) The authorised person must exhibit in a prominent position on or adjacent to the foreshore a yellow flag warning bathers of the potentially hazardous conditions.

8 Closure of bathing reserve

- (1) An authorised person may close a bathing reserve or part of a bathing reserve to bathing by erecting a red flag in a prominent position on or adjacent to the foreshore.³

Example—

The authorised person may close the bathing reserve if the prevailing conditions pose a risk to the lives of members of the public bathing in the reserve.

- (2) If patrol flags marking out a bathing area have been placed in position, the patrol flags must be removed on closure of the bathing reserve or a part of the bathing reserve in which the bathing area is situated.

³ Although this local law does not require strict compliance with Australian Standard No. 2416 (Design and Application of Water Safety Signs), that standard should, where practicable, be complied with.

- (3) A person must not bathe in a bathing reserve or part of a bathing reserve while the reserve or the relevant part of the reserve is closed to bathing.

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

Division 3 Reservation for training, competitions and special occasions

9 Reservation for life-saving training

- (1) An authorised person may—
 - (a) temporarily set apart the whole or a part of a bathing reserve for life-saving training; and
 - (b) impose restrictions on access to the area set apart.
- (2) However an authorised person may not set apart any part of a bathing reserve for life-saving training exclusively.
- (3) An area set apart under this section, and the restrictions applying to access, must be clearly indicated by signs erected in prominent positions on the bathing reserve.

10 Reservation for competitions and special occasions

- (1) For the purposes of *Local Law No.1 (Administration) 2015*, section 5(b), it is a prescribed activity⁴ to—
 - (a) set apart a bathing reserve or a part of a bathing reserve for life-saving training on an exclusive basis; or
 - (b) use any part of a bathing reserve for the conduct of a surfing competition, a life-saving competition or another aquatic activity.
- (2) Where an approval for an activity mentioned in subsection (1) permits restrictions on access to any part of a bathing reserve, the area set apart for the activity and the restrictions applying to access must be clearly indicated by signs erected in prominent positions on the bathing reserve.
- (3) A person must not contravene a restriction on access imposed under this section.

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

Part 3 Use of aquatic equipment in bathing reserves

11 Prohibition of use of aquatic equipment in bathing areas

- (1) A person must not use aquatic equipment in a bathing area.
Maximum penalty for subsection (1)—20 penalty units.
- (2) However—
 - (a) this section does not prevent the use of aquatic equipment if its use at a place within a bathing reserve is authorised under another law; and

⁴ *Local Law No.1 (Administration) 2015*, section 6, creates an offence for a person to undertake a prescribed activity without a current approval granted by the local government. Section 7 requires that the approval be obtained under part 2 of that local law.

- (b) a rubber float or board that does not give rise to risk of injury to other bathers may be used in a bathing area; and
- (c) if an authorised person authorises the use of other aquatic equipment in a bathing area, the equipment may be used subject to conditions fixed by the authorised person when giving the authorisation; and
- (d) life-saving equipment may be used in a bathing area by members of a life-saving patrol for surveillance of the bathing area or to assist bathers in distress.

12 Restrictions on use of aquatic equipment in bathing reserves

- (1) The local government may, by subordinate local law, prohibit or restrict the use of aquatic equipment or a specified class of aquatic equipment within a bathing reserve or a particular part of a bathing reserve.
- (2) Notice of a prohibition or restriction imposed under this section must be included on the reserve signs or on notices adjacent to the reserve signs.
- (3) A person must not use aquatic equipment in contravention of a prohibition or restriction imposed under this section unless authorised to do so by an authorised person under section 13, or authorised under another law.

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

13 Reservation of areas for use of aquatic equipment

- (1) An authorised person may temporarily set apart a particular part of a bathing reserve for the use of aquatic equipment of a particular type.
- (2) A part of the bathing reserve set apart under this section must be defined by signs and flags or in some other way that clearly indicates the relevant part of the reserve and the use for which it is set apart.
- (3) If a part of a bathing reserve is set apart for the use of aquatic equipment of a particular type under this section, a person must not—
 - (a) use aquatic equipment of the relevant type in the bathing reserve outside the part of the reserve set apart for its use; or
 - (b) use aquatic equipment, in the relevant part of the reserve, that is not of the type for which the relevant part of the reserve is set apart.

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

Part 4 Behaviour in bathing reserves

14 Dangerous objects

- (1) A person must not bring an item of aquatic equipment or other object into a bathing reserve, or use aquatic equipment or anything else in a bathing reserve, if the item or object is dangerous.

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

- (2) This section does not apply to life-saving equipment used by members of a life-saving patrol for surveillance of the bathing reserve or to assist bathers in distress.

15 Prohibited equipment

- (1) A person must not have prohibited equipment in a bathing reserve.
Maximum penalty for subsection (1)—20 penalty units.
- (2) However, this section does not apply in circumstances excluded under a subordinate local law from the application of this section.
- (3) In this section—
prohibited equipment means—
 - (a) a spear gun; or
 - (b) a fishing spear; or
 - (c) another object classified as prohibited equipment under a subordinate local law for this paragraph.

16 Dangerous conduct

A person must not use aquatic equipment or anything else in a bathing reserve in a way that creates a risk to the safety of others.

Maximum penalty—20 penalty units.

17 Emergency evacuation alarm

- (1) If an emergency evacuation alarm is given, a person within a bathing reserve—
 - (a) must leave the water as soon as practicable; and
 - (b) must not enter or re-enter the water until the all-clear is given.Maximum penalty for subsection (1)—20 penalty units.
- (2) An emergency evacuation alarm is given by—
 - (a) the prolonged ringing of a bell or sounding of a siren; and
 - (b) the exhibition of a red flag.
- (3) The all-clear is given by—
 - (a) a short ringing of the bell or sounding of the siren; and
 - (b) the replacement of the red flag by a yellow flag.
- (4) An emergency evacuation and the all-clear may also be given in ways recognised by SLSQ.

Example—

The emergency evacuation alarm may be given by holding up a red and white quartered flag and the all-clear may be given by taking down the flag when the danger has passed.

18 False alarms

A person must not, without the authority of an authorised person—

- (a) give an emergency evacuation alarm or do anything likely to be reasonably interpreted as an emergency evacuation alarm; or
- (b) give the all-clear after an emergency evacuation alarm or do anything likely to be reasonably interpreted as the all-clear after an emergency evacuation alarm.

Maximum penalty—50 penalty units.

Part 5 Life-saving clubs and powers of authorised persons

Division 1 Life-saving clubs and patrols

19 Recognised life-saving clubs

- (1) The local government may, after consultation with interested life-saving clubs, assign to a life-saving club the responsibility for patrolling a bathing reserve or a particular part of a bathing reserve.
- (2) The responsibility—
 - (a) may be assigned on conditions the local government considers appropriate; and
 - (b) may only be assigned with the agreement of the club to which the responsibility is assigned.

20 Enclosure for life-saving patrols

A recognised life-saving club may, with the local government's written approval, enclose a part of a bathing reserve for the exclusive use of members of life-saving patrols.

21 Distinctive clothing

A member of a life-saving patrol must wear a distinctive uniform appropriate to the member's rank in a design approved by SLSQ.

Division 2 Powers of authorised persons

22 Power to remove or reduce danger

- (1) If a person brings a dangerous object or dangerous item of aquatic equipment onto a bathing reserve, an authorised person may direct the person to take specified action to remove or reduce the danger posed by the object or item.

Example—

If a person brings a beach umbrella onto a bathing reserve and the umbrella appears likely to blow away, an authorised person might direct the person to take specified action to secure the umbrella.

- (2) A person must comply with a direction under this section.

Maximum penalty for subsection (2)—20 penalty units.

23 Power to stop dangerous and antisocial conduct

- (1) If a person behaves in a bathing reserve in a way that endangers the safety of the person or someone else, or causes a nuisance to someone else, an authorised person may direct the person to stop the behaviour.

- (2) A person must comply with a direction under this section.

Maximum penalty for subsection (2)—20 penalty units.

24 Power to require bathers to leave water

- (1) An authorised person may give a direction to a bather to leave the water if—

- (a) the bathing reserve, or the relevant part of the bathing reserve, is closed to bathing; or
 - (b) an emergency evacuation alarm has been given; or
 - (c) there is some other risk to the bather's safety.
- (2) A person must comply with a direction under this section.
- Maximum penalty for subsection (2)—20 penalty units.

25 Seizure and detention of dangerous objects and prohibited equipment

- (1) This section applies if, in a bathing reserve, a person—
 - (a) possesses, uses or has used a dangerous object or dangerous item of aquatic equipment; or
 - (b) uses or has used an object in a dangerous way; or
 - (c) has prohibited equipment.
- (2) An authorised person may seize the object, item or equipment (the *seized thing*).
- (3) The authorised person must give the person from whom the seized thing is taken a receipt—
 - (a) stating the nature of the seized thing; and
 - (b) stating the date and time of seizure; and
 - (c) stating a period (which must be at least 1 hour and not more than 6 months) for which the seized thing is to be detained; and
 - (d) stating a place where the seized thing may be reclaimed.
- (4) The seized thing must, if not reclaimed on the day on which it was seized, be delivered into the custody of the local government or the life-saving club of which the authorised person is a member.
- (5) The local government or the relevant life-saving club must take all reasonable measures to ensure the safe custody of the seized thing.
- (6) At the conclusion of the period fixed for its detention under subsection (3)(c), if the seized thing is in the custody of a life-saving club it must be delivered into the custody of the local government.
- (7) At the conclusion of the period fixed for its detention under subsection (3)(c), the seized thing must be dealt with by the local government as an impounded item under *Local Law No.1 (Administration) 2015*, section 37.

Part 6 Authorised persons

26 Who are authorised persons

- (1) The following persons are authorised persons for this local law—
 - (a) a person who is an authorised person under a subordinate local law for this paragraph;
 - (b) a person appointed as an authorised person for this local law under this section.

Example for paragraph (a)—

- The subordinate local laws might provide that a person who holds a particular rank in a life-saving patrol is an authorised person.
 - The subordinate local laws might provide that a life guard or a beach inspector is, while he or she holds that position, an authorised person.
- (2) A local government may appoint any of the following persons as authorised persons for this local law—
- (a) employees of the local government;
 - (b) other persons who are eligible for appointment as authorised persons under the Act.⁵
- (3) An appointment of a person as an authorised person under this section must state the provisions of this local law for which the person is appointed as an authorised person.
- (4) A local government may appoint a person as an authorised person under this section only if—
- (a) the local government considers the person has the necessary expertise or experience for the appointment; or
 - (b) the person has satisfactorily finished training approved by the local government for the appointment.

27 Limitation on authorised person's powers

An authorised person's powers may be limited in the person's instrument of appointment or under a subordinate local law for this section.

28 Authorised person's appointment conditions

- (1) An authorised person holds office on the conditions stated in the instrument of appointment or a subordinate local law for this subsection.
- (2) An authorised person—
- (a) if the instrument or subordinate local law provides for a term of appointment—ceases holding office at the end of the term; and
 - (b) if appointed as an authorised person under section 26(1)(b)—may resign by signed notice of resignation given to the local government; and
 - (c) if the person holds a particular rank or position, and is an authorised person under a subordinate local law because he or she holds the relevant rank or position—ceases holding office as an authorised person on ceasing to hold the relevant rank or position; and
 - (d) if the conditions of appointment provide—ceases holding office as an authorised person on ceasing to hold another office stated in the appointment conditions (the *main office*).
- (3) However, an authorised person may not resign from the office of authorised person (the *secondary office*) under subsection (2)(b) if a condition of the authorised person's employment in the main office requires the authorised person to hold the secondary office.

⁵ See the Act, chapter 6, part 6.

29 Authorised person's identity card

- (1) Each authorised person must hold an identity card issued by the local government or a recognised life-saving club.
- (2) An identity card issued by the local government must—
 - (a) contain a recent photograph of the authorised person; and
 - (b) be signed by the authorised person; and
 - (c) identify the person as an authorised person for the local government; and
 - (d) include an expiry date.
- (3) An identity card issued by a recognised life-saving club must—
 - (a) contain a recent photograph of the authorised person or state the authorised person's date of birth; and
 - (b) be signed by the authorised person; and
 - (c) identify the person as an authorised person for the life-saving club; and
 - (d) include an expiry date.
- (4) A person who ceases to be an authorised person must return the person's identity card to the local government or the life-saving club that issued it within 21 days after the person ceases to be an authorised person.

Maximum penalty for subsection (4)—10 penalty units.
- (5) This section does not prevent the giving of a single identity card to a person for this part and for other purposes.

30 Production of identity card

- (1) An authorised person may exercise a power in relation to someone else (the *other person*) only if the authorised person—
 - (a) first produces his or her identity card for the other person's inspection; or
 - (b) has the identity card displayed so it is clearly visible to the other person.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person's inspection at the first reasonable opportunity.

31 Offence

A person must not pretend to be an authorised person or a member of a life-saving patrol.

Maximum penalty—50 penalty units.

32 Protection from liability

- (1) This section applies to—
 - (a) an authorised person; and
 - (b) a person acting under the direction of an authorised person.
- (2) The person does not incur civil liability for an act done or omission made honestly and without negligence under this local law.

- (3) A liability that would, apart from this section, attach to the person attaches instead to the local government.

Part 7 Miscellaneous

33 Compliance with Australian standards

- (1) The flags and signs to be used for the purposes of this local law should comply with any relevant Australian Standard issued or approved by the Standards Association of Australia.
- (2) However, non-compliance with an applicable standard does not invalidate anything done under this local law.

34 Obstruction of authorised persons and life-savers

- (1) A person must not obstruct an authorised person or a member of a life-saving patrol in the conduct of their duties.
Maximum penalty for subsection (1)—50 penalty units.
- (2) A person must not use insulting or abusive language to an authorised person or a member of a life-saving patrol.
Maximum penalty for subsection (2)—20 penalty units.

35 Interference with flags and life-saving equipment

- (1) A person must not, without the approval of an authorised person, damage, destroy or interfere with a sign or flag erected or placed under this local law.
Maximum penalty for subsection (1)—50 penalty units.
- (2) A person must not, without the approval of an authorised person, interfere with life-saving equipment on a bathing reserve.
Maximum penalty for subsection (2)—50 penalty units.

36 Subordinate local laws

The local government may make subordinate local laws about—

- (a) prohibiting or restricting the use of aquatic equipment;⁶ or
- (b) the classification of objects as prohibited equipment;⁷ or
- (c) the circumstances in which a person may have prohibited equipment in a bathing reserve;⁸ or
- (d) the appointment of authorised persons for this local law;⁹ or
- (e) the limitation of an authorised person's powers;¹⁰ or
- (f) conditions of office for authorised persons.¹¹

⁶ See section 12(1).

⁷ See section 15(3).

⁸ See section 15(2).

⁹ See section 26(1)(a).

¹⁰ See section 27.

¹¹ See section 28(1).

Schedule Dictionary

Section 3

aquatic equipment means—

- (a) a boat or vessel; or
- (b) a surf ski; or
- (c) a jet ski; or
- (d) a surf board; or
- (e) a sail board; or
- (f) a body board; or
- (g) another device (whether motorised or not) for use on or in water to carry a person or thing across or through water or for recreational use in water.

authorised person means a person who is an authorised person for this local law under part 6.

bathing includes all activities involving the immersion or partial immersion of the body in water.

bathing area see section 6.

bathing reserve means a part of the seashore, adjacent land under the sea, and sea placed under the control of the local government as a bathing reserve under the Act.

dangerous item of aquatic equipment means an item of aquatic equipment that is of such a nature that, in the absence of care or precaution in its use or management, the life, safety or health of any person may be endangered.

Examples of dangerous items of aquatic equipment—

- A surfboard with sharp or broken edges.
- A boat with projections liable to cause injury to bathers.

dangerous object means an object that is of such a nature that, in the absence of care or precaution in its use or management, the life, safety or health of any person may be endangered.

life-saving club means a body—

- (a) affiliated with—
 - (i) Surf Life Saving Queensland Inc (SLSQ); or
 - (ii) the Head Centre of the Royal Life Saving Society; and
- (b) accredited by the Department of Community Safety.

life-saving equipment means equipment for use in sea rescue, life-saving, or the provision of first aid.

life-saving patrol means the members of a recognised life-saving club assigned by the club or SLSQ to patrol a bathing reserve, or part of a bathing reserve, at a particular time.

patrol flag means a red and yellow flag of the design prescribed by Australian Standard No. 2416.

recognised life-saving club means a life-saving club to which the local government has assigned the responsibility for patrolling a bathing reserve or a particular part of a bathing reserve.¹²

¹² See section 19.

reserve sign see section 5(1).

SLSQ means Surf Life Saving Queensland Inc.

surveillance means the visual supervision of an area.

the Act means the *Local Government Act 2009*.

CERTIFICATION

This and the preceding 14 pages bearing my initials is a certified copy of Noosa Shire Council *Law No. 6 (Bathing Reserves) 2015*, made in accordance with the provisions of the *Local Government Act 2009*, by Noosa Shire Council by resolution dated _____ 2015.

Brett de Chastel
Chief Executive Officer
Noosa Shire Council