

**CLONCURRY SHIRE COUNCIL  
LOCAL LAW  
NO. 1  
(ADMINISTRATION) 2001**

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## **PART 1 - PRELIMINARY**

### **1. Short title**

This local law may be cited as *Local Law No. 1 (Administration) 2001*.

### **2. Object**

The objects of this local law is to provide a legal framework for the administration, implementation and enforcement of the local government's local laws and subordinate local laws.

### **3. Repeal**

This local law repeals *Local Law No. 1 (Administration)*.

### **4. Definitions**

In this local law:

**"application"** includes a request;

**"approval"** means a consent, permit, licence, authorisation or approval under an Act or a local law and includes a development approval;

**"authorised person"** means a person who is authorised by the local government to exercise the powers of an authorised person under the provision in which the expression appears;

**"Chief Executive Officer"** means a person appointed and employed by the local government as the Chief Executive Officer under either section 1129(1)(a) or section 1134 of the Act;

**"decision"** includes a deemed refusal as referred to in section 6(7);

**"development approval"** has the meaning given to it in the *Integrated Planning Act 1997*;

**"environment"** has the meaning given to it in the *Environment Protection Act 1994*;

**"environmental harm"** has the meaning given to it in the *Environmental Protection Act 1994*;

**"goods"** includes an animal;

**"local government area"** means the local government area as that term is defined in the *Local Government Act 1993*;

**"planning scheme"** means a planning scheme and a transitional planning scheme as defined under the *Integrated Planning Act 1997*;

**"prescribed fee"** means a charge fixed by the local government by resolution, under section 974 of the Act;

**"prescribed form"** means a form approved by the Chief Executive Officer;

**"proposal"** means an act, matter or thing for which the local government's approval is sought;

**"public notice"** means a notice published in a newspaper circulating in the local government's area;

**"the Act"** means the *Local Government Act 1993*;

**"township"** is defined as land within the town common area of the townships of Cloncurry, Dajarra, Kajabbi, Duchess, Malbon and Quamby.

## **PART 2 - LOCAL GOVERNMENT APPROVALS**

### **5. Form of application**

- (1) An application for local government approval under a local law must:
  - (a) be made in the prescribed form;
  - (b) be accompanied by copies of all relevant approvals issued or required under other laws;
  - (c) be accompanied by documents and materials required under the relevant local law or subordinate local law;
  - (d) be accompanied by the prescribed fee; and
  - (e) comply with the requirements of any relevant subordinate local law.
- (2) The applicant must, if a request is made by the local government or the Chief Executive Officer within 28 days after receipt of the application by the local government, provide further information, documents or materials in support of the application.
- (3) An application for local government approval under a local law which complies with this section is a properly made application.
- (4) The local government is not required to assess an application for local government approval under a local law that is not a properly made application.

### **6. Local government's discretion on applications**

- (1) In determining an application for local government approval under a local law, the local government may:
  - (a) approve the application unconditionally; or
  - (b) approve the application subject to conditions it considers appropriate; or
  - (c) refuse the application.

*Example:*

*If a proposal for which the local government's approval is required may result in damage to property, the local government may, as a condition of giving its approval, require the applicant to give reasonable security (which may include a deposit of money, a guarantee or an insurance bond) to ensure that the damage is made good.*

- (2) Notwithstanding subsection (1), the local government's powers are subject to the provisions of the local law and any relevant subordinate local law, and the local government must, in deciding how to exercise its power, have regard to:
  - (a) the criteria stated in the relevant local law or subordinate local law; and
  - (b) the objects of the local law.
- (3) The local government may refuse an application for local government approval under a local law if:
  - (a) the proposal for which approval is being sought requires approval under another law and that approval has not been obtained or is not current; or
  - (b) if there has been a breach of another law which applies to the proposal.
- (4) The local government must make its decision on an application for a local government approval under the local law and give written notice (a "**decision notice**") of its decision to the applicant within 28 days ("**the decision making period**") from:
  - (a) the day it receives a properly made application; or
  - (b) if the local government or the Chief Executive Officer makes a request under section 5(2) - the day the information, documents or materials are provided to the local government.
- (5) The local government may extend the decision making period by no more than 28 days by giving written notice to the applicant for a local government approval under a local law within the decision making period.
- (6) Any further extensions of the decision making period by the local government must be with the written consent of the applicant for a local government approval under a local law.
- (7) If the local government has not made a decision on an application for local government approval under a local law within:
  - (a) the decision making period; or
  - (b) the date of the decision making period which has been extended under subsection (5); or
  - (c) the date of the decision making period which has been further extended under subsection (6),

then the local government is taken to have made a decision which refuses the application ("**a deemed refusal**").

- (8) A decision notice must:
- (a) specify the date of the local government's decision; and
  - (b) specify whether the application was:
    - i) approved unconditionally; or
    - ii) approved subject to conditions; or
    - iii) refused; and
  - (c) if the application was approved subject to conditions - attach the conditions; and
  - (d) if the application was refused - specify the written reasons for refusal; and
  - (e) attach any appeal or right of review of the decision provided for in a local law.

## **7. Minor proposals**

- (1) Notwithstanding sections 5 and 6, the local government may on any reasonable basis issue an on-the-spot permit to a person in relation to a particular proposal subject to such conditions as the local government considers appropriate.
- (2) Without limiting the local government's discretion under subsection (1), the local government may issue an on the spot permit if:
- (a) in its opinion the proposal for which approval is of a minor nature and will not result in environmental harm; or
  - (b) in its opinion the proposed duration of the proposal is such as to not warrant an application for approval in the form specified under section 5.

## **8. Projects requiring multiple approvals**

- (1) If:
- (a) an application is made to the local government for approval of a particular proposal; and
  - (b) the local government's approval of the proposal is required under 2 or more local laws, or 2 or more provisions of the same local law,

the local government must, if practicable, deal with the subjects on which its approval is required, together.

- (2) If the local government decides that an approval should be refused on a particular aspect of a proposal for which multiple approvals are required, it may refuse other approvals required for the proposal even though other aspects of the proposal for which approval is required may be unexceptionable.

## **9. False statement on an application**

It is an offence to make a statement on an application that the person making the statement knows is false or misleading.

Maximum Penalty - 20 penalty units

## **10. Variation, revocation or suspension of approval**

- (1) The local government may, by written notice to the holder of an approval, vary, revoke or suspend an approval or condition of approval:
  - (a) if the holder of an approval agrees to the variation or revocation; or
  - (b) if the local government becomes aware that section 9 applies; or
  - (c) for contravention of a local law or a condition of approval; or
  - (d) under the provisions of the relevant local law; or
  - (e) if the variation, revocation or suspension is necessary for the protection of public health or safety or the environment or is otherwise in the public interest; or
  - (f) for any other reason set out in a subordinate local law.
- (2) Subject to subsection (3), before making the proposed variation, revocation or suspension the local government must:
  - (a) give the holder of an approval written notice inviting the holder to make written representations about the proposed variation, suspension or revocation within a reasonable time fixed in the notice; and
  - (b) consider any representations made in accordance with subsection (2)(a).
- (3) The local government is not required to comply with subsection (2) in the case of imminent risk to the health or safety of life or safety of property or the environment.

## **11. Term of approval**

- (1) The approval commences on the date of its issue and terminates on the date specified in the approval unless a different date is specified in a local law or subordinate local law.
- (2) An approval may be renewed:
  - (a) in accordance with the provisions of a local law or subordinate local law; or
  - (b) on the terms stated in the approval.

## 12. Transfer of approval

- (1) Where a local law provides for the transfer of an approval, an application for the transfer of an approval must be made by the transferee of the approval.
- (2) The local government must not:
  - (a) unreasonably refuse to approve the transfer of an approval; or
  - (b) impose unreasonable conditions on the transfer of an approval.
- (3) If the local government approves an application made to it under subsection (1), the local government must, within 10 days after making the decision cancel the existing approval and issue a new approval.

## PART 3 - LEGAL PROCEEDINGS

### 13. General defence for owners of land or vehicle

If a local law makes the owner of land or a vehicle guilty of an offence it is a defence for the owner to prove that:

- (a) the act or omission happened without the owner's knowledge or consent; and
- (b) the owner could not, by reasonable diligence, have prevented the act or omission.

### 14. Defences

It is a defence to any breach or non-compliance of any provision of a local law if a person has a reasonable and lawful excuse.

## PART 4 - REVIEW OF DECISIONS

### 15. Review of decisions

- (1) This provision applies to all local laws unless a local law has a more specific provision relating to the review of decisions.
- (2) A person who is aggrieved by a decision made by the local government under this local law (a **person aggrieved**) is, subject to subsection (3), entitled to a review of the decision.
- (3) A person aggrieved is not entitled to a review under this section if it was made:
  - (a) by a resolution of the local government; or
  - (b) as a result of an emergency; or
  - (c) the decision has been carried into full force and effect; or
  - (d) a decision made on an earlier application for review.

*Example of section 15(3)(c):*

*An action by an authorised person properly taken to summarily destroy an animal if he or she is authorised to do so under a local law in the circumstances of a particular case.*

- (4) An application for review must:
  - (a) be in writing and addressed to the Chief Executive Officer; and
  - (b) specify an address in Australia to which notices under this local law may be sent to the person aggrieved; and
  - (c) be lodged with the local government within 14 days after the day on which notice of the decision was given to the person aggrieved; and
  - (d) if the person aggrieved seeks to make representations through an agent - state the name of the agent; and
  - (e) include any other information specified in a subordinate local law.
- (5) The decision of the local government on a review under this section must not be made by the person who made the original decision or any person who holds a less senior position than the person who made the original decision.

*Example:*

*If the original decision was made by the Chief Executive Officer then the only entity which can make a decision on the review is the full local government or a local government committee which has been delegated decision making power under the local law.*

- (6) The local government must make a decision on the review within 28 days (the "**review decision making period**") of receiving the application under subsection (4).
- (7) If the local government fails to notify the person aggrieved within the timeframe specified in subsection (6), the local government is taken to have confirmed the original decision.
- (8) Both the person aggrieved and the person who made the original decision are entitled to make written representations, either personally or through an agent, to the local government prior to a final decision on the review being made.
- (9) To remove any doubt, the local government in making a decision on the review has the same powers as the person who made the original decision and, without limiting those powers, can:
  - (a) confirm the original decision; or
  - (b) quash or set aside the original decision or part of the original decision and substitute it with a new decision.

- (10) The review of the decision is to be conducted on an informal basis but in accordance with the rules of natural justice.

#### **16. Joint and several liability**

- (1) If there is more than 1 owner or other person liable under a local law, all the owners or other persons are jointly and severally liable.
- (2) This section applies both to civil liabilities and liabilities enforced by summary proceedings under the *Justices Act 1886*.

#### **17. 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 the local government.

### **PART 5 - AUTHORISED PERSONS**

#### **18. Authorised persons**

- (1) The local government may appoint the following persons as authorised persons to exercise the powers of an authorised person under a local law:
- (a) employees of the local government; and
  - (b) other persons prescribed by regulation under section 1084 of the Act.
- (2) An appointment of a person as an authorised person under this section must state the local law or the provisions of a local law for which the person is appointed as an authorised person.
- (3) The 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.
- (4) An authorisation under this section may be general or subject to limitations stated in the instrument of appointment.

*Example*

*An appointment might provide that a designated person has the powers of an authorised person under a particular local law but only in relation to a particular local government reserve.*

#### **19. Authorised persons' appointment conditions**

- (1) An authorised person holds office on the conditions stated in the instrument of appointment.
- (2) An authorised person:
  - (a) if the instrument provides for a term of appointment - ceases holding office at the end of the term; and
  - (b) may resign by signed notice of resignation given to the local government.

#### **20. Identity cards**

- (1) The local government must issue an identity card to each person authorised to exercise the powers of an authorised person under a local law.
- (2) The identity card must:
  - (a) contain a recent photograph of the authorised person; and
  - (b) be in a form approved by the local government; and
  - (c) be signed by the authorised person; and
  - (d) identify the person as an authorised person of the local government; and
  - (e) include an expiry date.
- (3) A person who stops being an authorised person must return the identity card to the local government as soon as practicable but no later than 21 days after the person ceases to be an authorised person.

Maximum Penalty - 10 penalty units

#### **21. Production of authorised person's identity card**

- (1) An authorised person may exercise a power under a local law 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 that it is clearly visible to the other person.
- (2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must produce the identity card for inspection by the person at the first reasonable opportunity.

## **22. 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 or omission done honestly and without negligence under a local law.
- (3) A liability that would, apart from this section, attach to the person attaches instead to the local government.

## **23. Pretending to be an authorised person**

A person must not pretend to be an authorised person.

Maximum penalty - 50 penalty units

## **24. Register of Authorised Persons**

- (1) The local government must keep a register of all appointments of authorised persons.
- (2) The register must:
  - (a) contain the name or title of the person appointed;
  - (b) identify the local law or the provisions of a local law for which the person is an authorised person; and
  - (c) contain a summary of the appointment of the person, including:
    - i) the date of the appointment; and
    - ii) a summary of the conditions or limitations to which the appointment is subject.

## **PART 6 - MISCELLANEOUS**

### **25. Direction of the local government**

A person must not fail to comply with a notice, order or direction of the local government issued, made or given under a local law.

Maximum Penalty - 20 penalty units

### **26. Notices**

If a local law empowers a local government to issue a notice to a person requiring the person to do, or to refrain from doing, a particular act, the notice must set out:

- (a) the provisions of the local law under which the requirement is made; and

- (b) the time within which compliance is required; and
- (c) the consequences of contravention of the notice.

## **27. Charges**

- (1) If a local law provides for payment of a charge, and does not itself fix the amount of the charge, the charge is to be fixed by resolution under section 974 of the Act.
- (2) A resolution fixing a charge may provide for the reimbursement of the charge in appropriate circumstances.

### *Example*

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

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

## **28. Recovery of costs**

Where the local government has carried out any remedial works or action arising from:

- (a) a breach of a local law; or
- (b) a breach of a condition of approval; or
- (c) a failure to comply with any notice, order or direction to remedy any breach issued under a local law,

the costs of such remedial works or action may be recovered as a debt.

## **29. Unclaimed goods**

- (1) If goods are left in a building, or on land under the local government's control, the local government may dispose of the goods under this section.
- (2) If the goods are perishable, they may be disposed of, without delay, as the Chief Executive Officer directs.
- (3) If the goods are not perishable, they must be retained for at least 3 months before being sold or otherwise disposed of.
- (4) After the end of the 3 month period, the local government may dispose of the goods as follows:
  - (a) if the goods have no commercial value, or the value is so slight that it would not cover the cost of sale, the goods may be disposed of as the Chief Executive Officer directs;

- (b) in other cases the goods must be advertised for sale by public notice published at least 14 days before the date of the proposed sale and may then be sold by public auction.
- (5) A person to whom goods are sold under this section acquires a good title to the goods freed and discharged from the interests of others.
- (6) The local government must apply the proceeds of sale first toward the costs of the storage and sale of the goods and then into a fund established for the purpose.
- (7) If, within 1 year after the date of the sale, the former owner of the goods claims the proceeds of the sale of the goods, the net proceeds of the sale must be paid to the former owner but if no valid claim is made to the proceeds within that period, the local government may pay the proceeds of the sale into its general funds.
- (8) This section does not apply to goods if there is a statutory provision dealing specifically with abandoned goods of the relevant class.

### **30. Confiscated and impounded goods**

- (1) If the local government, or an authorised person, exercises a power under a local law to confiscate or impound goods, the property in the goods vests in the local government.
- (2) If the local government or an authorised person confiscates or impounds goods under powers conferred by a local law, the local government may dispose of the goods as follows:
  - (a) if the goods are perishable or have no commercial value, or the value is so slight that it would not cover the cost of sale, the goods may be disposed of as the Chief Executive Officer directs; or
  - (b) in other cases the goods must be advertised for sale by public notice published at least 14 days before the date of the proposed sale and may then be sold by public auction.
- (3) This section does not apply if there is a statutory provision dealing specifically with confiscated or impounded goods of the relevant class.

### **31. Damage to local government property**

A person must not wilfully damage, deface, remove or destroy any local government goods or property.

Maximum Penalty - 100 penalty units

### **32. Official crest or badge**

A person must not copy or use the official crest or badge or logo of the local government without the approval of the local government.

Maximum penalty - 50 penalty units

### **33. Smoking**

- (1) A person must not smoke in a local government building, a local government vehicle or local government plant and equipment.

Maximum penalty - 5 penalty units

- (2) If a person breaches subsection (1), the local government may direct that person to leave the local government building, local government vehicle or local government plant and equipment.

- (3) The local government may cause an official sign to be erected for the purpose of this section.

- (4) A person must not fail to comply with an official sign erected for the purpose of this section.

Maximum penalty - 20 penalty units

### **34. Confidentiality**

- (1) An employee must not release information that the person knows or should reasonably know is information that:

- (a) is confidential to the local government; and
- (b) the local government wishes to keep confidential.

- (2) For the purpose of this section, "employee" of the local government includes:

- (a) a person who contracts with it to provide services to it; and
- (b) a person prescribed by regulation for the purposes of section 1132 of the Act.

Maximum Penalty - 35 penalty units

## **PART 7 - ENFORCEMENT**

### **35. Court orders**

- (1) Where a person is convicted of an offence against a local law, the court may order one or more of the following:

- (a) that the person pay to the local government one or more of the following:-
  - i) the cost of any remedial work or rehabilitation necessary or desirable because of the offence; or
  - ii) replacement or repair costs appropriate to the damage to or loss of local government property arising as a result of the offence; or
  - iii) any costs or expenses reasonably incurred by the local government as a result of the breach of the relevant local law; or

- (b) the forfeiture of any equipment used in or in connection with the offence;  
and
  - (c) the carrying out of any remedial work or rehabilitation necessary or desirable because of the offence; and
  - (d) the revocation of an approval.
- (2) The amount mentioned in subsection (1)(a) is a debt owing to the local government and may be recovered from the person in a court of competent jurisdiction.
- (3) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or any other law.
- (4) The costs referred to in subsection (1)(a) are the costs certified by the Chief Executive Officer and include the labour costs of local government employees, an allowance for administrative costs and reasonable legal costs.