

**COUNCIL OF THE SHIRE OF BEAUDESERT**

**Beaudesert Shire**  
*A region of many colours*



**LOCAL LAW NO. 7**

**(LICENSING)**

**CONSOLIDATED AS AT 30 JUNE 2000**

# ANNOTATIONS

## **Original Local Law**

Local Law No. 7 (Licensing)  
date of gazettal 25 June 1999

## **Amending Local Laws**

Amending Local Law No. 1 (Miscellaneous Local Laws) 2000  
date of gazettal 30 June 2000

## **Original Subordinate Local Laws**

Local Law Policy No. 7.1 (Animal Keeping)  
date of public notice 28 June 1999

Local Law Policy No. 7.2 (Camping Grounds and Caravan Parks)  
date of public notice 28 June 1999

Local Law Policy No. 7.3 (Rental Accommodation)  
date of public notice 28 June 1999

Local Law Policy No. 7.4 (Advertisement)  
date of public notice 28 June 1999

Local Law Policy No. 7.5 (Animal Vending)  
date of public notice 28 June 1999

Local Law Policy No. 7.6 (Extractive Industry)  
date of public notice 28 June 1999

Local Law Policy No. 7.7 (Domestic Water Distribution)  
date of public notice 28 June 1999

Local Law Policy No. 7.8 (Itinerant Vending)  
date of public notice 28 June 1999

Local Law Policy No. 7.9 (Stalls)  
date of public notice 28 June 1999

Local Law Policy No. 7.10 (On-site Sewerage Facility)  
date of public notice 28 June 1999

Local Law Policy No. 7.11 (Temporary Events)  
date of public notice 28 June 1999

Local Law Policy No. 7.12 (Temporary Accommodation)  
date of public notice 28 June 1999

Local Law Policy No. 7.13 (Film Production)  
date of public notice 28 June 1999

Local Law Policy No. 7.14 (Home Based Business)  
date of public notice 28 June 1999

Local Law Policy No. 7.15 (Blasting Operations)  
date of public notice 28 June 1999

**Amending Subordinate Local Laws**

Amending Subordinate Local Law No. 1 (Miscellaneous Subordinate  
Local Laws) 2000

date of public notice 13 September 2000

# GAZETTAL NOTICE

*Local Government Act 1993*

## **COUNCIL OF THE SHIRE OF BEAUDESERT (MAKING OF LOCAL LAW) NOTICE (No. 1) 1999**

### **Short Title**

1. This notice may be cited as the *Council of the Shire of Beaudesert (Making of Local Law) Notice (No. 1) 1999*.

### **Commencement**

2. This notice commences on the date it is published in the Gazette.

### **Making of Local Law**

3. Pursuant to the provisions of the *Local Government Act 1993*, the Council of the Shire of Beaudesert made the following Local Laws by resolution on 1 June, 1999:—

- Local Law No. 1** — (Administration);
- Local Law No. 2** — (Meetings);
- Local Law No. 3** — (Animal Control);
- Local Law No. 4** — (Cemeteries);
- Local Law No. 5** — (Council Facilities);
- Local Law No. 6** — (Libraries);
- Local Law No. 7** — (Licensing);
- Local Law No. 8** — (Parks and Reserves);
- Local Law No. 9** — (Public Health);
- Local Law No. 10** — (Gates and Grids).

*Certified copies of each of the Local Laws are open for inspection at Beaudesert Shire Council's public office at 52 Brisbane Street, Beaudesert and at the Department of Communication and Information, Local Government and Planning. Copies of the Local Laws may be purchased at Beaudesert Shire Council's public office at a cost of 50 cents per page.*

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### ENDNOTES

1. Published in the Gazette on 25 June 1999.
  2. Not required to be laid before the Legislative Assembly
  3. The administering agency is the Department of Communication and Information, Local Government and Planning.
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## **CERTIFICATION**

It is hereby certified that this is a true and correct copy of Local Law No. 7 (Licensing) made, in accordance with the *Local Government Act 1993*, by the Council of the Shire of Beaudesert.

G.W. Day  
Chief Executive Officer

# **COUNCIL OF THE SHIRE OF BEAUDESERT**

## **LOCAL LAW NO. 7**

### **(LICENSING)**

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## PART 1 - PRELIMINARY

### Citation

1 This local law may be cited as Local Law No. 7 (Licensing).

### Objects

2 The objects of this local law are to ensure that:

- (a) a prescribed activity does not result in:
  - (i) harm to human health or safety or personal injury; or
  - (ii) property damage or a loss of amenity; or
  - (iii) environmental harm or environmental nuisance; and
- (b) the operation of a prescribed activity complies with the local government Acts that regulate the prescribed activity by subjecting the prescribed activity to an inspection and enforcement regime.

### Definitions

3 In this local law:

“**animal**” has the meaning given in *Local Law No. 3 (Animal Control)*.

“**approval**” has the meaning given in *Local Law No. 1 (Administration)*.

“**authorised person**” means a person authorised by the local government to exercise the powers of an authorised person under this local law.

“**building**” has the meaning given in the *Building Act 1975*.

“**compliance notice**” means the written notice given pursuant to section 15 (Compliance notice) of this local law.

**“corporation”** means a corporation as defined in the *Corporations Law* and includes an association as defined in the *Associations Incorporation Act 1981*.

**“Court”** means the court of law which has jurisdiction to deal with offences under this local law.

**“device”** means a design, writing, drawing, depiction, structure, erection, placard, banner, notice, signboard, notice of sign, publication or sign of any kind.

**“direction”** means a written or oral direction given by an authorised person pursuant to section 21(1)(b) (Powers of authorised persons) of this local law.

**“environmental harm”** has the meaning given in the *Environmental Protection Act 1994*.

**“environmental nuisance”** has the meaning given in the *Environmental Protection Act 1994*.

**“executive officer of a corporation”** means a person who is concerned with, or takes part in, the corporation’s management whether or not the person is a director or the person’s position is given the name of executive officer.

**“exhibit”** includes in relation to a sign the painting, writing, drawing, depiction, making, erection, affixing, putting up, operation, or transport of a sign.

**“knowledge”** includes actual or constructive knowledge.

**“land”** has the meaning given in the *Integrated Planning Act 1997*.

**“licence”** means a licence which has been granted pursuant to section 7 (Grant of a licence) of this local law or amended or transferred pursuant to section 11 (Amendment or transfer of a licence) of this local law or renewed pursuant to section 12 (Renewal of a licence) of this local law which:

- (a) has not expired pursuant to section 8(2) (Term of a licence) of this local law; and
- (b) has not been cancelled pursuant to section 13 (Cancellation of a licence) of this local law.

“**local government Acts**” has the meaning given in the *Local Government Act 1993* and includes approvals granted pursuant to local government Acts.

“**local government road**” means:

- (a) road under the Local Government Act 1993; and
- (b) a mall, square, court or other public place under the local government’s control that is declared in a subordinate local law to be subject to this local law.

“**local law**” includes any subordinate local laws and all approvals granted pursuant to this local law.

“**newspaper**” has the meaning given in the *Printing and Newspapers Act 1981*.

“**nuisance**” has the meaning given in *Local Law No 9 (Public Health)*.

“**occupier**” of premises means the person who has the control or management of the premises and includes a person in charge of the operation of the prescribed activity on the premises.

“**owner**” of premises means the person for the time being entitled to receive the rent for the premises or would be entitled to receive the rent for it if it were let to a tenant at a rent.

“**perform work**” has the meaning given in the *Local Government Act 1993* and includes work required to be performed pursuant to a compliance notice, a stop order, or a condition of a licence.

“**planning scheme**” has the meaning given in the *Integrated Planning Act 1997*.

“**plant**” means any tree, bush shrub, grass, fungi, algae or other thing terrestrial or aquatic including all natural parts of it or things naturally produced of, by or from it.

“**premises**” means any road, land, building or structure and includes any part thereof.

“**prescribed activity**” means an activity specified in:

- (a) the Schedule to this local law; or

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- (b) a subordinate local law the operation of which the local government is satisfied may give rise to a risk of:
- (i) harm to human health or safety or personal injury; or
  - (ii) property damage or a loss of amenity; or
  - (iii) environmental harm or environmental nuisance.

**“prescribed criteria”** means the criteria specified in a subordinate local law with which the operation of a prescribed activity must comply.

**“prescribed fee”** means the fee prescribed by the local government.

**“prescribed form”** means the form prescribed by the local government.

**“publication”** means any printed matter or written matter and includes a book, pamphlet, leaflet, circular, handbill, notice, ticket, voucher, pass, advertisement, poster, magazine or other periodical publication but does not include a newspaper.

**“publicise”** means to draw to the attention of, make known, advertise or promote and **“publicises”** has the corresponding meaning.

**“road”** means a local government road and a State-controlled road.

**“sign”** means a device that publicises a matter.

**“State-controlled road”** means a State-controlled road under the *Transport Infrastructure Act 1994*.

**“stop order”** means the written notice given pursuant to section 16(1) (Stop order) of this local law which has not ceased pursuant to section 16(4) (Stop order) of this local law.

**“structure”** has the meaning given in the *Local Government Act 1993* and includes a structure as defined in the *Building Act 1975* and any other thing specified in a subordinate local law.

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“vehicle” has the meaning given in the *Transport Operations (Road Use Management) Act 1995* and includes anything specified as a vehicle in a subordinate local law.

### Relationship to other laws

- 4
- (1) This local law does not apply to the operation of a prescribed activity which is authorised or required to be authorised in the performance of an express duty or power under legislation (including subordinate legislation).
  - (2) A licence granted under this local law in respect of a person’s operation of a prescribed activity shall be of no force or effect to the extent that it is inconsistent with a licence or approval granted in respect of the person’s operation of the prescribed activity by:
    - (a) the State government; or
    - (b) the local government pursuant to a local government Act.
  - (3) The powers given by this local law must be exercised in a way that is not inconsistent with all Acts (including subordinate legislation) including:
    - (a) the *Environmental Protection Act 1994*; and
    - (b) the *Fire and Rescue Authority Act 1990*; and
    - (c) the *Rural Lands Protection Act 1985*; and
    - (d) the *Transport Operations (Road Use Management) Act 1995*; and
    - (e) the *Health Act 1937*; and
    - (f) the *Land Act 1994*; and
    - (g) the *Meat Industry Act 1994*; and
    - (h) the *Sewerage and Water Supply Act 1949*; and
    - (i) the *Building Act 1975*; and

- (j) the *Integrated Planning Act 1997*; and
- (k) the *Hawkers Act 1984*; and
- (l) the *Food Act 1981*; and
- (m) the *Workplace Health and Safety Act 1995*; and
- (n) the *Coroners Act 1958*; and
- (o) the *Transport Infrastructure Act 1994*.

## PART 2 - LICENSING

### Requirement for a licence

- 5 (1) A person must not:
- (a) operate a prescribed activity on premises within the local government area unless authorised by a licence granted under section 7(1) (Grant of a licence) of this local law; or
  - (b) change the manner of operation of a prescribed activity on premises within the local government area unless authorised by a licence granted under section 7(1) (Grant of a licence) of this local law.
- Maximum penalty - 50 penalty units.
- (2) A person must not:
- (a) exhibit a sign which indicates that a prescribed activity which does not comply with this local law does comply with this local law; or
  - (b) in any manner or by any means indicate that a prescribed activity which does not comply with this local law does comply with this local law.

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Maximum penalty – 50 penalty units.

- (3) Notwithstanding section 5(1) (Requirement for a licence) of this local law, a licence is not required under this local law if a subordinate local law specifies that a licence is not required in respect of the operation of the prescribed activity.

### **Application for a licence**

- 6** (1) An application for a licence must be:
- (a) made by the person who will be operating the prescribed activity; and
  - (b) made in the prescribed form; and
  - (c) accompanied by:
    - (i) the prescribed fee; and
    - (ii) evidence that all approvals under the local government Acts required for the operation of the prescribed activity have been obtained; and
    - (iii) full details of the prescribed activity; and
    - (iv) such other information and materials as are requested by the local government or specified in a subordinate local law.
- (2) If an applicant for a licence is not the owner of the premises on which the prescribed activity is to be operated, the application must be accompanied by the written consent of the owner.
- (3) The local government may waive the requirements of section 6 (Application for a licence) of this local law in an emergency or if there are special reasons for dispensing with the requirements.

**Grant of a licence**

- 7 (1) The local government may grant a licence if satisfied that the operation of the prescribed activity:
- (a) will not result in harm to human health or safety or personal injury; and
  - (b) will not result in property damage or a loss of amenity; and
  - (c) will not result in environmental harm or environmental nuisance; and
  - (d) will not result in a nuisance; and
  - (e) complies with the provisions of the local government Acts that regulate the operation of the prescribed activity; and
  - (f) complies with the prescribed criteria.
- (2) Before the local government decides an application for a licence, an authorised person may:
- (a) inspect any premises, vehicle, equipment, animal, plant or thing to be involved in the operation of the prescribed activity; and
  - (b) measure, weigh, sample, test or otherwise examine anything that may be inspected.
- (3) A licence cannot be granted in respect of a prescribed activity:
- (a) on a State-controlled road unless the chief executive of the department which administers the *Transport Infrastructure Act 1994* has given written approval to the local government to licence the operation of the prescribed activity on State-controlled roads within the local government area; or
  - (b) that involves the erection of a permanent building or structure on a road or the making of structural changes to a road.

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- (4) For the purposes of determining whether the criteria specified in section 7(1) (Grant of a licence) of this local law have been satisfied the local government may have regard to the results of any periodic inspection, testing or monitoring program undertaken in respect of the operation of the prescribed activity.

#### **Term of a licence**

- 8** (1) A licence granted by the local government is for a term extending from the date of issue until the thirtieth day of the following June unless otherwise specified in the licence or a subordinate local law.
- (2) A licence expires at the end of the day specified in section 8(1) (Term of a licence) of this local law.

#### **Conditions of a licence**

- 9** (1) A licence may be granted by the local government on conditions the local government considers appropriate.
- (2) The conditions of a licence may require, for example:
- (a) the holder of the licence to take specified measures to:
    - (i) prevent harm to the human health or safety of persons who may be involved in or affected by the operation of the prescribed activity; and
    - (ii) prevent personal injury, property damage or a loss of amenity resulting from the operation of the prescribed activity; and
    - (iii) ensure that the operation of the prescribed activity does not cause a nuisance, environmental harm or environmental nuisance; and
    - (iv) otherwise ensure that the operation of the prescribed activity complies with the prescribed criteria; and

- (b) the holder of the licence to notify the local government within a period specified in the licence that the holder of the licence is no longer operating the prescribed activity or is operating other than in accordance with the licence; and
  - (c) the certification by a person specified by the local government of a vehicle, equipment, animal or other thing involved in the operation of the prescribed activity; and
  - (d) the giving of a security to secure compliance with the licence and the provisions of this local law; and
  - (e) specify insurance the holder of the licence must take out and maintain against claims for person injury and property damage resulting from the operation of the prescribed activity; and
  - (f) records to be kept at a place and for a time specified in the licence or a subordinate local law; and
  - (g) the holder of the licence to prepare, provide, undertake or comply with a periodic inspection, monitoring or management program in respect of the operation of the prescribed activity.
- (3) The local government may prescribe by subordinate local law the conditions that must be imposed in a licence or that will ordinarily be imposed in a licence

### **Power to change the conditions of a licence**

- 10** (1) The local government may change a condition of a licence where<sup>1</sup>:
- (a) the holder of the licence agrees to the proposed change; or
  - (b) the change is urgently necessary to prevent:
    - (i) harm to human health or safety or personal injury; or

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- (ii) property damage or a loss of amenity; or
    - (iii) environmental harm or environmental nuisance; or
    - (iv) a nuisance; or
  - (c) the change is necessary to ensure that the operation of the prescribed activity complies with the prescribed criteria.
- (2) If the local government is satisfied it is necessary to change a condition of a licence, the local government must:
- (a) give the holder of the licence a written notice stating:
    - (i) the proposed change and the reasons for the change; and
    - (ii) that the holder of the licence may make written representations to the local government about the proposed change; and
    - (iii) the time (at least 15 business days after the notice is given to the holder of the licence) within which the written representations may be made; and
  - (b) consider any written representation made by the holder of the licence within the time stated in the notice.
- (3) After considering any written representation made by the holder of the licence, the local government must give to the holder of the licence:
- (a) if the local government is not satisfied the change is necessary – a written notice stating that it has decided not to change the condition; or
  - (b) if the local government is satisfied that the change is necessary – a written notice stating that it has decided to change the condition including details of the changed condition.

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<sup>1</sup> A change to the conditions of a licence includes a change by omission, substitution or addition (see section 36 (Meaning of commonly used words and expressions) of the *Acts Interpretation Act 1954*).

- (4) The changed condition takes effect from the day the notice was given to the holder of the licence.

### **Amendment or transfer of a licence**

- 11** (1) The holder of a licence may make application to the local government to:
- (a) amend the licence; or
  - (b) transfer the licence to another person.
- (2) An application to amend or transfer a licence must be:
- (a) made by the holder of the licence; and
  - (b) made in the prescribed form; and
  - (c) accompanied by the prescribed fee and such other information as is requested by the local government; and
  - (d) accompanied by, in the case of a transfer of the licence:.
    - (i) the written consent of the person to whom the licence will be transferred; and
    - (ii) the written consent of the owner of the premises on which the prescribed activity is or is to be operated.
- (3) The local government may transfer a licence:
- (a) where the operation of the prescribed activity complies with the conditions of the licence and the provisions of this local law; and
  - (b) subject to such conditions the local government considers appropriate.
- (4) The local government may amend a licence:
- (a) where the operation of the prescribed activity complies with the criteria specified in section 7(1) (Grant of a licence) of this local law; and

- (b) subject to such conditions as the local government considers appropriate.

**Renewal of a licence**

- 12** (1) The local government shall be deemed to have requested the holder of a licence to renew the licence by giving to the holder of the licence a notice requiring the payment of the prescribed fee.
- (2) The holder of the licence may renew a licence by the payment of the prescribed fee.
- (3) The holder of a licence shall be deemed to have made an application to the local government to renew the licence upon the payment of the prescribed fee.
- (4) The local government may renew a licence:-
- (a) if the operation of the prescribed activity complies with the conditions of the licence and the provisions of this local law; and
  - (b) subject to the conditions of the licence unless otherwise determined by the local government; and
  - (c) subject to such conditions as the local government considers appropriate.

**Cancellation of a licence**

- 13** (1) The local government may cancel a licence where:
- (a) the holder of the licence agrees to the cancellation; or
  - (b) the cancellation is urgently necessary to prevent:
    - (i) harm to human health or safety or personal injury; or
    - (ii) property damage or a loss of amenity; or
    - (iii) environmental harm or environmental nuisance; or
    - (iv) a nuisance; or

- (c) the holder of the licence contravenes:
    - (i) this local law; or
    - (ii) a condition of a licence; or
    - (iii) a requirement of a compliance notice or stop order; or
  - (d) the operation of the prescribed activity does not comply with:
    - (i) the provisions of the local government Acts that regulate the operation of the prescribed activity; or
    - (ii) the prescribed criteria; or
  - (e) the licence was granted on the basis of false, misleading or incomplete information; or
  - (f) changes in circumstances as specified by a subordinate local law, since the licence was granted make the continued operation of the licence inappropriate.
- (2) If the local government is satisfied it is necessary to cancel a licence, the local government must:
- (a) give the holder of the licence a written notice stating:
    - (i) the reasons for the proposed cancellation; and
    - (ii) that the holder of the licence may make written representations to the local government about the proposed cancellation; and
    - (iii) the time (at least 15 business days after the notice is given to the holder of the licence) within which written representations may be made; and
  - (b) consider any written representations made by the holder of the licence within the time stated in the notice.

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- (3) After considering any written representation made by the holder of the licence the local government must give to the holder of the licence:
- (a) if the local government is not satisfied that the cancellation is necessary – a written notice stating it has decided not to cancel the licence; or
  - (b) if the local government is satisfied that the cancellation is necessary – a written notice stating it has decided to cancel the licence.
- (4) Before the local government cancels a licence under section 13(3) (Cancellation of a licence) of this local law, the local government must consider the impact of the cancellation of the licence on those persons who would be affected by the prescribed activity ceasing to be operated.
- Example: The local government must consider the impact on disabled persons who reside in rental accommodation where the licence in respect of the prescribed activity is cancelled.*
- (5) The cancellation of the licence takes effect from the day the written notice was given to the holder of the licence.
- (6) Where the local government has cancelled a licence, the holder of the licence must cease to operate the prescribed activity.

Maximum penalty - 50 penalty units.

### **General compliance provision**

- 14** (1) The holder of a licence must ensure that the conditions of the licence are complied with.
- Maximum penalty - 50 penalty units.
- (2) The holder of a licence and any person operating a prescribed activity must ensure that the operation of the prescribed activity:
- (a) does not result in harm to human health or safety or personal injury; and

- (b) does not result in property damage or a loss of amenity; and
- (c) does not result in environmental harm or environmental nuisance; and
- (d) does not result in a nuisance; and
- (e) complies with the prescribed criteria.

Maximum penalty - 50 penalty units.

### **PART 3 - ENFORCEMENT**

#### **Compliance notice**

- 15** (1) An authorised person may give a compliance notice to:
- (a) a person who contravenes this local law; and
  - (b) any person involved in the contravention of this local law pursuant to section 24 (Liability of third parties) of this local law; and
  - (c) the owner or occupier of the premises on which the prescribed activity is operated.
- (2) A compliance notice may require the person to whom it is given to:
- (a) stop the contravention, if the contravention is of a continuing or recurrent nature; and
  - (b) perform work or otherwise take specified action to remedy the contravention (including the making of an application for a licence) for or within a time specified in the compliance notice, whether or not the contravention is of a continuing or recurrent nature; and
  - (c) perform work or otherwise take specified action for or within a time specified in the compliance notice to ensure compliance with the criteria specified in section 14 (General compliance provision) of this local law.

- (3) A person to whom the compliance notice is given must comply with the compliance notice.

Maximum penalty - 50 penalty units.

### Stop order

- 16** (1) An authorised person may, by notice to the person operating a prescribed activity, require the person to cease to operate the prescribed activity within the time allowed in the notice where:
- (a) a compliance notice is not complied with within the time allowed for compliance in the compliance notice; or
  - (b) the person does not hold a licence from the local government; or
  - (c) the operation of the prescribed activity is in the authorised person's opinion likely to give rise to:
    - (i) harm to human health or safety or personal injury;
    - (ii) property damage or a loss of amenity; or
    - (iii) environmental harm or environmental nuisance; or
    - (iv) a nuisance; or
  - (d) the operation of the prescribed activity does not comply with:
    - (i) the provisions of the local government Acts that regulate the operation of the prescribed activity; or
    - (ii) the prescribed criteria.
- (2) Before an authorised person gives a notice under section 16(1) (Stop order) of this local law, the authorised person must consider the impact of the stop order on those persons who would be affected by the prescribed activity ceasing to be operated.

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*Example: An authorised person must consider the impact on disabled persons who reside at rental accommodation which is to be the subject of a stop order.*

(3) Subject to section 16(4) (Stop order) of this local law, the person to whom a stop order is given must:

- (a) cease to operate the prescribed activity; and
- (b) comply with the stop order.

Maximum penalty - 200 penalty units.

(4) The stop order ceases where the person to whom a stop order is given has complied with to the satisfaction of an authorised person:

- (a) the requirements of this local law; and
- (b) the prescribed criteria relevant to the prescribed activity; and
- (c) the conditions of any relevant licence; and
- (d) the requirements of any relevant compliance notice.

### **Inspection of a prescribed activity**

17 (1) An authorised person may inspect the operation of a prescribed activity and any premises, vehicle, equipment, animal, plant or thing involved in the operation of the prescribed activity to establish whether there is compliance with:<sup>2</sup>

- (a) the requirements of this local law; and
- (b) the prescribed criteria; and
- (c) the conditions of the licence; and

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<sup>2</sup> Section 1098 (Approval of inspection program) of the *Local Government Act 1993* empowers an authorised person to enter a place to monitor compliance with a local government Act which is defined to include a local law. Section 1096 (Monitoring authorisations and processing applications) of the *Local Government Act 1993* empowers an authorised person to enter a place to find out whether the conditions of an authorisation or notice have been complied with or to inspect work carried out under an authorisation or notice.

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- (d) the requirements of a compliance notice; and
  - (e) the requirements of a stop order.
- (2) An authorised person may direct the person operating the prescribed activity to produce for inspection:<sup>3</sup>
- (a) the licence granted by the local government; and
  - (b) any records that are required to be kept as a condition of the licence or as specified in a subordinate local law and may take copies of or extracts from those records; and
  - (c) any vehicle, equipment, animal, plant or thing involved in the operation of the prescribed activity.
- (3) An authorised person may measure, weigh, sample, test or otherwise examine anything that may be inspected pursuant to section 17 (Inspection of a prescribed activity) of this local law.<sup>4</sup>
- (4) The person operating the prescribed activity must comply with:
- (a) a direction of an authorised person pursuant to section 17(2) (Inspection of a prescribed activity) of this local law; and
  - (b) the terms of a periodic inspection, monitoring or management program in respect of the operation of the prescribed activity specified in a subordinate local law.

Maximum penalty - 50 penalty units.

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<sup>3</sup> Section 1102 (General powers after entering places) of the *Local Government Act 1993* provides for these powers.

<sup>4</sup> Section 1102 (General powers after entering places) of the *Local Government Act 1993* provides for these powers.

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**Performance of works**

- 18** (1) A person committing an offence under this local law must make good any damage caused directly or indirectly by the commission of the offence.
- (2) The local government may perform work where a person has failed to perform work required to be performed by:<sup>5</sup>
- (a) section 18(1) (Performance of works) of this local law; or
  - (b) a compliance notice or stop order issued under this local law; or
  - (c) a condition of a licence; or
  - (d) any other provision of this local law.
- (3) The local government may in the course of performing work remove from the premises any structure, vehicle, equipment, animal, plant or thing involved in the operation of the prescribed activity where the local government is satisfied there is a risk of:<sup>6</sup>
- (a) harm to human health or safety or personal injury; or
  - (b) property damage or a loss of amenity; or
  - (c) environmental harm or environmental nuisance; or
  - (d) a nuisance.
- (4) The local government may dispose as it sees fit of, and in accordance with the laws of the State, any material of any nature removed by the local government pursuant to section 18 (Performance of works) of this local law.

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<sup>5</sup> The exercise of this power is subject to section 1066 (Performing work for owner or occupier) of the *Local Government Act 1993*.

<sup>6</sup> The exercise of this power is subject to section 1066 (Performing work for owner or occupier) of the *Local Government Act 1993*.

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- (5) An authorised person may perform the work that the local government is empowered to undertake pursuant to section 18 (Performance of works) of this local law.
- (6) The Court may order a person found guilty of an offence under this local law to:
- (a) perform work required to be performed by:
    - (i) section 18(1) (Performance of works) of this local law; or
    - (ii) a compliance notice or stop order issued under this local law; or
    - (iii) a condition of a licence; or
    - (iv) a provision of this local law; and
  - (b) pay to the local government all costs incurred by the local government in performing the work pursuant to section 18 (Performance of works) of this local law.

### **Power of entry and cost recovery**

- 19** (1) If the work to be carried out by the local government is on land of which the local government is not the owner or occupier, the local government may enter the land to perform the work:
- (a) under section 1066 (Performing work for owner or occupier) of the *Local Government Act 1993*, if the person who has failed to perform the work is the owner or occupier of the land; or
  - (b) under section 1070 (Entry on land for local government purposes) of the *Local Government Act 1993*, if the person who has failed to perform the work is not the owner or occupier of the land<sup>7</sup>.

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<sup>7</sup> A magistrate may make an order for entry under section 1063 (Order for occupier who refuses the entry) of the *Local Government Act 1993* if the occupier refuses to permit entry.

<sup>8</sup> Section 1067(2) (Costs of work recoverable as a rate) of the *Local Government Act 1993* provides for the payment of interest on the same basis as for an overdue rate.

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- (2) If the person who failed to perform the work is the owner of the land, the amount properly and reasonably incurred by the local government to perform the work is recoverable (together with any interest) under section 1066 (Performing work for owner or occupier), section 1067 (Cost of work recoverable as a rate) and section 1068 (Cost of work a charge over land) of the *Local Government Act 1993*.
- (3) If the person who failed to perform the work is not the owner of the land, the amount properly and reasonably incurred by the local government is recoverable as a debt from the person in default together with interest on the same basis as applies to an owner of the land under section 1067 (Cost of work recoverable as a rate) of the *Local Government Act 1993*<sup>8</sup>.

## PART 4 - ADMINISTRATIVE PROVISIONS

### Appointment of authorised persons

- 20** The local government may authorise a person to exercise the powers of an authorised person under this local law where that person possesses or has access to a person with appropriate expertise or qualifications in respect of the powers to be exercised.

### Powers of authorised persons

- 21** (1) An authorised person may:
- (a) exercise the powers of an authorised person and such other powers under the local law as the local government may determine; and
  - (b) direct a person involved in the operation of a prescribed activity to:
    - (i) cease any conduct or activity which constitutes a breach of this local law; and
    - (ii) take such action determined by the authorised person to ensure that the person does not commit a breach of this local law; and

- (c) subject to the *Police Powers and Responsibilities Act 1997*, request the assistance of a member of the police force to take such action determined by the member of the police force to:
  - (i) assist the authorised person in the exercise of these powers; and
  - (ii) ensure that a person does not commit a breach of this local law.
- (2) A person must comply with a direction of an authorised person made pursuant to this local law.

Maximum penalty - 50 penalty units.

#### **Executive officers must ensure the corporation complies with the local law**

- 22**
- (1) The executive officers of a corporation must ensure the corporation complies with this local law.
  - (2) If a corporation commits an offence against a provision of this local law, each of the corporation's executive officers also commit an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty - the penalty for the contravention of the provision by an individual
  - (3) Evidence that the corporation has been convicted of an offence against a provision of this local law is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complied with the provision.
  - (4) However, it is a defence for an executive officer to prove:
    - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence - the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
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- (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.
- (5) This section applies so as not to limit or affect in any way the liability of a corporation to be proceeded against and punished for an offence committed by the corporation in contravention of this local law.

**Owners and occupiers must ensure compliance with the local law**

- 23**
- (1) The owner and occupier of premises must ensure that a person who is operating a prescribed activity on the premises complies with this local law.
  - (2) If a person who is operating a prescribed activity on the premises commits an offence against a provision of this local law, the owner and the occupier of the premises also commit an offence, namely, the offence of failing to ensure that the person who is operating the prescribed activity on the premises complies with the provision.

Maximum penalty – the penalty for the contravention of the provision.

- (3) Evidence that the person who is operating the prescribed activity on the premises has been convicted of an offence against a provision of this local law is evidence that the owner and the occupier of the premises committed the offence of failing to ensure that the person who is operating the prescribed activity on the premises complied with the provision.
- (4) However it is a defence for an owner or occupier to prove that:-
  - (a) the owner or occupier exercised reasonable diligence to ensure that the person operating the prescribed activity on the premises complied with the provision; or
  - (b) the non-compliance with a provision of this local law occurred without that person's knowledge or consent.

**Liability of third parties**

**24** (1) Any person involved in a contravention of this local law commits an offence.

Maximum penalty - the penalty for which any person who committed the contravention would be liable.

(2) For the purposes of section 24(1) (Liability of third parties) of this local law, a person involved in a contravention of this local law is any person who:

(a) has aided, abetted, counselled or procured the contravention; or

(b) has induced, whether by threats or promises or otherwise, the contravention; or

(c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or

(d) has conspired with others to effect the contravention; or

(e) has knowingly benefited from or knowingly was capable of benefiting from the contravention.

**Attempts to commit offences**

**25** (1) A person who attempts to commit an offence under this local law commits an offence.

Maximum penalty - half the maximum penalty for committing the offence.

(2) The provisions of the Criminal Code (relevant to attempts to commit offences) apply to the attempt.

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## PART 5 - SUBORDINATE LOCAL LAWS

### Subordinate local laws

**26** The local government may, in a subordinate local law, specify:

- (a) an activity as a prescribed activity pursuant to section 3 (Definitions) of this local law; and
- (b) the prescribed criteria with which the operation of a prescribed activity must comply pursuant to section 3 (Definitions) of this local law; and
- (c) as a local government road a public place pursuant to section 3 (Definitions) of this local law; and
- (d) a thing as a vehicle pursuant to section 3 (Definitions) of this local law; and
- (e) a thing as a structure pursuant to section 3 (Definitions) of this local law; and
- (f) a prescribed activity in respect of the operation of which a person is not required to hold a licence pursuant to section 5(3) (Requirement for a licence) of this local law; and
- (g) the information that must accompany an application for a licence pursuant to section 6(1)(c)(iv) (Application for a licence) of this local law; and
- (h) the term of the licence pursuant to section 8(1) (Term of a licence) of this local law; and
- (i) the records that must be kept, the place at which those records must be kept and the period for which those records must be kept pursuant to section 9(2)(e) (Conditions of a licence) of this local law; and
- (j) the conditions that must be imposed in a licence or that will ordinarily be imposed in a licence pursuant to section 9(3) (Conditions of a licence) of this local law; and

- (k) the changes in circumstances since a licence was granted that make the continued operation of the licence inappropriate pursuant to section (13)(1)(f) (Cancellation of a licence) of this local law; and
- (l) the records that are required to be kept pursuant to section 17(2)(b) (Inspection of a prescribed activity) of this local law; and
- (m) the terms of a periodic inspection, monitoring or management program in respect of the operation of the prescribed activity pursuant to section 17(4)(b) (Inspection of a prescribed activity) of this local law; and
- (n) a matter as provided for in the definitions of prescribed activities in section 2 (Definitions of prescribed activities) of the Schedule to this local law; and
- (o) the meaning of a term used in section 2 (Definitions of prescribed activities) of the Schedule to this local law pursuant to section 3(1) (Administrative definitions) of the Schedule to this local law; and
- (p) such other matters as are provided for in this local law.

## SCHEDULE - PRESCRIBED ACTIVITIES

### Prescribed activities

- 1 For the purposes of section 3 (Definitions) of this local law, an activity specified in Table 1 is a prescribed activity.

#### Table 1 - Prescribed activities

advertisement

animal keeping

animal vending

camping ground

caravan park

domestic water carrier

extractive industry

film production

home based business

itinerant vending

on-site sewerage facility

rental accommodation

stall

temporary accommodation

temporary event

**Definitions of prescribed activities**

2 For the purposes of section 1 (Prescribed activities) of this Schedule to this local law:

**“advertisement”** means:

- (a) the display or advertising on premises of a matter not associated with the primary purposes for which the premises are developed; and
- (b) the display or advertising on premises of a matter associated with the primary purposes for which the premises are developed; and
- (c) the temporary display or advertising of a matter referred to in paragraphs (a) and (b).

**“animal keeping”** means the keeping, boarding, breeding or training of any animal which is defined in *Local Law No. 3 (Animal Control)* which is specified in a subordinate local law.

**“animal vending”** means the commercial supply of animals.

**“camping ground”** has the meaning given in the local government’s planning scheme.

**“caravan park”** has the meaning given in the local government’s planning scheme.

**“domestic water carrier”** means the transportation of water:

- (a) by water tanker; and
- (b) to a person (whether that person is within the local government area or not) who is:
  - (i) using the water for human consumption, food preparation, washing or other normal domestic activities; or
  - (ii) distributing the water to a person referred to in paragraph (b)(i).

**“extractive industry”** has the meaning given in the local government’s planning scheme.

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**“film production”** means activities undertaken for fee or reward in respect of the production of:

- (a) a motion picture; or
- (b) a television program other than a commercial news program; or
- (c) a video program; or
- (d) an advertisement; or
- (e) a multimedia program.

**“home based business”** means any non-residential activity carried on within an accommodation unit, caretakers residence, duplex dwelling, dwelling house, multiple dwelling or relatives accommodation as defined in the local government’s planning scheme.

**“itinerant vending”<sup>9</sup>** means the commercial supply of goods or services which is not a general store, shop, shopping centre or stall as defined in the local government’s planning scheme.

**“on-site sewerage facility”** means:

- (a) a facility (other than a septic tank) installed on premises for treating, on premises, sewage generated on the premises and disposing of the resulting effluent on the premises; and
- (b) a septic tank where specified in a subordinate local law.

**“rental accommodation”** means accommodation on premises:

- (a) provided for payment by the persons for whom the accommodation is provided;
- (b) other than:

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<sup>9</sup> Itinerant vending does not include the supply of goods licensed under the Hawkers Act 1984 pursuant to section 4(1)(c) (Relationship of other laws) of this local law.

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- (i) a hospital, camping ground, caravan park as defined in the local government's planning scheme; or
  - (ii) premises providing support services and short term accommodation for youths and persons escaping domestic violence.

**“stall”** means the retail sale of goods from a vehicle, or permanent structure which has a total use area of less than 75 m<sup>2</sup> in area.

**“temporary accommodation”** means accommodation within a structure which is not a residential structure which requires a development permit for building works under the *Integrated Planning Act 1997*.

*Examples:*

?? a caravan;

?? a car, bus or other vehicle;

?? a tent;

?? a prefabricated structure;

?? a structure designed to be readily assembled and disassembled.

**“temporary event”** means premises used for a carnival, circus, fair, fete, rodeo, show, religious use, community use or a temporary use pursuant to an authority under the *Liquor Act 1992* or the like which is:

- (a) of a temporary nature; and
- (b) not conducted on a regular basis (that is weekly or monthly at a fixed venue).

**Administrative definitions**

- 3**       (1)       Unless the context otherwise indicates or requires the terms used in section 2 (Definitions of prescribed activities) of the Schedule of this local law have the meanings given to them in a subordinate local law.
- (2)       Where a term used in section 2 (Definitions of prescribed activities) of the Schedule of this local law is not defined in the local government's planning scheme, the term shall unless the context otherwise indicates or requires have the meaning assigned to it by the *Local Government Act 1993* or the Macquarie Dictionary where the term is not defined in the *Local Government Act 1993*.