

# Guidance Notes

## Model Local Law No. 1 (Administration)

### 2010

### Version 1.3

#### Disclaimer

*These guidance notes have been compiled for your information only and should not be treated as an exhaustive statement on the subject. Nor should they be considered as rendering to you legal or professional service. The department recommends that independent legal advice be sought on any matter of interpretation of the model local laws or template subordinate local laws. The information is provided on the basis that you are responsible for making your own assessment of the topics discussed.*

*The department expressly disclaims all liability (including but not limited to liability for negligence) for errors or omissions of any kind whatsoever or for any loss (including direct and indirect losses), damages or other consequences which may arise from your reliance on the material contained in the guidance notes.*

## Contents

|   |    |
|---|----|
| <b>Purpose</b> .....  | 4  |
| <b>Context – Model local laws 2010</b> .....                                  | 4  |
| <b>Template subordinate local laws 2010</b> .....                             | 5  |
| <b>Commentary on model provisions and template subordinate</b> .....          | 6  |
| <b>Part 1 - Preliminary</b> .....   | 6  |
| S2. Purposes and how they’re to be achieved.....                              | 6  |
| S3. Definitions – the dictionary.....   | 7  |
| S4. Relationship with other laws.....   | 7  |
| <b>Part 2 – Approvals for prescribed activities</b> .....                     | 8  |
| S5. Meaning of prescribed activity .....                                      | 8  |
| S6. Offence to undertake local law prescribed activity without approval ..... | 9  |
| S7. Approvals for prescribed activities to be obtained under this part .....  | 11 |
| S8. Form of application.....  | 12 |
| S9. Local government’s discretion in granting approvals .....                 | 13 |
| S10. Conditions of approval.....  | 13 |
| S11. Compliance with conditions of approval.....                              | 14 |
| S12. Third party certification.....   | 14 |
| S13. Term of approval.....  | 14 |
| S14. Renewal of approval .....  | 14 |
| S15. Transfer of approval.....  | 15 |
| S16. Amending conditions at request of approval holder .....                  | 16 |
| S17. Grounds for amending, suspending or cancelling approval.....             | 16 |
| S18. Procedure for amending, suspending or cancelling approval .....          | 17 |
| S19. Procedure for immediate suspension of approval .....                     | 18 |
| <b>Part 3 – Authorised persons</b> .....                                      | 18 |
| S20. Appointment.....   | 18 |
| S21. Threatening an authorised person.....                                    | 18 |

|  |    |
|--|----|
| <b>Part 4 – Review of decision</b> .....   | 19 |
| S22. Application for review .....  | 19 |
| S23. Review decision .....   | 19 |
| S24. Stay of operation of original decision.....   | 20 |
| <b>Part 5 – Enforcement</b> .....  | 20 |
| S25. Production of records.....  | 20 |
| S26. Compliance notice for contravention of local law or approval condition .....            | 20 |
| S27. Compliance notice authorised by local law .....   | 21 |
| S28. Power to remove and cost recovery.....  | 21 |
| S29. Stop orders .....   | 22 |
| <b>Part 6 – Legal proceedings</b> .....  | 22 |
| S30. Defence of reasonable excuse .....  | 22 |
| S31. General defence for owners or occupiers of land .....                                   | 23 |
| S32. Joint and several liability.....  | 23 |
| S33. Rewards .....   | 23 |
| <b>Part 7 – Miscellaneous</b> .....  | 23 |
| S34. Maintenance of good order of meetings.....  | 23 |
| S35. Fees .....  | 24 |
| S36. Abandoned goods.....  | 24 |
| S37. Dealing with seized and impounded items .....   | 24 |
| <b>Part 8 – Subordinate local laws</b> .....   | 24 |
| S36. Subordinate local laws .....  | 24 |
| <b>Schedule 1 – Dictionary</b> .....   | 25 |
| <b>Schedule 2—Prescribed activities</b> .....  | 25 |
| <b>Appendix 1— Model local laws gazetted in 2010</b> .....                                   | 31 |
| <b>Appendix 2— Model local law principles</b> .....  | 31 |
| <b>Appendix 3— Relationship between the new model local laws and the former models</b> ..... | 33 |
| <b>Appendix 4— Summary of offence provisions and maximum applicable penalty</b> .....        | 34 |
| <b>Appendix 5— Relationship with other laws</b> .....  | 35 |
| <b>Appendix 6— State legislation relevant to the Administration Model</b> .....              | 37 |
| <b>Appendix 7— Notice/review provisions table</b> .....                                      | 38 |

## Purpose

These guidance notes aim to assist local governments interpret and implement the set of seven model local laws gazetted on 25 June 2010. They provide explanatory commentary on each model local law and its relevant subordinate local law template.

The guidance notes set out the scope and purpose of each part of the model local law and associated provisions within the relevant template subordinate local law and explain how the model is intended to be applied. The notes also identify:

- how linkages between the different model local laws form an integrated regulatory regime
- how the model laws link with other relevant legislation including the *Local Government Act 2009* (LGA).

A set of guidance notes is available for each model local law and should be read in conjunction with the relevant model local law and template subordinate local law.

## Context – Model local laws 2010

The model local laws were developed following consultation with stakeholders undertaken in 2007–08. The model local laws cover a range of matters considered appropriate for local government to regulate such as:

- undertaking prescribed activities in a local government area
- bathing reserves
- parking
- community and environmental matters
- animal management and the regulation of other activities on local government controlled areas, facilities and roads.

See Appendix 1 for the full list of models.

The model local laws are presented as an integrated package with Model Local Law No.1 (Administration) 2010 (the Administration Model) being the framework for all other model local laws.

The Administration Model sets out common approval processes for:

- undertaking specific activities
- legal proceedings
- enforcement provisions
- miscellaneous matters upon which the other model local laws rely.

This means there is only one set of provisions for obtaining a local government's approval on a matter, rather than duplicating these provisions within each model local law. It ensures the model local laws are streamlined but flexible, enabling local governments to make local laws on new issues in the future without having to repeat relevant approval and enforcement provisions. It also means that a local government needs to adopt the Administration Model to enable any other model local law adopted to have effect.

There are a number of overarching principles upon which all model local laws are based. These include a requirement that a model local law should not duplicate state legislation and it should be necessary and enforceable. A full list of the principles upon which all models are based are set out in Appendix 2.

## Template subordinate local laws 2010

A template subordinate local law is available for each model local law as an additional support tool for local governments adopting the model local laws.

Subordinate local laws are essential to the successful implementation of the model local laws. In recognition of the diversity of local governments throughout the state, and to avoid limiting the application of the model local laws, subordinate local laws provide the means for local governments to specify the details of regulatory requirements that meet their particular needs.

Two subordinate local law templates have been developed for use with the Administration Model. One template is intended for use by Indigenous local governments. It includes additional schedules (Schedules 31 to 33) that relate to prescribed activities particular to indigenous local governments, such as entry to trust areas and undertaking scientific research in a trust area. In all other respects the templates are identical and a reference in these guidance notes to the Administration Subordinate is a reference to both templates.

It is intended local governments use the templates as a guide when developing subordinate local laws appropriate for their areas for each model local law adopted. The template provides a subordinate local law structure that is consistent with the heads of power provided in the model local law. While the templates include examples and suggestions for subordinate local law content in italicised text, this text is not intended to provide an exhaustive list of matters for inclusion.

## Commentary on model provisions and template subordinate

The Administration Model provides a legal and procedural framework for the other model local laws. As noted, the Administration Model sets out common approval processes for undertaking specific activities, legal proceedings, enforcement provisions and a range of miscellaneous matters upon which the other models rely. Under the former model local law regime different models had separate approval and enforcement processes that resulted in unnecessary duplication and could prove confusing. The new models provide for more streamlined administrative processes and establish an approval process that is flexible enough to accommodate the wide range of activities regulated under the model local laws.

The Administration Model effectively collapses several matters covered as separate subjects under the former suite of model local laws. A table that shows the linkages between the old model local laws and the new model local laws is attached (Appendix 3).

Local governments must adopt the Administration Model to enable any other model they choose to take effect. If a local government retains any of its other local laws after adopting the models, they will need to assess and amend existing local laws where necessary to ensure they fit within the framework implemented under the Administration Model. The Administration Model is deemed to apply to all local government local laws unless expressly excluded.

The Administration Model is sufficiently flexible to enable local governments to link the model local law to future local laws on new issues without having to repeat approval and enforcement provisions.

### Part 1 - Preliminary

#### S2. Purposes and how they're to be achieved

This Administration Model provides a legal and procedural framework for the administration, implementation and enforcement of the local government's local laws by providing for:

- consistent and comprehensive processes for the local government to grant and regulate approvals to undertake prescribed activities
- authorised persons (for persons enforcing local laws)
- review of certain decisions made under local laws
- enforcement of local laws and matters relating to legal proceedings
- miscellaneous administrative matters relating to meetings, fees, abandoned goods and seized and impounded items.

The Administration Model's purpose sets the broad context for, and places limits on, the scope of subordinate local laws developed by local governments to supplement the model local law. The content of all subordinate local laws should be consistent with the purpose of the authorising local law.

### S3. Definitions – the dictionary

All relevant words used in the model are defined in the schedule dictionary and are consistent with state legislation. However, definitions are included based on the following approach for all model local laws:

- where a term is used in only one section of the model local law it is defined in that section and not repeated in the dictionary
- where a term is defined in the Administration Model and also used with the same meaning in another model, the definition is not repeated in the dictionaries of the other models. Instead the term will be signposted in the other models' dictionaries to refer the reader to the definition in the Administration Model
- generally where a term is defined in the Local Government Act (LGA) it is not replicated in the model local law dictionaries. The first instance of the term's use in the model is footnoted to alert readers to refer to the LGA for its definition
- where a term is defined in another Act and the models rely on the meaning given to the term in that Act specific reference is made to this effect in the model local law.

### S4. Relationship with other laws

The Administration Model operates in conjunction with the LGA and applies to each of the local government's local laws subject to any specific provision in a local law that expresses a contrary intention. The Administration Model has been drafted to be consistent and reliant on provisions in the LGA and relies on the authorised person provisions in Chapter 6, Part 6 of the LGA.

The Administration Model is in addition to, and does not derogate from, laws regulating land use planning and development assessment. Several other pieces of legislation are relevant to understanding and applying the Administration Model. Some examples are listed in Appendices 5 and 6.

Please note, given the scope and range of matters covered by the Administration Model, it is not possible to provide an exhaustive list of all legislation that may be relevant to the Administration Model. It is a matter for local governments to consider the full impact of all relevant legislation when developing their subordinate local laws to ensure the content is consistent with requirements of state legislation.

#### Relationship with other Models

As noted, the Administration Model provides a legal procedural framework for the other model local laws.

## Part 2 – Approvals for prescribed activities

### S5. Meaning of prescribed activity

Under the model local laws, all activities conducted in a local government's area for which an approval is required are provided for under the Administration Model as prescribed activities. Specific requirements for undertaking each prescribed activity, such as the application requirements for a particular prescribed activity are set out in the Administration Subordinate.

The Administration Subordinate contains a template schedule for each prescribed activity. However these are included for reference only and local governments have the option of developing their own schedules.

A prescribed activity has two meanings under section 5(a) and section 5 (b) of the Administration Model.

#### Under section 5(a)

An activity is prescribed if it is listed in Part 1 of Schedule 2 and defined in Part 2 of Schedule 2 of the Administration Model. For example, keeping of animals, operation of caravan parks and installation of advertising devices.

#### Under section 5(b)

An activity is a prescribed activity if a Local Government Act authorises the local government to grant an approval but does not make any provision, except a provision that is consistent with Part 2 of the Administration Model, about the process for the local government to grant the approval.

It should be noted a 'Local Government Act' is defined very broadly by the *Local Government Act 2009* as 'a law under which a local government performs the local government's responsibilities', which includes other state legislation and local laws.

The objective of section 5(b) is to capture any other approvals that a local government is required to make under law but for which there is no approval process provided.

For example, within the Model Local Law No. 6 (Bathing Reserves) 2010 (Bathing Reserves Model), it is a prescribed activity to set apart a bathing reserve or a part of a bathing reserve for life-saving training on an exclusive basis; or use any part of a bathing reserve for the conduct of a surfing competition, a life saving competition or another aquatic activity. This prescribed activity has not been consolidated into the list in Schedule 2 of the Administration Model because the Bathing Reserves Model operates as a special local law that will not be relevant to all local governments.

This flexibility for a local law to declare other prescribed activities means that, if the local government develops a future local law requiring an approval for a particular activity, it can rely on the approval processes in the Administration Model rather than having to replicate those provisions in the new local law.



Section 75(2) of the LGA allows for a local government to grant written approval to carry out works on a road or to interfere with a road or its operation. The provision does not provide a process for approving an application for this activity. Therefore, the activity would be considered a prescribed activity under the Administration Model.

Section 180 of the *Water Supply (Safety and Reliability) Act 2008* is an example of a law that authorises the local government to grant an approval (a trade waste approval) and does prescribe the process for the granting of an approval. Because the Act sets out the approval process, there is no need for the Administration Model to be used and therefore discharging trade waste is not a prescribed activity.

## S6. Offence to undertake local law prescribed activity without approval

Section 6 of the Administration Model makes it an offence to undertake a local law prescribed activity without an approval. Note this section only refers to 'local law' prescribed activities.

The offence of undertaking a prescribed activity provided in state legislation without a current approval is covered by the relevant Local Government Act that provides for the approval.

For prescribed activities in local laws, the offence for undertaking the activity without an approval is provided for under section 6 of the Administration Model. Section 6(2) sets out the maximum penalty levels for an offence under this section. The Administration Model has been designed to allow flexibility for local governments in determining the appropriate penalty for the offence of undertaking a local law prescribed activity without approval.

It is a matter for local governments to categorise prescribed activities and therefore determining the penalty that will apply for that activity within the parameters set by the Administration Model. For example, a local government may consider it necessary to set a higher penalty for activities which if undertaken without an approval may have a serious impact on public health and safety. Operating a swimming pool without an approval might create greater risks and consequences than installing an advertising device without an approval.

Local governments can declare by subordinate local law, which activity falls into which category. However, a local government may decide not to declare separate categories by subordinate local law. In that case, the Administration Model provides that the default penalty will be 50 penalty units—section 6(2)(a).

Local governments can also declare that an approval is not required for a prescribed activity. This enables local governments to exclude particular activities that are listed in Schedule 2 from the requirement for an approval. For example, if a local government decided that it does not wish to regulate temporary homes, it could declare in the subordinate local law that an approval is not required for ‘establishment or occupation of a temporary home’. This effectively removes that activity from the approval requirements in the Administration Model even though it will still be listed in Schedule 2 as a prescribed activity.

Local governments may also declare that ‘a particular activity within the category of a prescribed activity’ does not require an approval. For example, operating a camping ground is a prescribed activity therefore to operate a camping ground an approval is required. However, a local government may declare by subordinate local law that the requirement for an approval does not apply if a camping ground meets certain criteria—for example, if it’s less than a certain size or outside an urban area.

However local governments cannot make exemptions about approvals for prescribed activities identified in state legislation because the approval is required under the relevant legislation and not the local law.

The Administration Subordinate includes a number of schedules for local governments to use when setting out the requirements for approval for each prescribed activity. Where a local government has declared by subordinate local law that an entire prescribed activity does not require an approval, then the relevant schedule in the Administration Subordinate can be omitted. For example, the Administration Subordinate includes a schedule for operation of a caravan park. Local governments can use the schedule to detail the application requirements for operating a caravan park. The template is designed to enable local governments to set out, amongst other things:

- the documents and information that must be included in an application
- the criteria that must be met for an approval to be granted
- conditions on approvals
- the term of the approval.

If the local government determines that an approval is not required to operate a caravan park then it would omit this schedule from the subordinate local law.

There is no necessity for a local government to set out by subordinate local law any of the further details regarding a prescribed activity. In other words, if the local government does not wish to provide more detailed provision about matters such as the information that must accompany an application, additional criteria for granting an approval or the standard conditions of an approval, then it could simply omit the relevant schedule in the Administration Subordinate. An approval would still be required for that activity under the Administration Model. The criteria for granting the approval would be the general criteria in section 9 and the local government would still be able to impose conditions on a case by case basis under section 10. The advantage of providing further detail about the approval process in a schedule listed in the Administration Subordinate is that it enables the local government to standardise the process and provide guidance about what the requirements will be to a person seeking an approval.

It is suggested that local governments retain the schedule numbering in the Administration Subordinate even if some schedules are considered unnecessary and omitted. These can simply be marked 'left intentionally blank'. This will ensure consistency with the schedule numbering in the model and across other local governments.

## **S7. Approvals for prescribed activities to be obtained under this part**

Section 7 makes it explicit that an approval for all prescribed activities must be obtained under Part 2 of the Administration Model. Local governments cannot add new prescribed activities to the list contained in Schedule 2. This would constitute an amendment to the model and it would no longer be the model local law approved as suitable for adoption under the LGA.

As noted, the Administration Model provides flexibility for local governments to link prescribed activities in future local laws to the Administration Model. Therefore if there are matters that local governments want to regulate that aren't covered under the model local law framework, it has the option of:

- making its own local laws about the matter and using the approval processes in the Administration Model
- making an amendment to the Administration Model, once it has been adopted by the local government, to include an activity within Schedule 2.

If a local government prescribes a new prescribed activity under a future local law, then a new schedule covering the new prescribed activity can be added to the Administration Subordinate.

## S8. Form of application

Section 8 is intended to ensure applications are received in a format or manner approved by the local government. This section is intentionally non-prescriptive to provide local governments with the flexibility to determine the appropriate form of application for a prescribed activity. For example, this allows local governments to stipulate if a written form is required or an application can be made online. This section sets out certain requirements for an application but it is a matter for local governments to determine how simple or complex an application process needs to be for a particular prescribed activity. For some activities—for example, the operation of a swimming pool or a caravan park—a more detailed application process may be required than the issuing of a parking permit. Local governments should give careful consideration to the requirements for a particular prescribed activity and tailor the Administration Subordinate accordingly.

The applicant must provide proof of any separate approval relating to the prescribed activity required under another law. For example, for an application to establish a temporary home any relevant planning approval must be included. The responsibility for providing the necessary proof lies with the applicant and the onus is on the applicant to ensure the local government is aware of any other relevant approvals and conditions when undertaking its assessment and placing conditions on approval for the prescribed activity.

Section 8(2)(a) allows local governments to prescribe by subordinate local law the documents and materials that must accompany an application for an approval. Different prescribed activities may require varying levels of detail. Local governments have power under this provision to request further information from an applicant if it is necessary to enable a full and proper assessment of an application. This must be done by issuing a written notice making explicit the grounds on which the request is made and stating the information needed.

The application lapses if the information is not provided within the stated timeframe in the notice unless there is a reasonable excuse on the part of the applicant. The date for response must not be less than seven days after the applicant receives the notice. The local government must issue a further written notice in this instance stating that the application has lapsed (under section 8 of the Administration Model) and advising the applicant that a new application is required in this case. Section 8 however provides scope for local governments to extend the period of time allowed for the applicant to provide further information. There may be circumstances when the local government considers it appropriate and reasonable to allow additional time for an applicant to provide the information.

It is an offence to provide information in relation to an application that is false or misleading. A maximum penalty of 20 penalty units is incurred for a breach of this provision.

## S9. Local government’s discretion in granting approvals

Section 9 stipulates a number of matters about which the local government must satisfy itself before granting an approval. These include taking account of separate approvals that may be required under an Act, Commonwealth law or the local government’s planning scheme and being satisfied the granting of an approval would be consistent with the purpose of any relevant local law. For example, an application for commercial use of a local government controlled area held in trust by the local government under the *Land Act 1994*, requires registration of a trustee lease or issue of a trustee permit, prior to the approval being granted for commercial use of the area.

Section 9 sets out broad criteria that the local government will take into account in deciding whether to grant an approval, including the catch-all criterion that the ‘proposed operation and management of the prescribed activity is adequate to protect public health, safety and amenity and prevent environmental harm’. Section 9(1)(d) enables the local government to set out (in the relevant schedule in the subordinate local law) additional, more specific criteria that will be considered in the granting of an approval.

When a local government has made its decision regarding an application, section 9(2) sets out the steps for informing the applicant of that decision. A written notice must be issued to the applicant by either:

- granting the approval unconditionally
- granting the approval subject to conditions determined in accordance with section 10 of the Administration Model
- refusing to grant the approval.

If the local government refuses to grant an approval or grants the approval subject to a non- standard condition, it must give the applicant an information notice. Information notices are issued under the new model local laws where there is an entitlement to review. Merit review is necessary where an individual’s entitlement has been affected by a decision of a local government.

The table in Appendix 7 sets out the circumstances when a notice may be issued and the types of notices that may be issued in different circumstances.

## S10. Conditions of approval

This section provides local governments with the power to set conditions on an approval. There are a number of requirements under this section in relation to conditions including a requirement that a condition must not conflict with the conditions of any other relevant approval issued under an Act. Approval holders must notify the local government in writing of a suspension or cancellation of a relevant approval for the prescribed activity under an Act within three days of the relevant approval being suspended or cancelled.

Local governments can prescribe conditions that must be imposed or that will ordinarily be imposed on an approval under this section. This allows for standard type conditions which apply across all applications for a prescribed activity of that type. For example, an approval to operate a caravan park might include standard conditions such as the manager residing in the caravan park, a register of people using the caravan park being kept and the operator keeping the caravan park clean and tidy.

Conditions that must be imposed on approvals are set conditions for all approvals relating to that prescribed activity. Conditions that will ordinarily be imposed on approvals offer greater flexibility and may not always be relevant for an individual approval.

As noted earlier, a local government is not obliged to set out usual conditions or mandatory conditions in the relevant schedule of the Administration Subordinate. This section provides the head of power for the local government to impose conditions on an approval, on a case by case basis.

## **S11. Compliance with conditions of approval**

It is an offence to breach a condition of an approval. The offence incurs a maximum penalty of 50 penalty units. There is an exception for prescribed activities where state legislation gives the local government authority to issue a permit (see commentary in section 5 of the guidance notes) as the offence is provided for under the relevant legislation.

## **S12. Third party certification**

Section 12 provides that a local government may accept the certificate of a third party certifier as evidence about any application requirement set out in a subordinate local law for this section. This provision is intended to assist local governments with the application process for an approval, renewal or transfer of approvals for prescribed activities only and is not intended to be used for regulating or enforcing approval conditions.

The Administration Subordinate provides for the declaration of an individual or organisation as a third party certifier for particular application requirements or for the prescribing of particular qualifications necessary for an individual or organisation to provide a certificate about particular application requirements.

## **S13. Term of approval**

Unless an approval is cancelled or suspended it remains in force for the term prescribed in the Administration Subordinate or for one year from the date of approval if there is no term provided.

## **S14. Renewal of approval**

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 further term provided for the prescribed activity under a subordinate local law. If a local government chooses not to set a renewal period then a further term equal to the current term of approval applies.

There may be occasions when the local government determines that a class of approvals for a particular prescribed activity will not be extended or renewed. In this instance there is a requirement on the local government to provide written notice to the approval holder that it does not intend to renew or extend the approval.

Section 14 sets out the application requirements for an application to renew or extend an approval. As for original applications, approvals for an application must be made in a form, approved by a local government and accompanied by a prescribed fee. Local governments can request further information to support the renewal application. The local government may by written notice:

- grant the application
- grant the application and amend the conditions of the approval
- refuse the application.

If the local government grants the renewal application and amends the conditions of the approval, it can amend the conditions without following the procedure in section 18.

In determining its decision for a renewal approval, the local government must consider the matters initially considered for the granting of an approval and whether the conditions of the approval are being complied with. If the local government refuses the application or grants the application and amends the approval to include non-standard conditions, then it must give the applicant an information notice. This gives the applicant a right to apply to the chief executive officer for a review of the decision under Part 4 of the Administration Model.

If someone applies to renew or extend the approval, it remains in force until any of the following apply:

- the application is granted
- if the application is refused and the applicant applies for a review of the decision, the date the applicant is given notice of the review decision
- if the application is refused and there has not been an application for a review of the decision, 14 days after the applicant is given an information under subsection (8).

## S15. Transfer of approval

An approval holder may apply to the local government for a transfer of the approval to another person. The application must be a joint application with the proposed transferee. A transfer cannot be effected however if the approval is of a category declared as non-transferable under a subordinate local law. The Administration Subordinate allows for local governments to determine that a certain type of approval is not one that is transferable. It is a matter for local governments to determine the appropriate form for an application and applicants can be asked to provide further information by written notice. Section 8(4) to (7) which states the requirement for a written notice applies to written notices under section 15.

The local government should inform both the approval holder and the proposed transferee of the outcome of the application to transfer an approval. This must be done by written notice. If the transfer is granted, the local government may amend the conditions of the approval without following the procedure set out in section 18. If there are changes to the conditions of the approval, these changes must be stated in the written notice that should also include the date the changes take effect. An information notice must be issued to the approval holder and the proposed transferee if the local government refuses the application or grants the application and amends the approval to include non-standard conditions.

## **S16. Amending conditions at request of approval holder**

There may be circumstances when an approval holder wishes to seek an amendment to the conditions of an approval and this section provides for those circumstances. Where an approval holder is initiating a request for a change to the conditions, the approval holder must apply in writing setting out the proposed amendment and reasons for it. If the local government decides to amend the conditions, it must give the approval holder written notice of the amended conditions and the day they take effect. An information notice must be issued to the approval holder if the local government refuses to amend the conditions. To amend the conditions, local governments do not need to follow the procedure in section 18.

## **S17. Grounds for amending, suspending or cancelling approval**

There are a number of grounds for amending, suspending or cancelling an approval set out in this section. An approval may be amended, suspended or cancelled if it is considered necessary:

- for the protection of public health or safety
- to protect environmental harm
- to prevent property damage or loss of amenity
- to allow for works on roads or local government controlled areas
- to improve access to a road
- to improve the efficiency of vehicle or pedestrian traffic.

If a prescribed activity required another approval under an Act and the other approval has been suspended or cancelled, this may also constitute grounds for amending, suspending or cancelling an approval.

There are a range of other circumstances that may give grounds for the amendment, suspension or cancelling of an approval. For example:

- if in undertaking the prescribed activity the approval holder has failed to comply with a local law or an Act
- failed to comply with a condition of an approval



- if the approval holder has been issued a notice under section 26 (a compliance notice for contravention of local law or approval condition), a notice under section 27 (compliance notice authorised by local law) or has failed to comply with a stop order under section 29.

Finally, if, in obtaining an approval, a document or representation was used as part of the application and that document or representation was false or misleading; or obtained or made in another improper way that may constitute grounds for amending, suspending or cancelling an approval.

## S18. Procedure for amending, suspending or cancelling approval

Section 17 sets out the grounds for amending, suspending or cancelling an approval and section 18 establishes the procedure for this proposed action. Before taking the proposed action, local governments must give the approval holder a written notice (a show cause notice) stating:

- the proposed action
- the grounds for the proposed action
- the facts and circumstances that are the basis of the grounds
- if the proposed action is a suspension of the approval, the proposed suspension period given
- 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.

Following a review of submissions, the local government may determine that a ground no longer exists to cancel, amend or suspend the approval. In this case, no further action about the show cause notice must be taken and a written notice must be given to the approval holder about its decision.

However if the local government still considers there are grounds to take the proposed action, the local government has a number of options available:

- if the proposed action was to amend the approval—it can amend the approval
- if the proposed action was to suspend the approval—suspend the approval for no longer than the period stated in the notice
- if the proposed action was to cancel the approval—amend the approval, suspend it for a period or cancel it.

If the local government decides to amend, suspend or cancel the approval, the local government must give the approval holder an information notice.

Whatever decision is taken, it takes effect on the day the written notice is given to the approval holder, unless the notice states a different day of effect.

This section does not limit the power a local government may have apart from this section to amend, suspend or cancel an approval.

## S19. Procedure for immediate suspension of approval

Despite the procedure established under section 18 of the Administration Model for amending, suspending or cancelling an approval, local governments can rely on section 19 of the Administration Model. This enables them to act quickly to effect an immediate suspension of an approval if it is necessary due to an urgent and serious threat to public health or safety or an urgent and serious risk of environmental harm, property damage or loss of amenity.

In such circumstances, the local government must give a notice to the approval holder regarding the decision to immediately suspend the approval, together with a show cause notice about the proposed action under section 18. The suspension begins immediately the notices are given to the approval holder and remains valid until the earliest of the following happens:

- the local government cancels the suspension
- the local government gives the approval holder notice of its decision about the show cause notice.

The suspension also ceases to operate:

- if 14 days have passed since the expiry of the stated time for the making of written submissions regarding the show cause notice
- if 14 days have passed since the approval holder notified the local government that it has made its written final submissions regarding the show cause notice.

## Part 3 – Authorised persons

### S20. Appointment

The instrument for appointing an authorised person must state the local law(s) or the provisions of local law(s) for which the person is appointed as an authorised person. This ensures it is clear as to the purposes for which an authorised person is appointed.

### S21. Threatening an authorised person

As the general powers of an authorised person are set out in the LGA, they are not replicated in the Administration Model. However, an additional offence of threatening or using insulting or abusive language to an authorised person is included in the Administration Model. It carries a maximum penalty of 20 penalty units. This is included in the Administration Model as an additional offence to protect authorised persons from threat or insult in the enforcement of local laws under the Administration Model.

## Part 4 – Review of decision

This part sets out the scope and process for a review of decisions under the Administration Model. There are two key aspects to the review of decisions. If a person has been given, or is entitled to be given, an information notice for a decision under a local law (an original decision) the person may apply to the chief executive officer for a review of the decision under this part.

Merit review, through internal review under the Administration Model is triggered only in instances where an information notice is given (those decisions that have the potential to significantly affect a person's rights, interests or legitimate expectations).

A person wishing to complain about any other issues that do not attract a formal right of review may be able to resolve this matter through the administrative actions complaints process that local governments must administer under the LGA.

### S22. Application for review

Section 22(2) establishes the process for a review application. If the person has been given an information notice for the decision, the review application must be made within 14 days of the day the person is given the notice. If the person is entitled to an information notice but does not receive one, then a review application must be made within 14 days of the day the person otherwise becomes aware of the original decision. Local governments have the discretion to extend the time for making a review application.

The review application must be in writing and accompanied by a statement setting out the grounds for which the applicant seeks review of the decision. It must be supported by enough information to enable the local government to decide the review application.

### S23. Review decision

The local government must review the original decision within 28 days after receiving a review application and make a decision (review decision) to either:

- confirm the original decision
- amend the original decision
- substitute another decision for the original decision.

The application must not be dealt with by the person who made the original decision, unless the original decision was made by the chief executive officer. The local government must, within five days of making the review decision, give the applicant notice of the decision (the review notice) stating the reasons for the review decision. If the local government does not give the review notice within the five days, the local government is taken to have made a review decision confirming the original decision.

## S24. Stay of operation of original decision

A review application does not stay the original decision that is the subject of the application. 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. The court may stay the original decision to secure the effectiveness of the review. A stay may be granted on conditions the court considers appropriate.

Note this is different to the process under section 38 of the Animal Management Model where a destruction order is automatically stayed once a notice of appeal is filed with the court. The automatic stay of decision is required in that case because of the finality of the order (i.e. the destruction of an animal).

## Part 5 – Enforcement

### S25. Production of records

This section applies where an authorised person has entered a property under the LGA to find out whether the conditions of an approval have been complied with. The authorised person may require the occupier of the property to produce records for inspection that are required by the conditions of an approval. A person must comply with that requirement unless they have a reasonable excuse.

### S26. Compliance notice for contravention of local law or approval condition

Where an authorised person finds that a person has breached a local law or the condition of an approval, this section gives the authorised person the option of issuing a compliance notice. This gives the person an opportunity to remedy the breach and is an alternative course of action to immediately fining or prosecuting the person for the breach.

There are a number of items that must be stated in a compliance notice:

- the time by which the recipient must remedy the contravention
- the particular provision of the local law or condition of an approval the authorised person believes is being, or has been, contravened
- the subordinate local law provision and the local law provision under which it is made if the breach is a requirement specified in a subordinate local law.

The compliance notice may also state the reasonable steps the authorised person considers necessary to remedy the contravention or avoid further contravention. The compliance notice must include, or be accompanied by, an information notice. A penalty applies to a failure to comply with a compliance notice.

It should be noted that where a compliance notice is given to the owner of a property and requires action to be taken in relation to the property, then the notice will constitute a ‘remedial notice’ under section 138(2) of the LGA. The consequence being that if the owner and occupier fail to take the action required under the notice, the local government will have the option of using the Local Government Act’s enforcement provisions—for example, entering the property to take the remedial action itself and recovering the cost from the owner or occupier (see section 142 of the LGA).

## **S27. Compliance notice authorised by local law**

Compliance notices can be issued for contravention of a local law or an approval condition under section 26. Section 27 applies if a local law provides that an authorised person may give a compliance notice to a person. For example, Model Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2010 enables a compliance notice to be issued requiring the responsible person for land to take specified action regarding an overgrown allotment. It should be noted that having an overgrown allotment is not an offence in itself, which is why a compliance notice could not be issued under section 26 for a person who has an overgrown allotment. Rather, Model Local No. 4 empowers the authorised person to issue a compliance notice where the authorised person forms the opinion that an allotment is overgrown. The compliance notice gives the responsible person for the property an opportunity to rectify the issue. The offence is committed, where the responsible person fails to comply with the compliance notice.

This provision describes what must be included in a compliance notice authorised by local law, such as the specified action that the recipient must take to comply with the notice and the maximum penalty for failing to comply with the notice.

The specified action must not be inconsistent with action required, by a remedial notice, to be taken under another Local Government Act.

The compliance notice must include, or be accompanied by, an information notice. This has the effect of giving the recipient of the notice a right to seek review under Part 4 of the authorised person’s decision to issue the notice.

## **S28. Power to remove and cost recovery**

This section provides local governments with power to seize and impound a structure or thing that has been brought onto a local government controlled area or road in contravention of a local law, or a structure that has been erected or installed in, on, or across, under or over a road in contravention of a local law.

The structure or thing may be seized by an authorised person if its immediate removal is necessary in the interests of public health and safety or to prevent environmental harm, property damage or loss of amenity. For example, if a gate or grid is built on a road without an approval or signage is erected on the side of a road without an approval then this provision allows for the removal of such structures.

In addition, this section gives an authorised person the power to seize and impound the structure, if 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 the time for making an application for review of the compliance notice under section 22 has expired. The local government may recover the cost of action taken under this section as a debt from the person.

## S29. Stop orders

This section provides for the issuing of stop orders to immediately stop a prescribed activity if the authorised person believes that continuation of the activity poses:

- an urgent and serious threat to public health or safety
- an urgent and serious risk of environmental harm, property damage or loss of amenity.

There are specific timeframes associated with stop orders. An order may be given orally or in writing and operates until:

- the expiry of the period, of no more than three days, specified by the authorised person when the order is given
- the local government immediately suspends the approval for the prescribed activity under section 19.

If an oral order is given an authorised person must confirm this in writing by the next business day following the giving of the order. It is an offence not to comply with the order.

The intent of this section is to operate as an interim measure to immediately stop a person from carrying out a prescribed activity—giving the local government the opportunity to commence the process for suspending the approval under section 19 and possibly cancelling it under section 18.

This section applies only where a person has an approval to carry out a prescribed activity. If an authorised person wishes to put an immediate stop to a person's activity that is a breach of a local law, then the authorised person could issue a compliance notice requiring the person to cease the offending activity immediately.

## Part 6 – Legal proceedings

### S30. 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 the person had a reasonable excuse for the contravention.

### S31. 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:

- the act or omission occurred without the owner's or occupier's knowledge or consent
- the owner or occupier could not, by reasonable diligence, have prevented the act or omission.

### S32. Joint and several liability

This section provides that a liability imposed by a local law on an owner or occupier of property or a person engaged in a particular activity, and two or more persons are the owners or occupiers of the relevant property, or they are jointly engaged in the relevant activity—the liability is joint and several.

This section applies both to civil liabilities and liabilities enforced by summary proceedings under the *Justices Act 1886*.

### S33. Rewards

The local government may, by public notice, offer a reward for information leading to the conviction of a person for:

- an offence involving damage to, or theft of, property of the local government or under the local government's control
- an offence against a local law.

That amount and the conditions on which it is payable, must be decided by resolution of the local government.

## Part 7 – Miscellaneous

This part comprises a number of miscellaneous provisions.

### S34. Maintenance of good order of meetings

This provision enables local governments to deal with individuals who are not members of the local government or a local government committee. Specifically this provision provides that such individuals must not obstruct the proper conduct of a meeting of the local government or committee. This section deals with non-members only. Members' behaviour in meetings can be regulated in other ways rather than by local law—for example, by local government policy or standing orders.

### S35. Fees

Section 35 states that 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 LGA. Section 35(2) gives local governments the flexibility to determine, by resolution, appropriate circumstances for the reimbursement of a fee. For example, where an approval is surrendered before the end of its duration, local governments can resolve to give a partial reimbursement of the approval fee if considered appropriate. Under section 35(3) the local government may, where appropriate, waive or partially remit a fee, unless specific provision to the contrary is made in a local law or resolution.

### S36. Abandoned goods

This provision provides local governments with powers to deal with goods it reasonably believes have been abandoned in a local government controlled area or on a road. Local governments have power under this provision to seize and impound the goods. Goods do not include animals because the seizing and impounding of animals is dealt with under the Animal Management Model.

### S37. Dealing with seized and impounded items

This section sets out the process under which local governments can deal with seized and impounded items. This section does not however deal with the seized and impounded animals. That is covered under the Animal Management Model and the *Animal Management (Cats and Dogs) Act 2008*.

This provision sets out the process for reclaiming an impounded item and makes a distinction when dealing with items that are of a perishable nature. The latter may be immediately disposed of as directed by the chief executive officer.

To reclaim an impounded item, a person must apply in writing to the local government and pay the prescribed fee. They must also produce proof that they are the owner of the item. The period for reclamation expires one month after the impounding date, after that the impounded item is forfeited to the local government which may dispose of the item according to the requirements set out in this section. The transfer of ownership of the seized item to local governments only occurs after the one month period since seizure has elapsed.

## Part 8 – Subordinate local laws

### S36. Subordinate local laws

Local governments are empowered to make subordinate local laws under the Administration Model in relation to the following matters—the authorising provisions are indicated at the end of each matter:

- prescribed activities in respect of which the requirement for an approval does not apply—section 6(30)
- the categories of prescribed activities for the purposes of maximum penalties—section 6(4)
- the documents and materials that must accompany an application for an approval—section 8(2)(a)



- additional criteria for the granting of approvals for prescribed activities—section 9(1)(d)
- the conditions that must be imposed on an approval or that will ordinarily be imposed on an approval—section 10(3)
- application requirements for which a third party certifier’s certificate may be accepted by the local government—section 12(1)
- the individuals or organisations that are declared as third party certifiers for particular application requirements—section 12(2)
- the qualifications that are necessary for an individual or organisation to provide a third party certificate about particular application requirements—section 12(2)
- the term for which an approval for a prescribed activity remains in force—section 13(a)
- the further term for which an approval for a prescribed activity may be renewed or extended—section 14(1)(a)
- categories of approvals that are non-transferable—section 15(2)
- complementary accommodation prescribed as appropriate for caravan parks (Schedule 1)
- a state-controlled road to which this local law applies (Schedule 1)
- public place activities prescribed as regulated activities on local government controlled areas and roads (Schedule 2, Part 2).

However as previously noted, a local government may choose not to provide further details about particular matters using the Administration Subordinate and may exempt particular prescribed activities from the application of the Administration Model. It is recommended that ‘intentional blank pages’ are left in the Administration Subordinate to ensure schedule numbering remains consistent with the template subordinate local law. However, ultimately it is a matter for individual local governments to consider and determine based on their needs.

Commentary on the content of the Administration Subordinate is outlined in these guidance notes under each of the relevant authorising provisions of the Administration Model. Local governments should refer to relevant state legislation when making a subordinate local law under the Administration Model to ensure consistency and operational efficiency.

## Schedule 1 – Dictionary

The dictionary, located in the Administration Model Schedule 1, defines all relevant words used in the model local law.

## Schedule 2—Prescribed activities

Schedule 2 sets out a list of prescribed activities and defines each of the prescribed activities.

If an activity is a prescribed activity, an approval is required before the activity can be undertaken. Section 6(2) makes it an offence to undertake a prescribed activity without a current approval unless it is declared under a subordinate local law that section 6(2) does not apply to a prescribed activity.

## Alteration or improvement to local government controlled areas and roads

An approval is required to undertake an alteration or improvement to a local government controlled area or road. Alteration or improvement includes installing, changing, damaging or removing a structure in a local government area or on a road. Note—however this does not include an alteration or improvement that is regulated under section 75 of the LGA. Section 75 makes it an offence to carry out works on a road or interfere with its operation unless written approval has been obtained from the local government. This is an example of a section 5(b) prescribed activity—because the requirement for the approval is set out in an Act but no further provision is made about the process for granting the approval. Schedule 30 in the Administration Subordinate has been developed specifically to provide for this approval process. As it is a requirement under the LGA to have an approval to carry out works on a road or interfere with its operation, this is not a prescribed activity where a local government can declare an approval is not required.

Alteration or improvement does not include an activity for which a tree clearing permit is required under the *Vegetation Management Act 1999*, or that involves a network connection—that is, an installation that has the sole purpose of connecting a home or other structure to an existing telecommunications network (under the LGA a local government must not make a local law that regulates network connections).

For other alterations or improvements to local government controlled areas and roads local governments can use Schedule 7 of the Administration Subordinate. Common examples of activities that might be regulated under this schedule include installation of gates and grids, and the planting of trees or garden beds on footpaths.

Conditions imposed on approvals are not intended to duplicate the conditions specified in development approvals under SPA. Conditions prescribed in the schedule for the prescribed activity should relate to the ongoing management of the activity.

## Commercial use of local government controlled areas and roads

This prescribed activity means soliciting or carrying out the supply of goods and services, including food or drink for profit on local government controlled areas and roads. There are a number of exclusions—for activities, which while conducted on local government controlled areas or roads, are regulated by state legislation or other local law provisions. Examples include the provision of a public passenger service under the *Transport Operations (Passenger Transport) Act 1994* and the operation of a temporary entertainment event.

Common examples of activities that would be covered by this prescribed activity are footpath dining, roadside vending (e.g. fruit and vegetable stalls), mobile vending (e.g. ice cream vans), market stalls

in parks and busking in public places. Fundraising activities on footpaths or in parks run by non-profit organisations would also be covered unless exempted.

## Establishment or occupation of a temporary home

This prescribed activity 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 activity that would constitute development under SPA or the establishment or occupancy of a temporary home, on or in a camping ground or caravan park. Local governments should consider the requirements under the *Building Act 1975* for temporary buildings when completing the schedule for this prescribed activity—in particular, local governments cannot determine that an approval for the establishment or occupation of a temporary home is not required if there is a legislative requirement under the *Building Act 1975* for an approval. Any approval required under that legislation would be a precondition to a local government granting approvals under the Administration Model and setting conditions under section 10(2).

## Installation of advertising devices

This means the installation, erection or display of an advertisement or sign that is visible from a road or other public place. It should be noted that section 854 of the *Local Government Act 1993* (LGA 1993) and section 37(5) of the LGA means that the installation of advertising devices will be regulated under a local government's planning scheme in the future. Once a new planning scheme has been made, applications for the installation of advertising devices, which will constitute 'development' under SPA will have to be assessed as a requirement under that legislation. A local law will only be able to deal with requirements for the ongoing management or maintenance of an advertising device.

## Keeping of animals

This prescribed activity is integrally linked with Model Local Law No.2 (Animal Management) 2010 (the Animal Management Model). Model local law No. 2 and its relevant subordinate sets out the details about when an approval is required to keep an animal. Keeping an animal in circumstances that require an approval is a 'prescribed activity' under the Administration Model. Therefore the processes for obtaining an approval, imposing conditions and enforcing compliance with the approval are covered by the Administration Model. But the trigger for when an approval is required is provided under the Animal Management Model as specified in its subordinate local law. The offence of not holding an approval for keeping an animal that requires an approval is also covered by the Administration Model (section 6).

When completing a schedule for this prescribed activity local governments should consider both its Animal Management local law and the impact of the *Animal Management (Cats and Dogs) Act 2008*. For example, to ensure consistency between laws when considering conditions that must be imposed on an approval, local governments must take into account the requirements for keeping animals under the *Animal Management (Cats and Dogs) Act 2008*.

## Operation of camping grounds

It is a prescribed activity to operate a camping ground. To operate a camping ground means to permit access to, or use of, a commercial camping ground. It is noted that a commercial camping ground does not include a caravan park, which is a separate prescribed activity (see page 21).

## Operation of cane railways

Similarly, an approval is required to operate a cane railway which is:

- operated, entirely or partly, on an access right under the *Sugar Industry Act 1999*, Chapter 2, Part 4
- used, or proposed to be used, to transport sugar cane or sugar cane by-products
- that does not transport passengers or other freight for reward.

It should be noted that section 854 of the LGA 1993 and section 37(5) of the LGA provide that a local government cannot make local laws regulating development. Accordingly, conditions imposed on approvals are not intended to duplicate the conditions specified in development approvals under SPA. Conditions prescribed in the schedule for the prescribed activity should relate to the ongoing management of the activity.

## Operation of caravan parks

It is a prescribed activity to operate a caravan park. An approval is required to operate on a commercial basis, a place for parking and residing in caravans and includes a place that provides also for complementary accommodation. The *Residential Tenancies and Rooming Accommodation Act 2008* relates to caravan parks and generally focuses on the contractual aspects of the landlord-tenant relationship and the resolution of disputes that arise between those two parties. Local governments should consider the terms and conditions of the grant of an approval under the Administration Model to ensure they do not conflict with the *Residential Tenancies and Rooming Accommodation Act 2008*.

## Operation of cemeteries

This prescribed activity concerns the operation of a place for disposing of human remains by burial, cremation, or placement in a columbarium, mausoleum or vault. In all cases, an approval is required from the local government for operation of a cemetery.

## Operation of public swimming pools

This prescribed activity means the operation of a swimming pool that is open for use by the public or is used by participants in organised swimming or diving competitions or in training for organised swimming or diving competitions or persons who have a commercial relationship with the owner of the pool. Local governments should consider the *Public Health Act 2005* (which provides that regulations can be made under that Act about public health risks including standards for water quality in non residential swimming pools) to ensure any regulation made under that legislation is taken into account when the application and approval process for this prescribed activity are considered.

This prescribed activity is intended to apply to privately-run public swimming pools. It is expected that public pools on local government controlled property will be regulated through lease or management agreements between the local government and the operator.

## Operation of shared facility accommodation

This prescribed activity concerns the operation of shared facility accommodation provided to holiday makers or travellers. It does not include accommodation in a hotel or motel. Local governments could use section 6(3) of the Administration Model to exempt certain premises from approvals. If, for example, a local government considers an approval is not required for accommodation in a private home where accommodation is provided for not more than three people, an exemption under section 6(3) could be provided.

## Operation of temporary entertainment events

This prescribed activity 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 SPA. Local governments should give full consideration to whether an application sought for this activity involves activity which includes development as defined under SPA, as this cannot be regulated under the Administration Model.

Local governments should consider fully the implications of all relevant state legislation impacting upon this prescribed activity. For example, the Queensland Development Code, established under the *Building Act 1975* deals with the establishment of temporary structures used for entertainment events must be taken into account. In addition, the *Police Powers and Responsibilities Act 2000* provides for the preservation of the safety of persons at 'special events'. Local governments should ensure an approval for a temporary entertainment event takes into account conditions that apply under the *Police Powers and Responsibilities Act 2000*.

Temporary entertainment events are distinguished from public place activities (Schedule 6 of the Administration Subordinate). Temporary entertainment events are events open to the general public for entertainment purposes (including both recreation and amusement)—for example, a music festival. The temporary entertainment event may take place on local government controlled land or on private land and are specifically excluded in the definition of the public events prescribed activity in Schedule 2 of the Administration Model.

## Undertaking regulated activities regarding human remains

Undertaking regulated activities regarding human remains means:

- disturbance of human remains buried outside a cemetery
- burial or disposal of human remains (excluding cremated remains) outside a cemetery
- disturbance of human remains in a local government cemetery

It is a prescribed activity to disturb, bury or dispose of human remains outside a private cemetery. There is no requirement to obtain an approval under local law to bury or dispose of human remains in a local government cemetery as it is considered these matters can be dealt with by administrative policy and contractual arrangements. It is an overarching principle for the model local laws that regulation is included only when absolutely necessary. Local governments can however control matters like burials and the types of memorials installed on burial sites within cemeteries under their control by relying on the provisions in Model Local Law No.4 Local Government Controlled Areas, Facilities and Roads 2010 which allows local governments to determine prohibited and restricted activities in a local government controlled area.

## Undertaking regulated activities on local government controlled areas and roads

This prescribed activity has three elements and means undertaking one of the following activities on a local government controlled area or road:

- driving or leading of animals to cross a road
- depositing of goods or materials
- holding of a public place activity prescribed under a subordinate local law, excluding the operation of a temporary entertainment event.

State legislation may provide for the regulation of matters such as the movement of animals on roads—the *Land Protection (Pest and Stock Route Management) Act 2002*—and the depositing of goods or rubbish on state-controlled roads—including requirements for permits in certain circumstances. Local governments should take into account other relevant legislative requirements when developing their subordinate legislation on these matters.

Public place activities relate to activities on a local government controlled area or road that is not a commercial use of a local government controlled area or road or a temporary entertainment event.

For example, film and television production that does not constitute development could be specified in the Administration Subordinate as a public place activity, establishing a framework for regulating the industry. The Queensland Government’s Screen Queensland facilitates film and television production in Queensland and is currently in the process of implementing its Film-Friendly Pathways Program aimed at assisting local governments to develop film-friendly regulatory frameworks to assist in attracting film and television production to their communities. For more information about the program, including ideas for promoting sites within the local government area in Screen Queensland’s Locations Database, contact Screen Queensland on 07 3224 4114.

Schedule 6 in the Administration Subordinate provides a template for determining what constitutes a public place activity for the purposes of this prescribed activity.

## Appendix 1— Model local laws gazetted in 2010

| Title  | Date of gazettal notice |
|--|-------------------------|
| Model Local Law No. 1 (Administration) 2010  | 25 June 2010            |
| Model Local Law No. 2 (Animal Management) 2010                                       | 25 June 2010            |
| Model Local Law No. 3 (Community and Environmental Management) 2010                  | 25 June 2010            |
| Model Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2010 | 25 June 2010            |
| Model Local Law No. 5 (Parking) 2010   | 25 June 2010            |
| Model Local Law No. 6 (Bathing Reserves) 2010  | 25 June 2010            |
| Model Local Law No. 7 (Indigenous Community Land Management) 2010                    | 25 June 2010            |

## Appendix 2— Model local law principles

### Consistent with other legislation

Each of the model local laws has been drafted to ensure consistency with state legislation and in particular, to take account of significant recent legislative reforms, including:

- the *Local Government Act 2009*
- the *Animal Management (Cats and Dogs) Act 2008*
- amendments to the Environmental Protection Regulation 2008
- the *Sustainable Planning Act 2009*.

Local laws, and any subordinate local law made under them, do not apply to the extent of any inconsistency with a law of the state or the Commonwealth.

## Necessary and enforceable

The new model local laws have been streamlined to ensure that only matters considered necessary to be regulated by local law are provided for. Matters that may be effectively regulated through administrative policy or contractual arrangements have been omitted from the new regime. However, before adopting any of the model local laws, each local government should make its own assessment about whether it considers the matters contained therein require regulation and whether the local government has the capacity and resources to effectively enforce the regulation being implemented.

## Efficiently structured

The model local laws are an integrated package, with the Administration Model providing the framework for all other models. This approach ensures the models are streamlined but flexible, enabling local governments to make local laws on new issues in the future without having to repeat relevant approval and enforcement provisions.

## Clear and easy to understand

The model local laws were drafted in accordance with current guidelines issued by the Office of the Queensland Parliamentary Counsel under section 9 of the *Legislative Standards Act 1992* for local laws and subordinate local laws. Guidance notes for each model local law have been developed to assist local governments understand the relationship between the new models and as an aid for implementing the new models.



## Appendix 3— Relationship between the new model local laws and the former models

| New model local law  | Incorporated model local law  |
|--|---|
| Model Local Law No. 1 (Administration) 2010  | No. 1 (Administration) 2004<br>No. 6 (Parks and Reserves) 2000<br>No. 11 (Camping Grounds) 2000<br>No. 12 (Caravan Parks) 2000<br>No. 13 (Cemeteries) 2000<br>No. 14 (Commercial Use of Roads) 2000<br>No. 16 (Rental Accommodation with Shared Facilities) 2004<br>No. 17 (Swimming Pools) 2000<br>No. 18 (Temporary Entertainment Venues) 2000<br>No. 19 (Temporary Homes) 2000<br>No. 20 (Tramways) 2000 |
| Model Local Law No. 2 (Animal Management) 2010                                       | No. 4 (Keeping and Control of Animals) 2000<br>No. 5 (Impounding of Animals) 2000   |
| Model Local Law No. 3 (Community and Environmental Management) 2010                  | No. 8 (Control of Pests) 2004<br>No. 9 (Overgrown and Unsightly Allotments) 2000  |
| Model Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2010 | No. 6 (Parks and Reserves) 2000<br>No. 11 (Camping Grounds) 2000<br>No. 12 (Caravan Parks) 2000<br>No. 13 (Cemeteries) 2000<br>No. 17 (Swimming Pools) 2000<br>No. 21 (Roads) 2000  |
| Model Local Law No. 5 (Parking) 2010   | No. 21 (Roads) 2000   |
| Model Local Law No. 6 (Bathing Reserves) 2010  | No. 7 (Bathing Reserves) 2000   |
| Model Local Law No. 7 (Indigenous Community Land Management) 2010                    | By-law No. 6 (Land and Natural Resource Management) 2001  |
| Considered local law was not required  | No. 2 (Meetings) 2008   |
| Redundant as now covered by state legislation  | No. 10 (Blasting operations) 2000<br>No. 15 (Domestic Water Carriers) 2000  |

## Appendix 4— Summary of offence provisions and maximum applicable penalty

| Provision number | Summary of offence provision   | Maximum Penalty (in penalty units)  |
|------------------|--|---|
| 6(2)             | Undertaking a prescribed activity without approval   | (a) for an activity for which no category has been declared by subordinate local law— 50 penalty units<br>(b) for a category 1 activity—50 penalty units<br>(c) for a category 2 activity— 200 penalty units<br>(d) for a category 3 activity— 500 penalty units. |
| 8(7)             | Providing false or misleading material in connection with an approval application  | 20  |
| 11(1)            | Failure to comply with the conditions of an approval   | 50  |
| 21               | Threatening, insulting or using abusive language to an authorised person   | 20  |
| 25(3)            | Failure to comply with a request from an authorised person to produce records for inspection, as required by a condition of approval | 10  |
| 26(7)            | Failure to comply with a compliance notice for the contravention of a local law or an approval condition                             | 50  |
| 27(6)            | Failure to comply with a compliance notice that is authorised by a local law   | 50  |
| 29               | Failure to comply with a stop order  | 50  |
| 34(1)            | Obstructing the proper conduct of a meeting of a local government or local government committee                                      | 20  |
| 34(4)            | Failure to immediately withdraw from a meeting place and remain away   | 20  |

## Appendix 5— Relationship with other laws

Several pieces of legislation are relevant to understanding and applying the Administration Model. Some examples are listed below:

- *Sustainable Planning Act 2009* (SPA)
- *Vegetation Management Act 1999*
- *Building Act 1975*

It is a prescribed activity under the Administration Model to undertake an alteration or improvement to local government controlled areas and roads. This includes activities such as installing or changing a structure but does not include activity that constitutes development under the SPA. Section 37 of the LGA prohibits a local law establishing an alternative development process to a process under SPA.

Altering or improving a local government controlled area or road also includes planting, clearing or damaging vegetation—however this does not include activity which requires a permit under the *Vegetation Management Act 1999*.

It is a prescribed activity to undertake the establishment or occupation of a temporary home. This category does not include activity which would constitute development under SPA. The *Building Act 1975* provides for the functions of local government in relation to particular building development applications. Some of the requirements imposed on the local government also apply to building developments for a temporary building or structure and include a requirement that any approval for such a building includes a condition that limits the period during which the temporary building may remain in place and requires demolition or removal of the building or structure at the end of the period. It is a requirement under the Administration Model that any such required approvals under the *Building Act 1975* (or any other legislation) must be obtained before approval can be granted under section 9 of the Administration Model.

### Land Act 1994

The *Land Act 1994* and the *Land Regulation Act 1995* provide the primary authority for regulating trust land. Where a local government is trustee of trust land it must take into account its rights, powers and obligations as a trustee when exercising its powers. For example, an application to undertake a prescribed activity in a local government controlled area that is held under the *Land Act 1994* may require a separate approval under that legislation.

### Transport Operations (Road Use Management) Act 1995

It is a prescribed activity under this Act to install an advertising device. There are several pieces of state legislation that regulate the installation of advertising devices. For example, *Transport Operations (Road Use Management) Act 1995* (TORUM) requires a permit in relation to certain advertising devices. An approval granted under the Administration Model in relation to the installation of advertising devices must not be inconsistent with any state legislation regulating this issue.

The Administration Model provides for local governments dealing with abandoned goods in a local government controlled area and in some instances, goods that have been abandoned on a road. TORUM provides specific powers for local governments regarding the removal of vehicles or trams abandoned on a road, however section 100 of TORUM also provides that a local government may choose to exercise these specific powers by way of local law. In addition, the chief executive of the department administering TORUM has powers under that legislation to move vehicles, loads or other things abandoned on roads.

### **Residential Tenancies and Rooming Accommodation Act 2008**

It is a prescribed activity to operate a caravan park on a commercial basis. Generally, the Administration Model provides for the ongoing management and operation of a caravan park and the conditions relating to that operation. The *Residential Tenancies and Rooming Accommodation Act 2008* (RTRAA) relates to caravan parks and generally focuses on the contractual aspects of the landlord-tenant relationship and the resolution of disputes that arise between those two parties. Local governments should be mindful of that legislation and in particular, ensure the terms and conditions of a grant of an approval under the Administration Model do not conflict with the RTRAA. Local governments should take into account the RTRAA requirements when making a subordinate local law about the operation of a shared facility accommodation.

### **Environmental Protection Act 1994**

#### **Police Powers and Responsibilities Act 2000**

The *Environmental Protection Act 1994* (EPA) provides for, among other things, the regulation of noise. This may have relevance to the prescribed activity under the Administration Model concerning operation of a temporary entertainment event. The EPA provides for a local government to grant approval for an event to contravene a noise standard or cause an environmental nuisance, where a local law has so provided.

The *Police Powers and Responsibilities Act 2000* (PPRA) provides for the preservation of the safety of persons at a special event. A regulation can declare an event to be a special event and consequently special restrictions apply to the event and certain powers are available to authorised persons appointed under the PPRA for the event. Local governments should take into account this legislation when considering approvals for temporary entertainment events.

### **Land Protection (Pest and Stock Route Management) Act 2002**

It is a prescribed activity under the Administration Model to undertake a regulated activity on local government controlled areas and roads. This includes driving or leading animals to cross a road. The *Land Protection (Pest and Stock Route Management) Act 2002* prohibits a person driving stock on foot on relevant land in a local government's area unless a local government has issued a stock route travel permit. That legislation also provides that a permit is not required if stock are driven on foot where certain conditions are met. Local governments cannot therefore impose a permit requirement if a state Act provides that a local government permit is not required.

## Appendix 6— State legislation relevant to the Administration Model

| Title of state legislation  |
|---|
| <i>Sustainable Planning Act 2009</i>                              |
| <i>Land Act 1994 and subordinate legislation</i>                  |
| <i>Vegetation Management Act 1999</i>                             |
| <i>Transport Operations (Passenger Transport) Act 1994</i>        |
| <i>Transport Infrastructure Act 1994</i>                          |
| <i>Animal Management (Cats and Dogs) Act 2008</i>                 |
| <i>Sugar Industry Act 1999</i>                                    |
| <i>Land Protection (Pest and Stock Route Management) Act 2002</i> |
| <i>Building Act 1975 and subordinate legislation</i>              |
| <i>Environmental Protection Act 1994</i>                          |
| <i>Transport Operations (Road Use Management) Act 1995</i>        |
| <i>Justices Act 1886</i>  |
| <i>Sale of Goods Act 1896</i>                                     |
| <i>Fair Trading Act 1989</i>                                      |
| <i>Residential Services (Accreditation) Act 2002</i>              |
| <i>Residential Tenancies Act 1994</i>                             |
| <i>Residential Services (Accommodation) Act 2002</i>              |
| <i>Residential Tenancies and Rooming Accommodation Act 2008</i>   |
| <i>Body Corporate and Community Management Act 1997</i>           |
| <i>Disabilities Services Act 2006</i>                             |
| <i>Coastal Protection and Management Act 1995</i>                 |

Note: The legislation listed in Appendix 6 is current as at June 2010. Local governments should refer to [www.legislation.qld.gov.au](http://www.legislation.qld.gov.au) for a complete list of all current legislation.

## Appendix 7— Notice/review provisions table

| Circumstance         | Trigger   | Section            | Notice type  |
|----------------------|---|--------------------|--|
| Original application | Request for further information to support an application for approval                                    | 8(3)               | Written notice   |
|                      | Inform applicant of a lapsed application and advise a new application may be made                         | 8(5)               | Written notice   |
|                      | Advise an approval has been granted unconditionally   | 9(2)               | Written notice   |
|                      | Advise grant of approval subject to conditions  | 9(4)               | Written notice<br><br>Information notice if approval is granted subject to non-standard conditions |
|                      | Refusal to grant the approval   | 9(4)               | Information notice   |
| Renewal application  | Advise an approval is one of a class of approvals the local government does not intend to renew or extend | 14(2)              | Written notice   |
|                      | Request for further information to support a renewal application  | 14(4)              | Written notice   |
|                      | Advise a renewal application has been granted   | 14(6)              | Written notice   |
|                      | Advise a renewal application has been granted and the conditions of approval have been amended            | 14(8)              | Written notice<br><br>Information notice if approval is granted subject to non-standard conditions |
| Transfer of approval | Request further information to support transfer of approval application                                   | 15(4)              | Written notice   |
|                      | Advise applicant that a transfer of approval application has been granted                                 | 15(7)              | Written notice   |
|                      | Advise applicant that application has been refused  | 15(7)<br>15(11)(a) | Written notice<br>Information notice   |
|                      | Notifying of any amendments to the conditions of approval   | 15(8)<br>15(11)    | Written notice<br>Information notice if approval is amended to include non-standard conditions     |

|   |   |       |   |
|---|---|-------|---|
| Approval holder requests amendments of conditions | Advise an amendment to conditions request has been approved   | 16(4) | Written notice  |
| Other   | Before taking action to amend, suspend or cancel an approval  | 18(2) | Written notice (show cause notice)  |
|   | Advise approval holder of a decision to take no further action regarding a show cause notice  | 18(3) | Written notice  |
|   | Where local government decides to amend, suspend or cancel the approval   | 18(5) | Information notice  |
|   | Issued following a review decision  | 23(3) | Review notice   |
|   | <p>Issued when either:</p> <ul style="list-style-type: none"> <li>a person is contravening a local law or condition of approval and is a matter relating to the contravention that can be remedied</li> <li>a person is contravening a local law or condition of an approval in circumstances that make it likely a contravention will continue or be repeated and is a matter relating to the contravention that can be remedied</li> </ul> <p>Issued when either:</p> <ul style="list-style-type: none"> <li>a local law provides that an authorised person may give a compliance notice to a person</li> </ul> | 26    | Written notice or compliance notice – must also be accompanied by an Information notice |
|   |   | 27    |   |