

MCKINLAY SHIRE COUNCIL**LOCAL LAW NO. 2****(ADMINISTRATION)****TABLE OF PROVISIONS**

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PART 1³/₄ PRELIMINARY

Citation

1. This local law may be cited as *Local Law No. 2 (Administration)*.

Object

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

Definitions

3. In this local law—

"**application**" includes a request;

"**approval**" means a consent, permission, licence, authorisation or approval under an Act or a local law;

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

"**goods**" includes an animal;

"**prescribed fee**" means a charge fixed by the local government, by local law or by resolution, under section 570 of the Act;

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

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

"**recognised qualifications**" in a particular field means qualifications prescribed by, or approved under, a regulation as appropriate to a person or body that provides private certification in the relevant field.

PART 2³/₄ LOCAL GOVERNMENT APPROVALS

Form of application

4.(1) An application for the local government's approval of a proposal must be made in a form approved by the local government or the chief executive officer.

(2) The application must be accompanied by documents and materials required under the relevant local law or local law policy.

(3) The applicant must, if the local government or the chief executive officer requires, provide further information, documents or materials in support of the application.

(4) An application must be accompanied by the prescribed fee.

Local government's discretion on applications

5.(1) If a local government has power under a local law to approve a proposal, the local government may—

- (a) approve the application unconditionally; or
- (b) approve the application subject to conditions; or

- (c) refuse to approve the application.

Example ¾

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

(2) However, the local government's powers are subject to the provisions of the local law and any relevant local law policy, and the local government must, in deciding how to exercise its power, have regard to criteria stated in the relevant local law or local law policy.

Projects requiring multiple approvals

6.(1) If—

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

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

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

Private certification

7.(1) A local law or local law policy may provide that a specified matter is subject to private certification.

(2) If a local law or local law policy provides that a matter is subject to private certification, the local government may accept the certificate of a person with recognised qualifications in the relevant field as evidence that—

- (a) a proposal complies with the requirements under the local law; or
- (b) a proposal for which approval has been given by the local law has been carried out in accordance with requirements under a local law.

Example ¾

A local law might provide that a proposal to carry out building work of a particular kind may be approved by the local government if it complies with specified technical requirements. In this case, the local government would, if compliance were made subject to private certification, be entitled to accept the certificate of a person with recognised qualifications in architecture or building design as evidence that the proposal complies with the specified requirements.

Variation of conditions of approval

8.(1) The local government may vary or revoke a condition on which its approval has been given under a local law if the variation or revocation is necessary for the protection of public health or safety.

(2) This section does not limit the power a local government may have apart from this section to vary or revoke a condition of approval.

Revocation of approval

9. A local government may revoke an approval for contravention of a condition of the approval.

Summary of local government approvals

10.(1) The local government must prepare and keep up to date a summary of the approvals required under the local laws.

(2) The local government must, on request, provide an interested person with a copy of the summary.

PART 3¾ LEGAL PROCEEDINGS

General defence for owners of land or vehicle

11. If a local law makes the owner of land or a vehicle guilty of an offence if a particular act or omission happens with respect to the land or vehicle it is a defence for the owner to prove that—

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

Joint and several liability

12.(1) If a local law imposes a liability on an owner of property, or a person engaged in a particular activity, and 2 or more persons are the owners of the relevant property, or are jointly engaged in the relevant activity, the liability is joint and several.

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

Rewards

13.(1) The local government may, by public notice, offer a reward for information leading to the conviction of a person for—

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

(2) The amount of the reward, and the conditions on which it is payable, must be decided by the local government.

PART 4¾ AUTHORISED PERSONS

Authorised persons

14.(1) The local government may, by resolution, authorise a person to exercise the powers of an authorised person under a local law.

(2) An authorisation under this section may be general or subject to limitations stated in the resolution.

Example ¾

A resolution might provide that a designated person has the powers of an authorised person under a particular local

law but only in relation to a particular local government reserve.

Identity cards

15.(1) The local authority must issue an identity card to each person authorised to exercise the powers of an authorised person under a local law.

(2) The identity card must—

- (a) contain a recent photograph of the authorised person; and
- (b) be in a form approved by the local government; and
- (c) be signed by the authorised person.

(3) A person who stops being an authorised person must return the identity card to the local government as soon as practicable unless the person has a reasonable excuse for not returning it.

Maximum penalty—40 penalty units.

Production of authorised person's identity card

16.(1) An authorised person may exercise a power in relation to a person only if the authorised person displays the authorised person's identity card for inspection by the person.

(2) If, for any reason, it is not practicable to comply with subsection (1), the authorised person must produce the identity card for inspection by the person at the first reasonable opportunity.

Protection from liability

17.(1) This section applies to—

- (a) an authorised person; and
- (b) a person acting under the direction of an authorised person.

(2) The person does not incur civil liability for an act or omission done honestly and without negligence under this Act.

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

PART 5^{3/4} MISCELLANEOUS

Notices

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

- (a) the provisions of the local law under which the requirement is made; and
- (b) the time within which compliance is required; and
- (c) the consequences of contravention of the notice.

Charges

19.(1) If a local law provides for payment of a charge, and does not itself fix the amount of the charge, the charge is to be fixed by resolution under section 570 of the Act.

(2) A resolution fixing a charge may provide for the reimbursement of the charge in appropriate circumstances.

Example

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

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

Unclaimed goods

20.(1) If goods are left in a building, or on land, under the local government's control, the local government may dispose of the goods under this section.

(2) If the goods are perishable, they may be disposed of, without delay, as the chief executive officer directs.

(3) If the goods are not perishable, they must be retained for at least 3 months before being sold or otherwise disposed of.

(4) After the end of the 3 month period, the local government may dispose of the goods as follows—

- (a) if the goods have no commercial value, or the value is so slight that it would not cover the cost of sale, the goods may be disposed of as the chief executive officer directs;
- (b) in other cases the goods must be advertised for sale by public notice published at least 14 days before the date of the proposed sale and may then be sold by public auction.

(5) A person to whom goods are sold under this section acquires a good title to the goods freed and discharged from the interests of others.

(6) The local government must apply the proceeds of sale first towards the costs of the storage and sale of the goods and then into a fund established for the purpose.

(7) If, within 1 year after the date of the sale, the former owner of the goods claims the proceeds of the sale of the goods, the net proceeds of the sale must be paid to the former owner but if no valid claim is made to the proceeds within that period, the local government may pay the proceeds of the sale into its general funds.

(8) This section does not apply to goods if there is a statutory provision dealing specifically with abandoned goods of the relevant class.

Confiscated goods

21.(1) If the local government, or an authorised person, exercises a power under a local law to confiscate or impound goods, the property in the goods vests in the local government.

(2) If the local government or an authorised person confiscates or impounds goods under powers conferred by a local law, the local government may dispose of the goods as follows?

- (a) if the goods are perishable or have no commercial value, or the value is so slight that it would not cover the cost of sale, the goods may be disposed of as the chief executive officer directs;
- (b) in other cases the goods must be advertised for sale by public notice published at least 14 days before the date of the proposed sale and may then be sold by public auction.