

Sunshine Coast Regional Council Local Law No. 2 (Animal Management) 2011

CONSOLIDATED VERSION NO.1

as in force on **XXX XXX 2013**

adopted by Sunshine Coast Regional Council on **XX XXX** 2013 pursuant to section 32 of the *Local Government Act 2009*

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Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law No. 2 (Animal Management) 2011*.

1A Commencement

This local law commences on 1 January 2012.

2 Purpose and how it is to be achieved

- (1) The purpose of this local law is to assist the local government in the management of animals by—
 - (a) minimising the risk to community health, safety and amenity; and
 - (b) reducing environmental harm or environmental nuisance; and
 - (c) supporting animal owners to keep their animals in a manner that is consistent with the expectations of the community.
- (2) The purpose is to be achieved by providing for—
 - (a) systems and processes for the effective management of domestic animals; and
 - (b) effective management of animals in public places and areas declared of significant environmental value by the local government; and
 - (c) the establishment and administration of animal pounds; and
 - (d) the seizure and destruction of animals in certain circumstances.

3 Definitions—the dictionary

Schedule 1 (Dictionary) of *Local Law No. 1 (Administration) 2011* defines particular words used in this local law.

4 Relationship with other laws¹

This local law is—

- (a) in addition to, and does not derogate from—
 - (i) laws regulating the use or development of land; and
 - (ii) other laws about the keeping or control or welfare of animals; and
- (b) to be read with *Local Law No. 1 (Administration) 2011*.

¹ This local law and any subordinate local law made under it do not apply to the extent of any inconsistency with a law of the State or Commonwealth. See the Act, section 27.

Part 2 Meaning of effective management

5 Application of part to regulated dogs

The provisions of this part are in addition to, and do not derogate from, the requirements of the *Animal Management (Cats and Dogs) Act 2008* relating to regulated dogs.

6 Meaning of effective management of an animal in a public place

- (1) For the purposes of this local law, a dog is under *effective management* in a public place if it is—
- (a) restrained by a leash, which is—
 - (i) on a collar around the neck, muzzle or shoulders of the dog; and
 - (ii) being held by a person who is physically able to manage the dog; or
 - (b) restrained to a fixed object and is under the continuous supervision of a person who is physically able to manage the dog; or
 - (c) restrained in or on a vehicle and is unable to reach beyond the extremities of the vehicle; or
 - (d) participating in an obedience trial or training for an obedience trial, under the supervision of an incorporated organisation recognised by the local government for the purposes of this paragraph; or
 - (e) being exhibited at an exhibition under the supervision of an organisation recognised by the local government for the purposes of this paragraph; or
 - (f) in a designated dog off leash area and—
 - (i) under the direct supervision of a person who is physically able to manage the dog; and
 - (ii) not harassing, intimidating, attacking, stalking, mounting or body slamming another animal or person; or
 - (g) a drover's dog or farm work dog that is actually engaged in the movement of livestock; or
 - (h) a trained guard dog that is—
 - (i) working and in close proximity to the owner or responsible person for the dog; and
 - (ii) being used for the purpose of guarding premises.
- (2) For the purposes of this local law, a domestic cat is under *effective management* in a public place if it is—
- (a) contained within an enclosure; or
 - (b) under the direct supervision of a person.

- (3) For the purposes of this local law, an animal other than a dog or domestic cat is under *effective management* in a public place if it is—
- (a) controlled by a person in a manner that is reasonable, taking into account the type of animal and the circumstances in which the animal is being managed; or
 - (b) being restrained in a manner prescribed under subordinate local law.
- (4) In this section—
- body slam* means to push or rub against a person or animal in a manner that causes the person or animal to lose their balance.

Part 3 Keeping of animals

Division 1 Prohibition on keeping animals

7 Prohibition on keeping animals in prescribed circumstances

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

Example for subsection (2)—

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

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

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

² Section 72(3) of the *Animal Management (Cats and Dogs) Act 2008* provides: “A permit application may be made for more than 1 restricted dog for the same place only if the keeping of more than 1 restricted dog and more than 1 dog of any breed is permitted under a local law.”

³ See the *Animal Management (Cats and Dogs) Act 2008*, chapter 4, regarding particular conditions on keeping regulated dogs, including requirements about enclosures.

Division 2 Animals for which approval is required

8 Requirement for approval

- (1) Subject to subsections (3) and (4), the local government may, by subordinate local law, require an approval⁴ for keeping an animal or animals in prescribed circumstances.
- (2) The circumstances in which an approval is required may be specified by reference to 1 or more of the following factors—
 - (a) species;
 - (b) breed;
 - (c) sex;
 - (d) age;
 - (e) number;
 - (f) the locality in which the animals are to be kept, including whether it is an urban or non-urban locality;
 - (g) the nature of the premises in which the animals are to be kept, including the size of the enclosure or the size of the allotment.⁵
- (3) An approval under this section is not required for the keeping of animals on land if the keeping of the animals on the land is authorised by a development approval under the *Sustainable Planning Act 2009*.
- (4) Under this section, the local government may not require an approval for keeping a restricted dog.⁶

Division 3 Minimum standards

9 Minimum standards for keeping animals

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

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

⁴ Keeping an animal in circumstances that require an approval is a *prescribed activity* under schedule 2 of *Local Law No. 1 (Administration) 2011*. The process for obtaining an approval for a prescribed activity is set out in part 2 of that local law and section 6 creates an offence for a person undertaking a prescribed activity without a current approval.

⁵ See footnote 3.

⁶ Section 71 of the *Animal Management (Cats and Dogs) Act 2008* requires a permit issued by the local government for a person to own or be responsible for a restricted dog. The processes for the granting of restricted dog permits are set out under chapter 4, part 3 of that Act.

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

Division 4 Identification of registered cats and dogs

10 Identification for cats and dogs in certain circumstances

The local government may, by subordinate local law, prescribe the identification required by the *Animal Management (Cats and Dogs) Act 2008* for a cat or dog that is at a place other than the address stated in the registration notice for the cat or dog.⁷

Part 4 Management of animals

Division 1 Animals in public places

11 Exclusion of animals

- (1) The local government may, by subordinate local law, specify public places where any animal or an animal of a particular species or breed is prohibited unless—
- (a) a sign at the place permits the animal to be in the place; or
 - (b) if the animal is a dog—the place is a dog off-leash area; or
 - (c) the owner or responsible person for the animal has an approval under *Local Law No.1 (Administration) 2011* that authorises the bringing of the animal into the public place.
- (2) The owner or responsible person for an animal must ensure that the animal is not in a public place in contravention of a prohibition imposed under subsection (1).

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

- (3) The local government must take reasonable steps to advise the community where animals are prohibited from a particular public place.

12 Dog off-leash areas

- (1) The local government may, by subordinate local law, designate an area to be a *dog off-leash area* and the times when the area operates as a dog off-leash area.
- (2) The local government must take reasonable steps to provide notice to the community regarding the designation of dog off-leash areas.
- (3) In this section—

reasonable steps include, as a minimum, the display of a notice at a prominent place within the dog off-leash area indicating the extent of the area and, if applicable, the times when the area is a dog off-leash area.

⁷ Section 45 of the *Animal Management (Cats and Dogs) Act 2008* requires a person who keeps a cat or dog at a place other than the address in the registration notice to ensure it bears the identification prescribed by the local government under a local law.

13 Control of animals in public places⁸

The owner or responsible person for an animal must ensure that the animal is not in a public place unless—

- (a) the animal is under effective management; and
- (b) if the animal is a declared dangerous animal⁹—the animal is securely restrained to prevent it from—
 - (i) attacking a person or animal; or
 - (ii) acting in a way that causes fear to a person or animal; or
 - (iii) causing damage to property.

Maximum penalty—20 penalty units.

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

- (1) If a dog or any other animal defecates in a public place, the person who has control of the dog or animal must immediately remove and dispose of the faeces in a sanitary way.

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

- (2) The person who has control of a dog or another animal in a public place must carry a bag, implement or container suitable to pick up and dispose of their animal's faeces.

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

Division 2 Restraint of animals

15 Requirements for enclosures, structures and buildings for keeping animals

- (1) A person who keeps an animal must maintain a proper enclosure to prevent the animal from escaping the person's property.¹⁰

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

- (2) The keeper of an animal must ensure that the animal is contained within its proper enclosure at all times that it is on the property, except where it is outside its enclosure while under effective management.

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

- (3) It is a defence against subsections (1) and (2) for the defendant to prove that—

⁸ See also *Animal Management (Cats and Dogs) Act 2008*, schedule 1, section 3, regarding the requirement for muzzling and effective control of regulated dogs in public and section 93, which applies this requirement where a dog is subject to a proposed declaration notice.

⁹ See the definition of *declared dangerous animal* in schedule 1 (Dictionary) of *Local Law No. 1 (Administration) 2011*.

¹⁰ See also *Animal Management (Cats and Dogs) Act 2008*, schedule 1, section 4, regarding the requirement for enclosure requirements for regulated dogs and section 93, which applies this requirement where a dog is subject to a proposed declaration notice.

- (a) the defendant maintained a proper enclosure for the animal and could not, by the exercise of reasonable diligence, have prevented the escape of the animal; or
 - (b) the animal was outside the defendant's property in circumstances authorised by the conditions of an approval granted under a local law.
- (4) In this section, *effective management* means the animal is being managed on the property in the way described in section 6 for the type of animal.

16 Conservation requirements

- (1) The local government may, by subordinate local law, prescribe requirements for keeping an animal on land that is within a relevant area.
- (2) The prescribed requirements may relate to—
- (a) the enclosure in which the animal must be kept; or
 - (b) particular conditions about how the animal must be kept; or
 - (c) fencing that must be in place to separate animals from native wildlife on the land or on a part of the land; or
 - (d) other measures that will be likely to prevent an attack by the animal on a native animal.
- (3) The owner or responsible person for an animal that is kept on land that is within a relevant area must comply with requirements prescribed under this section.

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

- (4) In this section—
- relevant area* means—
- (a) a core habitat area; or
 - (b) an area with conservation values designated by subordinate local law for this paragraph.

core habitat area see *Sunshine Coast Biodiversity Strategy 2010-2020*.

Division 3 Aggressive behaviour by animals other than dogs

17 Limited application of division to dogs¹¹

- (1) Unless otherwise indicated, this division does not apply in relation to aggressive behaviour by a dog.
- (2) In this section—
- aggressive behaviour* means attacking, or acting in a way that causes fear to, someone else or another animal.

¹¹ Aggressive behaviour by dogs is covered by the *Animal Management (Cats and Dogs) Act 2008*, sections 194 to 196.

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

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

Maximum penalty for subsection (1)—

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

- (2) A person must not allow or encourage an animal to attack, or act in a way that causes fear to, a person or another animal.

Maximum penalty for subsection (2)—

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

- (3) In this section—

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

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

Examples of vermin that are someone's property—

- a pet mouse or guinea pig
- vermin that are protected animals under the *Nature Conservation Act 1992*.¹²

19 Defences for offence against s 18

It is a defence to a prosecution for an offence against section 18 for the defendant to prove that the animal attacked, or acted in a way that caused fear to, the person or animal—

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

¹² See section 83 of that Act.

Division 4 Keeping of Guard Dogs

20 Requirements for guard dogs

A person who provides or keeps a guard dog on premises must warn persons about the presence of the dog by displaying a sign to that effect clearly visible from outside the premises.

Maximum penalty—50 penalty units.

Division 5 Dangerous animals other than dogs¹³

21 Declaration of dangerous animal other than a dog

- (1) The local government may declare an animal other than a dog to be a declared dangerous animal.
- (2) The local government may only make a declaration under subsection (1) if it forms the opinion that there is a high likelihood of the animal causing injury to a person or animal or damage to property, taking into account—
 - (a) its prior history of attacking or causing fear to persons or animals or damaging property; and
 - (b) the extent of injury or damage that could potentially be inflicted by an animal of its size and species or breed.
- (3) A declaration under this section takes effect at the time the local government gives the responsible person for the animal an information notice¹⁴ about the declaration.
- (4) The local government may, by written notice to the responsible person for the animal, revoke a declaration under this section if it becomes satisfied that the animal is no longer dangerous due to age, disability or other reasonable grounds.

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

- (1) The local government may, by giving a compliance notice¹⁵, require the responsible person for a declared dangerous animal to take specified action relating to the keeping and management of the animal, including action of an ongoing nature.
- (2) The local government may, by subordinate local law, specify requirements that must be met by the responsible person in keeping a declared dangerous animal.

Examples—

The local government may require the desexing of a declared dangerous animal or the installation of a sign warning persons about the presence of the declared dangerous animal.

¹³ Dangerous dogs are dealt with in the *Animal Management (Cats and Dogs) Act 2008*.

¹⁴ See *Local Law No.1 (Administration) 2011*, schedule 1 regarding the contents of an information notice.

¹⁵ See *Local Law No.1 (Administration) 2011*, section 27, regarding the requirements for compliance notices and the offence for not complying with a compliance notice.

- (3) The responsible person for a declared dangerous animal must comply with the requirements prescribed by subordinate local law pursuant to subsection (2).

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

Part 5 Establishment and administration of animal pounds

23 Establishment of animal pound

The local government may, subject to the *Sustainable Planning Act 2009* or the local government's planning scheme—

- (a) establish an animal pound; or
- (b) join with another local government or agency in establishing an animal pound.

24 Operation of an animal pound

The local government may, by subordinate local law, regulate the species, breed, sex, age, use or class of animals that will be accepted at the animal pound.

25 Register of impounded animals

- (1) The local government must keep a register of impounded animals which shall contain the—

- (a) species, breed, sex, use and class of the impounded animal; and
- (b) brand, colour, distinguishing markings and features of the impounded animal; and
- (c) local government's registration number of the impounded animal, if applicable; and
- (d) permanent identification device details, if applicable; and
- (e) condition of the impounded animal; and
- (f) name of the owner or responsible person for the impounded animal, if known; and
- (g) date and time of seizure and impounding of the animal; and
- (h) name of the authorised person who impounded the animal; and
- (i) reason for the impounding of the animal; and
- (j) note of any order made pursuant to this local law in relation to the impounded animal; and
- (k) date of the sale, release, destruction or disposal of the impounded animal; and
- (l) other matters specified in a subordinate local law.

- (2) The register must be kept available for inspection at the—

- (a) animal pound; or

- (b) local government's office.

Part 6 Impounding or destruction of animals

Division 1 Impounding of animals

26 Impounding of animals

- (1) An authorised person may impound¹⁶ an animal, other than a dog, in the following circumstances—
- (a) the animal is found not under effective management in a public place; or
 - (b) the responsible person for the animal has not complied with a compliance notice that has been issued under this local law or in relation to compliance with this local law; or
 - (c) the animal has attacked, threatened to attack, or acted in a way that causes fear to, a person or another animal; or
 - (d) the authorised person considers on reasonable grounds that the animal has been abandoned, left or found on a road in the circumstances mentioned in section 100(12) of the *Transport Operations (Road Use Management) Act 1995*¹⁷; or
 - (e) the animal is a class 2 pest animal; or
 - (f) the responsible person for the animal, on payment of the cost-recovery fee, requests the local government to enter premises to impound the animal; or
 - (g) the animal is—
 - (i) not in a public place; and
 - (ii) not, in the opinion of an authorised person, enclosed or restrained adequately to prevent it from gaining ready access to a public place.
- (2) An authorised person may impound a dog in the following circumstances¹⁸—
- (a) the dog is found not under effective management in a public place; or
 - (b) the responsible person for the dog has not complied with a compliance notice that has been issued in relation to compliance with this local law; or

¹⁶ See the Act, chapter 5, part 2, division 1 in relation to authorised persons' enforcement powers, including entry to land.

¹⁷ The *Transport Operations (Road Use Management) Act 1995*, section 100(13) provides: "If a local law provides for a matter mentioned in subsection (12), subsections (3) to (11) no longer apply in the local government's area."

¹⁸ See also the *Animal Management (Cats and Dogs) Act 2008*, section 125, in relation to the power to seize dogs in particular circumstances.

- (c) the authorised person considers on reasonable grounds that the animal has been abandoned, left or found on a road in the circumstances mentioned in section 100(12) of the *Transport Operations (Road Use Management) Act 1995*; or
 - (d) the responsible person for the dog, on payment of the cost-recovery fee, requests the local government to enter premises to impound the dog; or
 - (e) the animal is—
 - (i) not in a public place; and
 - (ii) not, in the opinion of an authorised person, enclosed or restrained adequately to prevent it from gaining ready access to a public place.
- (3) The authorised person may impound an animal under subsection (1)(a) or a dog under subsection (2)(a) where—
- (a) another person has found the animal or dog not under effective management and delivered it to the authorised person; or
 - (b) an occupier of private land has found the animal or dog not under effective management on the land, taken it under effective management and requested the authorised person to enter the land to impound it.
- (4) However, an authorised person is not obliged to accept the custody of an animal or dog under this section.
- (5) For the purposes of impounding an animal or dog, an authorised person may take any action, including the use of force, which is reasonable in the circumstances to capture or control the animal or dog.

Division 2 Destruction of animal without notice

27 Power to immediately destroy an impounded animal

- (1) This section applies where an authorised person has impounded or is attempting to impound an animal, other than a regulated dog,¹⁹ under this local law or another law.
- (2) The authorised person may, without notice, immediately destroy the animal if—
 - (a) the authorised person reasonably believes the animal is dangerous and the authorised person cannot control it; or
 - (b) the animal is significantly suffering as a result of disease, severe emaciation or serious injuries; or
 - (c) an owner of the animal has requested the authorised person to destroy it; or
 - (d) the animal—

¹⁹ See the *Animal Management (Cats and Dogs) Act 2008*, section 127, for the power to destroy a seized regulated dog.

- (i) is a declared dangerous animal; and
- (ii) after the time it became a declared dangerous animal, it has attacked, or acted in a way that has caused fear to, a person or animal; or
- (e) the animal is a class 2 pest animal.

Division 3 Dealing with impounded animals

28 Immediate return of animal impounded not under effective management

- (1) This section applies where—
- (a) an animal has been impounded under section 26(1)(a) or section 26(2)(a); and
 - (b) the authorised person who impounded the animal knows, or can readily find out, the name and address of the owner or responsible person for the animal.
- (2) The authorised person may return the animal to the owner or responsible person.

29 Housing of impounded animals

An authorised person who impounds an animal under this local law or another law may transfer the animal to the animal pound established under section 23.

30 What is a notice of impounding

- (1) A *notice of impounding* means a written notice, given to the owner or responsible person for an animal, stating that—
- (a) the animal has been impounded; and
 - (b) the animal may be reclaimed within 3 business days from the day of the impounding provided that—
 - (i) the cost-recovery fee is paid; and
 - (ii) if an approval or registration is required for the keeping of the animal and the owner or responsible person does not have the approval or registration— the approval or registration is obtained; and
 - (iii) if the animal has been impounded under section 26(1)(b) or 26(2)(b)— the owner or responsible person has complied with the relevant compliance notice; and
 - (iv) continued retention of the animal is not needed as evidence for a proceeding or proposed proceeding for an offence involving the animal; and
 - (v) no destruction order has been made for the animal.
- (2) Where an animal has been impounded from a place that is not a public place, the notice of impounding may be given to the owner or responsible person for the animal by leaving it at the place in a conspicuous positions and in a reasonably secure way.

- (3) In this section—
relevant compliance notice means the compliance notice mentioned in section 26(1)(b) or 26(2)(b).

31 Dealing with animal impounded not kept under effective management

- (1) Subsection (2) applies where—
- (a) an authorised person has impounded an animal under section 26(1)(a) or section 26(2)(a); and
 - (b) the animal was not a declared dangerous animal at the time of being impounded; and
 - (c) the authorised person knows, or can readily find out, the name and address of the owner or responsible person for the animal.
- (2) The authorised person must give the owner or responsible person a notice of impounding.
- (3) Subsection (4) applies where—
- (a) an authorised person has impounded a declared dangerous animal under section 26(1)(a) or section 26(2)(a); or
 - (b) an authorised person has impounded an animal that has been impounded on more than 2 occasions during a 12 month period.
- (4) The authorised person may—
- (a) give the owner or responsible person for the animal a notice of impounding; or
 - (b) make a destruction order for the animal under section 35.

32 Dealing with animal impounded for non-compliance with local law

- (1) This section applies where an authorised person has impounded an animal under section 26(1)(b) or 26(2)(b).
- (2) The authorised person may—
- (a) give the owner or responsible person for the animal a notice of impounding; or
 - (b) if the animal was being kept in contravention of section 7 of this local law or is an animal for which an approval cannot be granted under this local law or is an animal for which an application for approval under this local law has been rejected— dispose of the animal under division 5.

33 Dealing with animal impounded for attacking etc a person or another animal

- (1) This section applies where an authorised person has impounded an animal under section 26(1)(c).
- (2) The local government may—
- (a) make a destruction order for the animal under section 35; or
 - (b) give the owner or responsible person a notice of impounding.

34 Reclaiming an impounded animal

- (1) This section applies where—
 - (a) the owner or responsible person for an animal has been given a notice of impounding; or
 - (b) an authorised person—
 - (i) has impounded an animal under section 26(1)(a) or section 26(2)(a); and
 - (ii) does not know, and cannot readily find out, the name and address of an owner or responsible person for the animal.
- (2) The animal may be reclaimed by an owner or responsible person if the owner or responsible person—
 - (a) reclaims the animal within 3 business days from the day of the impounding; and
 - (b) pays the cost-recovery fee; and
 - (c) if an approval or registration is required for the keeping of the animal and the owner or responsible person does not have the approval or registration—obtains the approval or registration; and
 - (d) if the responsible person has not complied with a current compliance notice that has been issued in relation to compliance with this local law—complies with the compliance notice.
- (3) However, the animal may not be reclaimed by an owner or responsible person if—
 - (a) continued retention of the animal is needed as evidence for a proceeding or proposed proceeding for an offence involving the animal; or
 - (b) a destruction order has been made for the animal.
- (4) The animal may be reclaimed by an owner or responsible person for the animal if an event as follows happens—
 - (a) if subsection (3)(a) applies—
 - (i) the animal's continued retention as evidence is no longer required; and
 - (ii) the owner or responsible person has satisfied subsection (2)(b)-(d);
 - (b) if subsection (3)(b) applies—
 - (i) a review or appeal is made relating to the destruction order and, as a result of the review or appeal, the order is no longer in force; and
 - (ii) the owner or responsible person has satisfied subsection (2)(b)-(d).

Division 4 Destruction of animal following notice

35 Destruction orders

- (1) The local government may make an order (a *destruction order*) stating the local government proposes to destroy an animal 14 days after the order is served.
- (2) A destruction order may only be made in 1 or more of the following circumstances—
 - (a) the animal has attacked, threatened to attack, or acted in a way that causes fear to, a person or another animal;
 - (b) the animal is a declared dangerous animal and was found not under effective management;
 - (c) the animal has been impounded on more than 2 occasions during a 12 month period.
- (3) The destruction order must—
 - (a) be served on a person who owns, or is a responsible person for, the animal; and
 - (b) include or be accompanied by an information notice.²⁰
- (4) If a destruction order is made for the animal, the person may destroy the animal 14 days after the order is served if no review application has been made relating to the decision to make the order.
- (5) If an application for review has been made against the decision to make the order, the person may destroy the animal if—
 - (a) the review is finally decided or is otherwise ended; and
 - (b) no application for an appeal has been made against the order; and
 - (c) the order is still in force.
- (6) If an appeal is made relating to the decision to make the order, the person may destroy the animal if—
 - (a) the appeal is finally decided or is otherwise ended; and
 - (b) the order is still in force.
- (7) If the animal has been impounded, the owner or responsible person for an animal may reclaim the animal if—
 - (a) a review relating to the decision to make the order is finally decided or is otherwise ended; and
 - (b) no application for an appeal has been made against the order; and
 - (c) the order is no longer in force; and
 - (d) the owner or responsible person has satisfied section 34(2)(b)-(d).

²⁰ See footnote 14.

- (8) If the animal has been impounded, the owner or responsible person for an animal may reclaim the animal if—
- (a) an appeal relating to the decision to make the order is finally decided or is otherwise ended; and
 - (b) the order is no longer in force; and
 - (c) the owner or responsible person has satisfied section 34(2)(b)-(d).

- (9) In this section—

review means a review conducted under the process mentioned in part 6 of *Local Law No. 1 (Administration) 2011*.

appeal means an appeal under part 7 of this local law.

Division 5 Disposal of impounded animals

36 Application of this division

This division applies where—

- (a) an impounded animal has not been reclaimed under section 34(2) within 3 business days from the day of the impounding; or
- (b) if section 34(3) applies— the impounded animal has not been reclaimed within 3 business days of an event mentioned in section 34(4); or
- (c) an impounded animal has not been reclaimed within 3 business days of the events mentioned in section 35(7) occurring; or
- (d) an impounded animal has not been reclaimed within 3 business days of the events mentioned in section 35(8) occurring; or
- (e) an authorised person has impounded an animal mentioned in section 32(2)(b); or
- (f) the owner of an animal has surrendered the animal to the local government.

37 Sale, disposal or destruction of animals

- (1) The local government may—
- (a) offer the animal for sale by public auction or by tender; or
 - (b) if the animal is of a species, breed or class specified by subordinate local law for this paragraph—
 - (i) sell the animal by private agreement; or
 - (ii) dispose of the animal in some other way without destroying it; or
 - (iii) destroy the animal.

Example for paragraph (b)—

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

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

Examples—

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

Examples—

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

Division 6 Miscellaneous

38 Access to impounded animal

- (1) This section applies to an animal impounded under section 29.
- (2) The local government must allow the owner of the animal to inspect it at any reasonable time, from time to time.
- (3) Subsection (2) does not apply if it is impracticable or would be unreasonable to allow the inspection.
- (4) The inspection must be provided free of charge.

39 Unlawful removal of seized or impounded animal

- (1) A person must not, without the authority of an authorised person, remove or attempt to remove—

- (a) an impounded animal from the custody or control of an authorised person; or
- (b) an impounded animal from the animal pound.

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

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

Part 7 Appeals against destruction orders

40 Who may appeal

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

41 Starting appeal

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

42 Stay of destruction order

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

43 Hearing procedures

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

44 Court's powers on appeal

- (1) In deciding an appeal, the Magistrates Court may—
 - (a) confirm the decision appealed against; or

- (b) set aside the decision and substitute another decision; or
 - (c) set aside the decision and return the matter to the local government with directions the court considers appropriate.
- (2) The court may set aside a decision to make a destruction order if satisfied that—
- (a) the animal was unlawfully impounded; or
 - (b) there was no legal basis for making the destruction order; or
 - (c) the responsible person for the animal can demonstrate that in future the animal will be securely kept and managed in accordance with this local law and the circumstances that led to the making of the destruction order are unlikely to recur; or
 - (d) if a previous decision to destroy the animal has been set aside by the court— there are exceptional circumstances justifying why the most recent decision should be set aside.
- (3) If the court substitutes another decision, the substituted decision is, for the purposes of this local law, other than this part, taken to be the decision of the local government.
- (4) If a decision to destroy the animal has been set aside by the court, a magistrate may impose conditions on the owner or keeper of the animal to ensure the circumstances that led to the making of the destruction order do not reoccur.
- (5) Where a decision to set aside a destruction order is given and an impounded animal is not reclaimed by the owner from the care of the local government within 14 days of the decision, the local government may make an ex-parte application to the court to vacate the order setting aside the destruction order.
- (6) Immediately upon the court making an order under subsection (5), the local government is entitled to act under the original destruction order.
- (7) An order for the costs of an appeal may only be made against the local government if the court is satisfied that the animal was unlawfully seized or there was no reasonable basis for making the decision subject to the appeal.

45 Appeal to District Court

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

Part 8 Miscellaneous

46 Subordinate local laws

The local government may make subordinate local laws about—

- (a) restraint requirements for the effective management of an animal other than a dog or domestic cat;²¹ and

²¹ See section 6(3)(b).

- (b) the circumstances in which the keeping of animals is prohibited;²² and
- (c) the circumstances in which an approval is required for the keeping of animals;²³ and
- (d) minimum standards for keeping animals generally or animals of a particular species or breed;²⁴ and
- (e) the identification for cats and dogs required under the *Animal Management (Cats and Dogs) Act 2008*;²⁵ and
- (f) the exclusion of animals, or animals of a specified species, from public places;²⁶ and
- (g) designation of dog off-leash areas;²⁷ and
- (h) requirements for keeping an animal on land that is within a relevant area;²⁸ and
- (i) designation of an area as a relevant area for the purposes of applying conservation requirements;²⁹ and
- (j) requirements for keeping a declared dangerous animal;³⁰ and
- (k) the species, breed, sex, age, use or class of animal that will be accepted at an animal pound;³¹ and
- (l) other matters to be included on a register of impounded animals;³² and
- (m) the species, breed or class of animal that may be disposed of other than by public auction or tender.³³

²² See section 7(1).

²³ See section 8(1).

²⁴ See section 9(1).

²⁵ See section 10.

²⁶ See section 11(1).

²⁷ See section 12(1).

²⁸ See section 16(1).

²⁹ See section 16(4)(b).

³⁰ See section 22(2).

³¹ See section 24.

³² See section 25(1)(l).

³³ See section 37(1)(b).

Endnotes

1 Date to which amendments incorporated

This consolidated version includes all amendments that commenced operation on or before **XX XXXXX 2013**.

2 Table of consolidated versions

Consolidated Version No.	Amendments included	Effective	Notes
1	Amendment Local Law No.1 (Miscellaneous) 2013	26 July 2013	

3 List of amending local laws

Amendment Local Law No.1 (Miscellaneous) 2013

date of Council resolution 25 July 2013

date of gazettal 26 July 2013

commenced on date of gazettal

4 List of annotations

Meaning of effective management of an animal in a public place

s6 amended by Amendment Local Law No.1 (Miscellaneous) 2013 s7

Requirements for enclosures, structures and buildings for keeping animals

s15 amended by Amendment Local Law No.1 (Miscellaneous) 2013 s8