

GOLD COAST CITY COUNCIL



Gold Coast City Council

LOCAL LAW NO. 42

(ON-SITE SEWERAGE FACILITY) 2002

REPEALED (GAZE 172/08)

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GOLD COAST CITY COUNCIL
LOCAL LAW NO. 42
(ON-SITE SEWERAGE FACILITY) 2002

PART 1 - PRELIMINARY

Short title

1 This local law may be cited as Local Law No. 42 (On-site Sewerage Facility) 2002.

Object

2 The object of this local law is to regulate the operation and servicing of on-site sewerage facilities so as to protect public health and the environment.

Definitions

3 In this local law:

“**approval**” means a consent, permit, licence, authorisation, registration, membership or approval under a local government Act or a local law and includes all the conditions of a consent, permit, licence, authorisation, registration, membership or approval.

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

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

“**compliance notice**” means a written notice given pursuant to section 13 (Compliance notice) of this local law.

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

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

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

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

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

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

“**local government Acts**” has the meaning given in the *Local Government Act 1993* and includes approvals granted pursuant to local government Acts.¹

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

“**nuisance**” includes anything that:

- (a) disturbs or inconveniences people in the vicinity of the on-site sewerage facility; or
- (b) detracts from the use or enjoyment of land adjoining or in the vicinity of the on-site sewerage facility.

“**occupier**” has the meaning given in the *Standard Sewerage Law*.

“**on-site sewerage facility**” means a facility installed on premises for:

- (a) treating, on the premises, sewage generated on the premises and disposing of the resulting effluent on the premises; or
- (b) storing on the premises sewage generated on the premises for its subsequent disposal off the premises by collection from the premises.

“**on-site sewerage code**” has the meaning given in the *Standard Sewerage Law*.

“**owner**” has the meaning given in the *Standard Sewerage Law*.

“**perform work**” has the meaning given in the *Local Government Act 1993* and includes work required to be performed pursuant to a compliance notice or the registration of an on-site sewerage facility.

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

“**premises**” has the meaning given in the *Standard Sewerage Law*.

“**prescribed criteria**” means the criteria specified in a subordinate local law with which the operation of an on-site sewerage facility must comply.

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

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

¹ The *Local Government Act 1993*, section 3 -

“**local government Act**” means an Act under which a local government may exercise the jurisdiction of local government, and includes, for example, this Act [the *Local Government Act 1993*], the *Integrated Planning Act 1997*, *Water Act 2000*, chapter 3, a local law, a planning scheme or interim development control provisions.

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

“**registered facility**” means an on-site sewerage facility registered under this local law.

“**registration**” means the registration of an on-site sewerage facility which has been granted pursuant to section 7 (Grant of a registration of an on-site sewerage facility) of this local law or transferred pursuant to section 9 (Transfer of a registration of an on-site sewerage facility) of this local law or renewed pursuant to section 10 (Renewal of a registration of an on-site sewerage facility) of this local law which:

- (a) has not expired pursuant to section 8(2) (Term of a registration of an on-site sewerage facility) of this local law; and
- (b) has not been cancelled pursuant to section 11 (Cancellation of the registration of an on-site sewerage facility) of this local law.

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

“**structure**” has the meaning given in the *Local Government Act 1993* and includes a structure as defined in the *Building Act 1975* and any other thing specified in a subordinate local law.²

“**works licence**” means a licence granted under the *Sewerage and Water Supply Act 1949* in respect of the servicing of an on-site sewerage facility.

Relationship to other laws

- 4 (1) This local law is in addition to the Sewerage and Water Supply Act 1949 and the Standard Sewerage Law.
- (2) Unless the context otherwise indicates or requires, terms not defined in this local law shall have the meanings assigned to them by the Sewerage and Water Supply Act 1949 and the Standard Sewerage Law.
- (3) This local law does not apply to:
 - (a) the installation of an on-site sewerage facility; or

² The *Local Government Act 1993*, section 3 -

“**structure**” means anything built or constructed, whether or not attached to land.

The *Building Act 1975*, section 3 -

Example: This would exempt from the operation of this local law the installation of an on-site sewerage facility approved under the Standard Sewerage Law.

(b) a person operating an on-site sewerage facility where that person is required to be licensed in respect of the operation of that on-site sewerage facility by:

- (i) the State government; or
- (ii) the local government pursuant to a local government Act (other than a local law).

Example: This would exempt from the operation of this local law the operation of an on-site sewerage facility, the operation of which is licensed under the Environmental Protection Act 1994.

(4) The local government shall not exercise its powers under part 3 or part 4 of this local law in a manner that is inconsistent with:

- (a) the on-site sewerage code; and
- (b) the conditions of an approval for the installation or operation of an on-site sewerage facility.

PART 2 – REGISTRATION OF ON-SITE SEWERAGE FACILITIES

Requirement for the registration of an on-site sewerage facility

5 (1) The owner of premises on which an on-site sewerage facility is situated must ensure that the on-site sewerage facility is a registered facility.

Maximum penalty – 40 penalty units.

(2) A person must not exhibit a sign or in any manner or by any means indicate that an on-site sewerage facility which does not comply with this local law does comply with the local law.

Maximum penalty – 40 penalty units.

(3) Notwithstanding section 5(1) (Requirement for the registration of an on-site

“**structure**” includes a wall or fence and anything fixed to or projecting from a building, wall, fence or

sewerage facility) of this local law, the registration of an on-site sewerage facility is not required under this local law if a subordinate local law specifies that the registration of an on-site sewerage facility is not required.

Application for the registration of an on-site sewerage facility

- 6** (1) An application for the registration of an on-site sewerage facility must be:
- (a) made by a person who is the owner of the premises on which the on-site sewerage facility is situated; and
 - (b) made in the prescribed form; and
 - (c) accompanied by:
 - (i) the prescribed fee; and
 - (ii) evidence that all approvals under local government Acts and other legislation required for the installation and operation of the on-site sewerage facility have been obtained and complied with; and
 - (iii) full details of the on-site sewerage facilities; and
 - (iv) such other information and materials as is requested by the local government or specified in a subordinate local law.
- (2) The local government may waive the requirements of section 6(1) (Application for the registration of an on-site sewerage facility) of this local law in an emergency or if there are special reasons for dispensing with the requirements.

Grant of a registration of an on-site sewerage facility

- 7** The local government may grant a registration in respect of the on-site sewerage facility if the applicant for registration of the on-site sewerage facility complies with the requirements of section 6 (Application for the registration of an on-site sewerage facility) of this local law.

Term of a registration of an on-site sewerage facility

other structure.

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

Transfer of a registration of an on-site sewerage facility

- 9 (1) An application may be made to the local government to transfer the registration of an on-site sewerage facility to another person.
- (2) An application to transfer the registration of an on-site sewerage facility must be:
- (a) accompanied by the written consent of the holder of the registration of the on-site sewerage facility; and
 - (b) made in the prescribed form; and
 - (c) accompanied by the prescribed fee; and
 - (d) accompanied by evidence that all approvals under local government Acts and other legislation required for the operation of the on-site sewerage facility have been obtained and complied with; and
 - (e) accompanied by:
 - (i) the written consent of the person to whom the registration of the on-site sewerage facility will be transferred; and
 - (ii) the written consent of the owner of the premises on which the on-site sewerage facility is situated; and
 - (f) accompanied by such other information and materials as is requested by the local government or specified in a subordinate local law.
- (3) The local government may waive the requirements of section 9(2) (Transfer of a registration of an on-site sewerage facility) of this local law in an

emergency or if there are special reasons for dispensing with the requirements.

- (4) The local government may grant the transfer of the registration of an on-site sewerage facility if the application to transfer the registration of the on-site sewerage facility complies with the requirements of section 9(2) (Transfer of a registration of an on-site sewerage facility) of this local law.

Renewal of a registration of an on-site sewerage facility

- 10** (1) The local government shall be deemed to have requested the holder of a registration of an on-site sewerage facility to renew the registration of an on-site sewerage facility by giving to the holder of the registration of the on-site sewerage facility a notice requiring the payment of the prescribed fee.
- (2) The holder of the registration of an on-site sewerage facility may renew the registration of an on-site sewerage facility by the payment of the prescribed fee.
- (3) The holder of the registration of an on-site sewerage facility shall be deemed to have made an application to the local government to renew the registration of the on-site sewerage facility upon the payment of the prescribed fee.
- (4) The holder of a registration of an on-site sewerage facility shall provide to the local government such other information and materials as is requested by the local government or specified in a subordinate local law.
- (5) The local government may grant the renewal of the registration of the on-site sewerage facility if the application to renew the registration of the on-site sewerage facility complies with the requirements of section 10(3) and (4) (Renewal of a registration of an on-site sewerage facility) of this local law.

Cancellation of the registration of an on-site sewerage facility

- 11** (1) The local government may cancel the registration of an on-site sewerage facility where:

- (a) the holder of the registration of the on-site sewerage facility agrees to the cancellation; or
- (b) the on-site sewerage facility ceases to be situated or operated on the premises; or
- (c) the relevant registration was granted on false, misleading or incomplete information; or
- (d) changes in circumstances since the registration was granted make the continued operation of the relevant registration inappropriate.
- (2) If the local government is satisfied it is necessary to cancel the registration of an on-site sewerage facility the local government must:
- (a) give the holder of the registration of the on-site sewerage facility a written notice stating:
- (i) the reasons for the proposed cancellation; and
- (ii) that the holder of the registration of the on-site sewerage facility may make written representations to the local government about the proposed cancellation; and
- (iii) the time (at least 15 business days after the notice is given to the holder of the registration of the on-site sewerage facility) within which written representations may be made; and
- (b) consider any written representations made by the holder of the registration of the on-site sewerage facility within the time stated in the notice.
- (3) After considering any written representation made by the holder of the registration of the on-site sewerage facility, the local government must give to the holder of the registration of the on-site sewerage facility:
- (a) if the local government is not satisfied that the cancellation is necessary – a written notice stating that it has decided not to cancel the registration of the on-site sewerage facility; or
- (b) if the local government is satisfied that the cancellation is necessary –

a written notice stating that it has decided to cancel the registration of the on-site sewerage facility.

- (4) The cancellation of the registration of the on-site sewerage facility takes effect from the day the written notice was given to the holder of the registration of the on-site sewerage facility.

PART 3 – OPERATION OF ON-SITE SEWERAGE FACILITY

Operation of the on-site sewerage facility

12 The owner and occupier of premises on which an on on-site sewerage facility is situated, must ensure that the operation of the on-site sewerage facility:

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

Maximum penalty – 40 penalty units.

PART 4 - ENFORCEMENT

Compliance notice

13 (1) An authorised person may give a compliance notice to:

- (a) a person who contravenes this local law; and
- (b) the owner or occupier of the premises on which the on-site sewerage facility is being operated.

(2) A compliance notice may require the person to whom it is given to perform work or otherwise take specified action which is reasonably necessary to remedy the contravention (including the making of an application under this local law) for or within a time specified in the compliance notice, whether or not the contravention is of a continuing or recurrent nature.

- (3) The time specified in a compliance notice to perform work or otherwise take specified action to remedy the contravention (including the making of an application under this local law) must not be less than 28 days after the day on which the notice is given to the person.
- (4) A person to whom the compliance notice is given must comply with the compliance notice.

Maximum penalty - 165 penalty units.

Inspection of an on-site sewerage facility

- 14** (1) An authorised person may inspect an on-site sewerage facility and any premises, equipment, plant or thing involved in the operation of the on-site sewerage facility to find out whether there is compliance with:³
- (a) the requirements of this local law; and
 - (b) the prescribed criteria; and
 - (c) the requirements of a compliance notice.
- (2) An authorised person may direct the owner or occupier of premises on which an on-site sewerage facility is situated to produce for inspection:⁴
- (a) the registration of the on-site sewerage facility granted by the local government; and
 - (b) any records that are required to be kept in respect of the on-site sewerage facility by the registration of the on-site sewerage facility or as specified in a subordinate local law and may take copies of or extracts from those records; and
 - (c) any equipment, plant or thing involved in the operation of the on-site

³ Section 1098 (Approval of inspection program) of the *Local Government Act 1993* empowers an authorised person to enter a place to monitor compliance with a local government Act which is defined to include a local law. Section 1096 (Monitoring authorisations and processing applications) of the *Local Government Act 1993* empowers an authorised person to enter a place to find out whether the conditions of an authorisation or notice have been complied with or to inspect work carried out under an authorisation or notice.

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

sewerage facility.

- (3) An authorised person may measure, weigh, sample, test or otherwise examine anything that may be inspected pursuant to section 14 (Inspection of an on-site sewerage facility) of this local law.⁵
- (4) The owner and occupier of premises on which an on-site sewerage facility is situated must comply with:
 - (a) a direction of an authorised person pursuant to section 14(2) (Inspection of an on-site sewerage facility) of this local law; and
 - (b) the terms of a periodic inspection, monitoring or management program in respect of the operation of the on-site sewerage facility specified in a subordinate local law.

Maximum penalty - 40 penalty units.

Performance of works

- 15**
- (1) A person committing an offence under this local law must make good any damage caused directly or indirectly by the commission of an offence.
 - (2) The local government may perform work where a person has failed to perform work required to be performed by⁶:
 - (a) section 15(1) (Performance of works) of this local law; or
 - (b) a compliance notice issued under this local law; or
 - (c) any other provision of this local law.
 - (3) The Court may order a person found guilty of an offence under this local law to:
 - (a) perform work required to be performed by:

⁵ Section 1102 (General powers after entering places) of the *Local Government Act 1993* provides for these powers.

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

- (i) section 15(1) (Performance of works) of this local law; or
 - (ii) a compliance notice issued under this local law; or
 - (iii) a provision of this local law; and
- (b) pay to the local government all costs incurred by the local government in performing the work pursuant to section 15(1) (Performance of works) of this local law.

PART 5 - REVIEW

Reviewable decisions

16 A decision of the local government or an authorised person under this local law is a reviewable decision unless it is:

- (a) a decision made by resolution of the local government; or
- (b) a decision to dispose of goods that has been implemented; or
- (c) a decision made by the local government under section 20 (Appointment of authorised persons) of this local law; or
- (d) a decision made on an earlier application under section 17 (Application for review) of this local law.

Application for review

17 (1) A person who is aggrieved by a reviewable decision may apply to the local government for a review of the decision.

(2) An application for review of a decision must:

- (a) be in writing; and
- (b) state the reasons why the applicant considers the decision should be reviewed; and
- (c) be lodged at the public office of the local government within 28 days after the day on which notice of the decision was given to the applicant or within a further period allowed by the local government (before or after the end of that period).

Carrying out review

18 The review of a reviewable decision must be carried out by (“the reviewer”):

- (a) the local government at a meeting of the local government; or
- (b) an authorised person who:
 - (i) is not the original decision maker; and
 - (ii) is no less senior than the original decision maker.

Decision on review

- 19** (1) Upon the completion of the review, the reviewer may confirm, vary or reverse the decision under review.
- (2) The local government must ensure that the applicant is given written notice of the result of the review.
- (3) If the application for review is not decided within 28 days after receiving the application, the reviewable decision is taken to have been confirmed.

PART 6 - ADMINISTRATIVE PROVISIONS

Appointment of authorised persons

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

Defences

21 It is a defence to any breach or non-compliance of any provision contained in this local law if a person has a lawful excuse or defence.

Example: It is a defence to any breach or non-compliance of any provision contained in this local law if a person was not criminally responsible in accordance with Chapter 5 of the Criminal Code.

PART 7 - SUBORDINATE LOCAL LAWS

Subordinate local laws

22 The local government may, in a subordinate local law, specify:

- (a) the prescribed criteria with which an on-site sewerage facility must comply pursuant to section 3 (Definitions) of this local law; and
- (b) a thing as a structure pursuant to section 3 (Definitions) of this local law; and
- (c) an on-site sewerage facility in respect of which a person is not required to hold a registration of an on-site sewerage facility pursuant to section 5(3) (Requirement for the registration of an on-site sewerage facility) of this local law; and
- (d) the information that must accompany an application for the registration of an on-site sewerage facility pursuant to section 6(1)(c)(iv) (Application for the registration of an on-site sewerage facility) of this local law; and
- (e) the term of a registration of an on-site sewerage facility pursuant to section 8(1) (Term of a registration of an on-site sewerage facility) of this local law; and
- (f) the information and materials that must accompany an application to transfer a registration of an on-site sewerage facility pursuant to section 9(2)(f) (Transfer of a registration of an on-site sewerage facility) of this local law; and
- (g) the information and materials that must accompany an application to renew a registration of an on-site sewerage facility pursuant to section 10(4) (Renewal of a registration of an on-site sewerage facility) of this local law; and
- (h) the records that are required to be kept pursuant to section 14(2)(b) (Inspection of an on-site sewerage facility) of this local law; and
- (i) a periodic inspection, monitoring or management program pursuant to section 14(4)(b) (Inspection of an on-site sewerage facility) of this local law; and

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- (j) such other matters as are provided for in this local law.

REPEALED (GAZETTE 19/12/08)