



ENVIRONMENTAL DEFENDERS OFFICE (QLD) INC.

The Structure and Operations of Local Government

SUMMARY

The Integrated Planning Act 1997 (IPA) gives local government a new format for and enhanced responsibilities in planning, development assessment and approval and the enforcement of development offences as outlined in this summary.

The complete Factsheet 12 gives an overview of the structure and operations of local government (not included in this summary) to aid community groups trying to make use of the Integrated Planning Act 1997.

Local government is responsible for making and amending planning schemes in areas under their control.

Local government must consider submissions when making and amending planning schemes and report on how submissions have been dealt with.

Planning schemes must be reviewed every six years.

Under the *Integrated Planning Act 1997* most development applications will be decided by an assessment manager that is usually a local government.

Local government is expected to administer and enforce its planning scheme, including breaches of conditions.

Local governments may be members of **Regional Planning Advisory Committees**. Those committees can be established to report on and make recommendations on both general and specific regional issues.

Measures exist to counter the problem of conflicts of interest by councillors or senior local government officers. These centre around the requirement for the chief executive officer to maintain a register of interests, which in the case of councillors is open to public inspection.

Councillors must not take part in decisions concerning matters where they have a material personal interest. Council officers have a duty of disclosure on any matter where they have a material personal interest and then must not be further involved with the matter.

Local government is also responsible for many administrative and enforcement functions under the *Environmental Protection Act 1994* (not included in the complete Factsheet).

Most significantly, this obliges local governments to prevent environmental harm through the regulation of some environmentally relevant activities set out in schedules to the *Environmental Protection Act 1994* (not included in the complete Factsheet).

The Structure and Operations of Local Government

FULL TEXT

This Factsheet is for general information purposes and is not legal advice. Important legal details have been omitted to provide a brief overview of this area of the law. If you require legal advice relating to your particular circumstances you should contact the EDO or your solicitor.

Introduction

The *Integrated Planning Act 1997* provides for local government bodies to take a much greater role in planning and shaping local communities. The new approach is meant to be one of defining desired outcomes and using planning instruments and powers over development to achieve these outcomes. A precise understanding of the functions and role of local government will be a significant aid to individuals and community groups trying to make use of this Act.

What is a local government?

A local government is an organisation created by state government legislation -

the *Local Government Act 1993* and in the case of Brisbane City Council, the *City of Brisbane Act 1924*.

As in the case of State and Commonwealth governments, local governments have a political arm and an administrative arm. The political arm is made up of elected representatives - councillors and the mayor. The administrative arm comprises employed officers. The chief executive officer (formerly called the town clerk or the shire clerk) is in charge of the administrative arm.

The second reading speech for the *Local Government Act 1993* describes the functions of the different parts of the council as follows:

"The elected members represent the public interest. Collectively, they also comprise the council and determine the need for services, formulate the corporate plan, approve policies and exercise the lawmaking power and executive powers. The chief executive officer implements the decision of the council and the mayor has a responsibility to ensure implementation.

... The chief executive officer is responsible for establishing a system to provide advice or assistance to the council and individual elected members, a system which basically manages the interface between the elected members and the staff. Only the mayor will have a right to operate outside this administrative system.

... The elected members should not be involved in directing or organising work. They should also spend less time on ad-hoc decision-making and more time on making the main decisions and assessing the performance of the council. It is up to the chief executive officer and the other staff to implement the council's decisions, and deliver the goods."

Local governments have a generally stated jurisdiction, namely "to make local laws for, and otherwise ensure, the good rule and government of, its territorial unit". The "territorial unit" is the local government area, which is discussed below. The actual exercise of power will be based on a specific law, such as the power to make local laws under the *Local Government Act 1993*, and the power to enforce conditions of approvals under the *Integrated Planning Act 1997*.

In reading the *Local Government Act 1993*, it should be kept in mind that it only applies to Brisbane City where expressly stated. Accordingly, it is necessary to look at both the *Local Government Act 1993* and the *City of Brisbane Act 1924* when considering an issue in Brisbane City.

What is the local government's area?

As discussed above, the jurisdiction of a local government is based upon its "local government area".

At first instance, the boundaries of a local government area can be determined by looking at a street directory or a UBD map or by contacting the local government directly. However, the actual declaration of the area is in the *Local Government (Local Government Areas) Regulation 1995*. This regulation refers to a set of maps held by the Department of Local Government and Planning (DLGP), which delineate the boundaries of the local government areas. These maps may be inspected at the DLGP. Each local government holds a copy of the map for its area and must make this available for inspection.

The location of the local government boundary in relation to watercourses and the coastline can lead to some difficulties. In many cases the area includes watercourses and the coastline down to the low water mark. However, the maps referred to above should be checked.

The City of Brisbane Act sets the boundaries of Brisbane City, not by the regulation referred to above. In general terms, Brisbane City continues down to the low water mark at the shores of Moreton Bay, but only to the high water mark of the Brisbane River and any other river, creek or stream in Brisbane City.

A local government may also exercise its jurisdiction over land outside of its local government area where that land is put under its control or is acquired by it.

For example, the *Environmental Protection Act 1994* provides that powers under that Act may be devolved to the local government for an activity carried out below the high or low water mark (for example, marinas).

What are the responsibilities of the mayor?

The roles of the mayor are:

- To preside at local government meetings;
- To be responsible for the orderly conduct of the meetings;
- To ensure that the local government's decisions are carried out (in carrying out this role, the mayor may identify to the chief executive officer the duty of the officer in carrying out the policies and decisions of the local government);
- Exercise the powers and perform the duties given to the mayor by the local government; and
- Ensure the appropriate representation of the local government at civic and ceremonial functions.

What are the responsibilities of councillors?

Councillors must:

- Represent the overall public interest;
- Take part in deciding the facilities, services and enterprises that are appropriate for the area;

- Take part in formulating, adopting and reviewing the council's corporate plan and operational plan and the policies and goals of the council;
- Take part in making decisions for achieving the goals and implementing the policies of the council; and
- Give preference to the public interest if there is a conflict with the private interests of the councillor or another person.

Councillors must ensure that there is no conflict, or possible conflict, between the councillor's private interests and the honest performance of the councillor's role of serving the public interest.

In addition, councillors must:

- Not act in the office until they have made the declaration of office;
- Disclose any material personal interest in an issue to be considered at a Council meeting and vacate the chamber during the consideration and voting about the issue;
- Ensure that the register of interests of councillors and persons related to councillors is correct (see Factsheet 8 on Public Access to Information on Planning Processes and Development Applications);
- Must not misuse information acquired as a councillor to gain a financial advantage for themselves or someone else or to harm the local government; and
- Must not release information which is confidential or which the local government wishes to keep confidential.

How can you check if a councillor or council officer has a conflict of interest on a development application or contract?

The chief executive officer is to maintain a register of "interests" of each councillor and related persons (s247 *Local Government Act 1993*). These "interests" are set out in s17 of the *Local Government Regulation 1994* and include a broad range of non-financial as well as financial interests.

The register of councillors' interests is open to public inspection upon written application to the chief executive officer. Accordingly, if a person suspects a councillor may have a conflict of interest in relation to a development application he or she may request, in writing, an inspection of the register of the particular councillor's interests. The chief executive officer must keep a record of the details of the person seeking the inspection, the access given to the person and must also advise the councillor concerned of those details (s248 *Local Government Act 1993*).

A register of interests similar to the register of councillors' interests must be kept in relation to the chief executive officer, senior executive officers and other officers the local government considers should be subject to the requirement

(s1139 *Local Government Act 1993*). Again the "interests" are set out in the *Local Government Regulation 1994* (s76) and include a broad range of non-financial as well as financial interests.

However, access to the register of employee's interests is only available to the chief executive officer, councillors and persons acting under a specific legal authority such as a subpoena (s1140 *Local Government Act 1993*). Therefore, if a person suspects a council officer may have a conflict of interest in relation to a development application he or she should discuss his or her concerns with the chief executive officer or his or her local councillor. If either of those persons request access to the register of employee's interests they are not permitted to disclose information obtained from the register to persons other than those permitted access to the register i.e. the chief executive officer, councillors or a person permitted by law (s1140 (5) *Local Government Act 1993*). Where the concern is of a serious nature legal advice should be sought. It may be possible to have a subpoena issued to inspect the register.

The application for access to the register must be in writing, the details of the access recorded and details of the access given to the employee (s1140 *Local Government Act 1993*).

What must a councillor or council officer do in the case of a conflict of interest?

Where a councillor has a material personal interest in a matter, the councillor's interest must be disclosed and the councillor must not take part in proceedings in relation to that matter (s244 (1) *Local Government Act 1993*). The councillor must leave the council chamber while the matter, in which he or she has a material personal interest, is being dealt with (s 244(2) *Local Government Act 1993*).

The definition of "material personal interest" in s6 of the *Local Government Act 1993* focuses on the personal financial interest of a councillor. For example, there is a "material personal interest" if a councillor can gain or lose money from the activities of an organisation where the councillor is a member of an organisation which conducts community, sporting or cultural activities and the Council is considering action which may benefit or detrimentally affect the organisation (see s6 (3)(b)(iii) *Local Government Act 1993*).

The sorts of conflicts usually faced by a councillor relate to matters of public interest and competing private interests of a non-financial nature. In such cases the councillor concerned must ensure that he or she discharges his or her duty to avoid a conflict of interest under s229(3) of the *Local Government Act 1993*. However, in these cases the councillor concerned is not required to declare his or her interests or withdraw from a meeting. See question 2 and discussion on s229 of the *Local Government Act 1993* above.

A councillor who fails to comply with s244 of the *Local Government Act 1993* when he or she has a material personal interest in a matter being considered by council commits an offence and can be penalised under s246. Further, where the chief executive officer believes that a councillor is in breach of s244 of the *Local Government Act 1993* he or she may have to refer the matter to the Criminal Justice Commission (CJC) under s37 of the *Criminal Justice Act 1989*.

Councillors who do not:

- withdraw from matters involving a material personal interest under s246 of the *Local Government Act 1993*; or
- declare their interests under s247,

can be disqualified for 3 years from nominating for or being elected as a councillor or in the case of a councillor at the time of conviction, the office is automatically vacated (s222 *Local Government Act 1993*).

Under s1142 of the *Local Government Act 1993* a council officer has a duty of disclosure where he or she has a material personal interest in a matter which he or she is dealing with in the course of his or her duties. In such a case, notice of the interest must be given to the chief executive officer or where the council officer is the chief executive officer, the notice must be given to the mayor. The employee must then not be involved in the matter further unless directed by the chief executive officer or the mayor, as the case may be.

What are the responsibilities of the general chief executive officer?

The chief executive officer (CEO) is responsible for ensuring that the decisions and policies determined by the elected representatives are put into effect. The CEO also has statutory administrative functions such as ensuring that minutes of council meetings are kept.

The CEO acts as the connection between the council officers and the councillors and the mayor. It is intended that concerns and requests directed at specific employees or about specific projects are made through the CEO, and not by the councillor contacting the officer directly. The mayor has the job of discussing administrative concerns and requests with the CEO.

How are councillors elected?

Councillors are democratically elected every three years. By-elections are also held to fill a vacancy of a councillor. Voting in Council elections is compulsory.

The system of voting is:

- Optional preferential voting for a local government area divided into single member divisions; or
- First past the post voting in other cases.

How can I run for council?

A person is qualified to become a councillor if the person is elected and the person:

- Lives in the local government area;
- Is (under the Electoral Act 1992) an elector for an electoral district in the local government area.

A person is not qualified to become a councillor if

- The person is an undischarged bankrupt;
- The person has executed a deed of arrangement under the Bankruptcy Act and the terms of the deed have not been fully complied with;
- The person's creditors have accepted a composition under the Bankruptcy Act and a final payment has not been made under the composition;
- The person is in prison;
- The person is member of an Australian Parliament; or
- The person is not entitled to be elected as a member of the legislative assembly under s176 of the Electoral Act 1992 or under another law.

Section 176 refers to the following offences:

- Giving false, misleading or incomplete documents under the Electoral Act 1992;
- Influencing voting by violence or intimidation; and
- Improper voting practices.

To seek election, a person must:

- Be nominated by a political party or at least 6 electors; and
- Provide the deposit with the nomination.

Do councillors get paid?

Yes. The local government decides what the remuneration will be. It must also specify:

- The principles or remuneration system on which the remuneration is based; and
- The reasons for adopting the principles or system.

In the case of the Brisbane City, salaries may be paid differentially to:

- The mayor;
- The deputy mayor;
- The leader of the opposition;
- The chairperson of the council; and

- The chairpersons of the standing committees of the council.

What powers do committees of council have?

A local government may appoint standing committees or special committees comprised of councillors. The council may, by resolution, delegate powers to a standing committee.

The powers of a committee will be set out in the resolutions that created the committee and delegated powers to it. These resolutions are publicly available for inspection in the council minutes.

How often do local governments meet?

A local government must meeting within 14 days after an election to consider:

- The day and time for holding other meetings;
- The appointment of a deputy mayor; and
- The appointment of its standing committees.

Other meetings are held at the times decided by the council. As a minimum, City and Town councils must meet at least once a month and Shire councils at least every three months.

At least once a year, the council must publish in a newspaper a list of the days and times when its ordinary meetings (and the ordinary meetings of its standing committees) will be held. The council must also keep a notice in display of the days and times of its meetings. This notice must list the items to be discussed at the meeting at least 2 days before the day of the meeting.

Where can I see the minutes of council meetings?

A copy of the minutes of each meeting of a local government must be available for inspection at no cost at the council's public office within 10 days of the meeting. Copies of the minutes are available for purchase after the minutes are confirmed at the next meeting.

How do I know if a matter is a State or local government responsibility?

It is necessary to look at each piece of legislation and any delegations or memoranda of understanding to determine whether the State government or local government has jurisdiction over a matter. In some cases, both arms of government have jurisdiction.

Figure 12-1 Examples of the Jurisdiction of the Queensland State government and local government.

State government	Local government
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- licences and approvals under the <i>Environmental Protection Act 1994</i>	- some licences and approvals for environmentally relevant activities under the <i>Environmental Protection Act 1994</i>
- referral agency roles under the <i>Integrated Planning Act 1997</i>	- assessment manager for applications under the <i>Integrated Planning Act 1997</i>
- implementation of the <i>Nature Conservation Act</i>	- enforcement of local laws (e.g. about noxious weeds) under the <i>Local Government Act 1993</i>
- licences under the <i>Water Act 2000</i> and <i>Water Resources Act 1989</i>	- enforcing the <i>Sewerage and Water Supply Act</i>
- approvals under the <i>Marine Parks Act</i>	- fuel storage approvals under the Building (Flammable and Combustible Liquids) Regulation
- approvals under the previous sections of the <i>Harbours Act</i>	
- mining tenures under the <i>Mineral Resources Act</i>	
- implementing the <i>Queensland Heritage Act</i>	
- impact assessment under the <i>State Development and Public Works Organisation Act</i>	

Protocol between local government and the State government

If a State law is inconsistent with a law made by a local government, then the State law prevails to the extent of the inconsistency.

The interaction between local and State government is handled by the Local Government Association of Queensland and Department of Local Government and Planning.

Examples of a formal protocol between local government and State government are the protocols for the administration of the *Environmental Protection Act 1994* and the *Environmental Protection (Water) Policy 1997*.

In certain circumstances, the State government (or Governor in Council) may take action about a local government such as:

- Revoke or suspend resolutions or orders;
- Overrule local laws or local law policies;
- Dissolve a local government and appoint an administrator; and
- Conduct an inquiry.

What is the corporate plan?

A local government must prepare and adopt a corporate plan. The corporate plan deals with:

- The Council's mission and goals for the next 3 years; and
- How the goals will be achieved.

The Council's budget must be based on its corporate plan. In addition, operational plans are required every year. The local government's exercise of its jurisdiction must be consistent with its corporate plan and operational plan. A local government must keep copies of its corporate and operational plans available for inspection and purchase.

The planning scheme, not the corporate plan, is used to decide development applications. However, the budget influenced by the corporate plan will influence data collection and therefore preparation of the planning scheme.

Complains to the Ombudsman

The "Ombudsman" is now called the Parliamentary Commissioner for Administrative Investigations. The relevant legislation is the *Parliamentary Commissioner Act 1974*.

The Parliamentary Commissioner may investigate a complaint by any person. For example, a complaint about an administrative action by a local government or by a department of the State government. The complaint should be:

- Made in writing; and
- Made within 12 months of the date the action took place.

Complaints to the Criminal Justice Commission

The Criminal Justice Commission (CJC) exists to continually monitor, review and where necessary, initiate reform of criminal justice. It operates under the *Criminal Justice Act 1989*.

Complaints may be made to the CJC about official misconduct by a person in public administration.

What is the Local Government Association of Queensland?

The Local Government Association of Queensland (LGAQ) was formed in 1896 to represent and assist the development of councils. It is aligned with similar associations in other states. It is a powerful voice for local governments to the State government. Membership of the association is voluntary.

The LGAQ is established under the Local Government Act 1993. Its activities include:

- liaison with the State and Commonwealth governments;
- development of policy;
- legal advice on management and administrative matters;
- insurance;
- management advice; and
- training.

Further information and references

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Your local government

Your local non-government environment council

Watch 'Grass Roots' ABC TV Drama

Relevant laws

Local Government Act 1993
Integrated Planning Act 1997
City of Brisbane Act 1924
Electoral Act 1992
Environmental Protection Act 1994