

Gold Coast City Council



Local Law No. 15

(On-Site Sewerage Facility) 2008

It is hereby certified that this is a true and correct copy of
Local Law No. 15 (On-Site Sewerage Facility) 2008 made, in accordance with the *Local Government Act 1993*,
by the Council of the City of Gold Coast
Joe McCabe
Acting Chief Executive Officer

**Gold Coast City Council
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(On-Site Sewerage Facility) 2008**

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Gold Coast City Council Local Law No. 15 (On-Site Sewerage Facility) 2008

Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law No. 15 (On-Site Sewerage Facility) 2008*.

2 Object

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.

3 Definitions

The dictionary in the Schedule (Dictionary) of this local law defines particular words used in this local law.

4 Relationship to other laws

- (1) This local law is in addition to the *Plumbing and Drainage Act 2002*.
- (2) Unless the context otherwise indicates or requires, terms not defined in this local law are to have the meanings assigned to them by the *Plumbing and Drainage Act 2002*.
- (3) This local law does not apply to—
 - (a) the installation of an on-site sewerage facility; or
 - (b) a person operating an on-site sewerage facility if 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 of paragraph (a)—

This would exempt from the operation of this local law the installation of, but not the operation of, an on-site sewerage facility approved under the *Plumbing and Drainage Act 2002*.

Example of paragraph (b)—

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

- (4) The local government must not exercise its powers under part 3 or part 4 of this local law in a manner that is inconsistent with—
- (a) the Plumbing and Drainage Act 2002; and
 - (b) the Queensland Plumbing and Wastewater Code; and
 - (c) the conditions of an approval for the installation or operation of an on-site sewerage facility.

Part 2 Registration of on site sewerage facilities

5 Requirement for the registration of an on-site sewerage facility

- (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 for subsection (1)—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 for subsection (2)—40 penalty units.

- (3) Notwithstanding subsection (1), 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.

6 Application for the registration of an on-site sewerage facility

- (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 subsection (1) in an emergency or if there are special reasons for dispensing with the requirements.
- (3) The owner of premises on which an on-site sewerage facility is situated is taken to have complied with subsection (1) if—
 - (a) a person makes a request to the local government in respect of the on-site sewerage facility for the assessment of regulated work under the *Plumbing and Drainage Act 2002*; and
 - (b) the local government gives that person a compliance certificate for the on-site sewerage facility.

7 Grant of a registration of an on-site sewerage facility

The local government must 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.

8 Term of a registration of an on-site sewerage facility

- (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 subsection (1).

9 Transfer of a registration of an on-site sewerage facility

- (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) made in the prescribed form; and
 - (b) accompanied by—
 - (i) the prescribed fee; and
 - (ii) 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
 - (iii) the written consent of the person to whom the registration of the on-site sewerage facility will be transferred; and

- (iv) the written consent of the owner of the premises on which the on-site sewerage facility is situated; and
 - (v) the written consent of the holder of the registration of the on-site sewerage facility; and
 - (vi) 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 subsection (2) in an emergency or if there are special reasons for dispensing with the requirements.
- (4) The local government must 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 subsection (2).

10 Renewal of a registration of an on-site sewerage facility

- (1) The local government is taken 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 is taken 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 is to provide to the local government, on the application for renewal of the registration of the on-site sewerage facility, such other information and materials as is requested by the local government or specified in a subordinate local law.
- (5) The local government must 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 subsections (3) and (4).

11 Cancellation of the registration of an on-site sewerage facility

- (1) The local government may cancel the registration of an on-site sewerage facility if—
- (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; or
 - (e) the cancellation is urgently necessary to prevent—
 - (i) harm to human health or harm to human safety or personal injury; or
 - (ii) property damage or loss of amenity; or
 - (iii) environmental harm or environmental nuisance; or
 - (iv) a nuisance; or
 - (f) the holder of the registration contravenes—
 - (i) this local law; or
 - (ii) a requirement of a compliance notice.
- (2) The local government may specify by subordinate local law the changes in circumstances since the registration was granted that makes the continued operation of the registration inappropriate.
- (3) 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 written 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 written notice.
- (4) After considering any written representations 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.
- (5) 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—
- (a) under subsection (3)(a), if no written representations are made by the holder of the registration within the time stated in the written notice; or
 - (b) under subsection (4)(b), if written representations are made by the holder of the registration within the time stated in the written notice and the local government decides that the cancellation is necessary.
- (6) If the local government is satisfied that it is necessary to cancel the registration of an on-site sewerage facility in the circumstances specified in subsection (1)(e), the local government may give to the holder of the registration of the on-site sewerage facility a written notice stating that the on-site sewerage facility is not to be operated from the date of this written notice to the date that the local government gives a written notice pursuant to subsection (4)(a).
- (7) The holder of a registration of an on-site sewerage facility must ensure that the on-site sewerage facility is not operated during the period identified in a written notice given pursuant to section (6).

Maximum penalty for subsection (7)—40 penalty units.

Part 3 Operation of on-site sewerage facility

12 Operation of the on-site sewerage facility

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

13 Compliance notice

- (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 for subsection (4)—165 penalty units.

14 Inspection of an on-site sewerage facility

- (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—¹
 - (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—²

¹ 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.

² Section 1102 (General powers after entering places) of the *Local Government Act 1993* provides for these powers.

- (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 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.³
- (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 subsection (2); 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 for subsection (4)—40 penalty units.

15 Performance of work

- (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 if a person has failed to perform work required to be performed by⁴—
- (a) subsection (1); 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—
 - (i) subsection (1); or

³ Section 1102 (General powers after entering places) of the *Local Government Act 1993* provides for these powers.

⁴ The exercise of this power is subject to section 1066 (Performing work for owner or occupier) of the *Local Government Act 1993*.

- (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 subsection (1).

16 Power of entry and cost recovery

- (1) If the work to be carried out by the local government is on land of which the local government is not the owner or occupier, the local government may enter the land to perform the work—
- (a) under section 1066 (Performing work for owner or occupier) of the *Local Government Act 1993*, if the person who has failed to perform the work is the owner or occupier of the land; or
 - (b) under section 1070 (Entry on land for local government purposes) of the *Local Government Act 1993*, if the person who has failed to perform the work is not the owner or occupier of the land.⁵
- (2) If the person who failed to perform the work is the owner of the land, the amount properly and reasonably incurred by the local government to perform the work is recoverable, together with any interest, under section 1066 (Performing work for owner or occupier), section 1067 (Cost of work recoverable as a rate) and section 1068 (Cost of work a charge over land) of the *Local Government Act 1993*.
- (3) If the person who failed to perform the work is not the owner of the land, the amount properly and reasonably incurred by the local government is recoverable as a debt from the person in default.⁶

Part 5 Administrative Provisions

17 Executive officers must ensure the corporation complies with the local law

- (1) The executive officers of a corporation must ensure the corporation complies with this local law.
- (2) If a corporation commits an offence against a provision of this local law, each of the corporation's executive officers also commit an offence, namely, the offence of failing to ensure that the corporation complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision by an individual.

⁵ A magistrate may make an order for entry under section 1063 (Order on occupier who refuses entry) of the *Local Government Act 1993* if the occupier refuses to permit entry.

⁶ Section 1067(2) (Cost of work recoverable as a rate) of the *Local Government Act 1993* provides for the payment of interest on the same basis as for an overdue rate.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this local law is evidence that each of the executive officers committed the offence of failing to ensure that the corporation complied with the provision.
- (4) However, it is a defence for an executive officer to prove—
 - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence - the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
 - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.
- (5) This section applies so as not to limit or affect in any way the liability of a corporation to be proceeded against and punished for an offence committed by the corporation in contravention of this local law.

18 Liability of third parties

- (1) Any person involved in a contravention of this local law commits an offence.

Maximum Penalty—the penalty for which any person who committed the contravention would be liable.
- (2) For the purposes of subsection (1), a person involved in a contravention of this local law is any person who—
 - (a) has aided, abetted, counselled or procured the contravention; or
 - (b) has induced, whether by a threat or a promise or otherwise, the contravention; or
 - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
 - (d) has conspired with another person to effect the contravention; or
 - (e) has knowingly benefited from or knowingly was capable of benefiting from the contravention.

19 Attempts to commit offences

- (1) A person who attempts to commit an offence under this local law commits an offence.

Maximum penalty for subsection (1)—half the maximum penalty for committing the offence.
- (2) The provisions of the *Criminal Code* (relevant to attempts to commit offences) apply to the attempt.

20 Defences

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 6 Subordinate Local Laws

21 Subordinate local laws

- (1) 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 the Schedule (Dictionary) of this local law; and
 - (b) a thing as a structure pursuant to the Schedule (Dictionary) 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)(b)(vi) (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 changes in circumstances that make the continued operation of a registration inappropriate pursuant to section 11(2) (Cancellation of the registration of an on-site sewerage facility) of this local law; and

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

Schedule Dictionary

section 3

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 appointed by the local government pursuant to Local Law No. 3 (Administration) 2008 to exercise the powers of an authorised person under this local law.⁷

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

compliance certificate has the meaning given in the *Plumbing and Drainage Act 2002*.

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*

⁷ Section 21 (Appointment) of *Local Law No. 3 (Administration) 2008* provides for the local government to appoint a person to a position provided for under a local law and authorises a person appointed by the local government to a position provided for under a local law to exercise the powers attaching to that position under the local law unless otherwise stated in the appointment.

1993 and includes approvals granted pursuant to local government Acts.⁸

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 *Plumbing and Drainage Act 2002*.

on-site sewerage facility—

- (a) has the meaning given in the *Plumbing and Drainage Act 2002*; and
- (b) does not include an on-site sewerage facility that consists of or that includes sewage treatment works, the operation of which is an environmentally relevant activity under the *Environment Protection Act 1994*.

Queensland Plumbing and Wastewater Code has the meaning given in the *Standard Plumbing and Drainage Regulation 2003*.

owner has the meaning given in the *Plumbing and Drainage Act 2002*.

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.

⁸ The *Local Government Act 1993*, Schedule 2 (Dictionary) –

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*, the *Plumbing and Drainage Act 2002*, *Water Act 2000*, chapters 2A and 3, an interim development control provision, a local law and a planning scheme.

premises means a lot as defined in section 1.3.5 of the *Integrated Planning Act*, and includes a lot that has a building situated on it, or that is wholly or partly contained in, or that wholly or partly contains, a building.⁹

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.

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.

⁹ The *Integrated Planning Act 1997*, section 1.3.5 (Definitions for terms used in “development”) defines a lot in the following way–

“**lot**” means–

- (a) a lot under the *Land Title Act 1994*; or
- (b) a separate, distinct parcel of land for which an interest is recorded in a register under the *Land Act 1994*; and
- (c) common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*; or
- (d) a lot or common property to which the *Building Units and Group Titles Act 1980* continues to apply; or
- (e) a community or precinct thoroughfare under the *Mixed Use Development Act 1993*; or
- (f) a primary or secondary thoroughfare under the *Integrated Resort Development Act 1987* or the *Sanctuary Cove Resort Act 1985*.

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.¹⁰

¹⁰ 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 -

structure includes a wall or fence and anything fixed to or projecting from a building, wall, fence or other structure.