



*City of Brisbane Act 2010*

# City of Brisbane Regulation 2012

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Queensland

# City of Brisbane Regulation 2012

## Contents

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		Page
<b>Chapter 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	15
2	Definitions. . . . .	15
<b>Chapter 2</b>	<b>Brisbane City Council</b>	
<b>Part 1</b>	<b>Brisbane's external boundaries and its wards</b>	
3	Boundaries of Brisbane—Act, s 7(4) . . . . .	15
4	Wards of Brisbane—Act, s 17(2) . . . . .	16
5	Availability of map of Brisbane . . . . .	16
<b>Part 2</b>	<b>Changing Brisbane's external boundaries</b>	
6	What pt 2 is about . . . . .	17
7	Communities of interest . . . . .	17
8	Joint arrangements. . . . .	18
9	Planning . . . . .	18
10	Resource base sufficiency . . . . .	19
<b>Chapter 3</b>	<b>The business of council</b>	
<b>Part 1</b>	<b>Local laws</b>	
11	Local law register—Act, s 34 . . . . .	19
12	Anti-competitive provisions. . . . .	20
13	Procedures for the review of anti-competitive provisions—Act, s 41 . . . . .	20
<b>Part 2</b>	<b>Business reform, including competitive neutrality</b>	
<b>Division 1</b>	<b>Introduction</b>	
14	What pt 2 is about . . . . .	21
15	Reforming a significant business activity . . . . .	21
<b>Division 2</b>	<b>Identifying significant business activities for reform</b>	
16	Thresholds for significant business activities—Act, s 47(4)(b) . . .	21
17	Identifying significant business activity for report—Act, s 49 . . . .	22

Contents

---

<b>Division 3</b>	<b>Full cost pricing</b>	
18	What div 3 is about . . . . .	22
19	Full cost pricing . . . . .	23
20	Cost of community service obligations . . . . .	24
21	Community service obligations . . . . .	24
22	Taking account of government taxes . . . . .	25
<b>Division 4</b>	<b>Commercialisation</b>	
23	What div 4 is about . . . . .	26
24	Commercial business unit . . . . .	26
25	What are the key principles of commercialisation . . . . .	26
26	Converting a business unit to a commercial business unit . . . . .	28
27	Creating a commercial business unit . . . . .	28
<b>Division 5</b>	<b>Provisions for code of competitive conduct</b>	
28	Building certifying activity—Act, s 51(4)(b) . . . . .	28
29	Prescribed business activities—Act, s 51(7) . . . . .	29
<b>Division 6</b>	<b>Competitive neutrality complaints</b>	
<b>Subdivision 1</b>	<b>Introduction</b>	
30	What div 6 is about . . . . .	29
<b>Subdivision 2</b>	<b>Complaint process</b>	
31	Application of sdiv 2 . . . . .	29
32	Minimum requirements for complaint process . . . . .	30
33	Making a complaint . . . . .	30
34	QCA must investigate and report on complaint . . . . .	31
35	QCA requiring further information . . . . .	31
36	QCA refusing to investigate . . . . .	31
37	Notice of intention to investigate . . . . .	32
38	Investigation by QCA . . . . .	33
39	Matters QCA must consider when investigating . . . . .	33
40	QCA's report on investigation . . . . .	34
41	Public access to report . . . . .	35
42	Information to persons given an investigation notice . . . . .	36
43	Council response to QCA's report . . . . .	36
<b>Subdivision 3</b>	<b>Miscellaneous provision</b>	
44	Register . . . . .	37

<b>Part 3</b>	<b>Roads and other infrastructure</b>	
<b>Division 1</b>	<b>Roads</b>	
45	Prescribed particulars for register of roads—Act, s 81 . . . . .	37
<b>Division 2</b>	<b>Malls</b>	
46	Managing, promoting and using malls . . . . .	39
47	Restricted traffic on malls . . . . .	39
48	Offence to contravene mall traffic restriction . . . . .	40
49	Permits for vehicles on malls . . . . .	41
50	Removal or moving of vehicles on malls . . . . .	41
51	Notice to operator if vehicle removed from mall . . . . .	42
52	Requirements for return of vehicle . . . . .	43
53	Sale of vehicle removed from mall . . . . .	44
54	Who may appeal. . . . .	45
55	How to start appeal . . . . .	45
56	Stay of decision . . . . .	46
57	Powers of Magistrates Court . . . . .	46
58	Appeal to District Court . . . . .	47
<b>Division 3</b>	<b>Marine and aquatic matters</b>	
59	Harbours, jetties, breakwaters and ramps . . . . .	47
60	Canals . . . . .	48
61	The foreshore . . . . .	48
62	Bathing reserves . . . . .	48
<b>Division 4</b>	<b>Other matters</b>	
63	Public thoroughfare easements . . . . .	49
64	Boundary works . . . . .	50
<b>Chapter 4</b>	<b>Rates and charges</b>	
<b>Part 1</b>	<b>Preliminary</b>	
65	What is the value of land . . . . .	50
<b>Part 2</b>	<b>Land exempt from rating</b>	
66	Land that is exempt from rating—Act, s 95 . . . . .	51
<b>Part 3</b>	<b>Value of land used for rates</b>	
67	Rateable value of land . . . . .	51
68	Working out the 2-year averaged value . . . . .	52
69	Working out the 3-year averaged value . . . . .	52
<b>Part 4</b>	<b>Minimum general rates</b>	
70	Minimum general rates for land generally . . . . .	53

Contents

---

71	Minimum general rates on timeshare property . . . . .	54
72	Value of mining claim for fixing minimum general rates . . . . .	55
<b>Part 5</b>	<b>Differential general rates</b>	
<b>Division 1</b>	<b>Introduction</b>	
73	Differential general rates . . . . .	56
74	Categorisation of land for differential general rates . . . . .	56
75	Later categorisation . . . . .	57
<b>Division 2</b>	<b>Entering land to categorise land</b>	
76	Appointing categorisation officer . . . . .	58
77	Identity card for categorisation officer . . . . .	59
78	Exercise of power of entry . . . . .	59
79	End of appointment of categorisation officer . . . . .	61
80	Entering private property with written notice . . . . .	61
<b>Division 3</b>	<b>Notice of categorisation of land</b>	
81	Notice to owner of categorisation . . . . .	62
<b>Division 4</b>	<b>Objecting to rates category</b>	
82	What div 4 is about . . . . .	63
83	Land owner's objection to rates category . . . . .	63
84	Decision on a land owner's objection . . . . .	64
85	Land owner's appeal against decision . . . . .	65
86	Decision on a land owner's appeal . . . . .	65
<b>Part 6</b>	<b>Special rates and charges</b>	
87	Levying special rates or charges . . . . .	66
88	Carrying special rates or charges forward to a later financial year . . . . .	69
89	Surplus special rates or charges after plan is carried out . . . . .	69
90	Surplus special rates or charges after plan is cancelled . . . . .	69
91	Returning special rates or charges incorrectly levied . . . . .	70
<b>Part 7</b>	<b>Utility charges</b>	
92	Utility charges . . . . .	70
93	Utility charges before facilities are constructed . . . . .	71
94	Reading meters for utility charges . . . . .	72
<b>Part 8</b>	<b>Separate rates and charges</b>	
95	Levying separate rates or charges . . . . .	72

<b>Part 9</b>	<b>Levying and adjusting rates and charges</b>	
<b>Division 1</b>	<b>Rate notices</b>	
96	Rate notice for rates or charges . . . . .	73
97	Other amounts under rate notice . . . . .	74
98	Entities to whom rate notice must be given . . . . .	74
99	Issue of and period covered by rate notice. . . . .	74
100	Electronic issue of rate notice . . . . .	75
<b>Division 2</b>	<b>Adjusting rates or charges</b>	
101	What div 2 is about. . . . .	75
102	Land stops being rateable land . . . . .	75
103	Change in value . . . . .	76
104	Change in rating category . . . . .	76
105	Special rates become or stop being payable . . . . .	76
106	Loss of entitlement to occupy land from State . . . . .	76
107	Rates or charges paid before adjustment. . . . .	77
<b>Division 3</b>	<b>Other matters about levying rates or charges</b>	
108	Limitation of increase in rates or charges levied . . . . .	77
109	Rates or charges may be levied or adjusted after end of financial year . . . . .	78
110	When rates or charges must be paid . . . . .	78
<b>Part 10</b>	<b>Concessions</b>	
111	Concession for rates or charges. . . . .	78
112	Criteria for granting concession . . . . .	79
113	Types of concession. . . . .	80
114	Resolutions for granting concession. . . . .	80
115	Special provision for rebate for land occupied by pensioners . . . . .	81
116	Refund of rebated rates or charges already paid. . . . .	82
117	Special provision for agreement to defer rates or charges. . . . .	82
118	Special provision for agreement to accept land transfer. . . . .	82
<b>Part 11</b>	<b>Paying rates and charges</b>	
119	Who must pay rates and charges. . . . .	83
120	Paying part of rates and charges . . . . .	84
121	Paying rates or charges by instalments . . . . .	84
122	Discount for prompt payment of rates or charges . . . . .	85
123	Other benefits for prompt payment. . . . .	86

Contents

---

<b>Part 12</b>	<b>Overdue rates and charges</b>	
<b>Division 1</b>	<b>General provisions</b>	
124	What are overdue rates or charges and when do they become overdue . . . . .	87
125	Interest on overdue rates or charges . . . . .	88
<b>Division 2</b>	<b>Court proceedings for overdue rates or charges</b>	
126	Court proceedings for overdue rates or charges . . . . .	89
127	Selling or acquiring land ends liability for overdue rates or charges . . . . .	89
<b>Division 3</b>	<b>Selling or acquiring land for overdue rates or charges</b>	
<b>Subdivision 1</b>	<b>Preliminary</b>	
128	What div 3 is about . . . . .	89
129	Reference to market value . . . . .	90
<b>Subdivision 2</b>	<b>Selling land for overdue rates or charges</b>	
130	Selling land that is subject to a State encumbrance . . . . .	90
131	Selling land that is subject to other restrictions . . . . .	91
132	Notice of intention to sell land for overdue rates or charges . . . . .	91
133	When procedures for selling land must be started . . . . .	93
134	Procedures for selling land . . . . .	93
135	Conduct of auction . . . . .	94
136	Procedures after sale of land to council . . . . .	95
137	Procedures after sale of land other than to council . . . . .	95
138	Application of proceeds of sale . . . . .	96
139	Council's failure to comply with this subdivision . . . . .	97
<b>Subdivision 3</b>	<b>Acquiring land for overdue rates or charges</b>	
140	Application of sdiv 3 . . . . .	98
141	Requirements for notice of intention to acquire land . . . . .	98
142	Time to start procedures to acquire . . . . .	99
143	Acquisition procedures . . . . .	100
<b>Division 4</b>	<b>State pays overdue rates or charges</b>	
144	Satisfaction on termination of tenure . . . . .	101
<b>Part 13</b>	<b>The council's land record</b>	
<b>Division 1</b>	<b>Land record</b>	
145	What pt 13 is about . . . . .	101
146	Land record to be kept . . . . .	101
147	Public may inspect land record . . . . .	102



148	Amending land record . . . . .	103
149	Evidence of land record . . . . .	104
<b>Division 2</b>	<b>Review of decisions by QCAT to amend land record</b>	
150	Who may apply for review . . . . .	105
151	Powers of QCAT on review . . . . .	105
<b>Division 3</b>	<b>Change in ownership of land</b>	
152	Definitions for div 3 . . . . .	105
153	Notice of change of owner of land for sale or other ownership changes for land . . . . .	106
154	Council to record change of owner . . . . .	106
155	Previous owner can continue to be liable to pay rates or charges	107
<b>Chapter 5</b>	<b>Financial planning and accountability</b>	
<b>Part 1</b>	<b>General matters about financial management systems</b>	
156	Requirement to keep record of particular matters . . . . .	107
<b>Part 2</b>	<b>Financial planning documents</b>	
<b>Division 1</b>	<b>Corporate plan</b>	
157	Preparation of corporate plan . . . . .	108
158	Corporate plan contents . . . . .	108
<b>Division 2</b>	<b>Long-term asset management plan</b>	
159	Preparation of long-term asset management plan . . . . .	109
<b>Division 3</b>	<b>Annual budget</b>	
160	Preparation and content of budget . . . . .	109
161	Scrutiny of budget . . . . .	111
162	Adoption and amendment of budget . . . . .	112
163	Long-term financial forecast . . . . .	112
164	Revenue statement . . . . .	113
165	Unauthorised spending for genuine emergency or hardship . . . .	114
<b>Division 4</b>	<b>Annual operational plan</b>	
166	Preparation and adoption of annual operational plan . . . . .	114
167	Annual operational plan contents . . . . .	114
<b>Part 3</b>	<b>Financial accountability documents</b>	
<b>Division 1</b>	<b>Financial statements and report</b>	
168	Preparation of financial statements . . . . .	116
169	General purpose financial statement . . . . .	116
170	Financial sustainability statements . . . . .	117
171	Community financial report . . . . .	117

Contents

---

<b>Division 2</b>	<b>Asset register</b>	
172	Non-current physical assets to be recorded . . . . .	118
<b>Division 3</b>	<b>Annual report</b>	
173	What div 3 is about . . . . .	118
174	Preparation of annual report . . . . .	118
175	Financial statements . . . . .	118
176	Community financial report . . . . .	119
177	Particular resolutions . . . . .	119
178	Councillors . . . . .	119
179	Administrative action complaints . . . . .	120
180	Overseas travel . . . . .	121
181	Expenditure on grants to community organisations . . . . .	122
182	Other contents . . . . .	122
<b>Part 4</b>	<b>Financial policies</b>	
183	Investment policy . . . . .	124
184	Debt policy . . . . .	124
185	Revenue policy . . . . .	124
<b>Part 5</b>	<b>Community grants</b>	
186	Grants to community organisations . . . . .	125
187	Community grants policy . . . . .	125
<b>Part 6</b>	<b>Spending</b>	
188	Entertainment and hospitality . . . . .	126
189	Advertising spending . . . . .	126
190	Procurement policy . . . . .	127
<b>Part 7</b>	<b>Public access to particular documents</b>	
191	Public access to relevant financial and planning documents . . . .	127
<b>Part 8</b>	<b>Council's funds and accounts</b>	
<b>Division 1</b>	<b>Trust fund</b>	
192	Trust fund . . . . .	128
193	Transferring money to or from a trust fund . . . . .	129
<b>Division 2</b>	<b>Discretionary funds</b>	
194	Requirements about discretionary funds—Act, s 106 . . . . .	130
<b>Part 9</b>	<b>Accounting records</b>	
195	Accounting records for funds generally . . . . .	131
196	Financial report . . . . .	131
197	Statement of estimated financial position . . . . .	132

<b>Part 10</b>	<b>Asset accounting</b>	
198	Valuation of non-current physical assets . . . . .	132
<b>Part 11</b>	<b>Auditing</b>	
<b>Division 1</b>	<b>Internal audit function</b>	
<b>Subdivision 1</b>	<b>Internal auditing and reporting</b>	
199	Internal audit. . . . .	133
<b>Subdivision 2</b>	<b>Audit committee</b>	
200	Establishment and composition of audit committee . . . . .	134
201	Audit committee meetings . . . . .	134
<b>Division 2</b>	<b>External auditing</b>	
202	Auditing of financial statements by auditor-general . . . . .	136
203	Presentation of auditor-general's observation report . . . . .	137
<b>Part 12</b>	<b>Other matters</b>	
204	Insurance . . . . .	137
205	Notice of payment of notional GST. . . . .	138
<b>Chapter 6</b>	<b>Contracting</b>	
<b>Part 1</b>	<b>Introduction</b>	
206	What ch 6 is about . . . . .	138
<b>Part 2</b>	<b>Strategic contracting procedures</b>	
207	What pt 2 is about . . . . .	138
208	Power to choose strategic approach . . . . .	139
209	Effect of choice . . . . .	139
210	Contracting plans . . . . .	140
211	Significant contracting plans. . . . .	141
212	Contract manual . . . . .	142
<b>Part 3</b>	<b>Default contracting procedures</b>	
<b>Division 1</b>	<b>Introduction</b>	
213	What pt 3 is about . . . . .	143
<b>Division 2</b>	<b>Entering into particular contracts</b>	
214	What div 2 is about. . . . .	143
215	Medium-sized contractual arrangement—quotes needed first . . . . .	144
216	Large-sized contractual arrangement—tenders needed first . . . . .	144
217	Valuable non-current asset contract—tenders or auction needed first . . . . .	145
218	Tender process. . . . .	145

Contents

---

<b>Division 3</b>	<b>Exceptions for medium-sized and large-sized contractual arrangements</b>	
219	What div 3 is about . . . . .	147
220	Exception if quote or tender consideration plan prepared . . . . .	147
221	Exception for contractor on approved contractor list . . . . .	148
222	Exception for register of pre-qualified suppliers . . . . .	148
223	Exception for a preferred supplier arrangement . . . . .	149
224	Exception for LGA arrangement . . . . .	150
225	Other exceptions . . . . .	152
<b>Division 4</b>	<b>Exceptions for valuable non-current asset contracts</b>	
226	Exceptions for valuable non-current asset contracts . . . . .	152
<b>Part 4</b>	<b>Publishing details of particular contracts</b>	
227	Publishing details of contracts worth \$200000 or more . . . . .	155
<b>Part 5</b>	<b>Other matters</b>	
228	Entering into a contract under a delegation . . . . .	155
<b>Chapter 7</b>	<b>Monitoring and enforcing local government related laws</b>	
229	Period prescribed for carrying out particular approved inspection programs—Act, s 123 . . . . .	156
<b>Chapter 8</b>	<b>Administration</b>	
<b>Part 1</b>	<b>Councillors</b>	
<b>Division 1</b>	<b>Councillor remuneration</b>	
230	What div 1 is about . . . . .	157
231	Differential remuneration . . . . .	157
232	Remuneration for director's functions . . . . .	158
233	Excluded matters . . . . .	158
234	Criteria for remuneration decisions . . . . .	158
235	Publication of remuneration decisions . . . . .	159
<b>Division 2</b>	<b>Reimbursement of expenses and provision of facilities</b>	
236	What div 2 is about . . . . .	159
237	Requirement to adopt expenses reimbursement policy or amendment . . . . .	159
238	Notification of adoption of expenses reimbursement policy . . . . .	159
239	Meetings about expenses reimbursement policy . . . . .	160
<b>Division 3</b>	<b>Other matters</b>	
240	Prescribed integrity offence—Act, s 153 . . . . .	160
241	Declaration of office—Act, s 169 . . . . .	160
242	Administrative and support services for councillors . . . . .	161

<b>Part 2</b>	<b>Council meetings</b>	
243	What pt 2 is about . . . . .	161
244	Agenda of post-election meetings . . . . .	161
245	Frequency and place of meetings . . . . .	161
246	Notice of meetings for councillors. . . . .	162
247	Public notice of meetings . . . . .	162
248	Quorum at meetings. . . . .	163
249	Meetings in public unless otherwise resolved . . . . .	163
250	Procedure at meetings . . . . .	164
251	Adjournment of meetings . . . . .	164
252	Repeal or amendment of resolutions . . . . .	164
253	Minutes. . . . .	165
254	Recording of reasons for particular decisions . . . . .	165
255	Closed meetings. . . . .	166
<b>Part 3</b>	<b>Council employees</b>	
<b>Division 1</b>	<b>Disciplinary action against council employees</b>	
256	What div 1 is about. . . . .	167
257	When disciplinary action may be taken . . . . .	168
258	Types of disciplinary action. . . . .	168
259	Deductions from salary or wages. . . . .	169
260	Suspension of employees . . . . .	169
261	Employee to be given notice of grounds for disciplinary action . . . . .	170
<b>Division 2</b>	<b>Portability of long service leave</b>	
262	What div 2 is about. . . . .	171
263	Continuation of particular council employees' accrued rights to long service leave. . . . .	172
264	Recognition of previous periods of employment for particular council employees . . . . .	172
265	Payment by former employer to new employer towards long service leave entitlements accrued with former employer . . . . .	173
<b>Part 4</b>	<b>Authorised persons</b>	
266	Who may be appointed as authorised persons—Act, s 199 . . . . .	174
<b>Part 5</b>	<b>Register of interests</b>	
267	What pt 5 is about . . . . .	174
268	Who maintains registers of interests . . . . .	175
269	Contents of registers of interests . . . . .	175
270	Obligation to notify if interest in register no longer correct . . . . .	176

Contents

---

271	Who may inspect a register of interests . . . . .	178
272	Access to particular registers of interests. . . . .	178
273	Publication of register of interests of councillors . . . . .	179
274	Queries on contents of register of interests . . . . .	179
275	Improper disclosure of registers of interests . . . . .	180
<b>Chapter 9</b>	<b>Other provisions</b>	
<b>Part 1</b>	<b>Way to hold a hearing</b>	
276	Procedural rules for hearings—Act, s 206 . . . . .	181
277	Witness fees—Act, s 207 . . . . .	181
<b>Part 2</b>	<b>Delegation of powers</b>	
278	Particulars to be contained in register of delegations—Act, s 240 . . . . .	182
<b>Part 3</b>	<b>Process for resolving administrative action complaints</b>	
279	Process for resolving administrative action complaints—Act, s 250 . . . . .	182
<b>Chapter 10</b>	<b>Repeal and transitional provisions</b>	
<b>Part 1</b>	<b>Repeal provision</b>	
280	Repeal . . . . .	184
<b>Part 2</b>	<b>Transitional provisions</b>	
281	Definitions for pt 2. . . . .	185
282	Competitive neutrality complaints started before commencement . . . . .	185
283	References to QCA . . . . .	186
<b>Schedule 1</b>	<b>City of Brisbane—electoral ward boundaries</b> . . . . .	188
<b>Schedule 2</b>	<b>Pricing provisions</b> . . . . .	189
1	Definition for sch 2 . . . . .	189
2	Required revenue for deciding charges . . . . .	189
3	Different charges for commercial reasons . . . . .	189
4	Total costs of conducting relevant activity . . . . .	190
5	Allocation of administrative and overhead costs. . . . .	190
6	Cost of resources used in conducting activity . . . . .	190
7	Depreciation . . . . .	191
8	Equivalent amounts for taxes council is not liable to pay . . . . .	191
9	Guarantees by State. . . . .	192
10	Return on capital . . . . .	192
<b>Schedule 3</b>	<b>Financial and non-financial particulars for registers of interests</b> . . . . .	193
1	Definitions for sch 3 . . . . .	193
2	Shareholding or controlling interest in corporation. . . . .	194

## Contents

3	Officer of corporation . . . . .	194
4	Beneficial interest in trust or nominee corporation . . . . .	195
5	Self managed superannuation fund . . . . .	195
6	Trustee for trust . . . . .	195
7	Partnership and joint venture . . . . .	196
8	Land . . . . .	196
9	Liability . . . . .	196
10	Debentures and similar investments . . . . .	197
11	Savings and investment accounts . . . . .	197
12	Gifts totalling more than \$500 . . . . .	197
13	Sponsored hospitality benefit . . . . .	198
14	Membership of political party, body or association, or trade or professional organisation . . . . .	199
15	Other assets with value of more than \$5000 . . . . .	199
16	Other sources of income of more than \$500 a year . . . . .	199
17	Other financial or non-financial interests . . . . .	199
<b>Schedule 4</b>	<b>Dictionary . . . . .</b>	<b>201</b>

**Endnotes**

1	Index to endnotes . . . . .	207
2	Date to which amendments incorporated . . . . .	207
3	Key . . . . .	207
4	Table of reprints . . . . .	208
5	List of legislation . . . . .	208





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# City of Brisbane Regulation 2012

[reprinted as in force on 14 December 2012]

## Chapter 1 Preliminary

### 1 Short title

This regulation may be cited as the *City of Brisbane Regulation 2012*.

### 2 Definitions

The dictionary in schedule 4 defines particular words used in this regulation.

## Chapter 2 Brisbane City Council

### Part 1 Brisbane's external boundaries and its wards

#### 3 Boundaries of Brisbane—Act, s 7(4)

- (1) External boundaries of Brisbane are shown on map LGRB 1 edition 2, sheets 1 to 4.
- (2) To remove any doubt, it is declared that any part of a watercourse, including the land below the high-water mark of the watercourse, that is within the boundary of Brisbane is part of Brisbane.

[s 4]

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*Note—*

Brisbane is the council's local government area.

- (3) A *watercourse* includes a canal, lake or river.

#### **4 Wards of Brisbane—Act, s 17(2)**

- (1) The wards of Brisbane are named in schedule 1.
- (2) The boundaries of each ward are shown on map LGRB 1 edition 2, sheets 5 to 30.
- (3) For each ward, the boundaries are shown on the sheet number of map LGRB 1 edition 2 stated in schedule 1 opposite the ward's name.

#### **5 Availability of map of Brisbane**

- (1) The department's chief executive must ensure—
  - (a) the department's website states a place or places where a copy of map LGRB 1, edition 2 (including sheets 1 to 30 of the map) may be viewed by the public; and
  - (b) a copy of the map may be viewed by the public at the place or places; and
  - (c) the council has a copy of the map.
- (2) The council must ensure the public may view a copy of map LGRB 1, edition 2 (including sheets 1 to 30 of the map) at its public office.

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## **Part 2**                      **Changing Brisbane's external boundaries**

### **6**            **What pt 2 is about**

This part prescribes, for section 21(2)(c) of the Act, the other matters to be considered by the change commission when assessing whether a proposed boundary change is in the public interest.

### **7**            **Communities of interest**

- (1) The external boundaries of Brisbane should be drawn in a way that has regard to communities of interest, including that Brisbane should generally—
  - (a) reflect local communities, for example, the geographical pattern of human activities (where people live, work and engage in leisure activities), and the linkages between local communities; and
  - (b) have a centre, or centres, of administration and service easily accessible to its population; and
  - (c) ensure effective elected representation for residents and ratepayers; and
  - (d) have external boundaries that—
    - (i) do not divide local neighbourhoods or adjacent rural and urban areas with common interests or interdependencies, including, for example, economic, cultural and ethnic interests or interdependencies; and
    - (ii) subject to the water catchment principle—follow the natural geographical features and non-natural features separating different communities; and
    - (iii) do not dissect properties.

[s 8]

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- (2) The *water catchment principle* is the principle that water catchment areas should generally be included in the local government area they service.

## 8 Joint arrangements

- (1) Regard should be had to whether or not a joint arrangement should be established instead of, or in combination with, a change to the external boundaries of Brisbane.
- (2) A *joint arrangement* includes the following—
- (a) a joint local government;
  - (b) a joint standing committee;
  - (c) joint action by agreement;
  - (d) the joint exercise of local government jurisdiction or the joint operation of an activity, facility or service;
  - (e) an agreement on, or extension of, an activity, facility or service outside Brisbane;
  - (f) a contribution for the operation of an activity, facility or service outside Brisbane;
  - (g) resource sharing by the council and other local governments;
  - (h) any other type of arrangement of a joint nature the change commission considers appropriate, including an arrangement not dealt with under the Act.

## 9 Planning

The external boundaries of Brisbane should be drawn in a way that—

- (a) helps in—
  - (i) the planning and development for the benefit of Brisbane; and

- (ii) the efficient and effective operation of its facilities, services and activities; and
- (b) has regard to existing and expected population growth.

## **10 Resource base sufficiency**

The council should have a sufficient resource base—

- (a) to be able to efficiently and effectively exercise its jurisdiction and operate facilities, services and activities; and
- (b) to be flexible and responsive in the exercise of its jurisdiction and the operation of its activities, facilities and services.

# **Chapter 3 The business of council**

## **Part 1 Local laws**

### **11 Local law register—Act, s 34**

- (1) For section 34(1) of the Act, the council's register of its local laws must contain, for each local law, the local law's name, purposes and general effect.
- (2) A person may, on payment of a fee decided by the council, request an extract or a certified copy of a local law from the register of its local laws.
- (3) The fee mentioned in subsection (2) must be no more than the reasonable cost of providing the extract or copy.
- (4) The council must publish the register of its local laws on its website.

[s 12]

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## 12 Anti-competitive provisions

- (1) For the Act, schedule, definition *anti-competitive provision*, a provision is identified as creating barriers to entry to a market (*competitive barriers*) or barriers to competition within a market (also *competitive barriers*) if a local government, applying the identification guidelines, identifies the provision as creating competitive barriers.
- (2) The *identification guidelines* is the document called ‘National Competition Policy Guidelines to assist Local Governments identify possible anti-competitive provisions in proposed local laws and proposed local law policies’, made by the department and dated 28 November 1997.

*Editor’s note—*

A copy of the identification guidelines is available on the department’s website.

## 13 Procedures for the review of anti-competitive provisions—Act, s 41

- (1) For section 41(1) of the Act, the procedures prescribed are those procedures under the public interest test guidelines.
- (2) The *public interest test guidelines* is the document called ‘National Competition Policy Guidelines for conducting public interest tests on possible anti-competitive provisions in local laws and local law policies’, made by the department and dated 4 December 1997.

*Editor’s note—*

A copy of the public interest test guidelines is available on the department’s website.

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## **Part 2                      Business reform, including    competitive neutrality**

### **Division 1                      Introduction**

#### **14            What pt 2 is about**

This part is about reforming a significant business activity of the council in accordance with the competitive neutrality principle.

*Note—*

See sections 47 and 48 of the Act.

#### **15            Reforming a significant business activity**

- (1) The council must identify and assess each new significant business activity for possible reform.
- (2) If the council decides to reform the significant business activity, the reform must involve—
  - (a) applying full cost pricing to the activity; or
  - (b) commercialising the activity; or
  - (c) corporatising the activity by creating a corporatised business entity to conduct the activity.

### **Division 2                      Identifying significant business    activities for reform**

#### **16            Thresholds for significant business activities—Act, s    47(4)(b)**

- (1) This section prescribes, for section 47(4)(b) of the Act, the threshold that a business activity must meet to be a significant business activity.

[s 17]

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- (2) A business activity that has expenditure of at least \$25.54m for the previous financial year is a *type 1 significant business* for the current financial year.
- (3) A business activity, other than a type 1 significant business, that has expenditure of at least \$8.55m for the previous financial year is a *type 2 significant business* for the current financial year.
- (4) The Minister must consult with LGAQ Ltd. about a proposed amendment to a threshold mentioned in subsection (2) or (3).

## 17 Identifying significant business activity for report—Act, s 49

For section 49(b) of the Act, the council must use the financial information for the previous financial year that was presented to the council's budget meeting to identify each new significant business activity for the financial year.

## Division 3 Full cost pricing

### 18 What div 3 is about

- (1) This division explains how the council applies full cost pricing to a significant business activity as part of the reform of the activity.

*Editor's note—*

A guide to help local governments apply full cost pricing, called 'Full cost pricing in Queensland local government—a practical guide', is available on the department's website.

- (2) This division applies whether the reform is done by—
  - (a) full cost pricing; or
  - (b) commercialisation; or
  - (c) corporatisation.
- (3) This division expands on section 48 of the Act.



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## 19 Full cost pricing

- (1) The council applies full cost pricing to a significant business activity by charging for goods or services at the full cost of providing the goods or services, subject to the following—
  - (a) the pricing provisions;
  - (b) the removal of any competitive advantage or disadvantage, whenever possible and appropriate;
  - (c) if a competitive advantage or disadvantage can not be removed—the taking of the competitive advantage or disadvantage into account when pricing the goods or services.
- (2) For subsection (1)—
  - (a) the council applies full cost pricing to a significant business activity if the total projected revenue from providing all of the activity’s goods and services is enough to cover the projected total costs of conducting the activity; and
  - (b) it is not relevant whether the projected revenue from providing a particular good or service is enough to cover the projected costs incurred in providing that particular good or service.
- (3) A ***competitive advantage*** is an advantage a business entity conducting a significant business activity has over a private sector business because the council owns the activity.
- (4) For example, a competitive advantage includes—
  - (a) a financial advantage; and
  - (b) a procedural advantage; and
  - (c) a regulatory advantage.

*Examples of a financial advantage—*

A business entity conducting a significant business activity has a financial advantage if the business entity—

- is exempt from paying a local government tax a private sector business must pay; or

[s 20]

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- is charged a different government tax from the government tax that a private sector business is charged; or
- is charged a lower rate of interest on a bank loan because the State guarantees the loan.

*Examples of a procedural advantage—*

A business entity conducting a significant business activity has a procedural advantage if the business entity—

- does not have to supply the same amount of information under a government approval process as a private sector business; or
- can access more information for a government approval process than a private sector business can access.

*Example of a regulatory advantage—*

A business entity conducting a significant business activity has a regulatory advantage if the business entity is exempt (completely or partly) from a government approval process a private sector business must follow.

- (5) A ***competitive disadvantage*** is a disadvantage a business entity conducting a significant business activity suffers over a private sector business because the council owns the activity.
- (6) For example, a competitive disadvantage includes a community service obligation.

## **20 Cost of community service obligations**

- (1) This section applies when the council is deciding what to charge for goods or services provided in conducting a significant business activity.
- (2) The cost of carrying out community service obligations, less any revenue received from performing the obligations, must be treated as revenue for the significant business activity.

## **21 Community service obligations**

A ***community service obligation*** is an obligation the council imposes on a business entity to do something that is not in the commercial interests of the business entity to do.

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*Example of a community service obligation—*

giving a price concession to a particular group of customers, including pensioners, seniors and students

## **22 Taking account of government taxes**

- (1) A commercialised business unit that is applying full cost pricing to a significant business activity must comply with the tax equivalents manual.
- (2) The *tax equivalents manual* is a manual, issued by the Treasurer, about how a local government must account for tax equivalents.
- (3) A *tax equivalent* is an amount that is the equivalent to the advantage gained by a local government by not paying a tax the local government would be liable to pay if it were a private sector business.
- (4) A *tax* includes any charge, duty, fee, levy or rate payable under an Act of the Commonwealth or the State, including the Act.
- (5) The tax equivalents manual may, for example, provide for—
  - (a) lodging tax returns; and
  - (b) assessing tax returns; and
  - (c) rulings, including the application of rulings about taxes imposed under a Commonwealth Act; and
  - (d) objections and appeals against assessments and rulings; and
  - (e) the appointment of tax assessors.
- (6) The Treasurer must table a copy of each amendment of the tax equivalents manual in the Legislative Assembly within 14 sitting days after the amendment is made.

## **Division 4                      Commercialisation**

### **23            What div 4 is about**

- (1) This division is about the commercialisation of a significant business activity by the council.
- (2) This involves the council ensuring the significant business activity is conducted by a commercial business unit within the council, as required under this division.

### **24            Commercial business unit**

- (1) As part of the commercialisation of a significant business activity, the council must—
  - (a) if the activity is being conducted by a business unit—convert the business unit to a commercial business unit; or
  - (b) if the activity is not being conducted by a business unit—create a commercial business unit and transfer the activity to the commercial business unit.
- (2) A ***commercial business unit*** is a business unit that conducts business in accordance with the key principles of commercialisation.

### **25            What are the *key principles of commercialisation***

The ***key principles of commercialisation***, for a commercial business unit, are—

- (a) clarity of objectives, namely that the council—
  - (i) gives the unit clear and non-conflicting objectives; and
  - (ii) sets specific financial and non-financial performance targets for the significant business activity; and

- (iii) keeps activities relating to council policy formulation, or that are of a regulatory nature, separate from the unit, wherever possible; and
  - (iv) clearly identifies the nature and extent of the community service obligations the unit must perform; and
  - (v) sets performance targets for the unit's community service obligations; and
  - (vi) separately costs the unit's community service obligations; and
  - (vii) appropriately compensates the unit for performing the community service obligations, and discloses details of the compensation to the public; and
- (b) management autonomy and authority, namely that—
- (i) the unit remains at arms-length to the council in day-to-day operations; and
  - (ii) the council gives the unit autonomy in day-to-day operations, subject to overarching monitoring; and
  - (iii) any directions the council gives the unit to achieve non-commercial objectives are given in an open way; and
  - (iv) the unit uses its best endeavours to ensure the unit meets its performance targets; and
- (c) accountability for performance, namely that—
- (i) the council monitors the unit's performance against the performance targets; and
  - (ii) the unit must generally be subject to the management framework of the council; and
  - (iii) the unit complies with all laws the council must comply with; and
- (d) competitive neutrality, namely that the unit complies with the competitive neutrality principle by—

[s 26]

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- (i) removing any competitive advantage or competitive disadvantage, wherever possible and appropriate; and
- (ii) promoting efficiency of the use of resources to ensure markets are not unnecessarily distorted.

## **26 Converting a business unit to a commercial business unit**

- (1) The council must make the decision to convert a business unit to a commercial business unit by resolution.
- (2) The council converts a business unit to a commercial business unit by changing the way in which the business unit is conducted to agree with the key principles of commercialisation.

## **27 Creating a commercial business unit**

- (1) The council must make the decision to create a commercial business unit by resolution.
- (2) The decision may be made in the same resolution the council makes to commercialise a significant business activity.
- (3) A commercial business unit may be created to conduct more than 1 significant business activity.

## **Division 5 Provisions for code of competitive conduct**

### **28 Building certifying activity—Act, s 51(4)(b)**

Any business activity conducted by the council is prescribed for section 51(4)(b) of the Act.

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## **29 Prescribed business activities—Act, s 51(7)**

- (1) A business activity is prescribed for section 51(7) of the Act for a financial year if the amount of current expenditure for the business activity for the previous financial year is \$300000 or more.
- (2) The amount of *current expenditure* for a business activity for a financial year is the total of the following amounts spent in conducting the activity for the year—
  - (a) operational costs;
  - (b) administrative and overhead costs;
  - (c) cost of resources;
  - (d) depreciation.

## **Division 6 Competitive neutrality complaints**

### **Subdivision 1 Introduction**

#### **30 What div 6 is about**

This division prescribes, for section 52(4) of the Act, the process for resolving competitive neutrality complaints.

### **Subdivision 2 Complaint process**

#### **31 Application of sdiv 2**

This subdivision applies to a business activity, conducted by a business entity, to which the competitive neutrality principle applies.

[s 32]

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### **32 Minimum requirements for complaint process**

- (1) This section sets out the minimum requirements for the council's process for resolving a competitive neutrality complaint in relation to the business entity.
- (2) The council must ensure the process deals with the following—
  - (a) resolving a matter before making a complaint, including, for example, the process for—
    - (i) a person to raise concerns about alleged failures of the business entity to comply with the competitive neutrality principle in conducting the business activity; and
    - (ii) clarifying the matter;
  - (b) recording all complaints, decisions and recommendations.

### **33 Making a complaint**

- (1) A person who wants to make a competitive neutrality complaint must make the complaint in writing to the council or the QCA.
- (2) The complaint must contain—
  - (a) details of the business entity's alleged failure to comply with the competitive neutrality principle in conducting the business activity the subject of the competitive neutrality complaint; and
  - (b) information that shows—
    - (i) the person (the *complainant*) is, or could be, in competition with the business entity; and
    - (ii) how the complainant is, or may be, adversely affected by the business entity's alleged failure; and



(iii) the complainant has made a genuine attempt to resolve the complaint through the process mentioned in section 32(2)(a).

- (3) If a person makes a competitive neutrality complaint to the council, the council must give the complaint to the QCA as soon as is practicable.
- (4) The making of a complaint does not stop the business entity from conducting the business activity.

### **34 QCA must investigate and report on complaint**

The QCA must, subject to this part, investigate and report on a competitive neutrality complaint received under section 33.

### **35 QCA requiring further information**

- (1) The QCA may, by notice given to a complainant, require the complainant to give the QCA further information about the complaint (the *additional information*) within the reasonable period stated in the notice (the *stated period*).
- (2) However, the QCA may only require additional information that is necessary and reasonable to help the QCA to decide whether or not to investigate the complaint.
- (3) The QCA may refuse to investigate a complaint if the complainant fails, without reasonable excuse, to give the QCA the additional information within the stated period.

### **36 QCA refusing to investigate**

- (1) The QCA may refuse to investigate a competitive neutrality complaint if the QCA reasonably believes that—
  - (a) the complainant has not shown that the complainant made a genuine attempt to resolve the matter through the process mentioned in section 32(2)(a); or
  - (b) the complainant is not, or will not be, in competition with the council, after the QCA considers—

[s 37]

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- (i) whether the complainant is, or will be, supplying goods or services that are similar to the goods or services the business activity supplies; and
    - (ii) the laws relating to competition that apply to the business activity; or
  - (c) the complainant is not, or is unlikely to be, adversely affected if the business activity is not conducted in a way that complies with the competitive neutrality principle; or
  - (d) the complaint is frivolous or vexatious.
- (2) If the QCA refuses to investigate the complaint, the QCA must give each of the following a refusal notice within 14 days—
- (a) the complainant;
  - (b) the council.
- (3) A *refusal notice* is a document that states—
- (a) that the QCA has refused to investigate the complaint; and
  - (b) the reasons for the refusal.

### **37 Notice of intention to investigate**

- (1) Before the QCA starts to investigate a competitive neutrality complaint, the QCA must give an investigation notice to—
- (a) the complainant; and
  - (b) the council; and
  - (c) if a corporatised business entity is conducting the business activity—the corporatised business entity.
- (2) The QCA may also give an investigation notice to another person the QCA considers appropriate.
- (3) An *investigation notice* is a document that—

- (a) states the QCA's intention to investigate a competitive neutrality complaint; and
- (b) states the subject matter of the complaint, or has a copy of the complaint attached; and
- (c) invites the complainant to make written submissions or, if the QCA approves, oral submissions about the matter; and
- (d) states a reasonable period within which the submissions may be made; and
- (e) states the QCA's address.

### **38 Investigation by QCA**

Part 6 of the QCA Act applies to the QCA's investigation of a competitive neutrality complaint with the following changes—

- (a) a reference to a government agency is taken to include a reference to a business entity;
- (b) a reference to an investigation under part 4 is taken to be a reference to an investigation of a competitive neutrality complaint.

### **39 Matters QCA must consider when investigating**

- (1) The QCA must consider the competitive neutrality criteria when investigating a competitive neutrality complaint.
- (2) The following matters are the *competitive neutrality criteria*—
  - (a) the need to ensure the competitive neutrality principle is complied with;
  - (b) any council policies about the competitive neutrality principle, including, for example—

[s 40]

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- (i) directions the council gives to the business entity conducting the business activity the subject of the competitive neutrality complaint; and
  - (ii) arrangements between the council and the business entity about a competitive advantage gained, or competitive disadvantage suffered, by the business entity; and
  - (iii) social welfare and equity considerations, including, for example, community service obligations, and the availability of goods and services to consumers; and
  - (iv) policies on economic and regional development issues, including, for example, policies on employment and investment growth;
- (c) council policies, or a law, about—
    - (i) ecologically sustainable development; or
    - (ii) industrial relations; or
    - (iii) occupational health and safety;
  - (d) the need to promote competition;
  - (e) the need to allocate resources efficiently.
- (3) Subsection (1) does not limit the matters the QCA may consider when investigating a competitive neutrality complaint.

#### **40 QCA's report on investigation**

- (1) The QCA must prepare a report on the results of the QCA's investigation of a competitive neutrality complaint, and give it to—
- (a) the council; and
  - (b) if a corporatised business entity is conducting the business activity—the corporatised business entity.

- 
- (2) The report must state whether or not the QCA considers the complaint has been substantiated.
  - (3) If the QCA decides the business entity has a competitive advantage, the report must include—
    - (a) recommendations on how the business entity can conduct the business activity in a way that complies with the competitive neutrality principle; and
    - (b) the reasons for the recommendations; and
    - (c) for a complaint about a building certifying activity—comments on how carrying out the statutory building functions has resulted in a competitive advantage.
  - (4) The *statutory building functions* are the building functions under the Building Act or Planning Act that—
    - (a) only a local government can provide; and
    - (b) a building certifier under the Building Act relies on.

*Examples—*

- providing site or town planning information to a building certifier
  - receiving and processing documents from a building certifier
- (5) If the QCA decides the business entity suffers a competitive disadvantage, the report must include—
    - (a) recommendations on how the business entity can overcome the competitive disadvantage; and
    - (b) the reasons for the recommendations; and
    - (c) comments about the competitive disadvantage, including comments about the effect of the disadvantage on the business entity.

## **41 Public access to report**

The council must ensure the public can inspect a copy of the report at the council's public office as soon as practicable after the QCA gives the council the report.

[s 42]

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## **42 Information to persons given an investigation notice**

The QCA must give the following documents to any other person to whom the QCA gave an investigation notice—

- (a) a copy of the recommendations in the report;
- (b) notice that the person may inspect the report, including recommendations, at the council's public office.

## **43 Council response to QCA's report**

- (1) The council must decide, by resolution, whether to implement the recommendations in the QCA's report.
- (2) The resolution must state the reasons for the council's decision.
- (3) The council must make the resolution—
  - (a) within 1 month after the QCA gives the report to the council; or
  - (b) if the council does not ordinarily meet within that month—at the first meeting of the council after that month.
- (4) The council must, within 7 days after making the resolution, give notice of the resolution to—
  - (a) the complainant; and
  - (b) the QCA; and
  - (c) if a corporatised business entity is conducting the business activity—the corporatised business entity.
- (5) If a corporatised business entity is conducting the business activity, the corporatised business entity must implement the recommendations as soon as practicable.

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## **Subdivision 3      Miscellaneous provision**

### **44      Register**

- (1) The council must establish a register of business activities to which the competitive neutrality principle applies.
- (2) The register must state the following—
  - (a) business activities to which the council has applied the competitive neutrality principle, and the date from which the competitive neutrality principle applied to each business activity;
  - (b) business activities to which the code of competitive conduct applies, and the date from which the code applied to each business activity;
  - (c) a list of—
    - (i) current investigation notices for competitive neutrality complaints; and
    - (ii) the business activities to which the complaints relate; and
    - (iii) the council's responses to the QCA's recommendations on the complaints.

## **Part 3                      Roads and other infrastructure**

### **Division 1              Roads**

#### **45      Prescribed particulars for register of roads—Act, s 81**

- (1) For section 81(1)(b)(iii) of the Act, the other particulars prescribed are—

[s 45]

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- (a) the length of every road, including an unformed road, in Brisbane; and
  - (b) if a road is formed, gravelled pavement or sealed pavement—the length and width of the formed, gravelled pavement or sealed pavement part of the road; and
  - (c) if a road consists of a through road and an adjacent road—the width of each as if each were a separate road.
- (2) For subsection (1)—
- (a) a length must be measured in kilometres and a width must be measured in metres; and
  - (b) the width of a divided road is the total width of all sections of the divided road that are formed, gravelled pavement or sealed pavement.

- (3) In this section—

***formed***, for a road, means a road, other than a gravelled pavement or sealed pavement road, formed so that stormwater drains from the road.

***gravelled pavement***, for a road, means a road surfaced with gravel, limestone or rubble and constructed by the use of a mechanical compaction process.

***sealed pavement***, for a road, means a road with a surface of asphalt, bitumen, concrete or pavers.

***unformed***, for a road, means a road or track that—

- (a) is not a formed, gravelled pavement or sealed pavement road; but
- (b) is open to, and used by, the public.



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## Division 2                      Malls

### 46            **Managing, promoting and using malls**

For section 88(3) of the Act, this division prescribes particular matters connected with managing, promoting or using a mall, namely matters connected with vehicles and traffic on malls.

### 47            **Restricted traffic on malls**

- (1) The council may, by public notice (a *mall traffic restriction*), restrict—
  - (a) the types of vehicles (including recreational vehicles) that may be on any part of a mall; and
  - (b) the times that particular types of vehicles may be on any part of a mall.
- (2) The public notice must be published—
  - (a) in a newspaper that circulates throughout Brisbane; and
  - (b) on the council's website.
- (3) Also, the public notice—
  - (a) may state the types of vehicles to which it relates by reference to any of the following—
    - (i) vehicles generally;
    - (ii) vehicles of a particular class or similar description;
    - (iii) vehicles used for a particular purpose or in particular circumstances;
    - (iv) vehicles used by a particular person or class of person; and
  - (b) may state that times differ according to different types of vehicles; and
  - (c) may state the parts of the mall that a type of vehicle may not be on; and

[s 48]

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- (d) must state the day on which the restrictions take effect.
- (4) The council may vary or revoke a public notice made under subsection (1) by publishing another public notice.
- (5) While the restriction is in force, the council must display and maintain a notice on the mall that—
  - (a) is easily visible to—
    - (i) if the restriction applies to only part of the mall—persons entering the part of the mall where the restriction applies; or
    - (ii) if the restriction applies to all of the mall—persons entering the mall from a road; and

*Note—*

To comply with the requirement under paragraph (a) the council may need to display more than 1 notice on a mall (at each entrance to the mall, for example).

- (b) generally indicates that traffic restrictions apply (including by indicating the types of vehicles affected by the restriction); and

*Examples—*



- (c) states that further information about the restriction may be viewed on the council's website.

## **48 Offence to contravene mall traffic restriction**

- (1) This section applies to a mall if a mall traffic restriction restricts—

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- (a) a type of vehicle that may enter or be on any part of the mall; or
  - (b) the times that a particular type of vehicle may enter or be on any part of the mall.
- (2) A person must not contravene the restriction unless the person has a lawful excuse.
- Maximum penalty—20 penalty units.
- (3) It is a lawful excuse if, at the time of the contravention, the person was complying with a mall traffic permit.

#### **49 Permits for vehicles on malls**

- (1) The council may, in writing, permit a vehicle (a *mall traffic permit*) to be on any part of a mall for the purposes and period, and subject to the conditions (if any), stated in the permit.
- (2) A mall traffic permit must state the date on which it takes effect.
- (3) The council may revoke a mall traffic permit by giving written notice of the revocation to the holder of the permit.

#### **50 Removal or moving of vehicles on malls**

- (1) This section applies if an authorised person is satisfied, on reasonable grounds, that—
  - (a) a vehicle (including a recreational vehicle) has been—
    - (i) abandoned on any part of a mall; or
    - (ii) left unattended in a mall (whether temporarily or otherwise) in circumstances in which its presence is an obstruction or contravenes a mall traffic restriction; and
  - (b) the person who is or appears to be in control of the vehicle—

[s 51]

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- (i) can not readily be located after the authorised person has made reasonable attempts to do so; or
  - (ii) has failed to immediately remove the vehicle when required by the authorised person to do so.
- (2) For subsection (1), the presence of a vehicle is an **obstruction** if it is preventing, hindering or obstructing, or is likely to prevent, hinder or obstruct, the use of the mall or a part of the mall for a lawful purpose.
- (3) The authorised person may—
  - (a) remove the vehicle from the mall and keep it at a safe place; or
  - (b) move the vehicle, with the consent of the person who is or appears to be in control of the vehicle, to another place.

*Example of move the vehicle for paragraph (b)—*

shunting or bumping the vehicle using a modified vehicle that has a padded attachment at the front

## **51 Notice to operator if vehicle removed from mall**

- (1) Within 14 days after the removal of a vehicle from a mall under section 50(3)(a), the chief executive officer must, unless possession of the vehicle has already been delivered under section 52, give written notice of the vehicle's removal.
- (2) The notice must be given—
  - (a) if the registered operator of the vehicle can be identified—personally or by post to the registered operator; or
  - (b) if the registered operator of the vehicle can not be identified—by advertising it in a newspaper circulating in Brisbane.
- (3) However, subsection (2)(b) does not apply if the cost of giving the notice is more than the value of the vehicle.
- (4) The notice must state each of the following—

- (a) a description of the vehicle;
- (b) the date and time the vehicle was removed;
- (c) the place from which the vehicle was removed;
- (d) where the vehicle is kept;
- (e) how the registered operator or another person entitled to possession of the vehicle may obtain possession of it;
- (f) that the vehicle may be sold if the registered operator or another person entitled to possession of the vehicle does not obtain possession of it within 28 days after the date the notice is given.

## 52 Requirements for return of vehicle

- (1) The chief executive officer may deliver possession of the vehicle to an entitled person only if—
  - (a) the person has applied in writing to the chief executive officer for the release of the vehicle; and
  - (b) the applicant has provided proof, to the chief executive officer's satisfaction—
    - (i) that the applicant is the operator, or is entitled to possession, of the vehicle; or
    - (ii) if the applicant is acting on behalf of the operator—of the applicant's authority to act on behalf of the operator; and
  - (c) the applicant has paid all reasonable expenses incurred by the council for—
    - (i) removing and keeping the vehicle; and
    - (ii) giving a notice, under section 51, about the vehicle; and
  - (d) the applicant has signed a receipt for the delivery of the vehicle.
- (2) An *entitled person* for a vehicle is—

[s 53]

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- (a) the registered operator of the vehicle; or
  - (b) a person acting on behalf of the registered operator; or
  - (c) a person claiming a right to possession of the vehicle.
- (3) If the chief executive officer refuses the application, the chief executive officer must give the applicant written notice stating the following—
- (a) the decision;
  - (b) the reasons for the decision;
  - (c) that the applicant may appeal against the decision to a Magistrates Court within 28 days;
  - (d) how the person may appeal against the decision.

### **53 Sale of vehicle removed from mall**

- (1) This section applies if—
- (a) the chief executive officer has not delivered possession of a vehicle under section 52 within 28 days after the date notice is given under section 51; or
  - (b) all of the following apply—
    - (i) the chief executive officer has not delivered possession of a vehicle under section 52;
    - (ii) an application has been made under section 52 for the return of the vehicle;
    - (iii) the chief executive officer has refused the application;
    - (iv) either—
      - (A) the period allowed for an appeal against the decision has ended; or
      - (B) an appeal against the decision has been decided and the Magistrates Court has confirmed the decision.

- (2) The chief executive officer may, by notice published in a newspaper circulating in Brisbane, advertise that the council will offer the vehicle for sale by public auction on the day and at the time and place stated in the advertisement.
- (3) The day stated in the advertisement must not be earlier than 14 days after the day the notice is advertised.
- (4) The council may offer the vehicle for sale by public auction on the day and at the time and place stated in the advertisement.
- (5) If no offer for the vehicle is received at the auction, the council may dispose of the vehicle in the way and on the conditions decided by the chief executive officer.
- (6) The proceeds of the sale or disposal of the vehicle must be applied in the same way as stated in section 42A of the Act for the sale or disposal of personal property seized under a local law.
- (7) The council may deal with any goods, equipment or thing in or on the vehicle when it is removed in the same way as the council may deal with the vehicle under this section.
- (8) However, any perishable goods in or on the vehicle when it is removed must be disposed of in the way decided by the chief executive officer.
- (9) Any proceeds of the disposal under subsection (7) must be applied in accordance with subsection (6).

## **54 Who may appeal**

A person who is dissatisfied with a decision of the chief executive officer to refuse to deliver possession of a vehicle to the person under section 52 may appeal against the decision to a Magistrates Court.

## **55 How to start appeal**

- (1) An appeal is started by—

[s 56]

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- (a) filing notice of appeal with the clerk of the court of the Magistrates Court at Brisbane; and
  - (b) giving a copy of the notice to the council within 7 days after the notice is filed.
- (2) The notice of appeal must be filed within 28 days after the appellant receives notice of the decision.
- (3) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

## **56 Stay of decision**

- (1) The Magistrates Court may grant a stay of the decision appealed against to secure the effectiveness of the appeal.
- (2) The stay—
  - (a) may be given on the conditions the court considers appropriate; and
  - (b) operates for the period fixed by the court; and
  - (c) may be revoked or amended by the court.
- (3) The period of the stay must not extend past the time when the court decides the appeal.
- (4) The appeal affects the decision, or carrying out of the decision, only if the decision is stayed.

## **57 Powers of Magistrates Court**

- (1) In deciding the appeal, the Magistrates Court—
  - (a) has the same powers as the chief executive officer; and
  - (b) is not bound by the rules of evidence; and
  - (c) must comply with natural justice.
- (2) The appeal is by way of rehearing unaffected by the decision appealed against on the material before the chief executive officer and any further evidence allowed by the court.



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- (3) The court may—
- (a) confirm the decision; or
  - (b) set aside the decision and substitute another decision; or
  - (c) set aside the decision and return the issue to the chief executive officer with the directions the court considers appropriate.

## **58 Appeal to District Court**

An appeal to the District Court from a decision of the Magistrates Court may be made only on a question of law.

## **Division 3 Marine and aquatic matters**

### **59 Harbours, jetties, breakwaters and ramps**

- (1) The council may construct, maintain, manage and regulate the use of—
  - (a) harbours for small vessels in or over tidal waters; and
  - (b) jetties, breakwaters and ramps in or over tidal waters.
- (2) The council may exercise powers under subsection (1) for a harbour or proposed harbour even if the waters of the harbour are inside the limits of a port within the meaning of the Transport Infrastructure Act.
- (3) The council may occupy and use foreshore, tidal land or tidal waters to undertake work in exercising the powers under subsection (1).
- (4) While the council occupies or uses foreshore, tidal land or tidal waters, the foreshore, land or waters are taken to be within Brisbane.

## 60 Canals

- (1) This section is about canals within the meaning of the *Coastal Protection and Management Act 1995*, section 9.
- (2) If a local law affects the owner of a structure in a canal, the **owner** of the structure is—
  - (a) the holder of the development permit under the Planning Act to build the structure; or
  - (b) the owner of the land—
    - (i) that receives the benefit of the structure; or
    - (ii) to which the structure is connected.

## 61 The foreshore

- (1) The Governor in Council may, by gazette notice, place a foreshore that is adjoining Brisbane under the control of the council.
- (2) While the foreshore is under the council's control the foreshore is taken to be part of Brisbane.

## 62 Bathing reserves

- (1) The Governor in Council may, by gazette notice, place the following under the control of the council as a bathing reserve—
  - (a) a part of a seashore;
  - (b) land under the sea that is adjacent to the part of a seashore and seawards for a distance of not more than 1km beyond low-water mark at ordinary spring tides;
  - (c) sea above the part of a seashore and land.
- (2) The **seashore** is—
  - (a) the foreshore; or
  - (b) State land that—

- 
- (i) is above the high-water mark at ordinary spring tides; and
  - (ii) is ordinarily covered by sand or shingle; and
  - (iii) is not subject to a licence, permit or other authority granted by the State under an Act.
- (3) While the bathing reserve is under the council's control the bathing reserve is taken to be part of Brisbane.

## Division 4            Other matters

### 63        Public thoroughfare easements

- (1) This section is about land within Brisbane that is subject to a public thoroughfare easement.
- (2) The council has control of the land, subject to the provisions of the instrument that created the easement.
- (3) ***Control of the land*** includes the right to take all necessary steps for—
  - (a) construction on, maintenance of or improvement of the land; and
  - (b) regulation of the use of the land.
- (4) The council is responsible for maintaining the land.
- (5) The owner of the land is not required, and can not be required, to maintain, or to contribute to the maintenance of, any part of the land.
- (6) The ***owner*** of the land is—
  - (a) if the land is land granted in trust under the Land Act—the trustee of the land; or
  - (b) if the land is non-freehold land under the Land Act—the lessee or licensee of the land; or
  - (c) if the land is a lot under the Land Title Act—the registered owner of the lot.

[s 64]

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- (7) The owner of the land is not, and can not be made, civilly liable for an act done, or omission made, honestly and without negligence in relation to the land.
- (8) When deciding what rights and liabilities attach because of something that happened on the land, the land is taken to be a road under the council's control.

## **64 Boundary works**

- (1) This section is about a road or other work that is to be, or has been, built—
  - (a) along the boundary between Brisbane and another local government area; and
  - (b) partly in Brisbane and the other area.
- (2) The cost of planning, constructing, maintaining and managing the road or other work is the joint responsibility of the council and the other local government.
- (3) The council must enter into the arrangements that are necessary to perform that responsibility.

# **Chapter 4 Rates and charges**

## **Part 1 Preliminary**

### **65 What is the *value* of land**

The *value*, of land for a financial year, is its value under the Land Valuation Act when a liability for payment of rates or charges for the land arises for the financial year.

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## Part 2 Land exempt from rating

### 66 Land that is exempt from rating—Act, s 95

For section 95(3)(f)(i) of the Act, land owned or held by the council is exempted from rating unless the land is leased by the council to someone other than another local government.

## Part 3 Value of land used for rates

### 67 Rateable value of land

- (1) The council must calculate the rates for land by using the rateable value of the land.
- (2) The *rateable value* of land for a financial year is the value of the land—
  - (a) for the financial year; or
  - (b) as averaged over a number of financial years.
- (3) The council may use the value of the land averaged over a number of financial years only if the council decides, by resolution, to do so.
- (4) The resolution must state whether the council will use, for deciding the rateable value of the land—
  - (a) the 2-year averaged value of the land; or
  - (b) the 3-year averaged value of the land.
- (5) However, if the value of the land averaged over a number of financial years is more than the value of the land for the financial year, the rates must be calculated using the value of the land for the financial year.

[s 68]

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## **68 Working out the 2-year averaged value**

- (1) The **2-year averaged value** of land for a financial year is the amount that equals—
- (a) if the land had a value for the previous financial year—
- the value of the land for the previous financial year
  - plus the value of the land for the financial year
  - divided by 2; or
- (b) if the land did not have a value for the previous financial year—
- the value of the land for the financial year
  - multiplied by the 2-year averaging number.
- (2) The **2-year averaging number**, for a financial year, is the number calculated to 2 decimal places by using the formula—

$$\frac{T}{2V}$$

where—

*T* is the total of the values of all rateable land in Brisbane for the financial year and the previous financial year.

*V* is the value of all rateable land in Brisbane for the financial year.

## **69 Working out the 3-year averaged value**

- (1) The **3-year averaged value** of land for a financial year is the amount that equals—
- (a) if the land had a value for the 2 previous financial years—
- the sum of the value of the land for each of the 2 previous years
  - plus the value of the land for the financial year

- 
- divided by 3; or
- (b) if the land did not have a value for the 2 previous financial years—
- the value of the land for the financial year
  - multiplied by the 3-year averaging number.
- (2) The **3-year averaging number**, for a financial year, is the number calculated to 2 decimal places by using the formula—

$$\frac{T}{3V}$$

where—

*T* is the total of the values of all rateable land in Brisbane for the financial year and the previous 2 financial years.

*V* is the value of all rateable land in Brisbane for the financial year.

## Part 4 Minimum general rates

### 70 Minimum general rates for land generally

- (1) The council may fix a minimum amount of general rates.
- (2) The council may identify parcels of rateable land to which a minimum amount of general rates applies in any way the council considers appropriate.
- (3) However, the council must not levy minimum general rates for a parcel of land if—
  - (a) the Land Valuation Act, chapter 2, part 2, division 5, subdivision 3, applies to the parcel of land; and

*Editor's note—*

[s 71]

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Land Valuation Act, chapter 2, part 2, division 5, subdivision 3  
(Discounting for subdivided land not yet developed (non-Land  
Act rental))

- (b) the discounted valuation period for the parcel of land has not ended under that subdivision.
- (4) Generally, the same minimum amount of general rates must apply to all rateable land in Brisbane.
- (5) However, the council may fix a different minimum amount of general rates only for—
  - (a) if there are different rating categories of rateable land for Brisbane, each different rating category; or
  - (b) timeshare property; or
  - (c) any of the following—
    - (i) a mining lease granted for mining for minerals over land that is not larger than 2ha;
    - (ii) a mining lease granted for a purpose that is associated with mining for minerals over land that is not larger than 4ha; or
  - (d) land that is subject to a mining claim, subject to section 72.
- (6) For subsection (5)(a), if the council fixes a different minimum amount of general rates for different rating categories, the same minimum amount of general rates must apply to all rateable land belonging to a particular rating category.

## **71 Minimum general rates on timeshare property**

- (1) This section applies to the council for fixing a minimum amount of general rates on—
  - (a) land where there is a structure wholly or partially subject to a timeshare scheme; or
  - (b) a lot included in a community titles scheme under the *Body Corporate and Community Management Act 1997*



where there is a structure wholly or partially subject to a timeshare scheme; or

- (c) a lot within the meaning of a community titles Act other than the *Body Corporate and Community Management Act 1997* where there is a structure wholly or partially subject to a timeshare scheme.
- (2) The council may decide the minimum amount of general rates is to be worked out using the formula—

$$MA = L \times RU$$

where—

*MA* is the minimum amount.

*L* is the minimum amount of general rates that would, other than for this section, be payable for the land or lot.

*RU* is the number of units of the structure that are subject to the timeshare scheme and are available at any time for separate exclusive occupation.

## **72 Value of mining claim for fixing minimum general rates**

For fixing a minimum amount of general rates for land subject to a mining claim, the value of the mining claim is—

- (a) for a mining claim over land that is 900m<sup>2</sup> or less—\$150; or
- (b) for a mining claim over land that is larger than 900m<sup>2</sup>—\$450.

## Part 5 Differential general rates

### Division 1 Introduction

#### 73 Differential general rates

- (1) The council may levy general rates that differ for different categories of rateable land in Brisbane.
- (2) These rates are called *differential general rates*.
- (3) For example, the council may decide the amount of the general rates on a parcel of residential land will be more than the general rates on the same size parcel of rural land.
- (4) However, the differential general rates for a category of rateable land may be the same as the differential general rates for another category of rateable land.
- (5) If the council makes and levies a differential general rate for rateable land for a financial year, the council must not make and levy a general rate for the land for the year.
- (6) A differential general rate may be made and levied on a lot under a community titles Act as if it were a parcel of rateable land.

#### 74 Categorisation of land for differential general rates

- (1) Before the council levies differential general rates, it must decide the different categories (each a *rating category*) of rateable land in Brisbane.
- (2) The council must, by resolution, make the decision at the council's budget meeting.
- (3) The resolution must state—
  - (a) the rating categories of rateable land in Brisbane; and
  - (b) a description of each of the rating categories.

*Example—*

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A resolution may state that the rating categories, and a description of each of the rating categories, are as follows—

- (a) residential land—land that is used for residential purposes in particular urban centres, rural localities, park residential estates and coastal villages;
  - (b) commercial and industrial land—land that is used solely for commerce or industry in particular urban centres and rural localities, other than land used for manufacturing sugar or another rural production industry;
  - (c) grazing and livestock land—land that is used, for commercial purposes, for grazing and livestock;
  - (d) rural land—
    - (i) land that is not in an urban centre or locality;
    - (ii) land that is not used for grazing and livestock; or
    - (iii) land that is not sugar cane land or sugar milling land;
  - (e) other land—any other type of land.
- (4) After the rating categories and descriptions have been decided, the council must identify the rating category to which each parcel of rateable land in Brisbane belongs.
- (5) The council may do so in any way it considers appropriate.
- (6) The fact that some parcels of rateable land are inadvertently not categorised does not stop differential general rates being levied on rateable land that has been categorised.

## **75 Later categorisation**

- (1) This section applies if—
- (a) the council discovers that land has inadvertently not been categorised; or
  - (b) land becomes rateable land; or
  - (c) the council considers that the rating category of a parcel of land should be changed, in view of the description of each rating category; or
  - (d) 2 or more parcels of rateable land are amalgamated into a single parcel of rateable land.

[s 76]

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- (2) The council must decide what rating category the land should be in.
- (3) The decision takes effect—
  - (a) for a decision because of subsection (1)(a)—from the start of the relevant financial year; or
  - (b) for a decision because of subsection (1)(b)—from the day when the land became rateable land; or
  - (c) for a decision because of subsection (1)(c)—from the day when the decision is made; or
  - (d) for a decision because of subsection (1)(d)—from the day when the survey plan of amalgamation is registered by the registrar of titles.

## **Division 2                    Entering land to categorise land**

### **76            Appointing categorisation officer**

- (1) The chief executive officer may appoint a qualified person as a categorisation officer for this division.
- (2) For subsection (1), a person is qualified if the person—
  - (a) has the competencies the chief executive officer considers are necessary to perform the functions that are required to be performed by the person under this division; and
  - (b) is authorised by the council for this division.
- (3) A categorisation officer's appointment is subject to—
  - (a) section 78; and
  - (b) the conditions stated in the document that appoints the categorisation officer.

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## 77 Identity card for categorisation officer

- (1) The chief executive officer must give each categorisation officer an identity card.
- (2) A person who stops being a categorisation officer must return the person's identity card to the chief executive officer, within 21 days after stopping being a categorisation officer, unless the person has a reasonable excuse.

Maximum penalty for subsection (2)—10 penalty units.

## 78 Exercise of power of entry

- (1) A categorisation officer may enter private property under this division only—
  - (a) with the permission of the occupier of the property; or
  - (b) to ask the occupier of the property for permission to stay on the property to exercise the powers under this division; or
  - (c) with, and in accordance with, a warrant.
- (2) Subject to subsection (6), section 118, other than subsections (2)(b) and (4)(a)(ii), of the Act (the *applied provision*) applies to a categorisation officer for entering private property under subsection (1)(a) or (b).
- (3) Subject to subsections (4) and (6), sections 119, other than subsections (5) and (6)(a), and 120 of the Act (also the *applied provisions*) apply to a categorisation officer for entering private property under subsection (1)(c).
- (4) However, a magistrate may issue a warrant for entering private property under this division only if—
  - (a) the magistrate is satisfied—
    - (i) the warrant is sought for entering the property for a proper purpose; and
    - (ii) the occupier of the property has unreasonably refused a request for permission to enter the

[s 78]

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property under section 118(2) of the Act as applied under subsection (2); and

- (b) the warrant states the purpose for which it is issued.
- (5) For subsection (4)(a)(i), a proper purpose is to enable any of the following to happen—
- (a) the rating categories into which rateable land in Brisbane is to be categorised to be decided;
  - (b) a description for each of the rating categories to be decided;
  - (c) the rating category for a parcel of rateable land to be identified;
  - (d) an objection against the categorisation of rateable land to be decided.
- (6) Subject to subsection (7), sections 115, 125 and 126 of the Act (also the *applied provisions*) apply to a categorisation officer for entering private property under this division.
- (7) The applied provisions apply as if—
- (a) a reference in the applied provisions to an authorised person were a reference to a categorisation officer; and
  - (b) a reference in the applied provisions, other than section 126 of the Act, to a local government related law were a reference to this division; and
  - (c) a reference in the applied provisions to the powers under the Act were a reference to the powers under this division; and
  - (d) a reference in the applied provisions to the powers or action under chapter 5, part 2, division 1 of the Act were a reference to the powers or action under this division.

*Editor's note—*

Sections 115 (Producing authorised person's identity card), 118 (Entering private property with, and in accordance with, the occupier's permission), 119 (Entering private property with, and in accordance with, a warrant), 120 (Warrants—applications made electronically),

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125 (Authorised person to give notice of damage) and 126  
(Compensation for damage or loss caused after entry) of the Act

## **79 End of appointment of categorisation officer**

- (1) A person stops being a categorisation officer—
  - (a) at the end of the term of appointment stated in the document that appointed the person; or
  - (b) if the person gives the council a signed notice of resignation; or
  - (c) if it is a condition of the person's appointment that the person hold another position at the same time—if the person stops holding the other position.
- (2) This section does not limit the ways in which a categorisation officer's appointment ends.

## **80 Entering private property with written notice**

- (1) For the purpose of deciding an appeal relating to the categorisation of land, a Land Court representative may, after giving the occupier of a private property at least 14 days written notice, enter the property, other than a home on the property.
- (2) The written notice must inform the occupier of—
  - (a) the Land Court representative's intention to enter the property; and
  - (b) the reason for entering the property; and
  - (c) the day and time when the property is to be entered.
- (3) The Land Court representative may enter the property under subsection (1) at any reasonable time of the day without the permission of the occupier.
- (4) Also, as soon as the Land Court representative enters the property, the representative must inform an occupier of the property of the reason for entering the property.

[s 81]

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- (5) If there is no occupier of the property, this section applies as if a reference to the occupier of the property were a reference to an owner of the property.
- (6) In this section—
- Land Court representative*** means each of the following persons—
- (a) a member of the Land Court;
  - (b) a person authorised in writing by a member of the Land Court for this section.

## **Division 3                      Notice of categorisation of land**

### **81                      Notice to owner of categorisation**

- (1) This section applies if the council decides to levy differential general rates on rateable land for a financial year.
- (2) The council must ensure each of the following rate notices (a ***relevant rate notice***) is accompanied by, or contains, a rating category statement—
- (a) the first rate notice for the financial year given to the owner of the land;
  - (b) a later rate notice for the financial year if—
    - (i) the owner of the land has changed since the first rate notice for the financial year was issued; or
    - (ii) the rating category for the land has changed since the first rate notice for the financial year was issued.
- (3) However, a rating category statement may also accompany, or be contained in, a rate notice other than a relevant rate notice.
- (4) The ***rating category statement*** is a document stating—
- (a) the rating categories for land in Brisbane, and a description of each of the rating categories; and



- 
- (b) the rating category for the land (the *owner's land*) described in the rate notice accompanying or containing the rating category statement; and
  - (c) that the owner may object to the categorisation of the owner's land only on the ground that the rating category is wrong in reference to the council's descriptions of the rating categories; and
  - (d) that the owner may object by giving the council an objection notice within—
    - (i) 30 days after the date when the first rate notice was issued; or
    - (ii) a longer period that the council allows; and
  - (e) that the owner is liable to pay the amount in the rate notice even if the owner gives an objection notice; and
  - (f) that, if the rating category of the owner's land is changed because of the objection, the rates will be adjusted at that time.

## **Division 4                      Objecting to rates category**

### **82            What div 4 is about**

- (1) This division is about an owner of land making an objection, or starting an appeal, relating to the rating category for the land.
- (2) However, the making of an objection, or the starting of an appeal, does not stop the levying and recovery of rates on the land.

### **83            Land owner's objection to rates category**

- (1) This section applies if an owner of rateable land wants to object to the rating category for the land that is stated in a rate notice for the land.

[s 84]

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- (2) The only ground for objecting is that the owner considers the land should belong to a different rating category.
- (3) The owner may object by giving the council an objection notice.
- (4) An ***objection notice*** is a document, in a form approved by the council, stating—
  - (a) the rating category that the owner claims the land should belong to; and
  - (b) the facts and circumstances on which the owner makes that claim.
- (5) The owner must give the objection notice within—
  - (a) 30 days after the day when the rate notice was issued; or
  - (b) a longer period that the council allows.

#### **84 Decision on a land owner's objection**

- (1) This section applies if the owner of rateable land properly objects to the rating category for the land.
- (2) The chief executive officer must consider the objection and decide—
  - (a) to change the rating category for the land—
    - (i) to the rating category to which the owner claims in the objection notice the land should belong; or
    - (ii) to another rating category; or
  - (b) not to allow the objection.
- (3) The chief executive officer must give the owner notice of—
  - (a) the decision; and
  - (b) the reasons for the decision.
- (4) The chief executive officer must give the notice within 60 days after the objection was made.

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- (5) If the chief executive officer decides to change the rating category of the land, the rating category is taken to have been changed from the start of the period of the rate notice.

## **85 Land owner's appeal against decision**

- (1) This section applies if the owner of rateable land wants to appeal against a decision of—
- (a) the council not to allow a longer period for giving an objection notice; or
  - (b) the chief executive officer on the owner's objection to the rating category for the land.
- (2) The owner may appeal by filing an appeal notice in the Land Court registry, within 42 days after the day when the owner received notice of the decision.
- (3) The appeal notice must be in the form approved by the Land Court.
- (4) The owner must give a copy of the filed appeal notice to the council, within 7 days after the appeal notice was filed.
- (5) If the owner fails to do so, it does not affect the making of the appeal, or the jurisdiction of the Land Court to decide the appeal, but the court may award costs against the owner for any adjournment that is caused by the owner's failure.

## **86 Decision on a land owner's appeal**

- (1) For an appeal under this division, the Land Court is constituted by 1 member.
- (2) The Land Court—
- (a) must conduct the appeal with a view to its prompt disposal; and
  - (b) must observe natural justice; and
  - (c) is not bound by the rules of evidence.



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- (3) The **overall plan** is a document that—
    - (a) describes the service, facility or activity; and
    - (b) identifies the rateable land to which the special rates or charges apply; and
    - (c) states the estimated cost of carrying out the overall plan; and
    - (d) states the estimated time for carrying out the overall plan.
  - (4) The council must adopt the overall plan before, or at the same time as, the council first resolves to levy the special rates or charges.
  - (5) Under an overall plan, special rates or charges may be levied for 1 or more years before any of the special rates or charges are spent in carrying out the overall plan.
  - (6) If an overall plan is for more than 1 year, the council must also adopt an annual implementation plan for each year.
  - (7) An **annual implementation plan** for a financial year is a document setting out the actions or processes that are to be carried out in the financial year for the service, facility or activity to which the special rates or charges apply.
  - (8) The council must adopt the annual implementation plan before or at the budget meeting for each year of the period for carrying out the overall plan.
  - (9) The council may at any time, by resolution, amend—
    - (a) an overall plan; or
    - (b) an annual implementation plan.
  - (10) The council may fix a minimum amount of the special rates or charges.
  - (11) Subsection (12) applies if the council decides to levy special rates or charges on particular rateable land for a service, facility or activity.

[s 87]

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- (12) The amount of the special rates or charges for the particular rateable land may be different to the amount for other rateable land because, in the council's opinion—
- (a) the land or its occupier—
    - (i) specially benefits from the service, facility or activity; or
    - (ii) has or will have special access to the service, facility or activity; or
  - (b) the land is or will be used in a way that specially contributes to the need for the service, facility or activity; or
  - (c) the occupier of the land specially contributes to the need for the service, facility or activity.
- (13) For subsection (12), the council may levy the special rates or charges on any basis the council considers appropriate.
- (14) In any proceedings about special rates or charges, a resolution or overall plan mentioned in subsection (2) is not invalid merely because the resolution or plan does not identify all rateable land to which the special rates or charges could have been levied.
- (15) To remove any doubt, it is declared that the council may make and levy a special rate or charge for a service, facility or activity whether or not supplied or undertaken by the council itself, including a service, facility or activity supplied or undertaken by another local government—
- (a) in the other local government's local government area; and
  - (b) conducted as a joint government activity by the council and the other local government.

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**88 Carrying special rates or charges forward to a later financial year**

- (1) This section applies if the council does not spend all of the special rates or charges that are raised in a financial year in carrying out an annual implementation plan.
- (2) The council may carry the unspent special rates or charges forward for spending under an annual implementation plan in a later financial year.

**89 Surplus special rates or charges after plan is carried out**

- (1) This section applies if—
  - (a) the council implements an overall plan; and
  - (b) the council has not spent all the special rates or charges.
- (2) The council must, as soon as practicable, pay the unspent special rates or charges to the current owners of the land on which the special rates or charges were levied.
- (3) The payments to the current owners must be in the same proportions as the special rates or charges were last levied.

**90 Surplus special rates or charges after plan is cancelled**

- (1) This section applies if—
  - (a) the council decides to cancel an overall plan before it is carried out; and
  - (b) the council has not spent all the special rates or charges.
- (2) The council must, as soon as practicable, pay the unspent special rates or charges to the current owners of the land on which the special rates or charges were levied.
- (3) The council must pay the current owners—
  - (a) if the overall plan identifies the beneficiaries of the plan—in the proportions that the council, by resolution, decides; or

[s 91]

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- (b) if the overall plan does not identify the beneficiaries of the plan—in the same proportions as the special rates or charges were last levied.
- (4) The council must decide the proportions having regard to—
  - (a) the proportions in which the special rates or charges were last levied; and
  - (b) the extent to which the rateable land, or the owners of the rateable land, will benefit from or have access to the service, facility or activity.
- (5) The *beneficiaries* of the plan are the owners of the rateable land that will benefit from or have access to the service, facility or activity.

## **91 Returning special rates or charges incorrectly levied**

- (1) This section applies if a rate notice includes special rates or charges that were levied on land to which the special rates or charges do not apply.
- (2) The rate notice is not invalid, but the council must, as soon as practicable, return the special rates or charges to the person who paid the special rates or charges.

## **Part 7 Utility charges**

### **92 Utility charges**

- (1) The council may levy utility charges on any basis the council considers appropriate.
- (2) For example, utility charges may be levied on the basis of any, or any combination, of the following—
  - (a) the rateable value of land;
  - (b) the use made of—



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- (i) a particular parcel of land; or
    - (ii) a particular structure; or
    - (iii) a class of land or structure;
  - (c) any circumstances that are peculiar to the supply of a service to—
    - (i) a particular parcel of land; or
    - (ii) a particular structure; or
    - (iii) a class of land or structure.
  - (3) The council may do 1 or both of the following—
    - (a) levy utility charges for services that have been supplied or are to be supplied during part of the financial year and part of another financial year;
    - (b) levy differing utility charges for services that have been supplied or are to be supplied during various periods in 1 or more financial years, and decide the way the charges are to be apportioned.
  - (4) However, the council may only levy utility charges for services—
    - (a) supplied in the last financial year; or
    - (b) supplied, or to be supplied, in the current financial year; or
    - (c) to be supplied in the next financial year.

### **93 Utility charges before facilities are constructed**

- (1) The council may, in a financial year (the *current financial year*), levy utility charges for supplying a service before the facility for supplying the service has been constructed if—
  - (a) the council reasonably believes the service will be supplied in the next financial year; and
  - (b) the council—

[s 94]

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- (i) has started constructing the facility; or
  - (ii) intends to start constructing the facility during the next financial year, and has included the funds that are necessary for construction in its annual budget for the current financial year.
- (2) The utility charges are not invalid only because the service is not supplied in the next financial year for reasons beyond the council's control.

#### **94 Reading meters for utility charges**

- (1) This section is about the reading of meters for utility charges.
- (2) The council may, by resolution, decide a meter is taken to have been read during the period that starts 2 weeks before, and ends 2 weeks after, the day on which the meter is actually read.

*Example—*

In calculating utility charges for a period ending on 30 April, if a meter is read on 10 May, the meter reading is taken to be the meter reading on 30 April.

- (3) This section does not limit the council's power to make local laws about other aspects of the administration of the metered consumption of a utility service.
- (4) In this section—  
*meter* includes any measuring device.

## **Part 8 Separate rates and charges**

#### **95 Levying separate rates or charges**

- (1) This section applies if the council decides to levy separate rates or charges.

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- (2) For levying rates under subsection (1), the council may fix a minimum amount of the rates.
  - (3) To remove any doubt, it is declared that the council may levy separate rates or charges for a service, facility or activity, whether or not the service, facility or activity is supplied by the council.

## **Part 9                      Levying and adjusting rates and charges**

### **Division 1                Rate notices**

#### **96        Rate notice for rates or charges**

- (1) The council may levy rates or charges only by a rate notice.
- (2) A *rate notice* is a document stating—
  - (a) the date when the rate notice is issued; and
  - (b) the due date for payment of the rates or charges; and
  - (c) if the council has decided a discount applies to the rates or charges—
    - (i) the terms of the discount; and
    - (ii) the last day of the discount period; and
  - (d) if the council has decided rates or charges may be paid by instalments—the requirements for paying by instalments; and
  - (e) the ways in which the rates or charges may be paid.

[s 97]

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## **97 Other amounts under rate notice**

- (1) A rate notice may also include an amount, other than an amount for rates or charges, payable to the council.

*Example—*

a licence fee payable to the council

- (2) However, the rate notice must make it clear that—
- (a) the amount is not for rates or charges; and
  - (b) payment of the amount, whether before or after the end of any discount period, does not affect any discount that applies to the rates or charges.

## **98 Entities to whom rate notice must be given**

A rate notice must be given—

- (a) for services supplied to a structure, or to land that is not rateable land—to the entity who asked for the service to be supplied; and
- (b) in any other case—to the entity who is recorded in the council's land record as the owner of the land on which the rates are levied.

*Note—*

See part 13 for more information on the land record.

## **99 Issue of and period covered by rate notice**

- (1) A rate notice may only be issued—
- (a) for utility charges, for a period of at least 1 month, that the council considers appropriate; and
  - (b) for other rates or charges, for the whole or part of a financial year as the council considers appropriate.
- (2) However, the rate notice for the rates mentioned in subsection (1)(b) must be issued for the same period for all ratepayers.

- (3) If a person who is liable to pay rates or charges for a period pays the rates or charges before the council gives the person a rate notice for the period, the council is not required to give the person a rate notice for the period.
- (4) However, the council must, at least once each year, issue a rate notice for each parcel of rateable land for a period of no longer than a financial year.

### **100 Electronic issue of rate notice**

A rate notice, including a rating category statement contained in or accompanying the notice, may be given electronically to a person if—

- (a) the person has given consent to the notice being given electronically; and
- (b) at the time the notice was given, it was reasonable for the council to expect the notice would be readily accessible so as to be useable for subsequent reference by the person.

## **Division 2 Adjusting rates or charges**

### **101 What div 2 is about**

This division is about the council adjusting the amount of rates or charges that have already been levied on land because particular changes happen.

### **102 Land stops being rateable land**

If the land becomes, or stops being, rateable land, the council must adjust the rates so that the rates are calculated only on the period when the land was rateable land.

[s 103]

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### **103 Change in value**

If the value of the land changes under the Land Valuation Act, the council must adjust the rates so that the rates are calculated on the new value of the land for the period that starts on the day the change takes effect under that Act.

### **104 Change in rating category**

If the land is given a rating category, including a change of rating category, the council must adjust the general rates so that the rates are calculated on the new or changed rating category for the period that starts on the day the land was given the new or changed rating category.

### **105 Special rates become or stop being payable**

If the land becomes, or stops being, land on which the council may levy special rates or charges, the council must adjust the rates or charges so that the rates or charges are calculated on the period when the land was land on which the council could levy special rates or charges.

### **106 Loss of entitlement to occupy land from State**

- (1) This section applies if—
  - (a) a person is entitled to occupy land under a lease, licence or permission given by the State; and
  - (b) the person loses the entitlement, including, for example, because the lease, licence or permission expires or is surrendered or forfeited.
- (2) The council must adjust the rates or charges so that the rates or charges are calculated only for the period when the person was entitled to occupy the land.

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## 107 Rates or charges paid before adjustment

If the rates or charges are paid before they are adjusted, the council—

- (a) if the rates or charges are reduced—must refund the overpaid amount of rates or charges; or
- (b) if the rates or charges are increased—may recover the amount of rates or charges owing.

## Division 3 Other matters about levying rates or charges

### 108 Limitation of increase in rates or charges levied

- (1) When the council resolves to levy rates or charges, it also may resolve to limit the increase in the rates or charges.
- (2) The rates or charges may be limited to not more than—
  - (a) if the rates or charges for the last financial year were for a full year—
    - (i) the rates or charges for the last financial year; or
    - (ii) the rates or charges for the last financial year, increased by a stated percentage; or
  - (b) if the rates or charges levied for the last financial year were not for a full year—
    - (i) the corresponding annual amount for the rates or charges for the last financial year; or
    - (ii) the corresponding annual amount for the rates or charges for the last financial year, increased by a stated percentage.
- (3) The *corresponding annual amount* is the amount worked out by—
  - (a) converting the amount of the rates or charges levied for the last financial year to a daily amount; and

[s 109]

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- (b) multiplying the daily amount by 365.
- (4) The resolution may specify different percentages for—
  - (a) different land or classes of land; or
  - (b) different rates or charges.

### **109 Rates or charges may be levied or adjusted after end of financial year**

The council may levy rates or charges, or adjust a rates or charges levy in a financial year, even though the resolution for making the rates or charges was made for a previous financial year.

### **110 When rates or charges must be paid**

- (1) The council must decide the date by which, or the period within which, rates or charges must be paid.
- (2) The date by which, or the period within which, the rates or charges must be paid must be—
  - (a) at least 30 days after the rate notice for the rates or charges is issued; and
  - (b) subject to part 10, the same date or period for each person liable to pay the rates or charges.
- (3) The council must, by resolution, make the decision at its budget meeting.

## **Part 10 Concessions**

### **111 Concession for rates or charges**

The council may grant a ratepayer a concession for rates or charges for land only under this part.



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## 112 Criteria for granting concession

- (1) The council may grant the concession only if it is satisfied—
  - (a) the land is owned or occupied by a pensioner; or
  - (b) the land is owned by—
    - (i) an entity whose objects do not include making a profit; or
    - (ii) an entity that provides assistance or encouragement for arts or cultural development; or
  - (c) the payment of the rates or charges will cause hardship to the land owner; or
  - (d) the concession will encourage the economic development of Brisbane or a part of Brisbane; or
  - (e) the concession will encourage land that is of cultural, environmental, historic, heritage or scientific significance to Brisbane to be preserved, restored or maintained; or
  - (f) the land is used exclusively for the purpose of a single dwelling house or farming and could be used for another purpose, including, for example, a commercial or industrial purpose; or
  - (g) the land is subject to a GHG tenure, mining tenement or petroleum tenure; or
  - (h) the land is part of a parcel of land (a *parcel*) that has been subdivided and—
    - (i) the person who subdivided the parcel is the owner of the land; and
    - (ii) the land is not developed land.

- (2) In this section—

**GHG tenure** see the *Greenhouse Gas Storage Act 2009*, section 18(2).

**mining tenement** see the *Mineral Resources Act 1989*, schedule 2.

[s 113]

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*petroleum tenure* means—

- (a) a petroleum tenure under the *Petroleum and Gas (Production and Safety) Act 2004*, section 18(3); or
- (b) an authority to prospect or lease under the *Petroleum Act 1923*.

### **113 Types of concession**

The concession may only be of the following types—

- (a) a rebate of all or part of the rates or charges;
- (b) an agreement to defer payment of the rates or charges;
- (c) an agreement to accept a transfer of unencumbered land in full or part payment of the rates or charges.

### **114 Resolutions for granting concession**

- (1) The council may grant the concession only by—
  - (a) a resolution granting the concession to a stated ratepayer; or
  - (b) if the concession is of a type mentioned in section 113(a) or (b)—a resolution granting the concession to a ratepayer who is a member of a stated class of ratepayers.
- (2) The council may make the resolution before it levies the rates or charges.
- (3) The council may make a resolution under subsection (1)(a) only if the ratepayer has applied for the concession in a way accepted by the council.
- (4) If the council grants a concession by making a resolution under subsection (1)(b), the concession may be granted only to the ratepayers whom the council is satisfied are eligible for the concession.

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- (5) The resolution may include conditions for granting the concession to the ratepayer.
- (6) Without limiting subsection (5), the conditions may include the following—
- (a) a condition requiring the ratepayer to show the council particular information or documents or follow a procedure to be eligible for the concession;

*Examples—*

- a condition requiring the ratepayer to produce a health care card or pensioner concession card to show the ratepayer's eligibility for the concession for the rates or charges
  - a condition requiring the ratepayer to enter an agreement to defer payment of rates or charges in a form required by the council
- (b) a condition limiting the period for which the ratepayer is granted the concession.

*Example—*

for a concession on the basis of the ratepayer's receipt of a disability support pension, a condition limiting the concession to the period for which the ratepayer receives the pension

## **115 Special provision for rebate for land occupied by pensioners**

- (1) The council may grant a rebate of rates or charges for land occupied only by pensioners only if the land owner agrees to pass the benefit of the rebate on to the pensioners.
- (2) The council may grant a rebate of rates or charges for land that is occupied by pensioners and other persons, only—
- (a) for that part of the rates or charges that the council considers is fairly attributable to the part of the land where pensioners have a right to exclusive occupancy; and
- (b) if the land owner agrees to pass the benefit of the rebate on to the pensioners.

[s 116]

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### **116 Refund of rebated rates or charges already paid**

- (1) This section applies if—
  - (a) the council grants a rebate of rates or charges to a ratepayer or a ratepayer who is a member of a class of ratepayers; and
  - (b) the ratepayer has already paid the rates or charges.
- (2) The council must refund the amount of the rebated rates or charges to the ratepayer.

### **117 Special provision for agreement to defer rates or charges**

- (1) This section applies if a concession to a ratepayer for rates or charges includes an agreement to defer the payment of the rates or charges.
- (2) The agreement must state either—
  - (a) for an agreement under which the rates or charges become payable on a particular day—the due date for payment of the rates or charges; or
  - (b) for an agreement under which the rates or charges become payable when an event happens—a description of the event and the due date for payment of the rates or charges in reference to the event.

*Example—*

An agreement provides for general rates for land to be paid at the end of a stated period after the land is transmitted to the ratepayer's personal representative or sold.

- (3) The agreement may also include a condition that the ratepayer must pay an additional charge in return for the council agreeing to defer payment of the rates or charges.

### **118 Special provision for agreement to accept land transfer**

- (1) This section applies if a concession to a ratepayer for rates or charges includes an agreement to accept a transfer of

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unencumbered land in full or part payment of the rates or charges.

- (2) The agreement must state the due date for payment of the rates or charges.

## Part 11 Paying rates and charges

### 119 Who must pay rates and charges

- (1) Subject to section 155, the following persons are liable to pay rates and charges—
- (a) for rateable land—the current owner of the land, even if that owner did not own the land during the period to which the rates or charges relate;
  - (b) for a service that is supplied to a structure, or to land that is not rateable land—the entity who asked for the service to be supplied;
  - (c) for previously rateable land—the owner of the land immediately before it stopped being rateable land.
- (2) ***Previously rateable land*** is land that was, but has stopped being, rateable land because—
- (a) the tenure of a holding is terminated; or
  - (b) the land is surrendered or forfeited to the State; or
  - (c) the land is acquired by the State or the Commonwealth; or
  - (d) the land is exempted from rating; or
  - (e) the property description of the land no longer exists.
- (3) If more than 1 person is liable to pay rates or charges, all the persons are jointly and severally liable to pay the rates or charges.

[s 120]

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## **120 Paying part of rates and charges**

- (1) This section applies if a person—
  - (a) pays the council an amount that is less than the total of all amounts mentioned in a rate notice; and
  - (b) does not specify which of the amounts the person is paying.
- (2) The council must use the amount to pay the amounts mentioned in the rate notice in the following order—
  - (a) overdue rates or charges, starting with the rates or charges that have been overdue the longest;
  - (b) rates or charges stated in the rate notice;
  - (c) amounts, other than rates or charges, that are payable to the council.

## **121 Paying rates or charges by instalments**

- (1) The council may decide to allow ratepayers to pay rates or charges by instalments.
- (2) The council must, by resolution, make the decision at its budget meeting.
- (3) The resolution must state—
  - (a) the periods for payment of each instalment of the rates or charges; and
  - (b) any other requirements for paying the rates or charges by instalments.
- (4) The requirements may include a requirement for the ratepayer to pay an additional charge in return for paying the rates or charges by instalments.
- (5) The resolution may state a discount for paying an instalment of the rates or charges within the period for paying the instalment.

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## 122 Discount for prompt payment of rates or charges

- (1) The council may decide to allow a discount for payment of rates or charges before the end of the discount period.
- (2) The amount of the discount and the discount period may differ for different rating categories of rateable land.
- (3) The *discount period* is a period that ends on or before the due date for payment.

*Examples of discount period—*

- 1 month before the due date for payment
  - a period of 1 month ending 2 weeks before the due date for payment
- (4) The council must, by resolution, make the decision at its budget meeting.
  - (5) The resolution must state—
    - (a) whether the discount is to be—
      - (i) a fixed amount; or
      - (ii) a percentage of the rates or charges; and
    - (b) if the discount is to be a fixed amount—the amount; and
    - (c) if the discount is to be a percentage of the rates or charges—the percentage; and
    - (d) whether the discount applies only if—
      - (i) other rates or charges are paid; or
      - (ii) an amount, including any interest on the amount, is paid for work that was performed by the council under a remedial notice issued under the Act; and
    - (e) the discount period.
  - (6) The council may allow more than 1 discount period for rates or charges only if the council's resolution—
    - (a) states more than 1 discount period for the rates or charges; and

[s 123]

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- (b) allows a different discount for each discount period.
- (7) The council may, by resolution, change the discount period to end on a later day (the *new discount day*).
- (8) However, if the discount period is changed under subsection (6), the council must also, by resolution, change the due date for payment to a later day that is no earlier than the new discount day.
- (9) If the council decides to allow a discount for a discount period, it must allow the discount to all ratepayers who pay the rates or charges before the end of the discount period.
- (10) If the council is satisfied a ratepayer has been prevented, by circumstances beyond their control, from paying the rates or charges in time to get a discount, the council may still allow the discount.
- (11) A ratepayer is not entitled to a discount for paying in full rates or charges for land by the end of a discount period if other rates or charges for the land are overdue.

## **123 Other benefits for prompt payment**

The council may give a benefit that is not a discount as an inducement for payment of rates or charges before the due date for payment.

*Examples of a benefit—*

- free use of the council's services, facilities or activities
- an opportunity to win a donated car, holiday or other prize



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## Part 12                      Overdue rates and charges

### Division 1                      General provisions

#### 124      What are *overdue* rates or charges and when do they become *overdue*

- (1) *Overdue* rates or charges are made up of—
  - (a) either of the following—
    - (i) subject to subparagraph (ii), rates or charges that are not paid by the due date for payment stated in the rates notice;
    - (ii) if a ratepayer is granted a concession for rates or charges of a type mentioned in section 113(b) or (c)—rates or charges that are not paid by the due date stated in the agreement to which the concession relates; and
  - (b) if the council takes the ratepayer to court to recover rates or charges and the court orders the ratepayer to pay the council's costs—the costs; and
  - (c) the interest, if interest is payable, on the rates or charges, or costs.
- (2) Subject to subsection (3), the rates or charges mentioned in subsection (1)(a)(i) become *overdue* on the day after the due date for payment of the rates or charges stated in the rates notice.
- (3) Subject to subsections (4) to (6), the rates or charges mentioned in subsection (1)(a)(ii) become *overdue* on the day after the due date for payment of the rates or charges stated in the agreement to which the concession relates.
- (4) Subsection (5) applies if—
  - (a) rates or charges are not paid before the due date stated in the rates notice for the rates or charges; and

[s 125]

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- (b) a concession of a type mentioned in section 113(b) or (c) is granted after the due date; and
  - (c) the rates or charges are not paid by the due date stated in the agreement to which the concession relates.
- (5) The rates or charges are taken to have become *overdue* on the day after the due date stated in the rates notice for the rates or charges.
- (6) If an agreement deferring payment of rates or charges includes a condition about when the rates or charges become payable, the rates or charges can become *overdue* only if the condition is satisfied.

*Example—*

An agreement to defer payment of general rates for land provides that the rates become payable within a stated period after the land is sold. The rates or charges can become overdue only if the land is sold.

## **125 Interest on overdue rates or charges**

- (1) Interest is payable on overdue rates or charges—
- (a) at the percentage, of not more than 11% a year, decided by the council; and
  - (b) from the day the rates or charges become overdue or a later day decided by the council.
- (2) The council's decision about the rate of interest, and the date from which interest is payable on overdue rates or charges, must apply equally to all ratepayers.
- (3) Interest must be calculated—
- (a) on daily rests and as compound interest; or
  - (b) in another way the council decides, if an equal or lower amount will be obtained.

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## **Division 2                      Court proceedings for overdue rates or charges**

### **126      Court proceedings for overdue rates or charges**

- (1) The council may recover overdue rates or charges by bringing court proceedings for a debt against a person who is liable to pay the overdue rates or charges.
- (2) If the council does so, but does not recover all of the overdue rates or charges from the person, the council may recover the remaining overdue rates or charges from any other person who is liable to pay the overdue rates or charges (for example, a joint owner).
- (3) If a court orders a person to pay overdue rates or charges, and the person fails to comply with the court order, the person is not liable to imprisonment for the failure.

### **127      Selling or acquiring land ends liability for overdue rates or charges**

If the council sells or acquires land for overdue rates or charges, the council can not start or continue any court proceedings to recover the overdue rates or charges.

## **Division 3                      Selling or acquiring land for overdue rates or charges**

### **Subdivision 1      Preliminary**

#### **128      What div 3 is about**

This division is about the power of the council to sell or acquire land for overdue rates or charges.

[s 129]

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## **129 Reference to *market value***

- (1) A reference in this division to the *market value* of land includes a reference to the market value of the land and any improvements on the land.
- (2) A written report about the market value of land from a valuer registered under the *Valuers Registration Act 1992* who is not a council employee is evidence of the market value of the land.

## **Subdivision 2 Selling land for overdue rates or charges**

### **130 Selling land that is subject to a State encumbrance**

- (1) This section applies if—
  - (a) the council intends to sell land under this subdivision; and
  - (b) the land is subject to a State encumbrance.
- (2) A *State encumbrance* is an encumbrance on land that gives the State or a government entity an interest in the land, including, for example—
  - (a) a mortgage; or
  - (b) an interest that arises under a Housing Act contract.
- (3) The council must give the State or government entity that has the interest in the land under the State encumbrance a notice of the council's intention to sell the land, before the council sells the land.
- (4) The council may sell the land only—
  - (a) subject to the State encumbrance; or
  - (b) free of the State encumbrance to the extent, and on any conditions (the *sale conditions*), to which the State or government entity agrees.

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- (5) If the land is subject to an interest arising under a Housing Act contract, the council may sell the land free of the interest only if the sale conditions include a condition that the council pays the State an amount for—
- (a) the State's interest in the land; and
  - (b) any amount that is owing to the State under the contract.

### **131 Selling land that is subject to other restrictions**

- (1) This section applies if—
- (a) the council intends to sell land under this subdivision; and
  - (b) the land is held on a tenure that requires the holder of the land to have—
    - (i) particular qualifications; or
    - (ii) the agreement or permission of a particular government entity.
- (2) The council may sell the land only to a person who has—
- (a) the particular qualifications; or
  - (b) the agreement or permission of the government entity.

### **132 Notice of intention to sell land for overdue rates or charges**

- (1) This section applies if—
- (a) there are overdue rates or charges on land; and
  - (b) the liability to pay the overdue rates or charges is not the subject of court proceedings; and
  - (c) some or all of the overdue rates or charges have been overdue for at least—
    - (i) generally—3 years; or

[s 132]

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- (ii) if the rates or charges were levied on vacant land or land used only for commercial purposes, and the council has obtained judgment for the overdue rates or charges—1 year; or
  - (iii) if the rates or charges were levied on a mining claim—3 months.
- (2) The council may, by resolution, decide to sell the land.
- (3) If the council does so, the council must, as soon as practicable, give all interested parties a notice of intention to sell the land.
- (4) A ***notice of intention to sell*** is a document, signed by the chief executive officer, stating—
  - (a) that the council has, by resolution, decided under this section to sell land for overdue rates or charges; and
  - (b) the day on which the resolution was made; and
  - (c) the terms of the resolution; and
  - (d) a description of the location and size of the land, as shown in the council's land record; and
  - (e) details of the overdue rates or charges for the land, as at the date of the notice, including details of the period for which the rates or charges have been unpaid; and
  - (f) details of the interest that is owing on the overdue rates or charges, as at the date of the notice, including—
    - (i) details of the rate at which interest is payable on the rates or charges; and
    - (ii) a description of the way the interest is calculated; and
  - (g) the total amount of overdue rates or charges and the interest, as at the date of the notice; and
  - (h) a copy, or a general outline, of sections 133 to 136.

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### 133 When procedures for selling land must be started

- (1) This section applies if—
  - (a) the council decides to sell land under this subdivision for overdue rates and charges and gives the registered owner of the land a notice of intention to sell the land; and
  - (b) the overdue rates or charges are not paid in full within—
    - (i) generally—3 months after the council gives the notice of intention to sell the land; or
    - (ii) if the rates or charges were levied on a mining claim—1 month after the council gives the notice of intention to sell the land.
- (2) The council must start the procedures under section 134 for selling the land within 6 months after the council gives the notice of intention to sell the land.
- (3) However, the council must end the procedures if the council is paid—
  - (a) the amount of the overdue rates or charges; and
  - (b) all expenses that the council incurs in attempting to sell the land.

### 134 Procedures for selling land

- (1) This section sets out the procedures that the council must follow when selling land for overdue rates or charges.
- (2) The council must first offer the land for sale by auction.
- (3) The council must prepare an auction notice.
- (4) An *auction notice* is a document stating—
  - (a) the time and place of the auction; and
  - (b) a full description of the land.
- (5) At least 14 days, but not more than 35 days, before the day of the auction, the council must—

[s 135]

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- (a) give a copy of the auction notice to everyone who was given a notice of intention to sell the land; and
  - (b) advertise the auction notice in a newspaper that is circulating generally in Brisbane; and
  - (c) display the auction notice in a conspicuous place in the council's public office, until the day of the auction; and
  - (d) display the auction notice in a conspicuous place on the land unless it is not reasonably practicable to do so because the land is in a remote location or difficult to access.
- (6) However, if—
- (a) the land is a building unit; and
  - (b) it is not practicable to display the auction notice in a conspicuous place on the land;

the notice may be displayed in a conspicuous part of the common property for the building units.

### **135 Conduct of auction**

- (1) The council must set a reserve price for the auction that is at least—
  - (a) the market value of the land; or
  - (b) the higher of the following—
    - (i) the amount of overdue rates or charges on the land;
    - (ii) the value of the land.
- (2) If the reserve price is not reached at the auction, the council may enter into negotiations with the highest bidder at the auction to sell the land by agreement.
- (3) However, the price for the land under the agreement must be more than the highest bid for the land at the auction.



- (4) If the highest bidder at the auction does not agree to buy the land, the land is taken to have been sold at the auction to the council for the reserve price.
- (5) However, subsection (4) does not apply if the land is held on a tenure the council is not competent to hold.

### **136 Procedures after sale of land to council**

- (1) This section applies if land is taken to have been sold at auction to the council under section 135(4).
- (2) The council must give the registrar of titles a general request form.
- (3) A *general request form* is a form that—
  - (a) is approved for a general request lodged in the land registry; and
  - (b) requests the council be registered as owner of the land.
- (4) After receiving the general request form, the registrar of titles must register the transfer of the interest of the registered owner to the council free of all encumbrances.
- (5) The registrar of titles may register the transfer even though the general request form is not accompanied by the instrument of title for the land.
- (6) Also, the registrar of titles—
  - (a) need not inquire whether the council has complied with this subdivision; and
  - (b) is not affected by actual or constructive notice of any failure by the council to comply with this subdivision.

### **137 Procedures after sale of land other than to council**

- (1) This section applies if land is sold at auction under this division, but is not taken to be sold at auction to the council under section 135(4).

[s 138]

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- (2) The council must give the registrar of titles an appropriate form stating—
  - (a) that the land has been sold under this division; and
  - (b) the full description of the land; and
  - (c) the full name and address of the purchaser of the land; and
  - (d) the purchase price of the land.
- (3) An *appropriate form* is a form approved by the registrar of titles for lodgement in the land registry to record the transfer of land to a purchaser.
- (4) After receiving the appropriate form, the registrar of titles must register the transfer of the interest of the registered owner to the purchaser free of all encumbrances.
- (5) The registrar of titles may register the transfer even though the appropriate form is not accompanied by the instrument of title for the land.
- (6) Also, the registrar of titles—
  - (a) need not inquire whether the council has complied with this subdivision; and
  - (b) is not affected by actual or constructive notice of any failure by the council to comply with this subdivision.

### **138 Application of proceeds of sale**

- (1) The council must use the proceeds of the sale of the land in the following order—
  - (a) to pay any amount agreed for the release of a State encumbrance under section 130(4)(b) or (5);
  - (b) to pay the expenses of the sale;  
*Example of expenses of the sale—*  
administrative costs incurred by the council
  - (c) to pay the overdue rates or charges for the land;

- (d) to pay any other amounts relating to the land that the owner of the land owed the council immediately before the sale;
  - (e) to pay any rates or charges, other than overdue rates or charges, for the land;
  - (f) to pay any registered encumbrances, other than State encumbrances, in order of their priority under the Land Title Act;
  - (g) to pay the person who owned the land immediately before the sale.
- (2) If any of the proceeds of sale remain unclaimed after 2 years, the council must pay the proceeds to the public trustee as unclaimed money.

### **139 Council's failure to comply with this subdivision**

- (1) This section applies if the council fails to comply with this subdivision.
- (2) No person may make a claim against an indemnity fund that is administered by the State for—
  - (a) any dealing with the land under this subdivision; or
  - (b) the registration of an interest in the land under this subdivision.
- (3) However, this section does not protect—
  - (a) the council from liability for any loss that is caused by the council's failure to comply with this subdivision; or
  - (b) a person who commits fraud or wilful default from liability for any loss that is caused by the person's fraud or wilful default.

### **Subdivision 3      Acquiring land for overdue rates or charges**

#### **140      Application of sdiv 3**

This subdivision applies if—

- (a) there are overdue rates or charges on land in Brisbane; and
- (b) the liability to pay the overdue rates or charges is not the subject of court proceedings; and
- (c) some of the overdue rates or charges have been overdue for at least 3 years; and
- (d) the person who is liable to pay the overdue rates or charges has an interest in the land that a corporation is not prohibited from holding (for example, a life interest in land); and
- (e) either of the following applies—
  - (i) the total amount of the overdue rates or charges is more than the value of the land and the land is considered to be—
    - (A) valueless; or
    - (B) of so little value that, if it were sold, the proceeds of the sale would be less than the amount of the overdue rates or charges;
  - (ii) the total amount of the overdue rates or charges is more than the market value of the land.

#### **141      Requirements for notice of intention to acquire land**

- (1) The council may, by resolution, decide to acquire the land.
- (2) If the council does so, the council must, as soon as practicable, give all interested parties a notice of intention to acquire the land.

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- (3) A *notice of intention to acquire* is a document, signed by the chief executive officer, stating—
- (a) that the council has, by resolution, decided to acquire land for overdue rates or charges, under this section; and
  - (b) the day on which the resolution was made; and
  - (c) the terms of the resolution; and
  - (d) a description of the location and size of the land, as shown in the council's land record; and
  - (e) details of the overdue rates or charges for the land, as at the date of the notice, including details of the period for which the rates or charges are unpaid; and
  - (f) details of the interest that is owing on the overdue rates or charges, as at the date of the notice, including—
    - (i) details of the rate at which interest is accruing; and
    - (ii) a description of the way that the interest is calculated; and
  - (g) the total amount of the overdue rates or charges and the interest, as at the date of the notice; and
  - (h) a copy, or general outline, of this section and sections 142 and 143.

## **142 Time to start procedures to acquire**

- (1) This section applies if—
- (a) the council gives, under section 141, a notice of intention to acquire land for overdue rates or charges; and
  - (b) the overdue rates or charges are not paid in full within 6 months after the council gives the notice of intention to acquire the land.
- (2) The council may start the procedures for acquiring the land.

[s 143]

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- (3) However, the council must end the procedures for acquiring the land if the council is paid—
  - (a) the amount of the overdue rates or charges; and
  - (b) all expenses that the council incurs in attempting to acquire the land.

### **143 Acquisition procedures**

- (1) This section sets out the procedures that the council must follow when acquiring land for overdue rates or charges.
- (2) The council must—
  - (a) discharge the overdue rates or charges payable for the land; and
  - (b) give the registrar of titles a request, in the appropriate form, to record the council as the registered owner of the land.
- (3) After receiving the request, the registrar of titles must record the council as the registered owner of the land free of all encumbrances other than any State encumbrances.
- (4) The registrar of titles—
  - (a) may record the council as the registered owner of the land even if the request is not accompanied by the instrument of title for the land; and
  - (b) need not inquire whether the council has complied with this subdivision; and
  - (c) is not affected by actual or constructive notice of any failure by the council to comply with this subdivision.
- (5) When the registrar of titles has recorded the council as the registered owner of the land, the council must remove the reference to the land from the land record.
- (6) In this section—

*appropriate form* see the Land Title Act, schedule 2.

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## **Division 4                    State pays overdue rates or charges**

### **144    Satisfaction on termination of tenure**

- (1) This section applies if—
  - (a) the council is owed rates or charges on land; and
  - (b) the tenure of a holding is terminated for all or part of the land; and
  - (c) the State receives an amount from an incoming holder of all or part of the land.
- (2) After retaining any amount owing to the State, the State may pay the council an amount for the rates or charges.

## **Part 13                    The council's land record**

### **Division 1                    Land record**

#### **145    What pt 13 is about**

- (1) This part is about the council's land record.
- (2) The council uses a land record to identify who is responsible for paying rates or charges for land.

#### **146    Land record to be kept**

- (1) The council must keep a land record.
- (2) A *land record* contains the following information for each parcel of rateable land in its area—
  - (a) the name and postal address of the owner of the land;
  - (b) a description of the land, including its location and size;

[s 147]

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- (c) its value and the day of effect of the relevant valuation under the Land Valuation Act;
- (d) information about rates or charges for the land, including about the following—
  - (i) the type and amounts of rates or charges levied on the land;
  - (ii) if differential general rates are levied—the rating category of the land;
  - (iii) the date of each levy and the due date for payment;
  - (iv) the period for which the rates or charges are levied;
  - (v) the financial year to which the rates or charges apply;
  - (vi) concessions granted or discounts given for payment of rates or charges;
  - (vii) payment of rates or charges by instalments;
  - (viii) any overdue rates or charges, accrued interest on overdue rates or charges and the interest rate applying to overdue rates or charges;
  - (ix) the date when rates or charges are paid;
- (e) any other information that the council considers appropriate.

#### **147 Public may inspect land record**

- (1) The public may, on payment of the reasonable fee decided by the council, inspect the land record kept by the council.
- (2) However, the following persons may inspect particulars of land in the land record free of charge—
  - (a) an owner, lessee or occupier of—
    - (i) the land; or
    - (ii) adjoining land;



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- (b) the agent of an owner, lessee or occupier of—
    - (i) the land; or
    - (ii) adjoining land.
  - (3) The agent must produce, to the council, written evidence of the agent's appointment.
  - (4) The council may—
    - (a) provide a person with access to an electronic or paper copy of the land record or part of the land record; or
    - (b) give a person an electronic or paper copy of the land record or part of the land record, including, for example, by sending it by post, email or facsimile.
  - (5) The council must not include a person's name and address for service in the land record when it is open to inspection if—
    - (a) the council has been given a notice about the person under the Land Valuation Act, section 204; and
    - (b) the relevant suppression direction under that Act is still in effect.

## 148 Amending land record

- (1) The chief executive officer must ensure the particulars contained in the land record are amended whenever necessary to ensure the land record is correct and up to date.
- (2) If an amendment of the land record changes the rates or charges that are or may be levied on land, the chief executive officer must, as soon as practicable, give the ratepayer an information notice about the amendment.
- (3) An *information notice* is a notice that states the following matters—
  - (a) the amendment of the land record and how the amendment changes the rates or charges that are or may be levied on land;
  - (b) the reasons for the amendment of the land record;

[s 149]

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- (c) the ratepayer has a right to have the amendment of the land record reviewed by QCAT;
  - (d) how, and the period within which, the ratepayer may apply for the review;
  - (e) any right the ratepayer has to have the operation of the decision stayed under the QCAT Act, section 22.
- (4) Subsection (2) does not apply to an amendment of the land record that is made because of an annual valuation of all rateable land in Brisbane by the valuation authority.

#### **149 Evidence of land record**

- (1) In any court proceedings in which the liability for rates or charges is relevant, a certified extract of the land record is evidence that—
- (a) the valuation recorded in the extract was properly made; and
  - (b) the information about the rates or charges recorded in the extract is correct; and
  - (c) the person recorded in the extract as the owner of the land is liable to pay the rates or charges levied on the land.
- (2) In this section—
- A certified extract* is a document that—
- (a) purports to be a copy of an entry in the land record; and
  - (b) is certified by the chief executive officer to be a true copy of the entry in the land record.

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## **Division 2                      Review of decisions by QCAT to amend land record**

### **150      Who may apply for review**

A person dissatisfied with an amendment of a land record, other than a removal of land that has been acquired by the council, may apply, as provided under the QCAT Act, to QCAT for a review of the amendment.

### **151      Powers of QCAT on review**

In deciding the review, QCAT may—

- (a) confirm the amendment; or
- (b) set aside the amendment and order the particulars previously contained in the land record be restored.

## **Division 3                      Change in ownership of land**

### **152      Definitions for div 3**

In this division—

*change of owner notice*, for land, means a document stating—

- (a) the description of the land; and
- (b) the date the owner of the land changed; and
- (c) the reason the owner changed, including, for example, because the land has been sold; and
- (d) the full name and address of the previous owner of the land; and
- (e) the full name and address of the new owner of the land.

*new owner*, of land, means the person who owns the land immediately after the owner of the land changes.

[s 153]

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*previous owner*, of land, means the person who owned the land immediately before the owner of the land changed.

### **153 Notice of change of owner of land for sale or other ownership changes for land**

- (1) This section applies if the owner of land changes—
  - (a) because the land is sold; or
  - (b) for another reason, including, for example, if the land, or an entitlement to occupy the land, is forfeited or surrendered to the State.
- (2) The new owner of the land must give the council notice of the change of owner within 30 days after the change, unless the new owner has a reasonable excuse.  
Maximum penalty—5 penalty units.
- (3) The new owner may comply with subsection (2) by giving the following documents to the registrar of titles—
  - (a) a properly completed combined form for the change of owner of the land;
  - (b) the instrument of transfer of the land.
- (4) However, subsection (2) does not prevent the previous owner of the land giving the council the notice about the change of owner for the land.
- (5) In this section—

*combined form* means a form that—

  - (a) gives information required by this section; and
  - (b) may be given to the registrar of titles.

### **154 Council to record change of owner**

If the council receives a change of owner notice under this division, it must record the details of the new owner in the

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land record unless the council has reason to believe that the notice is false.

**155 Previous owner can continue to be liable to pay rates or charges**

If the council does not receive a change of owner notice under this division, the previous owner of the land continues to be liable to pay all rates or charges on the land, including interest on overdue rates or charges, if any, until—

- (a) the change of owner notice is given under this division; or
- (b) the council otherwise records the details of the new owner in the land record.

## **Chapter 5 Financial planning and accountability**

### **Part 1 General matters about financial management systems**

**156 Requirement to keep record of particular matters**

- (1) The council must keep a written record stating the following—
  - (a) the risks the council's operations are exposed to, to the extent they are relevant to financial management;
  - (b) the control measures adopted to manage the risks.
- (2) The council must keep, with the record, a copy of each of the following—
  - (a) its community grants policy;

[s 157]

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- (b) its entertainment and hospitality policy;
- (c) its advertising spending policy;
- (d) its procurement policy.

## **Part 2                      Financial planning documents**

### **Division 1                Corporate plan**

#### **157      Preparation of corporate plan**

- (1) The council must prepare a corporate plan for each period of 5 financial years.
- (2) The council must adopt its corporate plan in sufficient time to allow a budget and annual operational plan, consistent with the corporate plan, to be adopted for the first financial year that is covered by the plan.
- (3) The chief executive officer must present a written assessment of the council's progress towards implementing the corporate plan at meetings of the council held at regular intervals of not more than 1 year.
- (4) The council may, by resolution, amend the corporate plan at any time.
- (5) The council must discharge its responsibilities in a way that is consistent with its corporate plan.

#### **158      Corporate plan contents**

The council's corporate plan must—

- (a) outline the strategic direction of the council; and

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- (b) state the performance indicators for measuring the council's progress in achieving its vision for the future of Brisbane; and
  - (c) include the following information for each commercial business unit—
    - (i) an outline of the objectives of the commercial business unit;
    - (b) an outline of the nature and extent of the significant business activity the commercial business unit will conduct.

## **Division 2                    Long-term asset management plan**

### **159    Preparation of long-term asset management plan**

- (1) The council must prepare and adopt a long-term asset management plan.
- (2) The long-term asset management plan continues in force for the period stated in the plan unless the council adopts a new long-term asset management plan.
- (3) The period stated in the plan must be 10 years or more.

## **Division 3                    Annual budget**

### **160    Preparation and content of budget**

- (1) The budget for each financial year must—
  - (a) be prepared on an accrual basis; and
  - (b) include statements of the following for the financial year for which it is prepared and the next 2 financial years—
    - (i) financial position;

[s 160]

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- (ii) cash flow;
  - (iii) income and expenditure;
  - (iv) changes in equity.
- (2) The budget must also include—
  - (a) a long-term financial forecast; and
  - (b) a revenue statement; and
  - (c) a revenue policy.
- (3) The statement of income and expenditure must state each of the following—
  - (a) rates and utility charges excluding discounts and rebates;
  - (b) contributions from developers;
  - (c) fees and charges;
  - (d) interest;
  - (e) grants and subsidies;
  - (f) depreciation;
  - (g) finance costs;
  - (h) net result;
  - (i) the estimated costs of—
    - (i) the council’s significant business activities carried on using a full cost pricing basis; and
    - (ii) the activities of the council’s commercial business units; and
    - (iii) the council’s significant business activities.
- (4) The budget must include each of the relevant measures of financial sustainability for the financial year for which it is prepared and the next 9 financial years.



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- (5) The *relevant measures of financial sustainability* are the following measures as described in the financial management (sustainability) guideline—
- (a) asset sustainability ratio;
  - (b) net financial liabilities ratio;
  - (c) operating surplus ratio.
- (6) The budget must include the total value of the change, expressed as a percentage, in the rates and utility charges levied for the financial year compared with the rates and utility charges levied in the previous budget.
- (7) For calculating the rates and utility charges levied for a financial year, any discounts and rebates must be excluded.
- (8) The budget must be consistent with the following documents of the council—
- (a) its corporate plan;
  - (b) its annual operational plan.
- (9) In this section—
- financial management (sustainability) guideline* means the document called ‘Financial Management (Sustainability) Guideline 2011’, made by the department and dated March 2011.

*Editor’s note—*

A copy of the document is available on the department’s website.

## 161 Scrutiny of budget

- (1) The council must establish and follow a process for scrutiny of the budget.
- (2) The process must include conducting an information session about each program under the budget at which—
  - (a) a suitably qualified councillor provides information about the program; and

[s 162]

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- (b) councillors can ask questions about the program; and
  - (c) suitably qualified councillors must make reasonable efforts to answer the questions asked; and
  - (d) members of the public can attend.
- (3) However, if a question can not be answered at an information session, the process must provide for the question to be answered at the council meeting at which the budget is to be adopted.

## **162 Adoption and amendment of budget**

- (1) If the budget does not comply with section 160 when it is adopted, the adoption of the budget is of no effect.
- (2) The council may, by resolution, amend the budget for a financial year at any time before the end of the financial year.
- (3) If the budget does not comply with the following when it is amended, the amendment of the budget is of no effect—
- (a) section 160;
  - (b) the council's decision about the rates and charges to be levied for the financial year made at the budget meeting for the financial year.

*Note—*

The council may only decide the rates and charges to be levied for a financial year at the budget meeting for the financial year. See the Act, section 96(2).

## **163 Long-term financial forecast**

- (1) The council's *long-term financial forecast* is a forecast, covering a period of at least 10 years, of the following for each year during the period of the forecast—
- (a) income of the council;
  - (b) expenditure of the council;
  - (c) the value of assets, liabilities and equity of the council.

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- (2) The council must—
- (a) consider its long-term financial forecast before planning new borrowings; and
  - (b) review its long-term financial forecast annually.

## **164 Revenue statement**

- (1) The council's revenue statement must state—
- (a) if the council levies differential general rates—
    - (i) the rating categories for rateable land in Brisbane; and
    - (ii) a description of each rating category; and
  - (b) if the council levies special rates or charges for a joint government activity—a summary of the terms of the joint government activity; and
  - (c) if the council fixes a cost-recovery fee—the criteria used to decide the amount of the cost-recovery fee; and
  - (d) if the council conducts a business activity on a commercial basis—the criteria used to decide the amount of the charges for the activity's goods and services.
- (2) Also, the revenue statement for a financial year must include the following information for the financial year—
- (a) an outline and explanation of the measures that the council has adopted for raising revenue, including an outline and explanation of—
    - (i) the rates and charges to be levied in the financial year; and
    - (ii) the concessions for rates and charges to be granted in the financial year;
  - (b) whether the council has made a resolution limiting an increase of rates and charges.

[s 165]

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**165 Unauthorised spending for genuine emergency or hardship**

- (1) The council may spend money that is not authorised in the annual budget only for genuine emergency or hardship.
- (2) However, the council must make a resolution about spending the money before, or as soon as practicable after, the money is spent.
- (3) The resolution must state how the spending is to be funded.
- (4) If the council's budget for a financial year is amended after the money is spent, the amendment must take the spending into account.

**Division 4 Annual operational plan**

**166 Preparation and adoption of annual operational plan**

- (1) The council must prepare and adopt an annual operational plan for each financial year.
- (2) The council may, but need not, adopt the annual operation plan for a financial year at the same time the council adopts its budget for the financial year.
- (3) The chief executive officer must present a written assessment of the council's progress towards implementing the annual operational plan at meetings of the council held at regular intervals of not more than 3 months.
- (4) The council may, by resolution, amend its annual operational plan at any time before the end of the financial year.
- (5) The council must discharge its responsibilities in a way that is consistent with its annual operational plan.

**167 Annual operational plan contents**

- (1) The council's annual operational plan must—

- 
- (a) be consistent with its annual budget; and
  - (b) state how the council will—
    - (i) progress the implementation of the corporate plan during the period of the annual operational plan; and
    - (ii) manage operational risks; and
  - (c) include an annual performance plan for each of the council's commercial business units.
- (2) An ***annual performance plan*** for a commercial business unit is a document stating the following for the financial year—
- (a) the unit's objectives;
  - (b) the nature and extent of the significant business activity the unit is to conduct;
  - (c) the unit's financial and non-financial performance targets;
  - (d) the nature and extent of the community service obligations the unit must perform;
  - (e) the cost of, and funding for, the community service obligations;
  - (f) the unit's notional capital structure, and treatment of surpluses;
  - (g) the unit's proposed major investments;
  - (h) the unit's outstanding, and proposed, borrowings;
  - (i) the unit's policy on the level and quality of service consumers can expect;
  - (j) the delegations necessary to allow the unit to exercise autonomy in its commercial activities;
  - (k) the type of information that the unit's reports to the local government must contain.
- (3) The council may omit information from the copies of the annual performance plan made available to the public if—

[s 168]

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- (a) the information is of a commercially sensitive nature to the commercial business unit; and
- (b) the information is given to each of the local government's councillors.

*Note—*

See also section 173 (Use of information by councillors) of the Act.

- (4) The council may change an annual performance plan for a commercial business unit at any time before the end of the financial year.

## **Part 3                      Financial accountability documents**

### **Division 1                Financial statements and report**

#### **168      Preparation of financial statements**

For each financial year, the council must prepare each of the following (the *financial statements*)—

- (a) a general purpose financial statement;
- (b) a current-year financial sustainability statement;
- (c) a long-term financial sustainability statement.

#### **169      General purpose financial statement**

The council's general purpose financial statement must be prepared in compliance with the following documents (each a *prescribed accounting standard*) published by the Australian Accounting Standards Board—

- (a) Australian Accounting Standards;

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- (b) Statements of Accounting Concepts;
  - (c) Interpretations;
  - (d) Framework for the Preparation and Presentation of Financial Statements.

*Editor's note—*

The prescribed accounting standards are available on the Australian Accounting Standards Board's website at <[www.aasb.com.au](http://www.aasb.com.au)>.

## **170 Financial sustainability statements**

- (1) The council's current-year financial sustainability statement must state the relevant measures of financial sustainability for the financial year to which the statement relates.
- (2) The council's long-term financial sustainability statement must state—
  - (a) the relevant measures of financial sustainability for the 9 financial years following the year to which the statement relates; and
  - (b) an explanation of the council's financial management strategy that is consistent with the long-term financial forecast.

## **171 Community financial report**

- (1) The council must prepare a community financial report for each financial year.
- (2) The community financial report for a financial year must—
  - (a) contain a summary and an analysis of the council's financial performance and position for the financial year; and
  - (b) be consistent with the general purpose financial statement for the financial year; and
  - (c) include the relevant measures of financial sustainability for the financial year; and

[s 172]

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- (d) be written in a way that can be easily understood by the community.

## **Division 2                    Asset register**

### **172    Non-current physical assets to be recorded**

The council's asset register must record its non-current physical assets.

## **Division 3                    Annual report**

### **173    What div 3 is about**

This division explains what an annual report for the council must contain.

### **174    Preparation of annual report**

- (1) The council must prepare an annual report for each financial year.
- (2) The council must adopt its annual report within 1 month after the day the auditor-general gives the auditor-general's audit report about the council's financial statements for the financial year to the council.
- (3) However, the Minister may, by notice to the council, extend the time by which the annual report must be adopted.
- (4) The council must publish its annual report on its website within 2 weeks of adopting the annual report.

### **175    Financial statements**

The annual report for a financial year must contain—



- (a) the general purpose financial statement for the financial year, audited by the auditor-general; and
- (b) the current-year financial sustainability statement for the financial year, audited by the auditor-general; and
- (c) the long-term financial sustainability statement for the financial year; and
- (d) the auditor-general's audit reports about the general purpose financial statement and the current-year financial sustainability statement.

## **176 Community financial report**

The annual report for a financial year must contain the community financial report for the financial year.

## **177 Particular resolutions**

The annual report for a financial year must contain—

- (a) a copy of the resolutions made during the financial year under section 237; and
- (b) a list of any resolutions made during the financial year under section 198(2).

## **178 Councillors**

The annual report for a financial year must contain particulars of—

- (a) for each councillor, the total remuneration, including superannuation contributions, paid to the councillor during the financial year; and
- (b) the expenses incurred by, and the facilities provided to, each councillor during the financial year under the council's expenses reimbursement policy; and
- (c) a copy of the council's expenses reimbursement policy; and

[s 179]

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- (d) the number of council meetings that each councillor attended during the financial year; and
- (e) the total number of the following during the financial year—
  - (i) orders and recommendations made under section 183(2) or (4) of the Act;
  - (ii) orders made under section 186A of the Act; and
- (f) each of the following during the financial year—
  - (i) the name of each councillor for whom an order or recommendation was made under section 183 of the Act or an order was made under section 185 of the Act;
  - (ii) a description of the misconduct or inappropriate conduct engaged in by each of the councillors;
  - (iii) a summary of the order or recommendation made for each councillor; and
- (g) the number of each of the following during the financial year—
  - (i) complaints about the conduct or performance of councillors for which no further action was taken under section 180(2) of the Act;
  - (ii) complaints referred to the BCC councillor conduct review panel under section 180(3) of the Act;
  - (iii) complaints assessed as being about official misconduct;
  - (iv) complaints heard by the BCC councillor conduct review panel;
  - (v) complaints to which section 180(5) of the Act applied.

## **179 Administrative action complaints**

- (1) The annual report for a financial year must contain—

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- (a) a statement about the council's commitment to dealing fairly with administrative action complaints; and
  - (b) a statement about how the council has implemented its complaints management process, including an assessment of the council's performance in resolving complaints under the process.
- (2) The annual report must also contain particulars of—
- (a) the number of the following during the financial year—
    - (i) administrative action complaints made to the council;
    - (ii) administrative action complaints resolved by the council under the complaints management process;
    - (iii) administrative action complaints not resolved by the council under the complaints management process; and
  - (b) the number of administrative action complaints under paragraph (a)(iii) that were made in a previous financial year.

## **180 Overseas travel**

- (1) The annual report for a financial year must contain the following information about any overseas travel made by a councillor or council employee in an official capacity during the financial year—
  - (a) for a councillor—the name of the councillor;
  - (b) for the council employee—the name of, and position held by, the council employee;
  - (c) the destination of the overseas travel;
  - (d) the purpose of the overseas travel;
  - (e) the cost of the overseas travel.
- (2) The annual report may also contain any other information about the overseas travel the council considers relevant.

[s 181]

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## **181 Expenditure on grants to community organisations**

The annual report for a financial year must contain a summary of—

- (a) the council's expenditure for the financial year on grants to community organisations; and
- (b) expenditure from each councillor's discretionary fund, including—
  - (i) the name of each community organisation to which an amount was allocated from the fund; and
  - (ii) the amount and purpose of the allocation.

## **182 Other contents**

- (1) The annual report for a financial year must contain the following information—
  - (a) the chief executive officer's assessment of the council's progress towards implementing its corporate plan and annual operational plan;
  - (b) particulars of other issues relevant to making an informed assessment of the council's operations and performance in the financial year;
  - (c) an annual operations report for each commercial business unit;
  - (d) details of any action taken for, and expenditure on, a service, facility or activity—
    - (i) supplied by another local government under an agreement for conducting a joint government activity; and
    - (ii) for which the council levied special rates or charges for the financial year;
  - (e) the number of invitations to change tenders under section 218(7) during the financial year;
  - (f) a list of the registers kept by the council;

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- (g) a summary of all concessions for rates and charges granted by the council;
  - (h) the report on the internal audit for the financial year;
  - (i) a statement about the council's activities during the financial year to implement its plan for equal opportunity in employment;
  - (j) a summary of investigation notices given in the financial year under section 37 for competitive neutrality complaints;
  - (k) the council's responses in the financial year on the QCA's recommendations on any competitive neutrality complaints under section 40;
  - (l) an overview of the council's long-term strategy to ensure financial sustainability;
  - (m) an overview of the council's long-term asset management plan.
- (2) In this section—
- annual operations report***, for a commercial business unit, means a document that contains the following information for the previous financial year—
- (a) information that allows an informed assessment of the unit's operations, including a comparison with the unit's annual performance plan;
  - (b) particulars of any changes made to the unit's annual performance plan for the previous financial year;
  - (c) particulars of the impact the changes had on the unit's—
    - (i) financial position; and
    - (ii) operating surplus or deficit; and
    - (iii) prospects;
  - (d) particulars of any directions the council gave the unit.

## **Part 4                      Financial policies**

### **183      Investment policy**

- (1) The council must prepare and adopt an investment policy.
- (2) The investment policy must outline—
  - (a) the council’s investment objectives and overall risk philosophy; and
  - (b) procedures for achieving the goals related to investment stated in the policy.

### **184      Debt policy**

- (1) The council must prepare and adopt a debt policy for a financial year.
- (2) The debt policy must state—
  - (a) the new borrowings planned for the current financial year and the next 9 financial years; and
  - (b) the period over which the council plans to repay existing and new borrowings.

### **185      Revenue policy**

- (1) The council’s revenue policy for a financial year must state—
  - (a) the principles that the council intends to apply in the financial year for—
    - (i) levying rates and charges; and
    - (ii) granting concessions for rates and charges; and
    - (iii) recovering overdue rates and charges; and
    - (iv) cost-recovery methods; and
  - (b) if the council intends to grant concessions for rates and charges—the purpose for the concessions; and

- (c) the extent to which physical and social infrastructure costs for a new development are to be funded by charges for the development.
- (2) The revenue policy may state guidelines that may be used for preparing the council's revenue statement.
- (3) The council must review its revenue policy annually and in sufficient time to allow an annual budget that is consistent with the revenue policy to be adopted for the next financial year.

## Part 5 Community grants

### 186 Grants to community organisations

The council may give a grant to a community organisation only—

- (a) if the council is satisfied—
  - (i) the grant will be used for a purpose that is in the public interest; and
  - (ii) the community organisation meets the criteria stated in the council's community grants policy; and
- (b) in a way that is consistent with the council's community grants policy.

### 187 Community grants policy

The council must prepare and adopt a policy about grants to community organisations (a ***community grants policy***), which includes the criteria for a community organisation to be eligible for a grant from the council.

## Part 6 Spending

### 188 Entertainment and hospitality

- (1) The council must prepare and adopt a policy about the council's spending on entertainment or hospitality (an *entertainment and hospitality policy*).

*Examples of entertainment or hospitality—*

- entertaining members of the public in order to promote a council project
  - providing food or beverages to a person who is visiting the council in an official capacity
  - providing food or beverages for a conference, course, meeting, seminar, workshop or another forum that is held by the council for its councillors, employees or other persons
  - paying for a councillor or council employee to attend a function as part of the councillor's or employee's official duties or obligations as a councillor or council employee
- (2) The council may spend money on entertainment or hospitality only in a way that is consistent with its entertainment and hospitality policy.

### 189 Advertising spending

- (1) The council must prepare and adopt a policy about the council's spending on advertising (an *advertising spending policy*).
- (2) The council may spend money on advertising only—
- (a) if—
    - (i) the advertising is to provide information or education to the public; and
    - (ii) the information or education is provided in the public interest; and
  - (b) in a way that is consistent with the council's advertising spending policy.



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- (3) **Advertising** is promoting, for the payment of a fee, an idea, goods or services to the public.

## **190 Procurement policy**

- (1) The council must prepare and adopt a policy about procurement (a **procurement policy**).
- (2) The procurement policy must include details of the principles, including the sound contracting principles, that the council will apply in the financial year for purchasing goods and services.
- (3) The council must review its procurement policy annually.

# **Part 7 Public access to particular documents**

## **191 Public access to relevant financial and planning documents**

- (1) This section applies to the following documents of the council—
- (a) corporate plan;
  - (b) annual budget;
  - (c) general purpose financial statement;
  - (d) community financial report;
  - (e) annual report;
  - (f) investment policy;
  - (g) debt policy;
  - (h) community grants policy;
  - (i) procurement policy.

[s 192]

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- (2) The council must allow the public—
  - (a) to inspect the documents—
    - (i) at the council's public office; and
    - (ii) on the council's website; and
  - (b) to purchase copies of the documents from the council.
- (3) The price for purchasing a copy of a document must be no more than the cost to the council of making the copy available for purchase.

## Part 8 Council's funds and accounts

### Division 1 Trust fund

#### 192 Trust fund

- (1) The council must establish a trust fund.
- (2) A *trust fund* is a fund that is credited with trust money.
- (3) *Trust money* is money that is—
  - (a) paid to the council in trust for a person; or
  - (b) paid to the council as a deposit; or
  - (c) required by an Act to be credited to a trust fund; or
  - (d) interest accrued on money that was paid to the council under paragraphs (a) to (c), whether or not the money was required to be paid to the council, unless the council and the depositor have agreed the interest accrued should be paid to an entity other than the council.
- (4) The council must deposit trust money in a financial institution account.

- (5) The council must not allow a financial institution account in which trust money has been deposited to be overdrawn at any time.
- (6) The council must, at least monthly, reconcile the assets of the trust fund with the liabilities of the trust fund.

### **193 Transferring money to or from a trust fund**

- (1) The council may transfer trust money from a trust fund only in compliance with this section.
- (2) The council may transfer trust money from a trust fund—
  - (a) to, or for, the person who is entitled to the money, according to law; or
  - (b) as required by the relevant Act under which the money was paid into the trust fund.
- (3) If the purpose for which an amount of trust money was credited to the trust fund no longer exists, the council may, if it has resolved the purpose no longer exists, transfer the amount from the trust fund.
- (4) If an amount of trust money is mistakenly not credited to the trust fund, the council must transfer the amount to the trust fund as soon as practicable, but no longer than 5 working days, after the council becomes aware the amount has been incorrectly credited.
- (5) If an amount that is not trust money is mistakenly credited to the trust fund, the council must transfer the amount from the fund as soon as practicable, but no longer than 5 working days, after the council becomes aware the amount has been incorrectly credited.
- (6) Money that is trust money under section 192(3)(d) may be transferred from the trust fund at any time.

## Division 2                      Discretionary funds

### 194    Requirements about discretionary funds—Act, s 106

- (1) This section prescribes requirements for—
  - (a) the council for making discretionary funds available; and
  - (b) a councillor for using discretionary funds.
- (2) The council must, within 20 business days after adopting its budget for a financial year, publish a notice on its website (the *availability notice*) stating—
  - (a) the amount in the council's discretionary funds budgeted for use by each councillor for the financial year; and
  - (b) that community organisations may apply for allocation of the funds; and
  - (c) how to apply for allocation of the funds.
- (3) A councillor may use the councillor's discretionary funds in any of the following ways—
  - (a) to spend for a community purpose;
  - (b) to allocate for capital works of the council that are for a community purpose, but only with the approval of the Establishment and Coordination Committee;
  - (c) to allocate to a community organisation for a community purpose.
- (4) The Establishment and Coordination Committee must have regard to the council's corporate plan, long-term asset management plan and annual budget when deciding whether to approve the allocation of a councillor's discretionary funds under subsection (3)(b).
- (5) For subsection (3)(c), a councillor—



[s 197]

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- (3) The financial reports presented at a meeting of the council must state the progress that has been made in relation to the council's budget for the period of the financial year up to a day as near as practicable to the end of the month before the meeting is held.

### **197 Statement of estimated financial position**

- (1) The chief executive officer must present the council's annual budget meeting with a statement of estimated financial position.
- (2) A *statement of estimated financial position* is a document stating the financial operations, and financial position, of the council for the previous financial year.

## **Part 10 Asset accounting**

### **198 Valuation of non-current physical assets**

- (1) The value of the council's non-current physical assets must be worked out using the prescribed accounting standards.
- (2) The council must, by resolution, set an amount for each different type of non-current physical asset below which the value of an asset of the same type must be treated as an expense.
- (3) The amount must be included in a note in the council's general purpose financial statement.
- (4) For subsection (2), the following assets that are controlled by the council do not have a value for the council's general purpose financial statement—
  - (a) land that is a reserve under the Land Act;
  - (b) a road that is not owned by the council.

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## Part 11                      Auditing

### Division 1                      Internal audit function

#### Subdivision 1                      Internal auditing and reporting

#### 199      Internal audit

- (1) For each financial year, the council must—
  - (a) prepare an internal audit plan; and
  - (b) carry out an internal audit; and
  - (c) prepare a progress report for the internal audit; and
  - (d) assess compliance with the internal audit plan.
- (2) The council's *internal audit plan* is a document that includes statements about—
  - (a) the way in which the operational risks have been evaluated; and
  - (b) the most significant operational risks identified from the evaluation; and
  - (c) the control measures that the council has adopted, or is to adopt, to manage the most significant operational risks.
- (3) The council must give its audit committee—
  - (a) the progress report mentioned in subsection (1)(c); and
  - (b) at least twice during the year after the internal audit is carried out, each of the following documents—
    - (i) a summary of the recommendations stated in the report;
    - (ii) a summary of the actions that have been taken by the council in response to the recommendations;

[s 200]

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- (iii) a summary of any actions that have not been taken by the council in response to the recommendations.

## **Subdivision 2      Audit committee**

### **200      Establishment and composition of audit committee**

- (1) The council must establish an audit committee that—
  - (a) consists of at least 3 and no more than 6 members; and
  - (b) includes at least 1 member who has significant experience and skills in financial matters.
- (2) The audit committee may also include 2, but no more than 2, councillors appointed by the council.
- (3) The chief executive officer can not be a member of the audit committee but can attend meetings of the committee.
- (4) The council must appoint 1 of the members of the audit committee, other than a person appointed under subsection (2), as chairperson.

### **201      Audit committee meetings**

- (1) The audit committee must—
  - (a) meet at least twice each financial year; and
  - (b) review each of the following matters—
    - (i) the internal audit plan for the internal audit for the current financial year;
    - (ii) the internal audit progress report for the internal audit for the preceding financial year including the recommendations in the report and the actions to which the recommendations relate;
    - (iii) a draft of the council's financial statements for the preceding financial year before the statements are



certified and given to the auditor-general under section 202;

- (iv) the auditor-general's audit report and auditor-general's observation report about the council's financial statements for the preceding financial year; and
  - (c) as soon as practicable after a meeting of the committee, give the council a written report about the matters reviewed at the meeting and the committee's recommendations about the matters.
- (2) At a meeting of the audit committee—
- (a) a quorum is at least half the number of members of the committee; and
- Examples—*
- 1 If the committee consists of 4 members, a quorum is 2.
  - 2 If the committee consists of 5 members, a quorum is 3.
- (b) either—
    - (i) the chairperson presides; or
    - (ii) if the chairperson is absent, the member chosen by the members present as chairperson for the meeting presides.
- (3) The audit committee may, for performing its functions under subsection (1)(b), seek information or advice from the person who has carried out the internal audit.
- (4) The chief executive officer must present the report mentioned in subsection (1)(c) at the next meeting of the council.

## **Division 2                      External auditing**

### **202     Auditing of financial statements by auditor-general**

- (1) The council's general purpose financial statement and current-year financial sustainability statement for a financial year must be given to the auditor-general for auditing.
- (2) Also, the council's long-term financial sustainability statement for the financial year must be given to the auditor-general for information.
- (3) The financial statements mentioned in subsections (1) and (2) must be given to the auditor-general by a date agreed between the chief executive officer and the auditor-general.
- (4) The date agreed under subsection (3) must allow the audit of the financial statements, and the auditor-general's audit report about the statements, to be completed no later than 4 months after the end of the financial year to which the statements relate.
- (5) The financial statements given to the auditor-general must be accompanied by a certificate in the approved form given by the mayor and chief executive officer, certifying whether, in their opinion—
  - (a) in relation to the general purpose financial statement—
    - (i) any requirements prescribed under the Act or another Act for establishing and keeping the council's accounts have been complied with in all material respects; and
    - (ii) the statement presents a true and fair view, in compliance with the prescribed accounting standards, of the council's transactions for the financial year and financial position at the end of the year; and
  - (b) in relation to the current-year financial sustainability statement and the long-term financial sustainability

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statement—the statements have been accurately calculated.

- (6) Subsection (7) applies if the Minister considers there are extraordinary circumstances that make it impractical for the council to give the auditor-general its financial statements by a date that would allow the audit and report to be completed within the time stated in subsection (4).
- (7) The Minister may, by notice to the council, decide later dates by which the statements must be given and the audit and report must be completed.

### **203 Presentation of auditor-general's observation report**

- (1) This section applies if the auditor-general gives the mayor a copy of the auditor-general's observation report about an audit of the council's financial statements.
- (2) An *auditor-general's observation report*, about an audit of the council's financial statements, is a report about the audit prepared under section 54 of the *Auditor-General Act 2009* that includes observations and suggestions made by the auditor-general about anything arising out of the audit.
- (3) The mayor must present a copy of the report at the next ordinary meeting of the council.

## **Part 12 Other matters**

### **204 Insurance**

The council must maintain the following insurance—

- (a) public liability insurance for at least \$30m;
- (b) professional indemnity insurance for at least \$10m.

[s 205]

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## **205 Notice of payment of notional GST**

The council must, no later than 15 September in each financial year, give the department's chief executive a notice stating that the council has paid notional GST for the previous financial year.

# **Chapter 6 Contracting**

## **Part 1 Introduction**

### **206 What ch 6 is about**

- (1) This chapter is about the council's contracting activities.
- (2) *Contracting activities* are activities for the making of a contract for—
  - (a) the carrying out of work; or
  - (b) the supply of goods or services; or
  - (c) the disposal of non-current assets.
- (3) However, this chapter does not apply to the council making a contract of employment with a council employee.

## **Part 2 Strategic contracting procedures**

### **207 What pt 2 is about**

- (1) This part allows the council to take a strategic approach to its contracts.

- (2) A **strategic approach** is an approach that identifies potential opportunities, while managing adverse risks.
- (3) However, this part applies to the council only if it decides to apply the part.
- (4) This part does not apply to a contract for the disposal of land.
- (5) For all other contracts, this part provides an alternative to part 3.

## **208 Power to choose strategic approach**

- (1) The council may, by resolution, decide to apply this part to its contracts.
- (2) However, the council may do so only after it—
  - (a) has considered the costs and benefits of complying with this part; and
  - (b) has given the public notice of the proposed resolution.
- (3) The notice must—
  - (a) state the proposed resolution; and
  - (b) state the day and time of the meeting where the resolution is to be considered; and
  - (c) be published in a newspaper that circulates generally in Brisbane at least 4 weeks before the meeting.

## **209 Effect of choice**

- (1) If the council decides to apply this part to its contracts, it must comply with this part from—
  - (a) the day on which the resolution is passed; or
  - (b) if the resolution states a later day for complying—the later day.
- (2) The later day must not be more than 1 year after the resolution is passed.

[s 210]

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- (3) The passing of the resolution does not of itself affect a contractual obligation or right of the council.
- (4) Subsection (5) applies if, immediately before the day on which the council passes the resolution, the council—
  - (a) had, under part 3, invited tenders or quotes for a contract; and
  - (b) had received tenders or quotes in response to the invitation; and
  - (c) had not accepted, or had decided not to accept, any of the tenders or quotes.
- (5) Part 3 continues to apply to the contracts as if the resolution had not been passed.
- (6) The council may, by a later resolution, decide this part no longer applies to the council.
- (7) If the council does so, it must continue to comply with this part for any contract that was made when this part did apply to the council.

## **210 Contracting plans**

- (1) This section applies if the council decides to apply this part to its contracts.
- (2) Each financial year, the council must make and adopt a contracting plan.
- (3) A ***contracting plan*** is a document stating—
  - (a) the types of contracts that the council proposes to make in the financial year; and
  - (b) the principles and strategies for performing the contracts; and
  - (c) a policy about proposed delegations for the contracts; and
  - (d) a market assessment for each type of contract; and

- 
- (e) the contracts that the council considers will be significant (a *significant contract*) having regard to the market assessment; and
  - (f) a policy about the making of a significant contracting plan under section 211.
- (4) A *market assessment* is an assessment of the relative cost and difficulty in securing supply under each type of contract.
  - (5) A contracting plan must be consistent with and support the achievement of the strategic directions stated in the council's corporate plan.
  - (6) The council must not make the resolution to adopt a contracting plan before the council adopts the annual budget for the financial year.
  - (7) The council may, by resolution, amend a contracting plan at any time before the end of the financial year to which the plan relates.
  - (8) The council must allow the public to inspect and buy copies of the contracting plan at the council public office.

## 211 Significant contracting plans

- (1) This section applies if the contracting plan identifies any significant contracts.
- (2) The council must make a significant contracting plan for each significant contract before the contract starts.
- (3) A *significant contracting plan* is a document stating—
  - (a) the objectives of the significant contract; and
  - (b) how the objectives are to be achieved; and
  - (c) how achievement of the objectives will be measured; and
  - (d) any alternative ways of achieving the objectives, and why the alternative ways were not adopted; and
  - (e) proposed contractual arrangements for the activity; and

[s 212]

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- (f) a risk analysis of the market in which the contract is to happen.
- (4) The objectives must be consistent with the council's contracting plan.
- (5) The council may, by resolution, amend a significant contracting plan at any time before the end of the financial year to which the plan relates.

## **212 Contract manual**

- (1) The council must make and adopt a contract manual.
- (2) A ***contract manual*** is a document that sets out the procedures for how the council is to carry out all contracts.
- (3) The contract manual must—
  - (a) apply the sound contracting principles; and
  - (b) be consistent with, and support, the achievement of the strategic direction stated in the council's corporate plan; and
  - (c) if the council has adopted a contracting plan—be consistent with the contracting plan; and
  - (d) include a policy about how the council is to deal with any non-current assets that have a value of less than the amount mentioned in section 214(7).



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## Part 3                      Default contracting procedures

### Division 1                Introduction

#### 213    What pt 3 is about

- (1) This part is about the requirements that the council must comply with before entering into a contract, unless the council decides to apply part 2.
- (2) This part also applies to a contract for the disposal of land.

### Division 2                Entering into particular contracts

#### 214    What div 2 is about

- (1) This division explains what the council must do before it enters into—
  - (a) a medium-sized contractual arrangement; or
  - (b) a large-sized contractual arrangement; or
  - (c) a valuable non-current asset contract.
- (2) A *medium-sized contractual arrangement* is a contractual arrangement with a supplier that is expected to be worth, exclusive of GST, \$15000 or more but less than \$200000 in a financial year.
- (3) A *large-sized contractual arrangement* is a contractual arrangement with a supplier that is expected to be worth, exclusive of GST, \$200000 or more in a financial year.
- (4) For subsections (2) and (3), the expected value of a contractual arrangement with a supplier for a financial year is the total expected value of all of the council's contracts, in the financial year, with the supplier for goods and services of a similar type.

[s 215]

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- (5) A *valuable non-current asset contract* is a contract for the disposal of a valuable non-current asset.
- (6) A *valuable non-current asset* is—
  - (a) land; or
  - (b) another non-current asset that has an apparent value that is equal to or more than a limit set by the council.
- (7) The limit set by the council under subsection (6)(b) can not be more than the following amount—
  - (a) for plant or equipment—\$5000;
  - (b) for another type of non-current asset—\$10000.

## **215 Medium-sized contractual arrangement—quotes needed first**

- (1) The council can not enter into a medium-sized contractual arrangement unless the council first invites written quotes for the contract.
- (2) The invitation must be given to at least 3 persons who the council considers can meet the council's requirements at competitive prices.
- (3) The council may decide not to accept any of the quotes it receives.
- (4) However, if the council does decide to accept a quote, the council must accept the quote most advantageous to it having regard to the sound contracting principles.
- (5) This section is subject to division 3.

## **216 Large-sized contractual arrangement—tenders needed first**

- (1) The council can not enter into a large-sized contractual arrangement unless the council first invites written tenders for the contract under section 218.
- (2) This section is subject to division 3.

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**217 Valuable non-current asset contract—tenders or auction needed first**

- (1) The council can not enter into a valuable non-current asset contract unless it first—
  - (a) invites written tenders for the contract under section 218; or
  - (b) offers the non-current asset for sale by auction.
- (2) This section is subject to division 4.

**218 Tender process**

- (1) This section is about how the council must invite written tenders for—
  - (a) a large-sized contractual arrangement; or
  - (b) a valuable non-current asset contract.
- (2) The council must either—
  - (a) invite written tenders under subsection (4); or
  - (b) invite expressions of interest under subsection (5) before considering whether to invite written tenders under subsection (6)(b).
- (3) However, the council may invite expressions of interest under subsection (5) only if the council—
  - (a) decides, by resolution, that it would be in the public interest to invite expressions of interest before inviting written tenders; and
  - (b) records its reasons for making the resolution in the minutes of the meeting at which the resolution was made.
- (4) The invitation for tenders must—
  - (a) be made by an advertisement in a newspaper that circulates generally in Brisbane; and

[s 218]

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- (b) allow written tenders to be given to the council for at least 21 days after the advertisement is published.
- (5) The invitation for expressions of interest must—
  - (a) be made by an advertisement in a newspaper that circulates generally in Brisbane; and
  - (b) allow written expressions of interest to be given to the council for at least 21 days after the advertisement is published.
- (6) If the council invites expressions of interest under subsection (5), the council may—
  - (a) prepare a short list from the persons who respond to the invitation for expressions of interest; and
  - (b) invite written tenders from those persons.
- (7) If—
  - (a) an invitation to tender under subsection (4) or (6)(b) states that the council might later invite all tenderers to change their tenders to take account of a change in the tender specifications; and
  - (b) the council does change the tender specifications;

the council may invite all the persons who submitted a tender to change their tender to take account of the change, before making a decision on the tenders.
- (8) The council may decide not to accept any tenders it receives.
- (9) However, if the council does decide to accept a tender, the council must accept the tender most advantageous to it, having regard to the sound contracting principles.

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## **Division 3                      Exceptions for medium-sized and large-sized contractual arrangements**

### **219      What div 3 is about**

This division explains when the council may enter into—

- (a) a medium-sized contractual arrangement without first inviting written quotes; or
- (b) a large-sized contractual arrangement without first inviting written tenders.

### **220      Exception if quote or tender consideration plan prepared**

- (1) The council may enter into a medium-sized contractual arrangement or large-sized contractual arrangement without first inviting written quotes or tenders if the council—
  - (a) decides, by resolution, to prepare a quote or tender consideration plan; and
  - (b) prepares and adopts the plan.
- (2) A *quote or tender consideration plan* is a document stating—
  - (a) the objectives of the plan; and
  - (b) how the objectives are to be achieved; and
  - (c) how the achievement of the objectives will be measured; and
  - (d) any alternative ways of achieving the objectives, and why the alternative ways were not adopted; and
  - (e) the proposed terms of the contract for the goods or services; and
  - (f) a risk analysis of the market from which the goods or services are to be obtained.

[s 221]

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## **221 Exception for contractor on approved contractor list**

- (1) This section applies to a medium-sized contractual arrangement or large-sized contractual arrangement for services.
- (2) The council may enter into the contract without first inviting written quotes or tenders if the contract is made with a person who is on an approved contractor list.
- (3) An *approved contractor list* is a list of persons who the council considers to be appropriately qualified to provide the services.
- (4) The council must put together the approved contractor list by—
  - (a) inviting expressions of interest from suitably qualified persons, by an advertisement in a newspaper that circulates generally in Brisbane; and
  - (b) allowing expressions of interest to be given to the council for at least 21 days after the invitation is advertised; and
  - (c) choosing persons for the approved contractor list on the basis of the sound contracting principles.

## **222 Exception for register of pre-qualified suppliers**

- (1) This section applies to a medium-sized contractual arrangement or large-sized contractual arrangement for the supply of goods or services.
- (2) The council may enter into the contract without first inviting written quotes or tenders if the contract is entered into with a supplier from a register of pre-qualified suppliers.
- (3) The council may establish a register of pre-qualified suppliers of particular goods or services only if—
  - (a) the preparation and evaluation of invitations every time the goods or services are needed would be costly; or

- (b) the capability or financial capacity of the supplier of the goods or services is critical; or
  - (c) the supply of the goods or services involves significant security considerations; or
  - (d) a precondition of an offer to contract for the goods or services is compliance with particular standards or conditions set by the council; or
  - (e) the ability of local business to supply the goods or services needs to be discovered or developed.
- (4) A *pre-qualified supplier* is a supplier who has been assessed by the council as having the technical, financial and managerial capability necessary to perform contracts on time and in accordance with agreed requirements.

## **223 Exception for a preferred supplier arrangement**

- (1) This section applies to a medium-sized contractual arrangement or large-sized contractual arrangement for goods or services if the council—
- (a) needs the goods or services—
    - (i) in large volumes; or
    - (ii) frequently; and
  - (b) is able to obtain better value for money by accumulating the demand for the goods or services; and
  - (c) is able to describe the goods or services in terms that would be well understood in the relevant industry.
- (2) The council may enter into a contract for the goods or services without first inviting written quotes or tenders if the contract is entered into with the preferred supplier under a preferred supplier arrangement that is made in compliance with subsections (3) to (8).
- (3) The council must invite persons to tender for a preferred supplier arrangement.

[s 224]

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- (4) The invitation to tender for a preferred supplier arrangement must—
  - (a) be made by an advertisement in a newspaper that circulates generally in Brisbane; and
  - (b) allow tenders to be given to the council for at least 21 days after the advertisement is published; and
  - (c) describe the terms of the preferred supplier arrangement.
- (5) When selecting a person to be a preferred supplier under a preferred supplier arrangement, the council must have regard to the sound contracting principles.
- (6) The council must ensure the terms of the preferred supplier arrangement allow the contract to be cancelled for the poor performance of the preferred supplier.
- (7) A preferred supplier arrangement may be entered into for a term of more than 2 years only if the council is satisfied the longer term will result in better value for the council.
- (8) For subsection (7), the term of a preferred supplier arrangement includes any period provided for under the arrangement by which the term of the arrangement can be extended.

## **224 Exception for LGA arrangement**

- (1) The council may enter into a contract for goods and services without first inviting written quotes or tenders if the contract is entered into under an LGA arrangement.
- (2) An ***LGA arrangement*** is an arrangement that—
  - (a) has been entered into by—
    - (i) LGAQ Ltd.; or

*Note—*

See section 287 of the *Local Government Act 2009*.



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- (ii) a company (the *associated company*) registered under the Corporations Act, if LGAQ Ltd. is its only shareholder; and
- (b) if LGAQ Ltd. or the associated company were the council, would be either—
- (i) a contract with an independent supplier from a register of pre-qualified suppliers established under section 222(3) by LGAQ Ltd. or the associated company; or
- (ii) a preferred supplier arrangement entered into with an independent supplier under section 223.
- (3) An *independent supplier* is an entity other than a subsidiary (a *relevant subsidiary*) of LGAQ Ltd. or the associated company under the Corporations Act.
- (4) Despite subsection (2)(b), an *LGA arrangement* may include a contract with a relevant subsidiary from a register of pre-qualified suppliers or a preferred supplier arrangement with a relevant subsidiary if the arrangement is approved by the Minister.
- (5) For deciding whether to approve an LGA arrangement under subsection (4), the Minister—
- (a) must have regard to the sound contracting principles; and
- (b) may ask LGAQ Ltd. or the associated company to give the Minister information or documents relevant to the arrangement.

*Examples of relevant information or documents—*

- information or documents relating to assessment of the relevant subsidiary's suitability to be on the register of pre-qualified suppliers or the tender process for the preferred supplier arrangement
- information or documents relating to the potential impact of the arrangement on council employees

[s 225]

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## **225 Other exceptions**

The council may enter into a medium-sized contractual arrangement or large-sized contractual arrangement without first inviting written quotes or tenders if—

- (a) the council resolves it is satisfied that there is only 1 supplier who is reasonably available; or
- (b) the council resolves that, because of the specialised or confidential nature of the services that are sought, it would be impractical or disadvantageous for the council to invite quotes or tenders; or
- (c) a genuine emergency exists; or
- (d) the contract is for the purchase of goods and is made by auction; or
- (e) the contract is for the purchase of second-hand goods; or
- (f) the contract is made with, or under an arrangement with, a government agency.

## **Division 4                      Exceptions for valuable non-current asset contracts**

### **226 Exceptions for valuable non-current asset contracts**

- (1) Subject to subsections (2) and (3), the council may dispose of a valuable non-current asset other than by tender or auction if—
  - (a) the valuable non-current asset—
    - (i) was previously offered for sale by tender or auction but was not sold; and
    - (ii) is sold for more than the highest tender or auction bid that was received; or
  - (b) the valuable non-current asset is disposed of to—
    - (i) a government agency; or

- (ii) a community organisation; or
- (c) for the disposal of land or an interest in land—
  - (i) the land will not be rateable land after the disposal;  
or
  - (ii) the land is disposed of to a person whose restored enjoyment of the land is consistent with Aboriginal tradition or Island custom; or
  - (iii) the disposal is for the purpose of renewing the lease of land to the existing tenant of the land; or
  - (iv) the land is disposed of to a person who owns adjoining land if—
    - (A) the land is not suitable to be offered for disposal by tender or auction for a particular reason, including, for example, the size of the land or the existence of particular infrastructure on the land; and
    - (B) there is not another person who owns other adjoining land who wishes to acquire the land; and
    - (C) it is in the public interest to dispose of the land without a tender or auction; and
    - (D) the disposal is otherwise in accordance with sound contracting principles; or
  - (v) all or some of the consideration for the disposal is consideration other than money, for example, other land given in exchange for the disposal, if—
    - (A) it is in the public interest to dispose of the land without a tender or auction; and
    - (B) the disposal is otherwise in accordance with sound contracting principles; or
  - (vi) the disposal is for the purpose of a lease for a telecommunication tower; or

[s 226]

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- (vii) the disposal is of an interest in land that is used as an airport or for related purposes if—
    - (A) it is in the public interest to dispose of the interest in land without a tender or auction; and
    - (B) the disposal is otherwise in accordance with sound contracting principles; or
  - (d) for the disposal of a valuable non-current asset, other than land, by way of a trade-in for the supply of goods or services to the council—
    - (i) the supply is, or is to be, made under this part; and
    - (ii) the disposal is, or is to be, part of the contract for the supply; or
  - (e) the Minister exempts the council from complying with section 217.
- (2) An exception mentioned in subsection (1)(a) to (d) applies to the council disposing of a valuable non-current asset only if, before the disposal, the council has decided, by resolution, that the exception may apply to the council on the disposal of a valuable non-current asset other than by tender or auction.
- (3) The council may only dispose of land or an interest in land under this section if the consideration for the disposal would be equal to, or more than, the market value of the land or the interest in land, including the market value of any improvements on the land.
- (4) For subsection (3), a written report about the market value of land or an interest in land from a valuer registered under the *Valuers Registration Act 1992* who is not an employee of the council is evidence of the market value of the land or the interest in land.
- (5) An exemption under subsection (1)(e) may be given subject to conditions.

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## Part 4 Publishing details of particular contracts

### 227 Publishing details of contracts worth \$200000 or more

- (1) The council must, as soon as practicable after entering a contract worth \$200000 or more (exclusive of GST), publish relevant details of the contract on the council's website.
- (2) The relevant details must be published under subsection (1) for a period of at least 12 months.
- (3) Also, if a person asks the council to give relevant details of a contract, the council must allow the person to inspect the relevant details at the council's public office.
- (4) In this section—  
*relevant details*, of a contract, means the following—
  - (a) the person with whom the council has entered into the contract;
  - (b) the value of the contract;
  - (c) the purpose of the contract.

*Example—*

the particular goods or services to be supplied under the contract

## Part 5 Other matters

### 228 Entering into a contract under a delegation

- (1) This section applies if the council delegates, under section 238 of the Act, power to make, amend or discharge a contract for the council.

*Note—*

[s 229]

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The chief executive officer may delegate a power delegated by the council. See the Act, section 239.

- (2) The delegate may make, amend or discharge a contract (the *contractual action*) for the council if—
  - (a) the council's expenditure because of the contractual action has been provided for in the approved annual budget for—
    - (i) the financial year when the contractual action is taken; or
    - (ii) the financial year in which the delegation is made, if the expenditure is within the limits stated in the resolution making the delegation; or
  - (b) the contractual action has been taken because of genuine emergency or hardship.
- (3) The delegate may take the contractual action in the same way as an individual.
- (4) This section does not affect another law that requires—
  - (a) an approval, consent or permission to be obtained; or
  - (b) a procedure to be complied with for taking the contractual action.

## **Chapter 7      Monitoring and enforcing local government related laws**

### **229      Period prescribed for carrying out particular approved inspection programs—Act, s 123**

For section 123(4)(e) of the Act, the period prescribed for carrying out an approved inspection program is 12 months if—

- (a) the program is only for the inspection of budget accommodation buildings under the Building Act; and
- (b) inspection under the program is for, or includes, the monitoring of compliance with the fire safety standard under that Act.

## **Chapter 8 Administration**

### **Part 1 Councillors**

#### **Division 1 Councillor remuneration**

##### **230 What div 1 is about**

This division prescribes requirements for the council's processes in deciding the remuneration payable to councillors.

##### **231 Differential remuneration**

The council may decide the remuneration that is payable to councillors differentially according to the following classes of offices—

- (a) the mayor;
- (b) the deputy mayor;
- (c) the leader of the opposition;
- (d) the chairperson of the council;
- (e) chairpersons of standing committees of the council;
- (f) other councillors.

[s 232]

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### **232 Remuneration for director's functions**

- (1) The council may decide additional remuneration is payable to councillors who are directors of, or shareholder delegates for, a corporatised business entity.
- (2) However, the council can not differentiate between the additional remuneration payable to councillors who are directors of, or shareholder delegates for, a corporatised business entity.

### **233 Excluded matters**

- (1) The remuneration can not include—
  - (a) any amount for expenses to be paid, or facilities to be provided, to a councillor under the council's expenses reimbursement policy; or
  - (b) any contribution the council makes for a councillor to a voluntary superannuation scheme for councillors established or taken part in by the council under section 210 of the Act.
- (2) However, the remuneration may include an additional amount for councillors who are over 75 years paid in lieu of the contributions mentioned in subsection (1)(b).

### **234 Criteria for remuneration decisions**

In making a decision under this division, the council must have regard to—

- (a) the provisions of the Act about entitlements and responsibilities of councillors; and
- (b) community expectations about what is appropriate remuneration in the circumstances.



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**235 Publication of remuneration decisions**

As soon as practicable after the council makes a decision about the remuneration payable to councillors, the council must publish details of the decision—

- (a) in a newspaper circulating generally in Brisbane; and
- (b) on the council's website.

**Division 2 Reimbursement of expenses and provision of facilities**

**236 What div 2 is about**

- (1) This division is about the expenses reimbursement policy.
- (2) The *expenses reimbursement policy* is a policy providing for the following—
  - (a) payment of reasonable expenses incurred, or to be incurred, by councillors for discharging their duties and responsibilities as councillors;
  - (b) provision of facilities to councillors for that purpose.

**237 Requirement to adopt expenses reimbursement policy or amendment**

- (1) The council must adopt an expenses reimbursement policy.
- (2) The council may, by resolution, amend its expenses reimbursement policy at any time.

**238 Notification of adoption of expenses reimbursement policy**

- (1) As soon as practicable after the council adopts or amends its expenses reimbursement policy, the council must—

[s 239]

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- (a) ensure a copy of the policy may be viewed and purchased by the public at the council's public office; and
  - (b) publish the policy on the council's website.
- (2) The price for purchasing a copy of the policy must be no more than the cost to the council of making the copy available for purchase.

### **239 Meetings about expenses reimbursement policy**

The council can not resolve under section 255 that a meeting at which a proposed expenses reimbursement policy is discussed (including its adoption or amendment, for example) be closed.

## **Division 3 Other matters**

### **240 Prescribed integrity offence—Act, s 153**

For section 153(5)(c) of the Act, an offence against section 270 is prescribed.

### **241 Declaration of office—Act, s 169**

For section 169(2) of the Act, the declaration of office prescribed is—

‘I, (*insert* name of councillor), having been elected/appointed as a councillor of the City of Brisbane, declare that I will faithfully and impartially fulfil the duties of the office, in accordance with the local government principles under the *City of Brisbane Act 2010*, to the best of my judgment and ability.’.

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## **242 Administrative and support services for councillors**

- (1) The council must provide each councillor with sufficient administrative and support services to perform their responsibilities under the Act in accordance with the local government principles.
- (2) For subsection (1), a councillor's responsibilities under the Act include any responsibilities that the councillor may have because of an office of the council that the councillor holds, including, for example, as—
  - (a) the chairperson; or
  - (b) the leader of the opposition; or
  - (c) a chairperson of a committee.

## **Part 2 Council meetings**

### **243 What pt 2 is about**

This part is about the meetings of the council (other than meetings of its committees).

### **244 Agenda of post-election meetings**

- (1) The matters the council must consider at a post-election meeting include the day and time for holding other meetings.
- (2) A *post-election meeting* is the meeting mentioned in section 177(1) of the Act.

### **245 Frequency and place of meetings**

- (1) The council may decide how often it is to meet.

[s 246]

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- (2) However, the council must hold an extraordinary council meeting or a special council meeting if requested by the mayor or 9 or more of its councillors.
- (3) An *extraordinary council meeting* is a meeting of the council that is in addition to any meetings of the council decided under subsection (1).
- (4) All meetings of the council are to be held—
  - (a) at 1 of the council’s public offices; or
  - (b) for a particular meeting—at another place fixed by the council, by resolution, for the meeting.
- (5) A *special meeting* is an extraordinary council meeting at which the only business that may be conducted is the business stated in the notice of meeting.

#### **246 Notice of meetings for councillors**

- (1) Written notice of each meeting or adjourned meeting of the council must be given to each councillor at least 2 days before the day of the meeting unless it is impracticable to give the notice.
- (2) The written notice must state—
  - (a) the day and time of the meeting; and
  - (b) for a special meeting—the business to be conducted at the meeting.
- (3) The written notice may be given to a councillor by sending the notice to the councillor electronically.

#### **247 Public notice of meetings**

- (1) The council must, at least once in each year, publish a notice of the days and times when—
  - (a) its ordinary meetings will be held; and

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- (b) the ordinary meetings of its standing committees will be held.
  - (2) The notice mentioned in subsection (1) must be published—
    - (a) in a newspaper circulating generally in Brisbane; and
    - (b) on the council’s website.
  - (3) The council must display in a conspicuous place in its public office a notice of the days and times when—
    - (a) its meetings will be held; and
    - (b) meetings of its committees will be held.
  - (4) The council must immediately notify any change to the days and times mentioned in subsection (1) or (3) in the same way as the days and times were previously notified.
  - (5) A list of the items to be discussed at a meeting mentioned in subsection (3) must be available to be viewed at the time the agenda for the meeting is made available to councillors.
  - (6) The council may publish the list of items to be discussed at a meeting, including any details or documents relating to an item, on the council’s website.
  - (7) Subsection (5) does not affect the right to discuss or deal with, at any meeting, items arising after the agenda for the meeting is made available to councillors.

## **248 Quorum at meetings**

- (1) A quorum of the council is a majority of its councillors.
- (2) However, if the number of councillors is an even number, one-half of the number is a quorum.

## **249 Meetings in public unless otherwise resolved**

A meeting of the council is open to the public unless the council has resolved that the meeting is to be closed under section 255.

## **250 Procedure at meetings**

- (1) Business may be conducted at a meeting of the council only if a quorum is present.
- (2) At a meeting of the council—
  - (a) voting must be open; and
  - (b) a question is decided by a majority of the votes of the councillors present; and
  - (c) each councillor present has a vote on each question to be decided and, if the votes are equal, the chairperson of the council also has a casting vote.

## **251 Adjournment of meetings**

- (1) The majority of councillors present at a meeting of the council may adjourn the meeting to a later hour of the same day or to a later day.
- (2) If a quorum is not present within 15 minutes after the time appointed for a meeting, the meeting may be adjourned to a later hour or another day within 14 days after the day of adjournment, by—
  - (a) a majority of the councillors present; or
  - (b) if only 1 councillor is present—the councillor; or
  - (c) if no councillors are present—the chief executive officer.

## **252 Repeal or amendment of resolutions**

A resolution of the council may be repealed or amended only if written notice of intention to propose the repeal or amendment is given to each councillor at least 5 days before the meeting at which the proposal is to be made.

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## **253 Minutes**

- (1) The chief executive officer must ensure minutes of each meeting of the council are taken under the supervision of the chairperson of the council.
- (2) Minutes of each meeting must include—
  - (a) the names of councillors present at the meeting; and
  - (b) if a division is called on a question—the names of all persons voting on the question and how they voted.
- (3) At each meeting, the minutes of the previous meeting must be—
  - (a) confirmed by the councillors present; and
  - (b) signed by the chairperson of the council.
- (4) A copy of the minutes of each meeting—
  - (a) must be available for inspection by the public, at the council's public office and on its website, within 10 days after the end of the meeting; and
  - (b) when the minutes have been confirmed—must be available for purchase at the council's public office.
- (5) The price for purchasing the minutes must not be more than—
  - (a) the cost to the council of having the copy printed and made available for purchase; and
  - (b) if the copy is supplied to a purchaser by post—the cost of postage.

## **254 Recording of reasons for particular decisions**

- (1) This section applies if a decision made at a meeting of the council is inconsistent with a recommendation or advice given to the council by an advisor of the council and either or both of the following apply to the decision—

[s 255]

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- (a) the decision is about entering into a contract the total value of which is more than the greater of the following—
  - (i) \$200000 exclusive of GST;
  - (ii) 1% of the council's net rate and utility charges as stated in the council's audited financial statements included in the council's most recently adopted annual report;
- (b) the decision is inconsistent with—
  - (i) the policy or approach ordinarily followed by the council for the type of decision; or
  - (ii) a policy previously adopted by the council by resolution, whether or not as required by the Act, and still in force.

*Examples of decisions to which this section might apply—*

- the grant of a licence, permit or approval, however named, under an Act or local law
  - the grant of a concession, rebate or waiver in relation to an amount owed to the council
  - the disposal of land or a non-current asset
- (2) An **advisor**, of the council, is a person—
    - (a) who is an employee of the council or is otherwise engaged to provide services to the council; and
    - (b) whose duties include giving a recommendation or advice.
  - (3) The chief executive officer must ensure the minutes of the meeting include a statement of the reasons for not adopting the recommendation or advice.

## 255 Closed meetings

- (1) The council may resolve that a meeting of the council be closed to the public if its councillors consider it necessary to close the meeting to discuss—



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- (a) the appointment, dismissal or discipline of employees;  
or
  - (b) industrial matters affecting employees; or
  - (c) the council's budget; or
  - (d) rating concessions; or
  - (e) contracts proposed to be made by it; or
  - (f) starting or defending legal proceedings involving the council; or
  - (g) any action to be taken by the council under the Planning Act, including deciding applications made to it under that Act; or
  - (h) other business for which a public discussion would be likely to prejudice the interests of the council or someone else, or enable a person to gain a financial advantage.
- (2) A resolution that a meeting be closed must state the nature of the matters to be considered while the meeting is closed.
- (3) The council must not make a resolution (other than a procedural resolution) in a closed meeting.

## **Part 3 Council employees**

### **Division 1 Disciplinary action against council employees**

#### **256 What div 1 is about**

This division prescribes, for section 194(2) of the Act, when the chief executive officer may take, and the types of, disciplinary action.

[s 257]

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## **257 When disciplinary action may be taken**

The chief executive officer may take disciplinary action against a council employee if the chief executive officer is satisfied the employee has—

- (a) failed to perform their responsibilities under the Act; or
- (b) failed to perform a responsibility under the Act in accordance with the local government principles; or
- (c) taken action under the Act in a way that is not consistent with the local government principles.

## **258 Types of disciplinary action**

- (1) The disciplinary action taken by the chief executive officer against a council employee may be 1 or more of the following—

- (a) dismissal;
- (b) demotion, including a reduction in remuneration;

*Examples of demotion of a council employee—*

- a reduction in the classification level of the council employee's employment and a corresponding change in the employee's duties
  - a reduction in the council employee's level of remuneration within the classification level of the employee's employment
- (c) a deduction from salary or wages of an amount of not more than 2 penalty units;
  - (d) a written reprimand or warning.

*Note—*

If the disciplinary action to be taken is dismissal, the dismissal must comply with the requirements under the *Industrial Relations Act 1999*, chapter 3.

- (2) A written reprimand or warning—
  - (a) must state the following—

- (i) the employee's conduct that is disapproved of;
  - (ii) the remedial action needed to rectify the conduct;
  - (iii) the period within which the remedial action is to be taken;
  - (iv) the possible consequences for a repeat of the conduct by the employee; and
- (b) is part of a council employee's employment record.

## **259 Deductions from salary or wages**

- (1) If disciplinary action taken against a council employee consists of a deduction from the salary or wages of the employee, the council may make the deduction—
- (a) if no appeal is brought against the disciplinary action—when the period for starting an appeal against the disciplinary action has ended; or
  - (b) if an appeal is brought against the disciplinary action and the decision on the appeal confirms the deduction or changes the amount of the deduction—when notice of the decision is given to the employee; or
  - (c) if an appeal is brought against the disciplinary action and the appeal is discontinued or struck out—when the appeal is discontinued or struck out.
- (2) If an appeal is brought against the disciplinary action taken against a council employee and the decision on appeal changes the disciplinary action to a deduction from the salary or wages of the employee, the council may make the deduction when notice of the decision is given to the employee.

## **260 Suspension of employees**

- (1) If the chief executive officer is satisfied, on reasonable grounds, that a council employee will be subject to

[s 261]

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disciplinary action, the chief executive officer may suspend the employee from duty.

- (2) Suspension of a council employee from duty does not affect the following—
  - (a) the continuity of the employee's service in employment with the council;
  - (b) the entitlements previously accrued to the employee from employment with the council;
  - (c) the accrual of entitlements to the employee during the period of suspension.
- (3) A suspended employee must be paid the employee's full remuneration as at the start of the suspension for the period of suspension.

## **261 Employee to be given notice of grounds for disciplinary action**

- (1) Before the chief executive officer takes disciplinary action against a council employee, the chief executive officer must give the employee—
  - (a) written notice of the following—
    - (i) the disciplinary action to be taken;
    - (ii) the grounds on which the disciplinary action is taken;
    - (iii) the particulars of conduct claimed to support the grounds; and
  - (b) a reasonable opportunity to respond to the information contained in the written notice.
- (2) The grounds and particulars are taken to be the only grounds and particulars for the disciplinary action taken, and no other ground or particular of conduct can be advanced in any proceeding about the disciplinary action taken against the council employee.

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## Division 2                      Portability of long service leave

### 262      What div 2 is about

- (1) This division is about the continuation of particular council employees' accrued rights to long service leave and recognition of their previous periods of employment.
- (2) A person's *accrued right to long service leave* is the person's entitlement to take long service leave after having completed a minimum period of employment with an employer.
- (3) This division applies if—
  - (a) a person—
    - (i) is employed (the *new employment*) by the council (the *new employer*) and was previously employed (the *former employment*) by a relevant entity (the *former employer*); or
    - (ii) is employed (also the *new employment*) by a relevant entity (also the *new employer*) and was previously employed (also the *former employment*) by the council (also the *former employer*); and
  - (b) the period between ending the former employment and beginning the new employment is not longer than 1 year; and
  - (c) the person did not receive a payment from the former employer of an amount as a cash equivalent for the person's accrued right to long service leave.
- (4) A *relevant entity* is—
  - (a) a local government (other than the council); or
  - (b) a distributor-retailer; or
  - (c) a water entity; or
  - (d) another entity that is controlled or owned by a local government (other than the council).

[s 263]

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- (5) A **distributor-retailer** is a distributor-retailer under the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.
- (6) A **water entity** is a water entity under the *South East Queensland Water (Restructuring) Act 2007*.

## **263 Continuation of particular council employees' accrued rights to long service leave**

- (1) The person's accrued right to long service leave, in relation to the former employment, is continued, in relation to the new employment, as an accrued right to long service leave as an employee of the new employer.
- (2) From the start of the new employment, the new employer has the same obligations in relation to the person's accrued right to long service leave as the former employer had in relation to the person, at the end of the former employment.

*Example—*

If a person was entitled to take 11 weeks long service leave at the time the former employment ended, the person continues to be entitled to take 11 weeks long service leave after the start of the new employment. The entitlement would not be subject to completing any further period of employment with the new employer.

- (3) However, after the start of the new employment, the person continues to accrue rights to long service leave only under the same conditions as an employee of the new employer who is not a person to whom this division applies.

## **264 Recognition of previous periods of employment for particular council employees**

- (1) This section applies when determining the person's accrued right to long service leave in relation to the new employer.
- (2) The person's period of employment with the former employer, in addition to the person's period of employment with the new employer, is taken to be the person's period of employment with the new employer.

*Example—*

A person is taken to have completed a period of employment of 10 years with a new employer if the person completed a period of employment of 6 years with a former employer and a period of employment of 4 years with the new employer.

**265 Payment by former employer to new employer towards long service leave entitlements accrued with former employer**

- (1) The former employer must pay the new employer an amount for the number of days of long service leave that the person—
  - (a) is entitled to take because of the person's period of employment with the former employer; or
  - (b) would have been entitled to take, because of the person's period of employment with the former employer, if there was no minimum period of employment to be completed before the entitlement accrued.
- (2) The amount—
  - (a) is the amount the former employer would have been required to pay the person if the person had taken the long service leave; and
  - (b) must be paid within a reasonable time of being requested by the new employer.
- (3) A former employer must provide the new employer with the following information relating to the person—
  - (a) the length of accrued long service leave;
  - (b) any special leave taken by the person without salary;
  - (c) any long service leave taken by the person or any amount of cash paid to the person in lieu of long service leave;
  - (d) any undertaking given in relation to long service leave.

## Part 4 Authorised persons

### 266 Who may be appointed as authorised persons—Act, s 199

For section 199(2)(b)(ii) of the Act, each of the following types of persons are prescribed—

- (a) a person who contracts with the council to provide services to it for the administration or enforcement of a local government related law;
- (b) a person who is an employee of an entity that contracts with the council to provide services to it for the administration or enforcement of a local government related law;
- (c) a person who is an employee of another local government and who performs duties for the council under an arrangement between the council and the other local government.

## Part 5 Register of interests

### 267 What pt 5 is about

- (1) This part is about the register of interests of the following persons—
  - (a) councillors;
  - (b) chief executive officers;
  - (c) senior executive employees;
  - (d) a person who is related to a councillor, chief executive officer or senior executive employee.
- (2) A person is *related* to a councillor, chief executive officer or senior executive employee (the *primary party*) if—



- (a) the person is the primary party's spouse; or
- (b) the person is totally or substantially dependent on the primary party and—
  - (i) the person is the primary party's child; or
  - (ii) the person's affairs are so closely connected with the affairs of the primary party that a benefit derived by the person, or a substantial part of it, could pass to the primary party.

## **268 Who maintains registers of interests**

- (1) The chief executive officer must maintain a register of interests of the following persons—
  - (a) councillors;
  - (b) senior executive employees;
  - (c) a person who is related to a councillor or senior executive employee.
- (2) The mayor must maintain a register of interests of the following persons—
  - (a) the chief executive officer;
  - (b) a person who is related to the chief executive officer.

## **269 Contents of registers of interests**

- (1) The register of interests of each of the following persons must contain the financial and non-financial particulars mentioned in schedule 3 for an interest held by the person—
  - (a) a councillor;
  - (b) the chief executive officer;
  - (c) a senior executive employee;
  - (d) a person who is related to a councillor, the chief executive officer or a senior executive employee.

[s 270]

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- (2) However, the register of interests of a person who is related to a councillor, the chief executive officer or a senior executive employee need not include any interest that is—
  - (a) held jointly, or in common, with the councillor, chief executive officer or senior executive employee; and
  - (b) included in the register of interests of the councillor, chief executive officer or senior executive employee.
- (3) Nothing in subsection (1) requires a register of interests to include any of the following—
  - (a) the number or monetary value of shares;
  - (b) the monetary value of an investment or interest;
  - (c) the full street address of land;
  - (d) the amount of a liability, donation or other income;
  - (e) the account number of, or amounts held in, accounts held with a financial institution;
  - (f) the monetary value of accommodation, an asset, a gift or travel.
- (4) To remove any doubt, it is declared that a person holds an interest if the person holds the interest alone or jointly, or in common, with another person.

**270 Obligation to notify if interest in register no longer correct**

- (1) Subsection (2) applies if a councillor knows—
  - (a) of an interest that must be recorded in a register of interests under section 269 in relation to the councillor or a person who is related to the councillor; or
  - (b) that particulars of an interest recorded in a register under section 269 in relation to the councillor or a person who is related to the councillor are no longer correct.
- (2) The councillor must, in the approved form, inform the chief executive officer of the interest or the correct particulars

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within 30 days after the councillor knows of the interest or correct particulars.

Maximum penalty—85 penalty units.

- (3) Subsection (4) applies if the chief executive officer knows—
- (a) of an interest that must be recorded in a register of interests under section 269 in relation to the chief executive officer or a person who is related to the chief executive officer; or
  - (b) that particulars of an interest recorded in a register under section 269 in relation to the chief executive officer or a person who is related to the chief executive officer are no longer correct.
- (4) The chief executive officer must, in the approved form, inform the mayor of the interest or the correct particulars within 30 days after the chief executive officer knows of the interest or correct particulars.

Maximum penalty—85 penalty units.

- (5) Subsection (6) applies if a senior executive employee knows—
- (a) of an interest that must be recorded in a register of interests under section 269 in relation to the employee or a person who is related to the employee; or
  - (b) that particulars of an interest recorded in a register under section 269 in relation to the employee or a person who is related to the employee are no longer correct.
- (6) The senior executive employee must, in the approved form, inform the chief executive officer of the interest or the correct particulars within 30 days after the employee knows of the interest or correct particulars.

Maximum penalty—85 penalty units.

[s 271]

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## **271 Who may inspect a register of interests**

- (1) A register of interests of a councillor may be viewed by the public.
- (2) Subsection (3) applies to a register of interests of—
  - (a) the chief executive officer; or
  - (b) senior executive employees; or
  - (c) persons who are related to a councillor, the chief executive officer or a senior executive employee.
- (3) The register of interests is only open to inspection by the following persons—
  - (a) a councillor;
  - (b) the chief executive officer;
  - (c) another person permitted by law to have access to information in the register.

## **272 Access to particular registers of interests**

- (1) This section applies to the register of interests of—
  - (a) the chief executive officer; or
  - (b) a senior executive employee; or
  - (c) a person who is related to a councillor, the chief executive officer or a senior executive employee.
- (2) A person seeking access to the register of interests must apply in writing to—
  - (a) for the register of interests of the chief executive officer or persons who are related to the chief executive officer—the mayor; or
  - (b) otherwise—the chief executive officer.
- (3) The chief executive officer or mayor must record—

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- (a) the name and home or business address of each person given access to a register of interests by the chief executive officer or mayor; and
  - (b) the day the access is given.
- (4) If the chief executive officer or mayor gives access to a register of interests, the chief executive officer or mayor must, as soon as practicable, inform the person to whom the register of interests relates of the day the access was given.

### **273 Publication of register of interests of councillors**

- (1) The council must ensure a copy of the register of interests of councillors may be viewed by the public—
  - (a) at the council's public office; and
  - (b) on its website.
- (2) The copy of the register of interests must—
  - (a) include a change to the register of interests as soon as practicable, but no later than 5 business days, after the change is made; and
  - (b) be in a form that is reasonably accessible and transparent.

*Example for paragraph (b)—*

a consolidated version of the register of interests

### **274 Queries on contents of register of interests**

- (1) A person who suspects on reasonable grounds that a register of interests does not contain particulars that should be in the register may inform—
  - (a) if the suspicion relates to the register of interests of the chief executive officer or persons who are related to the chief executive officer—the mayor; or
  - (b) otherwise—the chief executive officer.

[s 275]

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- (2) The chief executive officer or mayor must immediately inform the following person (the *informed person*)—
  - (a) if the register of interests relates to a councillor or a person who is related to the councillor—the councillor;
  - (b) if the register of interests relates to the mayor or a person who is related to the mayor—the mayor;
  - (c) if the register of interests relates to the chief executive officer or a person who is related to the chief executive officer—the chief executive officer;
  - (d) if the register of interests relates to a senior executive employee or a person who is related to the senior executive employee—the senior executive employee.
- (3) The informed person must, within 30 days of being informed, establish whether the register of interests should be amended to make it a true record of fact.
- (4) If the informed person establishes that the register of interests does not need to be amended, the person must—
  - (a) complete a statutory declaration stating that the particulars in the register of interests are a true record of fact; and
  - (b) give the statutory declaration to—
    - (i) if the informed person is the chief executive officer—the mayor; or
    - (ii) otherwise—the chief executive officer.

## **275 Improper disclosure of registers of interests**

- (1) A person must not knowingly disclose information obtained from a register of interests if it is not a true copy, or a fair summary, of the contents of the register of interests.

Maximum penalty—85 penalty units.

- (2) A person must not knowingly disclose information obtained from a register of interests of the following persons, other than to a person mentioned in section 271(3)—
- (a) a chief executive officer;
  - (b) a senior executive employee;
  - (c) a person related to a councillor, chief executive officer or senior executive employee.

Maximum penalty—85 penalty units.

## Chapter 9 Other provisions

### Part 1 Way to hold a hearing

#### 276 Procedural rules for hearings—Act, s 206

For section 206(3) of the Act, a hearing must be held in public unless the investigator directs the hearing is to be held in private.

#### 277 Witness fees—Act, s 207

For section 207(4)(a) of the Act, the witness fees prescribed are the allowances for witnesses and other persons prescribed under the QCAT Act.

*Note—*

For the witness fees prescribed under the QCAT Act, see the *Queensland Civil and Administrative Tribunal Regulation 2009*, part 4.





- (2) The council must adopt—
  - (a) a complaints management process that effectively manages complaints from their receipt to their resolution; and
  - (b) written policies and procedures supporting the complaints management process.
- (3) A ***complaints management process*** is a process for resolving complaints about administrative actions of the council that—
  - (a) covers all administrative action complaints made to the council; and
  - (b) requires the council to quickly and efficiently respond to complaints in a fair and objective way; and
  - (c) includes the criteria considered when assessing whether to investigate a complaint; and
  - (d) requires the council to inform an affected person of the council's decision about the complaint and the reasons for the decision, unless the complaint was made anonymously.
- (4) The council must—
  - (a) record all administrative action complaints; and
  - (b) ensure the public may inspect the complaints management process (including the related policies and procedures) at the council's public office and on its website; and
  - (c) ensure internal reports are occasionally provided to senior management about the operation of the complaints management process; and
  - (d) ensure mechanisms are in place to—
    - (i) identify, analyse and respond to complaint trends; and

[s 280]

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- (ii) monitor the effectiveness of the complaints management process (by monitoring the time taken to resolve complaints, for example).
- (5) To remove any doubt, it is declared that, in deciding if a complaint is an administrative action complaint, it is irrelevant—
- (a) how quickly the complaint was resolved; or
  - (b) to which area of the council the complaint was made; or
  - (c) whether the complaint was a written or verbal complaint; or
  - (d) whether or not the complaint was made anonymously.

*Note—*

Under section 179, the council must include particular information relating to the complaints management process in the council's annual report.

## **Chapter 10      Repeal and transitional provisions**

### **Part 1            Repeal provision**

#### **280      Repeal**

The following regulations are repealed—

- City of Brisbane (Beneficial Enterprises and Business Activities) Regulation 2010 SL No. 170
- City of Brisbane (Finance, Plans and Reporting) Regulation 2010 SL No. 171
- City of Brisbane (Operations) Regulation 2010 SL No. 172.

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## Part 2 Transitional provisions

### 281 Definitions for pt 2

In this part—

*commencement* means the commencement of this part.

*repealed Business Activities Regulation* means the repealed *City of Brisbane (Beneficial Enterprises and Business Activities) Regulation 2010*.

### 282 Competitive neutrality complaints started before commencement

- (1) This section applies if—
  - (a) before the commencement—
    - (i) a person made a competitive neutrality complaint in relation to a business entity under chapter 5 of the repealed Business Activities Regulation; and
    - (ii) the council appointed a referee to investigate and report on the complaint; and
  - (b) at the commencement—
    - (i) the referee's investigation and report on the complaint has not been finalised; and
    - (ii) the complaint has not been withdrawn.
- (2) Chapter 5 of the repealed Business Activities Regulation continues to apply in relation to the competitive neutrality complaint despite the repeal of those provisions under this regulation.
- (3) Without limiting subsection (2)—
  - (a) the referee must continue to investigate and report on the competitive neutrality complaint; and
  - (b) the council must comply with sections 136 and 138 of the repealed Business Activities Regulation.

[s 283]

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- (4) To remove any doubt, it is declared that chapter 3, part 2, division 6 applies in relation to a competitive neutrality complaint about a business entity if—
  - (a) the complaint was made before the commencement; and
  - (b) at the commencement, the council had not appointed a referee to investigate and report on the complaint.

### **283 References to QCA**

- (1) This section is about referring to the QCA particular decisions about competitive neutrality complaints made—
  - (a) before the commencement; and
  - (b) against business entities conducting business activities to which chapter 5, part 3 of the repealed Business Activities Regulation applied.
- (2) If the person who made the complaint has not already done so, the person may refer to the QCA—
  - (a) the referee's decision not to investigate the complaint; or
  - (b) the council's response to the referee's recommendation about the complaint.
- (3) For the purpose of making the referral, or the QCA dealing with the referral, chapter 5, part 3 of the repealed Business Activities Regulation continues to apply despite the repeal of those provisions under this regulation.
- (4) Subsection (5) applies if—
  - (a) before the commencement, the person who made the complaint had referred a decision mentioned in subsection (2)(a) or (b) to the QCA under chapter 5, part 3 of the repealed Business Activities Regulation; and
  - (b) at the commencement, the QCA had not finished dealing with the complaint.

- (5) Chapter 5, part 3 of the repealed Business Activities Regulation continues to apply in relation to the complaint despite the repeal of those provisions under this regulation.

# **Schedule 1      City of Brisbane—electoral ward boundaries**

section 4

<b>Electoral ward</b>	<b>Map LGRB 1</b>
Bracken Ridge	Sheet 5
Central	Sheet 6
Chandler	Sheet 7
Deagon	Sheet 8
Doboy	Sheet 9
Enoggera	Sheet 10
Hamilton	Sheet 11
Holland Park	Sheet 12
Jamboree	Sheet 13
Karawatha	Sheet 14
Macgregor	Sheet 15
Marchant	Sheet 16
McDowall	Sheet 17
Moorooka	Sheet 18
Morningside	Sheet 19
Northgate	Sheet 20
Parkinson	Sheet 21
Pullenvale	Sheet 22
Richlands	Sheet 23
Tennyson	Sheet 24
The Gabba	Sheet 25
The Gap	Sheet 26
Toowong	Sheet 27
Walter Taylor	Sheet 28
Wishart	Sheet 29
Wynnum-Manly	Sheet 30

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## Schedule 2 Pricing provisions

schedule 4, definition *pricing provisions*

### 1 Definition for sch 2

In this schedule—

*relevant activity*, of the council, means—

- (a) a significant business activity of the council to which full cost pricing applies; or
- (b) a business activity of the council to which the code of competitive conduct applies.

### 2 Required revenue for deciding charges

In deciding charges to persons for goods or services provided in conducting a relevant activity, the council must ensure the projected total revenue from conducting the activity is enough to cover the projected total costs of conducting the activity for—

- (a) if the relevant activity is an activity to which the code of competitive conduct applies—a period of more than 1 year but not more than 5 years; or
- (b) otherwise—each financial year in which the activity is conducted.

### 3 Different charges for commercial reasons

- (1) A charge may be decided for providing particular goods or services in conducting a relevant activity that is, for commercial reasons, an appropriate charge for the goods or services provided.
- (2) For subsection (1), a charge is, for commercial reasons, an appropriate charge if it could reasonably be charged if the goods or services were provided by an entity conducting the

relevant activity with the primary object of making a profit from conducting the activity.

#### **4 Total costs of conducting relevant activity**

- (1) For this schedule, the total costs of conducting a relevant activity include each of the following—
  - (a) the operational costs incurred in conducting the activity;
  - (b) administrative and overhead costs;
  - (c) the cost of resources used in conducting the activity;
  - (d) depreciation;
  - (e) equivalents for Commonwealth or State taxes the council is not liable to pay because it is a local government;
  - (f) equivalents for the cost of funds advantage the council obtains over commercial interest rates because of State guarantees on borrowings;
  - (g) return on capital.
- (2) The total costs must be adjusted for other advantages and disadvantages of the council that are not eliminated.
- (3) Subsection (2) does not apply in relation to a relevant activity to which commercialisation applies.

#### **5 Allocation of administrative and overhead costs**

For section 4(1)(b), the council must make a reasonable allocation of its administrative and overhead costs to each relevant activity, having regard to all of the council's relevant activities.

#### **6 Cost of resources used in conducting activity**

- (1) For section 4(1)(c), if resources are provided by or to the council for conducting an activity, the cost of resources used in conducting the activity may be taken to be—



- 
- (a) if the resources have an identifiable cost—the cost of the resources; or
  - (b) if paragraph (a) does not apply and the resources are readily available on the open market—the price at which the resources can be obtained on the market.
- (2) If subsection (1)(b) applies, the council must ensure the terms on which the cost is based are similar to the terms on which they are made available in conducting the relevant activity.

## **7 Depreciation**

- (1) For section 4(1)(d), depreciation of an asset used in conducting a relevant activity must be based on the depreciable amount for the asset allocated over its useful life.
- (2) However, the council may decide to base the depreciation on an amount decided by the council to be appropriate in the circumstances.

## **8 Equivalent amounts for taxes council is not liable to pay**

- (1) This section applies for section 4(1)(e) for working out the equivalent amount for a Commonwealth or State tax the council is not liable to pay because it is a local government.
- (2) The equivalent amount must be worked out—
  - (a) for a tax to which a tax equivalents manual applies—by applying the general principles provided for in the manual; or
  - (b) if paragraph (a) does not apply—by estimating the amount a private sector business conducting the relevant activity would calculate to be its liability to pay the tax.
- (3) Subsection (2)(a) does not, of itself, require the council to comply with a process or other requirement under the tax equivalents manual.
- (4) However, the council must keep, for 7 years from the day the equivalent amount is worked out, details of the calculations made in working out the equivalent amount.

- (5) This section does not apply for a relevant activity to which commercialisation applies.

## 9 Guarantees by State

- (1) This section applies for section 4(1)(f) in relation to a relevant activity that is a business activity to which the code of competitive conduct applies.
- (2) If the State guarantees repayment of a debt of the council attributed to the relevant activity, the council must, in conducting the activity, take account of amounts equivalent to the cost of funds advantage the council obtains over commercial interest rates because of the guarantee.

## 10 Return on capital

- (1) This section applies for section 4(1)(g).
- (2) The amount for the return on the capital used by the council in conducting a relevant activity must be decided using the rate at which, in the council's opinion, a comparable private sector business conducting the activity would be able to obtain the capital in the market.
- (3) In deciding the rate under subsection (2), the council must have regard to the split the council considers appropriate, for the type of business activity, between equity and loan capital and the return appropriate to each.
- (4) However, the amount for the return on the capital used in conducting a business activity for the first year in which the business activity is a relevant activity may be the amount the council decides.
- (5) In this section—  
***capital used in conducting a business activity*** means the total value, decided using an accepted accountancy method, of the assets used for the business activity less the liabilities attributable to the activity.

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## Schedule 3      **Financial and non-financial particulars for registers of interests**

section 269(1)

### 1      **Definitions for sch 3**

In this schedule—

***controlling interest***, in shares in a corporation, for a person, means the person is able—

- (a) to dispose of, or to exercise control over the disposal of, the shares; or
- (b) if the shares are voting shares—to exercise, or to control the exercise of, a voting power attached to the shares.

***debenture*** see the Corporations Act, section 9.

***holding company***, for a corporation, see the Corporations Act, section 9.

***nominee corporation*** means a corporation whose principal business is holding marketable securities as a trustee or nominee.

***relevant person*** means any of the following persons—

- (a) a councillor;
- (b) a chief executive officer;
- (c) a senior executive employee;
- (d) a person who is related to a councillor, chief executive officer or senior executive employee.

***securities*** see the Corporations Act, section 9.

***subsidiary***, for a corporation, see the Corporations Act, section 9.

## **2 Shareholding or controlling interest in corporation**

The particulars required for each corporation in which a relevant person is a shareholder or has a controlling interest in shares are—

- (a) the corporation's name; and
- (b) if the shareholding or interest is a controlling interest in the corporation—details of the shareholdings of the corporation in any other corporation; and
- (c) if the shareholding or interest is held in a proprietary company that is the holding company of another corporation—
  - (i) details of the holding company's investments; and
  - (ii) the name of any corporation that is a subsidiary of the holding company; and
  - (iii) the name of any corporation that is a subsidiary of any corporation that is the holding company's subsidiary; and
  - (iv) if the relevant person is a councillor or a person related to a councillor—the investments or other interests in property held by the subsidiaries; and
- (d) if the relevant person is a councillor, or a person related to a councillor, and the shareholding or interest is held in a proprietary company—the investments or other interests in property, other than those mentioned in paragraph (c)(iv), held by the company.

## **3 Officer of corporation**

The particulars required for each corporation of which a relevant person is an officer are—

- (a) the corporation's name; and
- (b) the nature of the office held; and
- (c) the nature of the corporation's activities.

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#### 4 Beneficial interest in trust or nominee corporation

The particulars required for each family or business trust or nominee corporation in which a relevant person holds a beneficial interest are—

- (a) the name of, or a description sufficient to identify, the trust, or the corporation's name; and
- (b) the nature of the activities of the trust or corporation; and
- (c) the nature of the interest.

#### 5 Self managed superannuation fund

(1) This section applies to each self managed superannuation fund for which a councillor or a person related to a councillor is—

- (a) a trustee; or
- (b) if the trustee of the fund is a corporation—a director of the trustee.

(2) The particulars required for each self managed superannuation fund are—

- (a) the name or a description of the fund; and
- (b) the nature of the activities of the fund; and
- (c) the investments or other interests in property held, of which the councillor or person is aware, by the fund.

(3) In this section—

*director* see the Corporations Act, section 9.

*self managed superannuation fund* see the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 10.

#### 6 Trustee for trust

The particulars required for each family or business trust of which a relevant person is a trustee are—

- (a) the name of, or a description sufficient to identify, the trust; and
- (b) the nature of the trust's activities; and
- (c) the name of each beneficiary of the trust, or, if the trust is a discretionary trust, each class of persons who may benefit under the trust.

## **7 Partnership and joint venture**

The particulars required for each partnership or joint venture in which a relevant person has an interest are—

- (a) the name of, or a description sufficient to identify, the partnership or joint venture; and
- (b) the nature of the partnership's or joint venture's activities; and
- (c) the nature of the interest.

## **8 Land**

The particulars required for all land in which a relevant person has an interest are—

- (a) the suburb or locality of the land; and
- (b) the approximate size of the land; and
- (c) the purpose for which the land is, and is intended to be, used; and
- (d) the nature of the interest.

## **9 Liability**

- (1) The particulars required for each liability, other than department store and credit card accounts, of a relevant person, trust or private company are—
  - (a) the nature of the liability; and
  - (b) the name of the creditor.
- (2) However, subsection (1) does not apply if the debt—

- 
- (a) is for an amount of \$10000 or less; or
  - (b) arises from the supply of goods or services supplied in the ordinary course of—
    - (i) the relevant person's business; or
    - (ii) the business of the trust or private company.
  - (3) In this section—

*private company* means a proprietary company in which a relevant person holds securities.

*trust* means a trust of which a relevant person is a beneficiary.

## 10 Debentures and similar investments

The particulars required for each debenture or similar investment held by a relevant person are—

- (a) the nature of the investment; and
- (b) the name of the corporation in which the investment is made; and
- (c) the nature of the business of the corporation.

## 11 Savings and investment accounts

The particulars required for each savings or investment account of a relevant person held with a financial institution are—

- (a) the nature of the account; and
- (b) the name of the institution.

## 12 Gifts totalling more than \$500

- (1) The particulars required for each gift, or all gifts totalling, more than \$500 in amount or value given to a relevant person by another person (a *donor*) are—
  - (a) the donor's name; and
  - (b) a description of the gift.

- (2) Subsection (1) does not apply to a gift from a donor who is—
  - (a) a person who is related to the relevant person; or
  - (b) someone else who is related by blood or marriage to the relevant person; or
  - (c) the relevant person's friend.
- (3) However, the relevant person must be satisfied there can not be the perception of a conflict of interest, financial or otherwise, relating to the gift that could conflict with a duty the person has under the Act.
- (4) A *gift* is—
  - (a) the transfer of money, other property or other benefit—
    - (i) without consideration; or
    - (ii) for a consideration substantially less than full consideration; or
  - (b) a loan of money or other property made on a permanent or indefinite basis, other than an overdraft facility.

### **13 Sponsored hospitality benefit**

- (1) The particulars required for each sponsored hospitality benefit received by a relevant person are—
  - (a) the source of the contribution for the travel or accommodation; and
  - (b) the purpose of the benefit.
- (2) A person receives a *sponsored hospitality benefit* if—
  - (a) the person, other than in an official capacity—
    - (i) undertakes travel; or
    - (ii) uses accommodation; and
  - (b) a contribution, whether financial or non-financial, for the cost of the travel or accommodation is made by another person.
- (3) However, a person does not receive a sponsored hospitality benefit if—



- (a) the contribution mentioned in subsection (2)(b) was made by the person's spouse, other family member or friend; and
- (b) there could not be a perception of a conflict of interest, financial or otherwise, relating to the contribution.

**14 Membership of political party, body or association, or trade or professional organisation**

The particulars required for each political party, body or association, or trade or professional organisation, of which a relevant person is a member are its name and address.

**15 Other assets with value of more than \$5000**

- (1) The particulars required for each other asset of a relevant person with a value of more than \$5000 are sufficient details of the asset to identify it.
- (2) This section does not apply to the following—
  - (a) household and personal effects;
  - (b) a motor vehicle used mainly for personal use;
  - (c) superannuation entitlements.

**16 Other sources of income of more than \$500 a year**

The particulars required for each other source of income of more than \$500 a year received by the following are sufficient details of the income to identify it—

- (a) a relevant person;
- (b) a proprietary company, or trust, in which the relevant person holds securities.

**17 Other financial or non-financial interests**

- (1) The particulars required for each other interest of a relevant person are sufficient details of the interest to identify it.
- (2) In this section—

*interest*, of the relevant person, means a financial or non-financial interest—

- (a) of which the relevant person is aware; and
- (b) that raises, appears to raise, or could raise, a conflict between the relevant person's duty under the Act and the holder of the interest.

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## Schedule 4      Dictionary

## section 2

*2-year averaged value* see section 68(1).

*3-year averaged value* see section 69(1).

*accrued right to long service leave*, for chapter 8, part 3, division 2, see section 262(2).

*advertising* see section 189(3).

*advertising spending policy* see section 189(1).

*annual budget* means the council's annual budget under chapter 5, part 2, division 3.

*annual implementation plan* see section 87(11).

*annual report* means the council's annual report under chapter 5, part 3, division 3.

*auditor-general's audit report* means a report under the *Auditor-General Act 2009*, section 40.

*auditor-general's observation report* see section 203.

*business entity* means—

- (a) the council to the extent it carries on the business activity, including a business unit of the council; or
- (b) a corporatised business entity.

*categorisation officer* means a person appointed under section 76.

*change of owner notice*, for chapter 4, part 13, division 3, see section 152.

*commercial business unit* see section 24(2).

*community financial report* means the council's community financial report under section 171.

*community grants policy* see section 187.

***community organisation*** means—

- (a) an entity that carries on activities for a public purpose; or
- (b) another entity whose primary object is not directed at making a profit.

***community service obligation*** see section 21.

***community titles Act*** means—

- (a) the *Body Corporate and Community Management Act 1997*; or
- (b) the *Building Units and Group Titles Act 1980*; or
- (c) the *Integrated Resort Development Act 1987*; or
- (d) the *Mixed Use Development Act 1993*.

***competitive advantage*** see section 19(3).

***competitive disadvantage*** see section 19(5).

***complainant*** see section 33(2)(b)(i).

***complaints management process*** see section 279(3).

***concession***, for rates or charges, means a concession granted under chapter 4, part 10.

***contracting activities***, for chapter 6, see section 206(2).

***contracting plan*** see section 210(3).

***control measure***, for managing a risk, means a measure that may be adopted for managing the risk.

***corporate plan*** means the corporate plan adopted under section 157.

***corporatised business entity*** means a company registered under the Corporations Act that is owned or controlled by the council.

***court proceedings*** means proceedings in a court having jurisdiction for the recovery of a debt in the amount claimed.

***differential general rates*** see section 73(2).

***discount period*** see section 122(2).

**distributor-retailer** see the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*, section 8.

**due date for payment**, for rates or charges, means—

- (a) the due date stated in the rate notice by which the rates or charges must be paid; or
- (b) if a concession defers payment of the rates or charges under section 113(b)—the due date stated in the agreement to defer payment of the rates or charges under the concession; or
- (c) if a concession accepts a transfer of unencumbered land in full or part payment of the rates or charges under section 113(c)—the due date stated in the agreement to accept the transfer.

**entertainment and hospitality policy** see section 188(1).

**expenses reimbursement policy** see section 236(2).

**financial institution account** means an account with a financial institution.

**foreshore** means land between the high-water mark and low-water mark during ordinary spring tides.

**former employer**, for chapter 8, part 3, division 2, see section 262(3)(a).

**former employment**, for chapter 8, part 3, division 2, see section 262(3)(a).

**government agency** is—

- (a) the State, a government entity, a corporatised business entity or another local government; or
- (b) another Australian government or an entity of another Australian government; or
- (c) a local government of another State.

**interested parties** are—

- (a) the owner of the land; and
- (b) the holder of any registered interest in the land; and

(c) any encumbrancee, lessee or trustee of the land who has given the council notice of their interest in the land.

**internal audit plan** see section 199(2).

**investigation notice** see section 37(2).

**key principles of commercialisation** see section 25.

**land record** see section 146(2).

**Land Valuation Act** means the *Land Valuation Act 2010*.

**large-sized contractual arrangement** see section 214(3).

**leader of the opposition** means the councillor who is recognised by the council as the Leader of the Opposition.

**mall traffic permit** see section 49(1).

**mall traffic restriction** see section 47(1).

**market value**, of land, for chapter 4, part 12, division 3, see section 129.

**medium-sized contractual arrangement** see section 214(2).

**new employer**, for chapter 8, part 3, division 2, see section 262(3)(a).

**new employment**, for chapter 8, part 3, division 2, see section 262(3)(a).

**new owner**, for chapter 4, part 13, division 3, see section 152.

**notice** means a written notice.

**notice of intention to acquire**, for land, see section 141(3).

**notice of intention to sell**, for land, see section 132(4).

**objection notice** see section 83(4).

**overall plan** see section 87(7).

**overdue**, for rates or charges, see section 124.

**pensioner** means a person who is the holder of a pensioner concession card issued by the department of the Commonwealth responsible for administering the *Social Security Act 1991* (Cwlth) or the *Veterans' Entitlements Act 1986* (Cwlth).

***preferred supplier arrangement*** means a preferred supplier arrangement under section 223.

***pre-qualified supplier*** see section 222(4).

***prescribed accounting standard*** see section 169.

***previous owner***, for chapter 4, part 13, division 3, see section 152.

***pricing provisions*** means the provisions in schedule 2.

***private sector business*** means a business in the private sector.

***procurement policy*** see section 190.

***QCA*** means the Queensland Competition Authority established under the QCA Act.

***QCA Act*** means the *Queensland Competition Authority Act 1997*.

***rateable value*** see section 67(2).

***rate notice*** see section 96(2).

***ratepayer*** is a person who is liable to pay rates or charges.

***rating category*** see section 74(1).

***rating category statement*** see section 81(4).

***recreational vehicle*** means a bicycle or wheeled recreational device under the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

*Examples of recreational vehicles—*

rollerblades, skateboards and scooters

***registered interest***, in land, means an interest in land that has been registered by the registrar of titles.

***registered operator***, of a vehicle, see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

***related*** see section 267(2).

***relevant measures of financial sustainability*** see section 160(5).

***salary*** includes allowances.

***significant contract*** see section 210(3)(g).

***special meeting*** see section 245(5).

***State encumbrance*** see section 130(2).

***statement of estimated financial position*** see section 197(2).

***strategic approach*** see section 207(2).

***tax*** see section 22(4).

***tax equivalent*** see section 22(3).

***tax equivalents manual*** see section 22(2).

***trust fund*** see section 192(2).

***trust money*** see section 192(3).

***valuable non-current asset*** see section 214(6).

***valuable non-current asset contract*** see section 214(5).

***value***, of land, see section 65.

***vehicle*** see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

***wages*** include a salary.



## Endnotes

### 1 Index to endnotes

	Page
2 Date to which amendments incorporated . . . . .	207
3 Key . . . . .	207
4 Table of reprints . . . . .	208
5 List of legislation . . . . .	208

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the City of Brisbane Regulation 2012 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	none	14 December 2012	

## 5 List of legislation

### *Regulatory impact statements*

For subordinate legislation that has a regulatory impact statement, specific reference to the statement is included in this list.

### *Explanatory notes*

All subordinate legislation made on or after 1 January 2011 has an explanatory note. For subordinate legislation made before 1 January 2011 that has an explanatory note, specific reference to the note is included in this list.

### **City of Brisbane Regulation 2012 SL No. 235**

made by the Governor in Council on 13 December 2012

notfd gaz 14 December 2012 pp 548–52

commenced on date of notification

exp 1 September 2023 (see SIA s 54)

Note—The expiry date may have changed since this reprint was published. See the latest reprint of the SIR for any change.