The Local Law

Navigating good government | August 2024

Lawyers | McCullough Robertson

Welcome

We are pleased to bring you the August 2024 edition of *The Local Law*.

In an ever-changing landscape of local government, staying informed is crucial. This publication is designed for CEOs, elected representatives, local government officers and in-house lawyers, offering insights and updates on key decisions, legislation, and relevant topics you need to make informed decisions.

In this edition, we explore the rules of authorised access to public spaces, the importance of procedural fairness in ensuring defendants' rights to a fair trial and delve into the ethical considerations surrounding AI adoption for local governments. We also examine the new Powers and Penalties Act, emphasising local governments' role in environmental compliance.

Additionally, we analyse recent cases providing best practice for managing public safety, insights on how changes to a planning scheme impact existing use rights, and the *Homeland Property Developments Pty Ltd v Whitsunday Regional Council* case that will clarify the approach to infrastructure conditions.

To provide feedback or if you would like to read more about particular topics, please send your thoughts to a member of our team.

We hope that you find this edition insightful and engaging.

Troy Webb
Partner and Head of Local Government

Contents

Generative AI: Key risks and ethical considerations for local governments

Generative artificial intelligence (**AI**) is a powerful tool that is developing at astonishing pace. Unlike previous versions of AI for public use (e.g. Siri, or the ever-useful Autocorrect), generative AI models now produce their own sophisticated content and can respond to an ever-expanding range of stimuli including text, images, audio, and video.

Businesses, individuals, and governments of all levels are increasingly leveraging generative AI to streamline processes and increase efficiency in:

1. identifying early indicators of flooding, or wear and tear to local government-managed roads;
2. accelerating time frames for processing of planning applications, e.g. by quickly identifying non-compliant components within applications;
3. triaging requests for assistance in the event of an emergency, to address critical needs faster;
4. expediting the shift from paper-based systems to digital platforms; and
5. assisting in decision-making processes.

However, this rapid adoption brings with it a swathe of serious risks and ethical concerns that require careful attention.

In this article, we'll unpack the key risk factors and ethical considerations of generative AI that local governments should take into consideration when using generative AI.

Generative AI models

Generative AI models are trained on massive data sets to generate predictive outputs. Because of this, it is important to remember that generative AI tools can only 'know' what they are given through their training data.

Recent developments in this space have seen the latest models being equipped to process internet search results in real time, meaning models are becoming more current. However, training data is also where AI companies are facing increasing scrutiny, including as the holders of intellectual property (**IP**) rights aim to safeguard their rights.

Key risks for local governments

Copyright: Copyright holders are increasingly live to AI companies (allegedly) infringing their IP rights by training their AI models on copyright materials. While it would be best practice to avoid using generative AI tools whose suppliers cannot confirm that their training data is properly licensed from all relevant IP rights holders, this may not be realistically possible in many cases.

Privacy and confidentiality: Most of the current generative AI systems are not secured and information entered becomes public and is used to train the model. To the extent that training or input data used by an AI system contains confidential information or information about identifiable individuals, the use of that data raises major privacy and confidentiality concerns. Local governments must uphold their statutory obligations, including those under the *Information Privacy Act 2009* (Qld), at all times.

Hallucinations: AI 'hallucinations' refer to instances where the underlying model of an AI tool generates an output that is not grounded in its training data or is otherwise plainly wrong or misleading. This can be particularly problematic if an AI tool is used to make decisions affecting individuals in a significant way.

Bias: Training data can introduce biases and lead to unfair outcomes. Two common examples include biases based on gender (for example, a generative AI model trained on data containing gender-biased language may generate job descriptions that inadvertently favour one gender over another), and biases based on race or socio-economic conditions (for example, an AI-powered permit approval tool may inadvertently discriminate against individuals from certain racial, ethnic or socio-economic backgrounds due to biased training data).

Ethics: The key ethical risk of generative AI relates to automated decision making (and one needs only to remember the Robodebt issue to understand the potential risks of this). Wherever possible, Local governments should avoid using generative AI in decision making processes, or where this is not feasible, to ensure that any use of generative AI is transparent and explainable, and any outputs are independently validated by a person before being relied upon.

Regulation (or lack thereof): It is also worth noting that, in Australia, as of the time of publication, there is currently no domestic regulatory framework directly relevant to generative AI. However, there are clear signs that this is a priority for policymakers, and in the meantime, local governments are still subject to their usual statutory obligations in relation to IP, privacy, and the like.

What can local governments do to minimise their risk?

To ensure these risks are mitigated, local governments should implement common-sense measures to minimise their risk profile when using generative AI.

These can include:

1. thorough review processes for any AI-generated materials;
2. detailed and consistent compliance with all statutory obligations, including under the *Information Privacy Act 2009* (Qld);
3. awareness of the potential for hallucinations and bias;
4. appropriated supervision and sign off of work before distribution;
5. ensuring disclosure of any use of generative AI;
6. engagement with the public regarding any new AI systems that are implemented; and
7. effective record-keeping for future reflection and consideration.

Key takeaways

The future of AI is exciting, and it is important that local governments stay up to date with this new technology and consider how to best utilise generative AI, while ensuring to consider risk management at the same time. AI will not necessarily replace the need for workplaces, but those that do not adopt generative AI might be outperformed or be replaced by the workplaces that do. However, local governments should think carefully before embracing it fully.

If you would like advice or assistance in relation to any of the above, please contact a member of our Technology, Media, and Telecommunications team here.

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Trunk vs Non-Trunk: Guidance from the Court on infrastructure conditions

The Planning and Environment Court recently decided the case of *Homeland Property Developments Pty Ltd v Whitsunday Regional Council* [2024] QPEC 30 (**Homeland**).

The judgment represents the latest instalment in a body of caselaw unpacking the infrastructure provisions of *Planning Act 2016* (Qld) (**Planning Act**). This judgment of his Honour Judge Williamson KC provides some welcome guidance about the power to impose necessary trunk infrastructure conditions.

The key infrastructure concepts from the Planning Act relevant to this case are as follows:

Trunk infrastructure

Trunk infrastructure (infrastructure that is shared between multiple developments) is generally provided by local governments, as planned for in the Local government infrastructure plan (**LGIP**). Adopted charges are used to fund the supply of trunk infrastructure.

Trunk infrastructure is defined under the Planning Act as:

1. development infrastructure identified in a LGIP as trunk infrastructure; or
2. development infrastructure that, because of a conversion application, becomes trunk infrastructure; or
3. development infrastructure that is required to be provided under a condition under section 128(3) (a necessary trunk infrastructure condition).

Necessary infrastructure conditions

A local government may impose conditions on a development approval requiring the supply of necessary trunk infrastructure. Necessary trunk infrastructure is the trunk infrastructure required to service the premises the subject of the development application.

The cost of the infrastructure provided via a necessary trunk infrastructure condition is offset against the adopted charge for the development i.e. the applicant provides trunk infrastructure in lieu of paying infrastructure charges.

Non-trunk conditions

Non-trunk infrastructure is infrastructure that is internal to a development, connects a development to external infrastructure networks, or is necessary to protect or maintain the safety or efficiency of the infrastructure network of which it is a component.

Developers are responsible for providing non-trunk infrastructure. Under section 145 of the Planning Act, local governments, may place conditions on a development approval pertaining to non-trunk infrastructure.

Facts

Whitsunday Regional Council approved Homeland's suite of development approvals (and planning scheme variations) in respect of a staged master planned community known as 'Whitsunday Paradise', south of Bowen. The approvals anticipate 1,757 lots, to be developed over 10 stages.

The approvals were granted subject to conditions. The case was an appeal against 34 of the conditions, relating to sewerage and water supply infrastructure, and two advisory notes. The advisory notes clarified that, to the extent conditions require the delivery of infrastructure, the conditions in the approval are imposed under section 145 of the Planning Act (i.e. that all the infrastructure was non-trunk infrastructure). Homeland also filed 15 related appeals against each of the infrastructure charges notices issued in respect of the development approval.

A key issue was that, at the time Homeland's development application was properly made, the planning scheme did not include an LGIP. There were then changes to the planning scheme and an LGIP was introduced during the life of the development application, which directly concerned the infrastructure at the centre of the appeal. In this case, the subsequent LGIP initially included a water reservoir (Item W8) as trunk infrastructure, but this was later removed.

Question for the Court to determine

Homeland's appeal sought to determine whether the development conditions should instead be categorised as necessary trunk infrastructure conditions under section 128 of the Planning Act. In summary, the Appellant's position was that it was providing trunk infrastructure, and argued that the local government has the power to impose a development condition categorising the infrastructure as such.

If Homeland's arguments had succeeded, the Council may have been liable in the future to recognise offsets and refunds for Homeland's provision of that infrastructure, as opposed to that infrastructure being entirely at Homeland's cost.

Key takeaways

The Court found that Homeland did not identify any infrastructure that met the Planning Act definition of trunk infrastructure.

The judgment clarifies that infrastructure that is not identified in the LGIP cannot be conditioned as trunk infrastructure, except following a successful conversion application. The Court therefore reinforced that a conditions appeal is not the appropriate vehicle for seeking to replace a non-trunk condition with a necessary infrastructure condition.

The Court also stated that a decision to delete certain infrastructure from the schedule of works in the LGIP is not appealable in the context of the infrastructure conditions appeal.

It will be interesting to watch the impact of this judgment, in light of the case law on conversion applications. In *The Avenues Highfields Pty Ltd v Toowoomba Regional Council [2017] QPEC 48*, the Court upheld the refusal of a conversion application, giving weight to the fact that the developer did not appeal a non-trunk infrastructure condition.

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Securing lawful uses: Navigating existing use rights in changing planning schemes

When planning schemes are amended or a new scheme is introduced, 'existing use rights' protect the existing lawful use of premises from the regulatory impacts of such changes. This article provides a refresher on existing lawful use rights and discusses the recent Planning and Environment Court decision in *Jephcott v Noosa Shire Council*. [1]

A Lawful, Existing Use

Section 260 of the *Planning Act 2016* (Qld) (**Planning Act**) provides that if, immediately before a planning instrument change, a use of premises was a lawful use of premises, the change does not:

1. stop the use from continuing;
2. further regulate the use; or
3. require the use to be changed.

Relevantly, a 'planning instrument change' includes the commencement or amendment of a planning scheme. The burden of proving existing lawful use rights sits with the person alleging them.

There are two key points to make about establishing existing use rights.

First, the existing use must have been *lawfully* carried out immediately prior to the planning instrument change. To be lawful, the existing use needs to have been occurring in accordance with a development approval or have been otherwise permissible under the relevant planning scheme. If the use was being carried out without an approval, or contrary to an approval, the use is not protected.

Secondly, the use sought to be protected must have been *in fact* occurring on the land. Existing use rights do not protect a potential or intended use, only a use that had actually commenced and regularly continued on the land. A person seeking to establish existing use rights must be able to produce evidence of the use lawfully occurring prior to the planning instrument change.

Notably, an existing use is also only protected at the intensity and scale it operated at before the planning scheme change. Determining the exact nature and extent of existing use rights requires looking at the purpose served by the activities and considering how this purpose would be described according to ordinary terminology. [2]

In considering whether existing lawful use rights exist, it may be necessary to consider whether there has been a material increase in intensity or scale of the use over time, constituting a material change of use, or whether the use has ceased and the rights have been abandoned.

Case study: *Jephcott v Noosa Shire Council*

The importance of this second point was demonstrated in the recent case of *Jephcott*. In early 2022 Noosa Shire Council (**Council**) enacted a new local law regulating the 'operation of short stay letting' which required operators to obtain local law approval. The Appellants, Mr and Mrs Jephcott, applied to Council for approval to use their Peregian property for short stay letting and were refused. The Appellants appealed this decision arguing that the property benefitted from existing lawful use rights for short stay letting.

1 [2024] QPEC 5.

2 Shire of Perth v O'Keefe (1964) 110 CLR 529.

The Appellants put on evidence that prior to the commencement of the *Noosa Plan 2020*, they used the property for personal respite and for family and friends to use as a holiday house. Guests stayed at the property free of charge. The Appellants argued this was sufficient to protect their right to use the property for short stay letting. Council argued that because the property was not 'let' on a commercial basis prior to the commencement of *Noosa Plan 2020*, the property did not benefit from existing lawful use rights for short stay letting.

The Court agreed with Council's approach. As the use did not exist at the relevant time, the Court concluded there was *'nothing for section 260 of the Planning Act to preserve'*[3] and the property did not benefit from existing lawful use rights.

Key takeaways

In considering and assessing existing lawful use rights it is important to remember that:

1. the existing use must be lawful;
2. the use must have actually been occurring prior to the planning instrument change;
3. an existing use is only protected at the intensity and scale it operated at before the planning scheme change; and
4. existing use rights can be abandoned.

Contact a member of our Planning and Environment team if you would like to know more about existing lawful use rights.

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Thank you to Caleb Caswell, Graduate, for his contributions to this article.

3 Jephcott v Noosa Shire Council [2024] QPEC 5 [14].

Strengthening environmental protections: Key updates for local governments

On 11 June 2024, the *Environmental Protection (Powers and Penalties) and Other Legislation Amendment Act 2024* (**Powers and Penalties Act**) was passed, amending key provisions of the *Environmental Protection Act 1994* (Qld) (**EP Act**).

These amendments are significant and will be relevant to all environmental operators in Queensland, including local governments that hold environmental authorities to provide their services. Local governments also have a role to play in ensuring environmental compliance in their communities.

Breach of the general environmental duty

One of the most significant amendments in the Powers and Penalties Act is the creation of a new offence in section 319 of the EP Act for failure to comply with the general environmental duty (**GED**).

The GED requires that reasonable and practicable measures must be undertaken to minimise risks of environmental harm. Examples of compliance with the GED might include proper installation and use of equipment, or training staff to handle chemicals.

Previously, compliance with the GED was only a defence to compliance allegations. For example, if a spillage or emission occurred, the operator could claim they took all reasonable and practicable measures to prevent harm. The operator could raise evidence that equipment was commissioned and monitored by a suitably qualified person, or a training course was provided on chemical handling.

It is now an offence to breach the GED where the failure is likely to cause serious or material environmental harm. For example, the regulator could allege a breach of the GED if an operator does not invest in new plant or equipment to avoid environmental harm. There are some exceptions to the offence, including if the contravention is authorised under another instrument.

New section 319B also provides legal protections to prevent double jeopardy, ensuring that a person cannot be charged with this new GED offence if they have already been charged with another environmental harm offence for the same conduct.

Duty to restore

A continuous and proactive 'duty to restore' obligation and offence have also been introduced. Previously, clean-up, rehabilitation and remediation were generally responsive to a notice provided by the regulator under the EP Act. Now, there is a proactive duty to restore any environmental harm caused.

The duty to restore is intended to encourage quicker responses to incidents involving contamination to ensure they are remedied before they cause serious environmental harm. However, compliance with the duty will require significant resources and careful risk analysis.

Another significant challenge will be the determination of who is deemed responsible to restore in each circumstance. This may be relevant to local governments, and could be particularly difficult to navigate in events involving water discharge or water quality.

Notification requirements

The duty to notify of contamination has also expanded to a broader range of circumstances. The duty to notify now applies whenever a relevant person becomes aware, or should reasonably have become aware, of contamination, even without a specific trigger event.

New compliance tool – Environmental Enforcement Order

The Powers and Penalties Act introduced a new 'Environmental Enforcement Order' (**EEO**) as a single tool to replace the previous environmental protection orders, direction notices and clean-up notices.

The EEO is a broader compliance mechanism, which can be issued for new purposes, including to secure compliance with a transitional environmental program or temporary emissions licence, and to secure compliance with the new 'duty to restore'.

An EEO may also be issued to 'related persons'. Local governments should be aware that 'related persons' may include the landholder of land upon which an activity is undertaken or upon which an event occurs.

When issuing an EEO to a 'related person', the Department of Environment, Science and Innovation is required to consider whether the person took all reasonable steps to ensure that environmental obligations were complied with, and that adequate provision was made to finance the rehabilitation of the site.

Key takeaways

The recent legislative amendments mark a critical shift in how local governments and community members must manage environmental risks, which may have significant implications for their operations.

If you need any assistance with navigating these significant changes, please get in touch with a member of our Planning and Environment team.

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Key takeaways on public land safety

In a recent ruling, the District Court of South Australia (**the Court**) dismissed a claim against the District Council of Lower Eyre Peninsula (**Council**), finding no liability for a teenager's severe injuries after falling from a cliff on Council land. The case highlights important considerations for Councils regarding the duty of care owed to the public in managing and maintaining public spaces.

Summary and findings

Mr Greggory Warren (**Plaintiff**) was 17 years old when he suffered severe injuries upon falling from a 10 metre cliff onto rocks while on Council land. The land was located at a remote beach on Eyre Peninsula (around a seven-hour drive from Adelaide).

The Plaintiff's mother made an application to the Court on his behalf against the Council alleging that the Council had breached the duty of care it owes to members of the public who visited the area by failing to place signs and barriers that warn them of the cliff.

The Court considered whether the standard of care under the *Civil Liability Act 1936* (SA) (**CLA**) was to take reasonable care to safeguard them against injury arising from the Council's care, control and management of the land and its role as occupier. The measures required to discharge the CLA duty depended upon the 'circumstances of the particular case'.

The duty did not extend to erecting a sign because of the:

1. low probability of the risk eventuating in a remote area;
2. burden of taking precautions along a 700km coastline;
3. fact that even if a sign were erected it would only warn the public of something obvious; and
4. lack of justification for a sign or barrier on the point of injury as opposed to the 'hundreds' of other sites where a track could carry a vehicle to an area to park a car near a cliff.

Notably, a significant issue in the case was whether the Council had encouraged the activity that caused harm by creating and maintaining a road to the site and a car park atop the escarpment. The Court held that while the Council created the road and the car park, it did not encourage descending the escarpment because there was no access to the beach from the car park.

Provisional findings

The Court found it was not possible to determine whether any particular alleviating action in respect of the risk of injury, such as erecting a sign, would have prevented the accident. This is because it had already found that the duty of care did not include the obligation to implement such measures. The Court also determined that had the claim succeeded, the applicant's damages would have been reduced by 40% for his own contributing negligence, and neither voluntary assumption of risk nor the wrongful act statutory defence would operate.

Under section 244(1) of the *Local Government Act* (SA) the Council is only liable for an injury, damage or loss that is a direct consequence of the Council's wrongful act. Notably, the Court stated that a wrongful act under section 244 includes omissions and is not limited to only positive acts. As such, the Council's lack of placement of a sign would have constituted a wrongful act.

Key takeaways

Two key takeaways for Councils are:

1. if an area is maintained for a particular purpose, then foreseeable risks associated with that purpose may need to be warned about; and
2. if an area is not maintained for a particular purpose, but a Council knows it is being used, whether a Council needs to warn of risks depends on a range of factors and legal advice should be sought.

When warning about a risk using signs, the warning must be placed somewhere that would be effective to deter a person from engaging in the behaviour. In its discussion of causation, the Court determined a sign would have had no effect unless placed at the point of descent.

There are other ways in which a Council may warn about foreseeable risks of injury besides the erection of signs. For instance, this may be achieved by publishing information on websites or on social media. There are inherent limits to the effectiveness of such measures, not least of which may be obtaining useful images of risky areas and locations and presenting these in a way which resonates with users of those sites.

Many cases in this area are concerned with the need for the placement of signs in the areas in question. The effectiveness of electronic information and warnings is yet to be tested. Councils need to bear this in mind when they are creating promotional material for tourists using public spaces for which they are responsible.

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Unpacking the Local Government Act: Authorised persons and public places

In the March edition, we looked at the concept of an 'authorised person' in the *Local Government Act 2009* (**Act**). In this article, we explore the rules around an authorised person entering a public place.

What is considered a public place

Section 128 of the Act states that an authorised person can enter a 'public place' without the permission of the occupier of the place to ensure that place complies with a Local Government Act, if the place is not 'closed to the public.'

A public place is a place, or a part of a place, that:

1. is open to the public; or
2. is used by the public; or
3. the public is entitled to use,

whether or not on payment of money.

Examples of public places could include:

1. a shop;
2. a thoroughfare on private property; or
3. the reception area of a business.

A place can be partially public and partially private. The Act provides the following example:

> *'A person uses a room at the front of their home as a business office. While the business office is open to the public it is a public place. However, the home is private property and not part of the public place.'*

When is a public place 'closed to the public'?

Section 128 of the Act can be relied upon only if a place is open to the public.

In most cases, it will be clear when a place is not open to the public, because it will be inaccessible. The Act provides the example of a locked gate indicating that a place is not open to the public.

Can force be used?

Force cannot be used to enter the public place unless it is expressly authorised by a warrant.

What is a Local Government Act?

An authorised person can enter a public place to ensure it complies with a 'Local Government Act'. Notably, a 'Local Government Act' means the *Local Government Act 2009* (Qld) as well as a law under which a local government fulfills its responsibilities, including for example:

1. a local law;
2. the *Building Act 1975*;
3. the *Planning Act 2016*;
4. a planning scheme;
5. the *Plumbing and Drainage Act 2018*;
6. the *Water Act 2000*; and
7. the *Water Supply (Safety and Reliability) Act 2008*.

What about private places?

A 'private place' is any place that isn't a public place. The rules around private places are different – and will be explored in the next edition as part of our *Unpacking the Local Government Act* series.

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Procedural fairness in enforcement matters: Defendant's understanding

Defendant's right to procedural fairness

Unless stated otherwise in legislation, Defendants have a right to procedural fairness in administrative decision-making and Court proceedings. Procedural fairness is founded on the notion of a fair trial and it necessarily requires concepts such as access to information, public accountability and independent and impartial decision-makers.

Procedural fairness is fundamental to the interests of justice. In *Kioa v West*, 'procedural fairness' was interpreted as a flexible obligation for adopting fair and appropriate procedures that suit the individual circumstances of each Defendant. [1] Relevantly, this includes the concept that amenable discretion (such as that exercised by a Judge or Council) may be implemented to maintain fair and balanced outcomes.

Procedural fairness requires a Defendant to understand

In order to achieve procedural fairness, a Defendant must be able to understand the complaint against him or her. This can include understanding administrative or judicial procedures, the legal framework and the facts upon which a decision or action is being made.

Crucially, limited English proficiency or a lack of legal representation may present significant barriers to a Defendant's understanding of the matter. In *DZAAA v Minister for Immigration and Citizenship*, the Federal Circuit Court found that:

> "[The] *object* [of open justice] *cannot be achieved, and justice cannot penetrate, into a world where an applicant sits hearing but not understanding and has no means of understanding...*" [2]

A Defendant with limited English proficiency may require the appointment of an interpreter in Court proceedings, and the failure of a prosecutor or Court to allow this may result in an unfair trial. [3] Relevantly, Courts may delay proceedings to allow for the appointment of an interpreter and will often bear the costs of such appointment where it is in the interests of justice to do so.

Further, allowing a Defendant time to obtain legal advice or representation (including from free community legal centres) ensures that a Defendant may have assistance through a legal process if he or she requires such assistance to sufficiently understand the matter.

1 (1985) 159 CLR 550, 585.

2 (2011) 250 FLR 423 at 437 [37].

3 *Ebataninja v Deland* (1998) 194 CLR 444 at 454 [26]-[27].

While parties to proceedings may elect to self-represent, practitioners and prosecuting bodies have an obligation to not exploit a Defendant's lack of understanding or insufficient financial means to obtain such representation. [4]

Model litigant principles

Councils would ordinarily conduct litigation in accordance with the Model Litigant Principles. The concept establishes a non-exhaustive list of principles that agencies must consider when applying authority. While the principles were never intended to be applied rigidly or to override legislation and governmental functions, they ensure that delegated power continues to fulfill public interests with respect to civil and criminal proceedings. These principles include adhering to acts that consistently apply outcomes, endeavouring to limit legal proceedings by ensuring all appropriate alternative dispute resolutions are considered and financially vulnerable litigants are not exploited where all avenues of support have been attempted.

Council's requirement to be cognisant of procedural fairness

A failure by a Council to be aware of, and uphold, procedural fairness creates opportunities for appeals in Court proceedings and may not result in a favourable exercise of the Court's discretion. Such failures may occur before, during, or after proceedings. For example, when undertaking pre-Court enforcement action such as issuing penalty infringement notices or enforcement notices, Council should be aware of any facts or circumstances that may indicate that the relevant Respondent/Defendant does not understand the allegations raised and the required actions to be taken.

These circumstances may include a person's limited English proficiency or an apparent absence of capacity.

Upholding procedural fairness is also consistent with the local government principles of 'transparent and effective processes' and 'good governance of, and by, local government' contained within the *Local Government Act 2009* (Qld).

Key takeaways

Councils and practitioners acting for Councils should take steps to uphold procedural fairness and the model litigant principles in enforcement matters. This includes taking steps in an effort to ensure a Defendant has a sufficient understanding of the matter. Language differences, an absence of legal advice or representation or intellectual impairment may create barriers to such understanding, and appropriate tools should be deployed to prevent compromising procedural fairness in the circumstances. Councils should also be cognisant of these concepts during pre-Court enforcement action.

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4 *Dietrich v R* (1992) 177 CLR 292.

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Sarah is a specialist planning and environment lawyer with a strong focus on infrastructure, water, and environment. Her qualifications in environmental science and urban and regional planning equips her with a deep understanding of clients' challenges, allowing her to address them effectively.

Sarah's experience covers advising both government bodies and private clients on various matters, including environmental compliance and incident response, planning and environmental litigation, project approvals, due diligence, and infrastructure agreements. She has drafted infrastructure agreements for urban and regional developments, managing stormwater and drainage issues, and handling water allocations and licensing.

Her work includes advising on infrastructure conditions for major developments, guiding infrastructure agreements for essential public projects, and representing developers in Planning and Environment Court appeals related to infrastructure contributions.

Additionally, Sarah has played a key role in significant water and waste management projects, including acting for water and waste management businesses in dealing with emerging contaminants, responding to statutory notices and investigations, incident response, advising on transitional environmental programs, enforceable undertakings, program notices and changes to environmental authorities to address changes in receiving environments, environmental standards and technology.

Her comprehensive expertise in infrastructure, water, and environment ensures that clients receive tailored, strategic advice for their most complex environmental and planning challenges.

Meet our team

McCullough Robertson has acted for local governments across Queensland for over 30 years. Our dedicated Local Government Industry Group are specialists in fields of law relevant to local government and ensure that the advice given aligns with, and is cognisant of, the industry and its framework.

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