



LOCAL LAW SIGNS

The use of signs by local government is an appropriate mechanism to inform people of appropriate conduct in accordance with the Council's local laws.

The model local laws applied in Queensland require local governments to take reasonable steps to provide notice to members of the public and variously defines "reasonable steps".

By way of example

reasonable steps include, as a minimum, the display of a notice at a prominent place within the dog off-leash area indicating the extent of the area.

reasonable steps may include the display of a notice at a prominent place within each local government controlled area for which a declaration under subsection (1) (b) has been made, stating-

(a) if the declaration relates to the whole area-the restricted activities for the area; and

(b) if the declaration relates to a part of the area-the restricted activities and a description of the part of the area to which the declaration applies; and

(c) in general terms, the provisions of subsection (4).

Subsection (4) provides for the maximum penalty.

The recent judgment of *Tallott v City of Sterling* [2017] WASCA 126 considered amongst many other local law enforcement issues the question of appropriate signage. That consideration occurred in an action brought by Mr



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Tallott against numerous Council officers for matters such as false imprisonment, abuse of public office, trespass to goods and collateral abuse of process.

Whilst Mr Tallott's actions were dismissed lessons can be learnt to avoid enforcement difficulties and the potential for actions being brought against Council officers.

Relevant extracts of the judgment dealing with signage are set out below:

As noted earlier, the judge found that the dunes area was demarcated by multiple signs along its edge. A photograph of one of the signs indicates that it was in the following terms:

City of Stirling
DUNE CONSERVATION AREA
<i>Why Stabilise and Revegetate the Dunes</i>
<ul style="list-style-type: none">• To create wildlife movement corridors and habitats• For public interest in the diversity of coastal plants and animals• To sustain natural sand accumulation and erosion cycles• To contain tidal surges during abnormal storms• To prevent sand drift on to built areas
<i>What you can do to Protect the Dunes</i>
<ul style="list-style-type: none">• Avoid littering and rubbish dumping• <u>Please do not climb on to dunes</u> - use beach access paths provided• Do not remove or burn tree prunings used for dune stabilisation• Avoid any form of damage to dune protection fencing• Assist with establishment of dune plantings

264 As to Mr Tallott's first contention, in our view, at least most of the signs surrounding the dune area did not operate to close the dune area to the public for the purposes of cl 5.6 of the Local Law. Entry into such an area without authority in contravention of cl 5.6 is an offence against cl 10.3(1) of the Local Law. Given the penal nature of these provisions, cl 5.6 should be construed as requiring relevant signage to clearly and unambiguously state, by way of a command, that the area is closed to the public, or that public entry into the area without the authority of the City is prohibited. Otherwise, the Local Law would provide for the criminal liability of persons who may have no reason to suspect that they might be committing an offence by going onto public land. Ordinarily, the character of the sign as a command will be made clearer by a statement that entry into the area is an offence, although such a statement will not be required in all cases.

265 In our view, at least most of the signs surrounding the dune area lacked the required element of command.

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266 It is not just that the term 'please' was used. The use of polite language does not itself preclude the signs operating to close an area to the public for the purposes of cl 5.6 of the Local Law. A sign might use polite language while making it clear that it was prohibiting entry, rather than merely providing advice or making a request which was open to the reader to follow or not at his or her choice.

269 There was in evidence a photograph, taken by police for the purposes of a trial listed for 22 February 2012 which did not proceed when the charge to which it related was discontinued. That photograph depicted a sign which included the statement:

DUNE ACCESS PROHIBITED

PLEASE USE PATHS

That sign is effective to indicate that the dune area to which it applies is closed, for the purposes of cl 5.6 of the Local Law.

It is imperative that Council signage is clear and direct to inform the public and to found an enforcement action.

It would be prudent for Council signage to be consistent. The court recognised in Tallott that there were numerous signs placed around the dune conservation area and some of those signs gave sufficient command to be enforceable. However, as a consequence of the placement of some signs that did not give sufficient command the court could not be satisfied that an offence had been committed.

In the earlier judgment of *Durrant & Anor v Von Schulz* [2001] QCA 345 the location of signs in proximity to areas was considered.

[2] The Traffic Act 1949 (Qld) ("the Act") allows a local government under a local law to regulate parking in its area.² A local government may install official traffic signs indicating how parking is regulated throughout a traffic area only if a local law has declared the traffic area and defined its boundaries and "the sign is installed on the road at every road entry to the traffic area".

[8] That was the area upon which attention was focussed in the District Court and upon which his Honour concluded that the necessary sign was not installed "at" the boundary of the central traffic area.

[14] It cannot have been the intention of the legislature that the section have the unlikely result that official traffic signs are valid only if placed precisely at or on the surveyed boundary of the traffic area, assuming such a point is identifiable: *Project Blue Sky v Australian Broadcasting Authority*. The interpretation given to s 44B(3)(b) by the learned trial judge would make unworkable the provisions of the Act as to regulated parking in traffic areas.

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[16] The official traffic sign was about 30-40 metres south of the boundary of the central traffic area and was displayed so that motorists could see it immediately before entering the area. Its current position on the scaled map suggests it is now no more than 100 metres south of the boundary of the central traffic area. Motorists entering the traffic area would travel that short distance in moments. The sign was and is installed on a road sufficiently proximate to the road entry to be "at" the road entry within s 44B(3)(b) of the Act. The learned judge therefore had no reason to doubt the general evidence of Mr Robinson accepted by the learned magistrate and the further general evidence of Mr Gates that official traffic signs were displayed at every road entry to the traffic area. The appeal against the first respondent must be allowed.

The language of section 44B(3)(b) can be distinguished from the language used in the model local laws which relevantly provides "the display of a notice at a prominent place within the (specified) area."

The application of *Project Blue Sky* would be applicable to the consideration of placement of signage for the purpose of the model local laws and provided there was a common sense consideration of their placement to enable members of the public to be aware of any restrictions they ought in the ordinary course inform the public and be able to found any enforcement action.



If you would like more information on the above topic or advice generally,
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