

# Drafting applications for warrants to enter private land – Section 130 *Local Government Act 2009*

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# Context

- › Focus is on Section 130 LGA search warrants
- › Section 130 is under
  - › Chapter 5 ‘Monitoring and enforcing the LGA’
  - › Part 2 ‘The Public’
- › Legislative intent
  - › ***‘to balance the rights of individuals with those of the State’***
- › Differentiate from
  - › Warrants for entry by investigators (s.150BN LGA)
  - › Warrants for entry by categorisation officers to rateable land (S.85 LG Regs)
  - › Warrants under other Acts



# Local Government Act 2009 (Qld)

## **130 Entering private property with, and in accordance with, a warrant**

- (1) An authorised person may enter private property with, and in accordance with, a warrant.
- (2) An authorised person must apply to a magistrate for a warrant.
- (3) The application for the warrant must—
- (a) be in the form approved by the department's chief executive; and
  - (b) be sworn; and
  - (c) state the grounds on which the warrant is sought.
- (4) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information that the magistrate requires about the application, in the way that the magistrate requires.
- Example—
- The magistrate may require additional information in support of the application to be given by statutory declaration.
- (5) The magistrate may issue the warrant only if the magistrate is satisfied that there are reasonable grounds for suspecting—
- (a) there is a particular thing or activity that may provide evidence of an offence against a Local Government Act (the "evidence" ); and
  - (b) the evidence is at the place, or may be at the place within the next 7 days.
- (6) The warrant must state—
- (a) the evidence for which the warrant is issued; and
  - (b) that the authorised person may, with necessary and reasonable help and force, enter the property and exercise an authorised person's powers under this Act; and
  - (c) the hours of the day or night when the property may be entered; and
  - (d) the day (within 14 days after the warrant's issue) when the warrant ends.
- (7) The magistrate must keep a record of the reasons for issuing the warrant.
- (8) A warrant is not invalidated by a defect in the warrant, or in compliance with section 131 , unless the defect affects the substance of the warrant in a material particular.
- (9) As soon as an authorised person enters private property under a warrant, the authorised person must do, or make a reasonable attempt to do, the following things—
- (a) inform any occupier of the property—
    - (i) of the reason for entering the property; and
    - (ii) that the warrant authorises the authorised person to enter the property without the permission of the occupier;
  - (b) give any occupier a reasonable opportunity to allow the authorised person to immediately enter the property without using force.
- (10) However, the authorised person does not need to comply with subsection (9) if the authorised person believes that immediate entry to the property is required to ensure the warrant is effectively executed.

# Section 130(1)

*“An authorised person may enter private property with, and in accordance with, a warrant”.*

- Who is an *authorised person*? (see section 202)
  - appointed by the Chief Executive Officer
  - has competencies to perform the responsibilities required
  - is an employee of the local government
  - Is not an authorised officer
- What is *private property*? (see section 125)
  - property that is not a public place
  - public places are open to the public, used by the public and the public is entitled to use it.
  - can include *the home*
- What does ‘*enter*’ include?
  - whatever you have included in the warrant, approved by a Magistrate

*‘In accordance with’* – the limitations on entry



# Section 130(2)

*“(2) An authorised person must apply to a magistrate for a warrant.”*

- Mandatory
  - Must be made by an *authorised person*
  - Reflects the legislative intent ‘*to balance the rights of individuals with those of the State*’
  - Magistrate as impartial third party – a ‘check’ on State power
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- Relevant to how you approach drafting the application



# Section 130(3)(a)&(b)

<b>Form 3—Application warrant to enter</b> <b>Section 130 of the <i>Local Government Act 2009</i> (QLD)</b>	
<b>Applicant</b>	
Name	I Alan Drysdale Martin, Senior Land Use Investigation Officer being an authorised person appointed by Logan City Council under section 202 of the <i>Local Government Act 2009</i> of
Name of local government	Logan City Council, 150 Wembley Road Logan Central QLD 4114
Office address	
<b>Suspicion</b>	
	on oath say that there are reasonable grounds for suspecting that there is a particular “thing” activity (the “evidence”) that may provide evidence of the commission of an offence against a <i>Local Government Act 2009</i> and the evidence “is” may be within the next fourteen days at the property described below.
<b>Details</b>	
The property:	
Description	Lot 23 RP 167175
Situated at	47-49 Poinciana Drive Boronia Heights QLD 4124 (“Subject Property”)
<b>Evidence</b>	
Particular “thing” activity (the evidence for which this warrant is issued)	The ‘things and activities’ giving rise to the Applicant’s suspicion that there may be evidence of the commission of an offence against a Local Government Act on the Subject Property are the following: 1. the Applicant has received reports of vehicles being delivered to the Subject Property by tow trucks; 2. a large number of motor vehicle and motor vehicle bodies and parts are able to be seen on the Subject Property from the street; 3. various unregistered vehicles have been seen on the Subject Property and on the street frontage of the Subject Land; 4. various machinery, tools, building and scrap materials and other miscellaneous items that are not ancillary to a residential land use are able to be seen on the Subject Property from the street frontage; and 5. two shipping containers can be seen on the Subject Property by drone.
<b>Grounds for Suspicion</b>	
	1. A search of Council records shows that Danny Dale Weston is the owner of the Subject Property and has been since 13 July 2007. 2. On 8 May 2014 following a compliance process initiated by the Applicant with respect to the Subject Property, her Honour Magistrate White in the Beenleigh Magistrates Court ( <i>Court file No. BEEN-MAG-9441/13</i> ) found Mr Weston had; a. Contravened s.582 of the <i>Sustainable Planning Act 2009</i> in two counts by unlawfully operating a Car Depot and a General Industry as defined in the <i>Logan Planning Scheme 2006</i> ; b. Contravened s.594 of the <i>Sustainable Planning Act 2009</i> in two counts by failing to comply with Enforcement Notice No. 27814 and Enforcement Notice No. 27815.

“(3) *The application for the warrant must—*

*(a) be in the form approved by the department’s chief executive; and*

*(b) be sworn; and*

*(c) state the grounds on which the warrant is sought.”*

- *Must be in the form approved by the department chief executive*
  - Forms promote consistency & compliance
  - Make it easier to complete
  - ‘Approved’ – has been checked / is authorised
  - Electronic applications are possible under section 131
- *Must ‘be sworn’*
  - Greater onus on the Applicant than a mere signature
  - Criminal penalties for swearing a document that is untrue / knowingly incorrect

# Section 130(3)(c)

<b>Form 3—Application warrant to enter</b> <b>Section 130 of the <i>Local Government Act 2009</i> (QLD)</b>	
<b>Applicant</b>	
Name	I Alan Drysdale Martin, Senior Land Use Investigation Officer being an <b>authorised</b> person appointed by Logan City Council under section 202 of the <i>Local Government Act 2009</i> of
Name of local government	Logan City Council, 150 Wembley Road Logan Central QLD 4114
Office address	
<b>Suspicion</b>	
	on oath say that there are reasonable grounds for suspecting that there is a particular "thing/activity" (the "evidence") that may provide evidence of the commission of an offence against a <i>Local Government Act 2009</i> and the evidence "is/may be within the next fourteen days at the property described below.
<b>Details</b>	
The property:	
Description	Lot 23 RP 167175
Situated at	47-49 Poinciana Drive Boronia Heights QLD 4124 ("Subject Property")
<b>Evidence</b>	
Particular "thing/activity" (the evidence for which this warrant is issued)	The 'things and activities' giving rise to the Applicant's suspicion that there may be evidence of the commission of an offence against a Local Government Act on the Subject Property are the following: 1. the Applicant has received reports of vehicles being delivered to the Subject Property by tow trucks; 2. a large number of motor vehicle and motor vehicle bodies and parts are able to be seen on the Subject Property from the street; 3. various unregistered vehicles have been seen on the Subject Property and on the street frontage of the Subject Land; 4. various machinery, tools, building and scrap materials and other miscellaneous items that are not ancillary to a residential land use are able to be seen on the Subject Property from the street frontage; and 5. two shipping containers can be seen on the Subject Property by drone.
<b>Grounds for Suspicion</b>	1. A search of Council records shows that Danny Dale Weston is the owner of the Subject Property and has been since 13 July 2007. 2. On 8 May 2014 following a compliance process initiated by the Applicant with respect to the Subject Property, her Honour Magistrate White in the Beenleigh Magistrates Court ( <i>Court file No. BEEN-MAG-9441/13</i> ) found Mr Weston had; a. Contravened s.582 of the <i>Sustainable Planning Act 2009</i> in two counts by unlawfully operating a Car Depot and a General Industry as defined in the <i>Logan Planning Scheme 2006</i> ; b. Contravened s.594 of the <i>Sustainable Planning Act 2009</i> in two counts by failing to comply with Enforcement Notice No. 27814 and Enforcement Notice No. 27815.

*(3) The application for the warrant must— [...]*

*(c) state the grounds on which the warrant is sought.”*

Consider what are the reasons for the warrant being issued

- to find evidence of suspected offences
- The broader context / background
  - what brought Council to this point in the investigation
- Examples:
  - Complaints, Searches, Notices, Observations

# Section 130(4)

*“(4) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information that the magistrate requires about the application, in the way that the magistrate requires.”*

*Example—*

*The magistrate may require additional information in support of the application to be given by statutory declaration.”*

- All the information the Magistrate require
  - Linked to next part which sets out the things the Magist must be satisfied of (s.130(5))
  - May require more direct / sworn evidence –via a stat de





# Section 130(5)



*“(5) The magistrate may issue the warrant only if the magistrate is satisfied that there are reasonable grounds for suspecting—*

*(a) there is a particular thing or activity that may provide evidence of an offence against a Local Government Act (the “evidence”); and*

*(b) the evidence is at the place, or may be at the place within the next 7 days.”*

- Primary goal – is to get the Magistrate over the line
- Convince them that:
  - Suspicions are reasonable – *what are they based on?*
  - Is linked to an offence against a Local Government Act – *state the offence(s)*
  - A thing or activity may occur at the place within the next 7 days – *link it to the place & time*
  - The search ‘may’ provide evidence – *what element of the offence do you expect to find and why?*
- The relevant background of the matter

# Section 130(5) continued...

*(a) there is a particular thing or activity that may provide evidence of an offence against a Local Government Act (the "evidence")*

- offences against a Local Government Act includes offences found in:

- (a) the Local Government Act; and
- (b) a local law; and
- (c) the Building Act; and
- (d) the Planning Act; and
- (e) a planning scheme; and
- (f) the Plumbing and Drainage Act; and
- (g) the Water Act 2000; and
- (h) the Water Supply (Safety and Reliability) Act 2008.



# Section 130(6)

“(6) The warrant **must** state

- (a) the evidence for which the warrant is issued; **and**
- (b) that the authorised person may, with necessary and reasonable help and force, enter the property and exercise an authorised person’s powers under this Act; **and**
- (c) the hours of the day or night when the property may be entered; **and**
- (d) the day (within 14 days after the warrant’s issue) when the warrant ends.”

- The evidence here is the **suspected evidence** – not the particular thing/activity that gives rise to suspicion
- The property owner/occupier must be able to determine who has the right to enter under the warrant - & that they can gain entry with:
  - Necessary & reasonable help/force
- Timeframes for entry – *when will the evidence be there?*
- Timing of application is important – only valid 14 days

Warrant to enter	
Section 130 of the <i>Local Government Act 2009</i> (QLD)	
<b>Applicant</b>	
Name	TO Alan Drysdale Martin, Land Use Investigation Officer being an authorised person appointed by
Name of local government	Logan City Council
Office address	under section 202 of the <i>Local Government Act 2009</i> of Logan City Council, 150 Wembley Road, Logan Central, QLD 4114
<b>Information</b>	
	The said authorised person has this day informed me the undersigned Magistrate on oath that there are reasonable grounds for suspecting that there is a particular "thing"/activity (the "evidence") that may provide evidence of the commission of an offence against a <i>Local Government Act 2009</i> and the evidence "is"/may be within the next seven days at the property described below.
<b>Details</b>	
The property:	
Description	Lot 23 RP 167175
Situated at	47-49 Poinciana Drive Boronia Heights QLD 4124
<b>Evidence</b>	
Particular "thing"/activity (The evidence for which this warrant is issued)	
<b>Grounds for Suspicion</b>	
Grounds for suspicion:	
<b>Offence Suspected</b>	
The offences suspected are multiple contraventions of:	
	1. The <i>Planning Act 2016</i> , s176 Enforcement orders, (5), A person must not contravene an enforcement order.
<b>Jurisdiction</b>	
Local Government Act and section.	Section 130 of the <i>Local Government Act 2009</i>
<b>Authorisation</b>	
	WHEREAS I am satisfied that there are reasonable grounds for so suspecting. YOU the said authorised person are hereby authorised between the hours of; .....a.m. /p.m. and .....a.m. /p.m. with such necessary and reasonable help and force to enter the property and exercise the powers of an authorised person under the <i>Local Government Act 2009</i> .
<b>Warrant to enter</b>	
Section 130 of the <i>Local Government Act 2009</i> (QLD)	
<b>Expiry</b>	
Within 14 days after the warrant is issued)	This warrant stops having effect at .....a.m./p.m. on ..... 2022.
	Given under my hand at Beaneleigh, in the said State this .....day of ***** 2022.
	..... Magistrate

# Section 130(7)

- (7) “the magistrate must keep a record of the reasons for issuing the warrant”
- Validity/lawfulness of a warrant to enter can be challenged at later stage
- Evidence collected under invalid/unlawful warrant may be held to be inadmissible in Court proceedings
- Magistrate may need to demonstrate that they have exercised their discretion to issue the warrant appropriately & in compliance with section 130(5)
- Another reason for a well-drafted Application

Warrant to enter Section 130 of the Local Government Act 2009 (QLD)	
<b>Applicant</b>	
Name	TO Alan Drysdale Martin, Land Use Investigation Officer being an authorised person appointed by Logan City Council
Name of local government	under section 202 of the Local Government Act 2009 of Logan City Council, 150 Wembley Road, Logan Central, QLD 4114
Office address	
<b>Information</b>	
	The said authorised person has this day informed me the undersigned Magistrate on oath that there are reasonable grounds for suspecting that there is a particular “thing/activity” (the “evidence”) that may provide evidence of the commission of an offence against a Local Government Act 2009 and the evidence “is/”may be within the next seven days at the property described below.
<b>Details</b>	
The property:	
Description	Lot 23 RP 167175
Situated at	47-49 Poinciana Drive Boronia Heights QLD 4124
<b>Evidence</b>	
Particular “thing/activity” (The evidence for which this warrant is issued)	
<b>Grounds for Suspicion</b>	Grounds for suspicion:
<b>Offence Suspected</b>	
	The offences suspected are multiple contraventions of:  1. The Planning Act 2016, s176 Enforcement orders, (5), A person must not contravene an enforcement order.
	WHEREAS I am satisfied that there are reasonable grounds for so suspecting. YOU the said authorised person are hereby authorised between the hours of, .....*a.m. / *p.m. and .....*a.m. / *p.m. with such necessary and reasonable help and force to enter the property and exercise the powers of an authorised person under the Local Government Act 2009.
<b>Warrant to enter Section 130 of the Local Government Act 2009 (QLD)</b>	
<b>Expiry</b>	
Within 14 days after the warrant is issued)	This warrant stops having effect at .....*a.m./ *p.m. on ..... 2022.
	Given under my hand at Beenleigh, in the said State this ..... day of ***** 2022.
	..... Magistrate

# Section 130(8)

*“A warrant is not invalidated by a defect in the warrant, or in compliance with section 131, unless the defect affects the substance of the warrant in a material particular.”*



- A warrant won't be invalid due to a minor defect
- The substance includes those matters required to be addressed in the warrant
- The defect must be more than a trivial defect
  - Fails to state a matter listed in s.130(6)
    - Fails to state the evidence
    - Incorrect address or the authorised person
    - Timeframes

# Section 130(9)

*“As soon as an authorised person enters private property under a warrant, the authorised person must do, or make a reasonable attempt to do, the following things—*

*(a) inform any occupier of the property—*

*(i) of the reason for entering the property; and*

*(ii) that the warrant authorises the authorised person to enter the property without the permission of the occupier;*

*(b) give any occupier a reasonable opportunity to allow the authorised person to immediately enter the property without using force.”*





# Section 130(10)



*“However, the authorised person does not need to comply with subsection (9) if the authorised person believes that immediate entry to the property is required to ensure the warrant is effectively executed”.*

