

Toowoomba Regional Council

Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2018

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Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2018*.

2 Purpose and how it is to be achieved

- (1) The purpose of this local law is to—
 - (a) protect the health and safety of persons using local government controlled land, facilities, infrastructure and roads; and
 - (b) preserve features of the natural and built environment and other aspects of the amenity of local government controlled land, facilities, infrastructure and roads.
- (2) The purpose is to be achieved by providing for—
 - (a) the regulation of access to local government controlled areas; and
 - (b) the prohibition or restriction of particular activities on local government controlled areas or roads; and
 - (c) miscellaneous matters affecting roads and stormwater drainage.

3 Definitions—the dictionary

The dictionary in the schedule defines particular words used in this local law.

4 Relationship with other laws¹

This local law is—

- (a) in addition to and does not derogate from laws² regulating the use of trust land and roads; and
- (b) is to be read with *Local Law No. 1 (Administration) 2011*.

¹ This local law and any subordinate local law made under it do not apply to the extent of any inconsistency with a law of the State or the Commonwealth. See the Act, section 27.

² Other legislation that may be relevant in the application of this local law includes the *Land Act 1994* and the *Land Regulation 2009*.

Part 2 Use of local government controlled areas, facilities and roads³

5 Prohibited and restricted activities

- (1) The local government may, by subordinate local law, declare an activity to be—
 - (a) prohibited in a local government controlled area or road (a ***prohibited activity***); or
 - (b) restricted in a local government controlled area or road (a ***restricted activity***).

Example for paragraph (a)—

The local government may declare that the lighting of fires is a prohibited activity in all local government controlled areas, in a particular local government controlled area or in a part of a local government controlled area.

Example for paragraph (b)-

The local government may declare that the playing of sport generally, or the playing of certain sports, is a restricted activity in that it is restricted to particular times of the day, week, month or year in all local government controlled areas, in a particular local government controlled area or in a part of a local government controlled area.

- (2) The local government must take reasonable steps to provide notice to members of the public regarding restricted activities declared for local government controlled areas or roads.
- (3) In this section—

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).
- (4) A person must not engage in a prohibited activity or a restricted activity.

Maximum penalty — 20 penalty units

6 Motor vehicle access to local government controlled areas

- (1) A ***motor vehicle access area*** is an area within a local government controlled area that is—

³ *Local Law No. 1 (Administration) 2011* deals with activities on local government controlled areas and roads that require the local government's approval, such as commercial use of local government controlled areas and roads, alterations or improvements to local government controlled areas, and other miscellaneous regulated activities.

- (a) a car park or roadway for which there is no sign or traffic control device indicating that vehicles owned by members of the public are excluded; or
 - (b) declared under a subordinate local law for this paragraph as a motor vehicle access area.
- (2) For the purposes of *Local Law No.1 (Administration) 2011*, section 5(b), it is a prescribed activity⁴ to bring a motor vehicle onto or drive a motor vehicle on any part of a local government controlled area that is not a motor vehicle access area.
- (3) The local government may, by subordinate local law, declare a specific type of motor vehicle (a ***prohibited vehicle***) as prohibited in a specified motor vehicle access area.
- (4) For the purposes of *Local Law No.1 (Administration) 2011*, section 5(b), it is a prescribed activity⁵ to bring a prohibited vehicle onto or drive a prohibited vehicle on the specified motor vehicle access area.
- (5) However, subsections (2) and (4) do not apply for an emergency vehicle.
- (6) The local government must take reasonable steps to provide notice to members of the public regarding—
 - (a) declarations of motor vehicle access areas under subsection (1)(b); and
 - (b) declarations of prohibited vehicles under subsection (3).
- (7) In this section—

emergency vehicle includes the following—

 - (a) an ambulance;
 - (b) a fire-engine;
 - (c) a police vehicle;
 - (d) another vehicle, including a tow truck, helicopter or mobile crane, if used in circumstances of an emergency.

reasonable steps include, as a minimum, the display of a notice at a prominent place within each declared motor vehicle access area stating—

 - (a) a description of the declared motor vehicle access area; and
 - (b) a description of prohibited vehicles for the area; and
 - (c) in general terms, the provisions of subsections (2) and (4).

7 Opening hours of local government controlled areas

- (1) The local government may, by subordinate local law, declare the times when a local government controlled area is open to the public (the ***opening hours***).

⁴ *Local Law No.1 (Administration) 2011*, section 6, creates an offence for a person to undertake a prescribed activity without a current approval granted by the local government. Section 7 requires that the approval be obtained under part 2 of that local law.

⁵ See footnote 3.

- (2) A person must not enter or remain in a local government controlled area outside the opening hours unless the person is authorised to do so by the chief executive officer⁶.

Maximum penalty for subsection (2)—20 penalty units.

- (3) If the local government declares the opening hours for a local government controlled area under subsection (1), it must place a notice showing the opening hours at each public entrance to the area.

8 Power of closure of local government controlled areas

- (1) The local government may temporarily close a local government controlled area to public access—
- (a) to carry out construction, maintenance, repair or restoration work; or
 - (b) to protect the health and safety of a person or the security of a person's property; or
 - (c) because of a fire or other natural disaster; or
 - (d) to conserve or protect the cultural or natural resources of the area or native wildlife.
- (2) A temporary closure under subsection (1)—
- (a) must state a period, not greater than 6 months, during which the area will be closed; and
 - (b) must be revoked as soon as practicable after the local government becomes satisfied that the reason for the temporary closure no longer exists.
- (3) The local government may, by subordinate local law, permanently close a local government controlled area to public access for any of the following reasons—
- (a) the conservation of the cultural or natural resources of the area, including, for example—
 - (i) to protect significant cultural or natural resources; or
 - (ii) to enable the restoration or rehabilitation of the area; or
 - (iii) to protect a breeding area for native wildlife; or
 - (iv) to manage a significant Aboriginal area in the area in a way that is consistent with Aboriginal tradition; or
 - (v) to manage a significant Torres Strait Islander area in the area in a way that is consistent with Island custom;
 - (b) protection of the health and safety of members of the public;
 - (c) protection of a facility or service in the area, including, for example, infrastructure, water supply facilities or power generating equipment;
 - (d) protection of the amenity of an area adjacent to the area;
 - (e) the orderly or proper management of the area.

⁶ See definition of *chief executive officer* in the Act, schedule 4.

- (4) If the local government closes a local government controlled area under subsections (1) or (3), it must place at each public entrance to the area a notice of the closure, including a statement of the duration of the closure.

Example—

If the local government closes an area that is part of a wider local government controlled area, it must place notices at each public entrance to the closed area.

- (5) A person must not enter or remain in a local government controlled area while it is closed to public access under this section, unless the person is authorised to do so by the chief executive officer.

Maximum penalty for subsection (5)—20 penalty units.

- (6) In this section—

significant Aboriginal area see the *Aboriginal Cultural Heritage Act 2003*, section 9.

significant Torres Strait Islander area see the *Torres Strait Islander Cultural Heritage Act 2003*, section 9.

Part 3 **Matters affecting roads and stormwater drains**

9 Power to require owner of land adjoining road to fence land

- (1) This section applies if an authorised person is satisfied that it is necessary for land adjoining a road to be fenced to prevent the risk of—
- (a) animals escaping from the land onto the road; or
 - (b) interference with the safe movement of traffic or the safe use of the road.
- (2) The authorised person may, by giving a compliance notice⁷ to the owner—
- (a) if the land is not currently fenced—require the owner to fence the land; or
 - (b) if a current fence on the land is in disrepair—require the owner to repair or replace the fence.
- (3) The local government may, by subordinate local law, set out the minimum standards with which the fence must comply.

- (4) In this section—

animal does not include a native animal, feral animal or pest animal.

feral animal see *Animal Care and Protection Act 2001*, section 42.

pest animal see *Animal Care and Protection Act 2001*, section 42.

10 Numbering of premises and allotments adjoining a road⁸

⁷ See *Local Law No.1 (Administration) 2011*, section 27, regarding the requirements for compliance notices.

⁸ See the Act, section 60, regarding control of roads by a local government.

- (1) An owner of land must not adopt a number for a building or allotment that is inconsistent with a numbering system adopted by the local government under this section.

Maximum penalty for subsection (1)—10 penalty units.

- (2) An owner of land (other than vacant land) must display the number allocated so as to be easily identified from the adjoining road.

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

11 Compliance notice about a road or vehicle crossing

- (1) An authorised person may give a compliance notice to a person who is the owner or occupier of land adjoining or adjacent to a road to do 1 or more of the following—
 - (a) perform work on the land or, subject to written approval from the relevant road authority, on the road;
 - (b) construct and maintain a vehicle crossing⁹ to provide vehicular access between the land and the road to a standard specified by the authorised person in the compliance notice;
 - (c) maintain or repair a vehicle crossing which provides vehicular access between the land and the road to a standard specified by the authorised person in the compliance notice if, in the opinion of the authorised person, the vehicle crossing—
 - (i) is not effective for its intended purpose; or
 - (ii) is causing a nuisance or poses a risk of a nuisance; or
 - (iii) constitutes an actual or potential safety hazard;
 - (d) alter a vehicle crossing, or construct a new or modified vehicle crossing between the land and the road to a standard specified by the authorised person in the compliance notice if, in the opinion of the authorised person, the vehicle crossing —
 - (i) is no longer adequate having regard to—
 - (A) the volume or nature of traffic using the vehicle crossing; or
 - (B) the manner in which the vehicle crossing is used by traffic; or
 - (C) changes in the use of the land to which the vehicle crossing provides access; or
 - (D) changes in the usual or expected standard of vehicle crossing provision in the relevant locality; or
 - (ii) is causing a nuisance or poses a risk of a nuisance; or
 - (iii) constitutes an actual or potential safety hazard.
- (2) However, a compliance notice may only be given under subsection (1) if, in the reasonable opinion of an authorised person, the action specified in the compliance notice—

⁹ See definition of *vehicle crossing* in the dictionary.

- (a) is a result of the intentional act or negligence of the person who is the owner or occupier of the land adjoining or adjacent to the road; and
- (b) should be performed to—
 - (i) protect the public health, safety or amenity; or
 - (ii) prevent environmental harm or environmental nuisance; or
 - (iii) prevent interference with the safe movement of traffic or the safe use of a road.

12 Compliance notice about stormwater installation

- (1) This section applies if—
 - (a) stormwater flows to a lawful point of discharge (including, for example, a stormwater drain of the local government); and
 - (b) the stormwater must pass through a stormwater installation on the land of a person other than the local government as it flows to the lawful point of discharge.
- (2) An authorised person may give a compliance notice to a person who is either or both of the owner and the occupier of the land requiring the person to do 1 or more of the following—
 - (a) repair and maintain the stormwater installation on the land;
 - (b) if the flow of stormwater through the stormwater installation on the land of the person has caused damage to a road or a stormwater drain of the local government—repair the damage to the road or stormwater drain of the local government;
 - (c) cause to be carried out any other work reasonably required by the authorised person.
- (3) The recipient of a compliance notice must comply with the compliance notice¹⁰.
- (4) If a stormwater installation on land connects to a local government stormwater drain, the owner of the land must—
 - (a) maintain the stormwater installation in a condition that is safe; and
 - (b) if the local government has given a written notice to the owner requiring the owner to connect a stormwater installation to the local government stormwater drain subject to specified conditions—maintain the stormwater installation in compliance with each condition of the written notice; and
 - (c) if the local government has given its approval for the connection of the stormwater installation to the local government stormwater drain—maintain the stormwater installation in compliance with each condition of the approval.
- (5) Subsection (6) applies if—
 - (a) this section applies to a stormwater installation on land (a *primary parcel*); and

¹⁰ See *Local Law No. 1 (Administration) 2011*, section 27.

- (b) the stormwater installation on the primary parcel benefits both the primary parcel and other parcels of land (each a *benefited parcel*).
- (6) An authorised person may give a compliance notice under subsection (2)—
 - (a) to each person who is either or both of the owner and the occupier of a primary parcel about a stormwater installation on the primary parcel which benefits both the primary parcel and 1 or more benefited parcels; and
 - (b) to each person who is either or both of the owner and the occupier of a benefited parcel about a stormwater installation on the benefited parcel which benefits the benefited parcel, the primary parcel and 1 or more other benefited parcels.
- (7) An authorised person may not give a compliance notice under subsection (2) about a stormwater installation on land to a person unless the person is either or both of the owner and the occupier of the land.
- (8) A requirement of a compliance notice given under subsection (2) does not apply to the extent that it is contrary to a requirement of a development approval given under the Planning Act.
- (9) In this section—
 - stormwater drain* see *Local Government Act 2009*, section 76(2);
 - stormwater installation* see *Local Government Act 2009*, section 76(3).

Part 4 Enforcement

13 Performance of work

- (1) This section applies if a person commits an offence on a local government controlled area or a road under a local law.
- (2) The person must make good any damage caused directly or indirectly by the commission of the offence, to a standard approved by the local government.
- (3) The local government may perform work on a local government controlled area or a road where a person has failed to perform work required to be performed on the local government controlled area or road under—
 - (a) subsection (2); or
 - (b) a compliance notice or a stop order issued under a local law; or
 - (c) a condition of an approval; or
 - (d) any other provision of a local law.
- (4) The local government may recover the amount that the local government properly and reasonably incurs in performing the work mentioned in subsection (3) as a debt payable by the person who failed to perform the work.
- (5) The local government must give the person who failed to perform the work written notice of the amount of the debt.

- (6) For the avoidance of doubt, a court may order a person found guilty of an offence mentioned in subsection (1) to do 1 or more of the following —
- (a) perform work required to be performed under—
 - (i) subsection (2); or
 - (ii) a compliance notice or a stop order issued under a local law; or
 - (iii) a condition of an approval; or
 - (iv) any other provision of a local law;
 - (b) pay to the local government the amount properly and reasonably incurred by the local government in performing the work.

14 Damage to a local government controlled area or a road

- (1) A person is liable to the local government in damages if the person, without the local government's authority—
- (a) damages a local government controlled area, a road or a structure associated with a local government controlled area or a road; or
 - (b) creates a nuisance on a local government controlled area or a road; or
 - (c) creates or causes an actual or potential safety hazard; or
 - (d) creates or causes environmental harm or environmental nuisance.
- (2) The local government may—
- (a) recover damages under this section in the same way as damages for a tort; and
 - (b) seek an injunction or other equitable remedy under this section in the same way as such remedies may be sought for a tort.

Part 5 Miscellaneous

15 Repeal

This local law repeals *Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2011*.

16 Subordinate local laws

The local government may make subordinate local laws about—

- (a) the declaration of prohibited activities or restricted activities;¹¹ or
- (b) the declaration of motor vehicle access areas;¹² or
- (c) the declaration of prohibited vehicles;¹³ or

¹¹ See section 5(1).

¹² See section 6(1).

¹³ See section 6(3).

- (d) the opening hours for a local government controlled area;¹⁴ or
- (e) closing a local government controlled area to public access;¹⁵ or
- (f) minimum standards for fences on land adjoining a road.¹⁶

¹⁴ See section 7(1).

¹⁵ See section 8(2).

¹⁶ See section 9(3).

Schedule Dictionary

Section 3

environmental harm see the *Environmental Protection Act 1994*, section 14.

environmental nuisance see the *Environmental Protection Act 1994*, section 15.

land see *Local Government Act 2009*, schedule 4.

local government controlled area see *Local Law No.1 (Administration) 2011*, schedule 1.

occupier see *Local Government Act 2009*, schedule 4.

owner see *Local Government Act 2009*, schedule 4.

road see *Local Law No.1 (Administration) 2011*, schedule 1.

vehicle crossing means facilities provided for the purpose of vehicles making entry or exit at, or substantially at, right angles between a road and land adjoining or adjacent to the road and may include an invert, pipe or driveway at, or adjacent to, the boundary of the land.

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