

Toowoomba Regional Council

Subordinate Local Law No. 1.1 (Alteration or Improvement to Local Government Controlled Areas and Roads) 2020

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Part 1 Preliminary

1 Short title

This subordinate local law may be cited as *Subordinate Local Law No. 1.1 (Alteration or Improvement to Local Government Controlled Areas and Roads) 2020*.

2 Purpose and how it is to be achieved

- (1) The purpose of this subordinate local law is to supplement *Local Law No. 1 (Administration) 2020* which provides for a legal and procedural framework for the administration, implementation and enforcement of the local government's local laws, subordinate local laws and other regulatory powers, and for miscellaneous administrative matters.
- (2) The purpose is to be achieved by providing for—
 - (a) various matters regarding the granting of approvals for prescribed activities; and
 - (b) further specification of the definitions relevant to various prescribed activities.
- (3) In particular, the purpose of this subordinate local law is to supplement the legal and procedural framework for the prescribed activity named in schedule 1, section 1.

3 Authorising local law

The making of the provisions in this subordinate local law is authorised by *Local Law No. 1 (Administration) 2020* (the **authorising local law**).

4 Subordinate local law repealed

This subordinate local law repeals *Subordinate Local Law No. 1.1 (Alteration or Improvement to Local Government Controlled Areas and Roads) 2011*.

5 Definitions

- (1) Particular words used in this subordinate local law have the same meaning as provided for in the authorising local law.
- (2) The dictionary in schedule 4 defines particular words used in this subordinate local law.

Part 2 Approval for prescribed activity

6 Matters regarding the prescribed activity—Authorising local law, sections 6(3), (4), 8(2)(a), 9(1)(d), 10(3), 12, 13(a), 14(1)(a)

- (1) Schedule 1—
 - (a) names a prescribed activity in section 1; and

- (b) prescribes the matters specified in this section for the prescribed activity.
- (2) For section 6(3) of the authorising local law, it is declared that section 6(2) of the authorising local law does not apply to the particular activities stated in section 2 of schedule 1.
- (3) For section 6(4) of the authorising local law, it is declared that the prescribed activity named in section 1 of schedule 1 is a category 1 activity.
- (4) For section 8(2)(a) of the authorising local law, the documents and materials that must accompany an application for approval for the prescribed activity are stated in section 3 of schedule 1.
- (5) For section 9(1)(d) of the authorising local law, the local government may only grant an approval for the prescribed activity if it is satisfied the proposed operation and management of the activity would be consistent with the additional criteria prescribed in section 4 of schedule 1.
- (6) For section 10(3) of the authorising local law, the conditions that must be imposed on an approval for the prescribed activity are stated in section 5 of schedule 1.
- (7) For section 10(3) of the authorising local law, the conditions that will ordinarily be imposed on an approval for the prescribed activity are stated in section 6 of schedule 1.
- (8) For section 13(a) of the authorising local law, the term of an approval for the prescribed activity is provided for in section 7 of schedule 1.
- (9) For section 14(1)(a) of the authorising local law, the further term for renewal or extension of an approval for the prescribed activity is provided for in section 8 of schedule 1.
- (10) For section 12 of the authorising local law, in Table 1 of schedule 1—
 - (a) column 1 lists the application requirements for which the local government may accept as evidence the certificate of a third party certifier; and
 - (b) column 2 lists the individuals or organisations that are declared to be third party certifiers for the corresponding application requirement in column 1; and
 - (c) column 3 lists the qualifications that are necessary for an individual or organisation to be a third party certifier for the corresponding application requirement in column 1.

7 Approvals that are non-transferable—Authorising local law, section 15(2)

For section 15(2) of the authorising local law, it is declared that the categories of approval listed in schedule 2 are non-transferable.

Part 3 Application to State-controlled roads

8 State-controlled roads to which the local law applies—Authorising local law, schedule 1

For the purposes of the definition of *road* in schedule 1 of the authorising local law, the State-controlled roads listed in schedule 3 are roads to which the authorising local law applies unless otherwise provided in the local law.

Schedule 1 Alteration or improvement to local government controlled areas and roads

Section 6

1. Prescribed activity

Alteration or improvement to local government controlled areas and roads.¹

2. Activities that do not require an approval under the authorising local law

(1) An approval is not required if—

(a) the prescribed activity is—

(i) the mowing or slashing of ground vegetation; or

(ii) the clearing or removal of vegetation after a severe storm event; or

(b) the prescribed activity is installing, changing or removing a temporary structure and—

(i) the owner of the temporary structure is the person undertaking the prescribed activity; and²

(ii) the undertaking of the prescribed activity complies with the minimum standards prescribed in subsections (2) to (10) inclusive; or

(c) the prescribed activity is—

(i) installing, changing, planting, removing or clearing a footpath

¹ See *Local Law No. 1 (Administration) 2020*, schedule 2, part 2, alteration or improvement to local government controlled areas and roads means—

1 Alteration or improvement to local government controlled areas and roads means—

(a) installing, changing, damaging or removing a structure in a local government controlled area or on a road; or

(b) planting, clearing or damaging of vegetation in a local government controlled area or on a road.

2 Alteration or improvement to local government controlled areas and roads does not include an alteration or improvement—

(a) that constitutes development under the Planning Act; or

(b) for which a tree clearing permit is required under the *Vegetation Management Act 1999*; or

(c) that involves a network connection; or

(d) for which written approval of the local government is required under section 75 of the Act.

² Note, alteration or improvement to local government controlled areas and roads does not include an alteration or improvement for which written approval of the local government is required under section 75 of the Act. See schedule 2, part 2 of the authorising local law and *Subordinate Local Law No. 1.15 (Carrying Out Works on a Road or Interfering with a Road or its Operation) 2020*.

garden; and³

(ii) the undertaking of the prescribed activity complies with the minimum standards prescribed in subsections (2) to (10) inclusive.

- (2) The prescribed activity must be located on a footpath which is—
- (a) at least 4m wide;
 - (b) adjacent to premises owned or occupied by the person undertaking the prescribed activity.
- (3) The prescribed activity must be located to allow for a clearance from its edges of at least the following—
- (a) 500mm to the edges of any concrete pathway/cycleway;
 - (b) 800mm to any electricity services;
 - (c) 600mm to any water meter, sewerage main or water main;
 - (d) 1m to any water supply valve, hydrant point, utility junction box or underground cable;
 - (e) 5m to any bus zone.
- (4) The location of the prescribed activity must maintain—
- (a) an unrestricted corridor of at least 2m for pedestrian movement; and
 - (b) an unrestricted corridor of at least 3m for cycle movement; and
 - (c) unrestricted access to local government and ‘statutory authority’ services.

Examples of local government and statutory authority services—

- (a) *kerbside waste collection;*
- (b) *natural gas supply.*

- (5) Line of sight must not be obstructed for—
- (a) any motorist using a road or entering or exiting a residential driveway;
or
 - (b) any footpath user.
- (6) The prescribed activity must not interfere with, or obstruct, public infrastructure

³ Note, alteration or improvement to local government controlled areas and roads does not include an alteration or improvement for which written approval of the local government is required under section 75 of the Act. See schedule 2, part 2 of the authorising local law and *Subordinate Local Law No. 1.15 (Carrying Out Works on a Road or Interfering with a Road or its Operation) 2020*.

such as traffic signs, power poles and parking bays.

- (7) Goods or materials must not be stored on the footpath for any longer than 72 hours.
- (8) Temporary structures must not remain on the footpath or nature strip for any longer than 72 hours.
- (9) If machinery, equipment or materials are used in the undertaking of the prescribed activity—the person undertaking the prescribed activity must, promptly after completion of the prescribed activity, dismantle and remove from the footpath all machinery, equipment and materials used.
- (10) The prescribed activity must—
 - (a) be aesthetically pleasing and sympathetic with the image of the local government area; and
 - (b) if it is a footpath garden—
 - (i) comprise plants or ground cover having a height of not more than 750mm above ground level; and
 - (ii) not include any plant which is poisonous, woody or has thorns; and
 - (iii) have a width not exceeding 500mm; and
 - (iv) not have any edges that exceed a height of 100mm above the footpath surface; and
 - (v) be regularly cleaned and maintained.

3. Documents and materials that must accompany an application for an approval

- (1) Full details of the proposed alteration or improvement including plans and specifications.
- (2) Details of all building work and other work to be carried out under the approval.
- (3) Details of the time and place at which the prescribed activity will be undertaken.
- (4) The proposed term of the approval.
- (5) The impact, if any, of the prescribed activity on vehicular or pedestrian traffic.
- (6) The materials, equipment and vehicles to be used in the undertaking of the prescribed activity.
- (7) Plans and specifications detailing—
 - (a) the relevant part of the local government controlled area or road that is to be used for the undertaking of the prescribed activity; and

- (b) the proposed location of each structure and item of equipment to be used in the undertaking of the prescribed activity; and
 - (c) the type and location of any utility, service or infrastructure to be used in the undertaking of the prescribed activity.
- (8) A copy of each policy of insurance of the applicant which is applicable to the undertaking of the prescribed activity including, without limitation, a public liability insurance policy which provides indemnity for each individual occurrence in an amount not less than \$10,000,000.00.

4. Additional criteria for the granting of an approval

The alteration or improvement must not result in—

- (a) harm to human health or safety; or
- (b) property damage or loss of amenity; or
- (c) nuisance; or
- (d) obstruction of vehicular or pedestrian traffic; or
- (e) environmental harm; or
- (f) environmental nuisance.

5. Conditions that must be imposed on an approval

- (1) An approval may be cancelled at any time if—
 - (a) it is believed weather/ground conditions will result in damage to the area or prove unsafe for the user; or
 - (b) the activity is believed to interfere with emergency works; or
 - (c) it is believed that any emergency works will prove unsafe for the user.
- (2) A copy of the approval must be available and able to be produced for inspection by an authorised person on demand.
- (3) Ensure that insurance policies applicable to the activity remain current, including public liability insurance of no less than \$10,000,000.00 and insurance against property damage resulting from the activity.

6. Conditions that will ordinarily be imposed on an approval

- (1) The conditions of an approval may—
 - (a) require compliance with specified safety requirements; and
 - (b) regulate the time within which the alteration or approval must be carried out; and

- (c) specify standards with which the alteration or improvement must comply; and
- (d) require the approval holder to—
 - (i) carry out specified additional work such as earthwork and drainage work; and
 - (ii) take out and maintain public liability insurance as specified by the local government and produce documentary evidence of the insurance to the local government before commencement of the alteration or improvement; and
 - (iii) give the local government specified indemnities; and
 - (iv) maintain structures erected or installed, or vegetation planted, under the approval, in good condition; and
 - (v) remove a structure erected or installed, under the approval, at the end of a stated period; and
 - (vi) exhibit specified signage warning about the conduct of the prescribed activity.
- (2) The conditions of an approval may require the approval holder to take specified measures to ensure that the undertaking of the prescribed activity does not cause unsafe movement or obstruction of vehicular or pedestrian traffic.

7. Term of an approval

- (1) The term of an approval must be assessed having regard to the information submitted by the applicant.
- (2) The term of the approval must be specified in the approval.
- (3) In any event the approval comes to an end on the earlier of —
 - (a) the date on which the approval ends; and
 - (b) the date the approval is cancelled; and
 - (c) unless the approval has been transferred, the date the approval holder is no longer the responsible person for the prescribed activity.

8. Term of renewal of an approval

- (1) The term for which an approval may be renewed or extended must be determined having regard to the information submitted by the approval holder.
- (2) The term of the renewal or extension must be specified in the written notice.

Table 1 – Third party certification

Column 1 Application requirement	Column 2 Individuals or organisations that are third party certifiers	Column 3 Qualifications necessary to be a third party certifier
No application requirement stated		

Schedule 2 Categories of approval that are non-transferable

Section 7

No category specified.

Schedule 3 State-controlled roads to which the local law applies

Section 8

Subject to the chief executive's written agreement under the *Transport Operations (Road Use Management) Act 1995*, section 66(5)(b), every State-controlled road in the local government area of the local government.

Schedule 4 Dictionary

Section 5

building work has the meaning given in the *Building Act 1975*.

bus zone has the meaning given in the *Transport Operations (Road Use Management – Road Rules) Regulation 2009*.

footpath has the meaning given in the *Transport Operations (Road Use Management) Act 1995*.

footpath garden means—

- (a) the use of a part of a footpath for growing vegetation, for example, flowers, for ornamental or public enjoyment purposes; but
- (b) does not include the growing of vegetation which is—
 - (i) a tree; or
 - (ii) a shrub having a height of 750mm or more above ground level directly adjacent to the shrub.

plant means a member of the plant kingdom, other than a protected plant under the *Nature Conservation Act 1992*, and includes all or any part of the flowers, seeds or genetic or reproductive material of the plant.

road—

- (a) has the meaning given in the authorising local law; and
- (b) includes—
 - (i) an area of land that—
 - (A) is developed for, or has 1 of its main uses, the driving or riding of motor vehicles; and
 - (B) is open to, or used by, the public; and
 - (ii) a footpath or bicycle path.

service means a utility service, for example, water, hydraulic power, electricity, gas, sewerage or drainage services, or telecommunications services.

structure has the meaning given in the *Local Government Act 2009*.

vegetation means trees, shrubs, plants and all other organisms of vegetable origin (whether living or dead).