

# Toowoomba Regional Council

## Subordinate Local Law No. 1.2 (Commercial Use of Local Government Controlled Areas and Roads) 2020

### Contents

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<b>Part 1</b>	<b>Preliminary.....</b>	<b>2</b>
	1 Short title .....	2
	2 Purpose and how it is to be achieved .....	2
	3 Authorising local law .....	2
	4 Subordinate local law repealed.....	2
	5 Definitions .....	2
<b>Part 2</b>	<b>Approval for prescribed activity .....</b>	<b>2</b>
	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).....	2
	7 Approvals that are non-transferable—Authorising local law, section 15(2).....	3
<b>Part 3</b>	<b>Application to State-controlled roads .....</b>	<b>3</b>
	8 State-controlled roads to which the local law applies—Authorising local law, schedule 1 .....	3
<b>Schedule 1</b>	<b>Commercial use of local government controlled areas and roads .</b>	<b>4</b>
<b>Schedule 2</b>	<b>Categories of approval that are non-transferable.....</b>	<b>16</b>
<b>Schedule 3</b>	<b>State-controlled roads to which the local law applies .....</b>	<b>17</b>
<b>Schedule 4</b>	<b>Dictionary.....</b>	<b>18</b>

## Part 1 Preliminary

### 1 Short title

This subordinate local law may be cited as *Subordinate Local Law No. 1.2 (Commercial Use of 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### 4 Subordinate local law repealed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. 1.2 (Commercial Use of 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      Commercial use of local government controlled areas and roads

### Section 6

#### 1.      Prescribed activity

Commercial use of local government controlled areas and roads.<sup>1</sup>

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

- (1)      An approval is not required under the authorising local law for the prescribed activity if—
  - (a)      the prescribed activity is undertaken on a road, other than a State-controlled road ; and
  - (b)      the prescribed activity is not undertaken on a local government controlled area; and
  - (c)      the undertaking of the prescribed activity complies with the minimum standards prescribed in subsection (2).
- (2)      The person undertaking the prescribed activity identified in subsection (1) must—
  - (a)      take out and maintain policies of insurance 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 and insurance against property damage resulting from the undertaking of the prescribed activity; and
  - (b)      produce a copy of each insurance policy referred to in paragraph (a) to an authorised person when requested; and
  - (c)      only undertake the activity adjacent to premises which are owned or

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<sup>1</sup> See *Local Law No. 1 (Administration) 2020*, schedule 2, part 2, **commercial use of local government controlled areas and roads** means the use of a local government controlled area or road for soliciting or carrying on the supply of goods and services (including food or drink) for profit, but does not include the following—

- (a)      the provision of a public passenger service under the *Transport Operations (Passenger Transport) Act 1994*;
- (b)      a business on part of a road if the person carrying on the business is authorised by a permit under the *Land Act 1994* to occupy the relevant part of the road for carrying on the business;
- (c)      a business that a person is authorised to carry on under the *Transport Infrastructure Act 1994*;
- (d)      using a road for a particular purpose if the use constitutes development under the Planning Act;
- (e)      operation of a temporary entertainment event;
- (f)      undertaking a regulated activity on a local government controlled area or road where the activity is the holding of a public place activity.

occupied by the person; and

- (d) maintain an unrestricted corridor of at least 2.5m for pedestrian movement and 3m for cycle movement; and
- (e) maintain unrestricted access to local government and ‘statutory authority’ services; and

*Examples of local government and statutory authority services—*

*(a) kerbside waste collection;*

*(b) natural gas supply.*

- (f) maintain an unobstructed line of sight for—
  - (i) any footpath user; and
  - (ii) any motorist using a road or entering or exiting any premises or carpark; and
- (g) not interfere with, or obstruct, public infrastructure such as traffic signs, power poles and parking bays; and
- (h) not interfere with, or obstruct, access to any premises; and
- (i) maintain a clearance of—
  - (i) 800mm to any electricity services; and
  - (ii) 500mm to the edges of any concrete pathway/cycleway; and
  - (iii) 1m to any water supply valve, hydrant point, utility junction box or underground cable; and
  - (iv) 1m to any kerb; and
  - (v) 5m to any bus zone; and
- (j) ensure that any table or other item used in the undertaking of the prescribed activity—
  - (i) is constructed of metal, wood, moulded laminate or other similar material; and
  - (ii) has a base which is constructed of metal, wood or other similar material; and
- (k) ensure that any chair used in the undertaking of the prescribed activity is of metal or timber construction, or an appropriate plastic chair; and
- (l) ensure that each planter used in the undertaking of the prescribed activity is constructed of sandstone, concrete, ceramic or another similar material; and
- (m) ensure that any umbrella and other associated item used in the

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- undertaking of the prescribed activity—
- (i) has a maximum diameter of 1,800mm; and
  - (ii) is securely attached to a table or held in a metal disc base; and
  - (iii) has not less than 2m clearance above ground level directly adjacent to the umbrella; and
  - (iv) is properly secured when in use; and
- (n) ensure that each barrier used in the undertaking of the prescribed activity—
- (i) is constructed of timber or metal; and
  - (ii) does not exceed 750mm in height; and
- (o) ensure that the prescribed activity is not—
- (i) undertaken on the footpath at an intersection unless tables and chairs are located in such a way that they do not interfere with the line of sight of pedestrian or vehicular traffic; and
  - (ii) undertaken otherwise than on an area which is contiguous to, or in the vicinity of, a registered cafe, restaurant, takeaway food shop or similar premises or other commercial premises (***principal premises***); and
- (p) limit the operation of the prescribed activity to the normal business hours of the principal premises; and
- (q) remove all tables, chairs, fixtures, fittings, umbrellas, barriers and equipment used in the undertaking of the prescribed activity from the footpath when the principal premises are not open for business; and
- (r) keep and maintain the area used, including all tables, chairs, fixtures, fittings and equipment, at all times in a clean, sanitary and tidy condition; and
- (s) keep and maintain, in and about the area, adequate waste disposal facilities, for example, bins, and be responsible for the removal of all waste from the waste disposal facilities at regular intervals, and at least daily; and
- (t) only use furniture which is—
- (i) aesthetically acceptable; and
  - (ii) kept in a proper state of repair; and
- (u) regularly clean the area on which the prescribed activity is undertaken—
- (i) during business hours for the principal premises; and

- (ii) daily, after the close of business of the principal premises; and
- (v) if the local government undertakes, or gives notice of intention to undertake, works on a road or footpath used in the undertaking of the prescribed activity—not interfere with the works of the local government by undertaking the prescribed activity on the road or footpath until completion of the works; and
- (w) not injure, deface, misuse, mark or otherwise damage any building or structure on the road on which the prescribed activity is undertaken.

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

- (1) The application must contain the following details—
  - (a) the name and contact details of the applicant; and
  - (b) the name and details of the nominated responsible person(s) for—
    - (i) ensuring compliance with the authorising local law before, during and after the activity; and
    - (ii) handling general complaints which maybe received; and
    - (iii) liaising and communicating with the local government or an authorised person; and
  - (c) a brief explanation of the activity that includes—
    - (i) activity start and finish dates and times (including setup and pack up); and
    - (ii) if goods or services are to be supplied—the nature of the goods and services to be supplied; and
    - (iii) if the goods or services are to be supplied at particular times—the times during which the goods or services will be supplied; and
    - (iv) if goods or services are to be supplied—the method of sale of the goods or services; and
    - (v) how the applicant proposes to dispose of waste generated by the operation of the prescribed activity; and
    - (vi) if signage is intended to be displayed – details of the signage and how the signage will be secured whilst displayed.
- (2) Subsection (3) applies if—
  - (a) the prescribed activity is to be operated at a place on a local government controlled area or road; and
  - (b) the place abuts, or is adjacent to, land other than a local government

controlled area or road.

- (3) The application must be accompanied by—
  - (a) the written consent of the occupier of the land to the operation of the prescribed activity at the place; or
  - (b) a written statement from the occupier of the land in support of the operation of the prescribed activity at the place.
- (4) A management plan which details proposed arrangements for each of the following—
  - (a) the proposed activity ; and
  - (b) insurance; and
  - (c) key management contact; and
  - (d) equipment; and
  - (e) consultation with key stakeholders; and
  - (f) emergency and incident management; and
  - (g) selling of food or beverages; and
  - (h) water supply; and
  - (i) toilets and amenities; and
  - (j) cleaning and sanitation; and
  - (k) nuisances (noise, dust, light, odour); and
  - (l) waste and recycling; and
  - (m) public safety; and
  - (n) security and crowd management; and
  - (o) traffic management; and
  - (p) hazard identification and risk management.

#### **4. Additional criteria for the granting of an approval**

- (1) The physical characteristics of the local government controlled area or road must be suitable for the prescribed activity.
- (2) The prescribed activity must not cause nuisance, inconvenience or annoyance to—
  - (a) the occupier of any land which adjoins the location of the prescribed



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- activity; or
  - (b) vehicular traffic; or
  - (c) pedestrian traffic.
- (3) The prescribed activity must not have a detrimental effect on the amenity of the surrounding area.
- (4) If the prescribed activity is mobile roadside vending or stationary roadside vending—
- (a) whether the prescribed activity for which the approval is sought is competitive with business activities operated from fixed premises in the local government area; and
  - (b) whether the business activities operated from the fixed premises are sufficient to meet public demand for the goods or services proposed to be sold as part of the operation of the prescribed activity; and
  - (c) whether the grant of the approval will result in substantial competition between the applicant for the approval and operators of business activities operated from fixed premises in the local government area; and
  - (d) whether the goods or services proposed to be sold as part of the operation of the prescribed activity, or similar goods or services, are available for sale from fixed premises near the location of the prescribed activity.

**5. Conditions that must be imposed on an approval**

No conditions prescribed.

**6. Conditions that will ordinarily be imposed on an approval**

- (1) The conditions of an approval may require that the approval holder—
- (a) limit the activities authorised by the approval to 1 or more of—
    - (i) a single specified location;
    - (ii) a number of specified locations;
    - (iii) a specified area;
    - (iv) a number of specified areas; and
  - (b) limit the activities to specified days and times; and
  - (c) limit the activities to—
    - (i) a specified period of time; or
    - (ii) specified periods of time; and

- (d) display the approval in a specified position, and produce the approval for inspection on demand by an authorised person; and
- (e) take specified measures to protect the safety of persons who may be involved in, or affected by, the activities authorised by the approval; and
- (f) give specified indemnities and take out and maintain insurance against personal injury and property damage resulting from the activities authorised by the approval; and
- (g) take specified measures to ensure that the activities authorised by the approval do not cause a nuisance; and
- (h) if the approval authorises the approval holder to use a specified part of a road or local government controlled area for the operation of the activity— pay a specified rental to the local government at specified intervals; and
- (i) submit the operation of the activity, including any vehicle or premises used in the operation of the activity, for inspection by an authorised person; and
- (j) prominently and permanently display at a specified location each of—
  - (i) the approval number granted by the local government in numbers not less than 50mm in height; and
  - (ii) the name and address of the approval holder in letters not less than 75mm in height; and
- (k) if the approval relates to an activity on a road—give a written indemnity to the State; and
- (l) limit the activities authorised by the approval such that the activities may not be operated within a specified radius of—
  - (i) fixed premises which sell or offer for sale, the same or similar goods or services; or
  - (ii) the site of operation of another prescribed activity—
    - (A) the operation of which is authorised by an approval granted by the local government; and
    - (B) at which the same or similar goods or services are sold or offered for sale; and
- (m) limit the operation of the prescribed activity so that it does not—
  - (i) create a traffic nuisance; or
  - (ii) increase an existing traffic nuisance; or
  - (iii) detrimentally affect the efficiency of the road network in which

- the activity is undertaken; and
  - (n) limit the operation of the prescribed activity so that it does not detrimentally affect the amenity of the neighbourhood in which the prescribed activity is undertaken; and
  - (o) ensure that the operation of the prescribed activity does not —
    - (i) create a road safety risk; or
    - (ii) injure, deface, misuse, mark or otherwise damage any building or structure on the local government controlled area or road on which the prescribed activity is undertaken; and
  - (p) ensure that all facilities and equipment used in the operation of the prescribed activity are, at all times, maintained—
    - (i) in good working order and condition; and
    - (ii) in a clean and sanitary condition; and
  - (q) if the approval authorises the operation of a roadside vending activity on a road on specified days—remove the vehicle from the road after the close of business each day unless otherwise specified by the local government; and
  - (r) remove all plant, equipment, fixtures, fittings and furniture used in the operation of the prescribed activity within a specified period of time or at specified times; and
  - (s) deliver a bond or security to the local government to secure compliance with the requirements of each of the approval and the provisions of the authorising local law.
- (2) If the prescribed activity is mobile roadside vending, the conditions of the approval may also require that the approval holder—
- (a) limit the operation of the activity to—
    - (i) a specified vehicle; or
    - (ii) a number of specified vehicles; and
  - (b) if the approval holder is selling or offering for sale, goods, for example, food, or services—not engage in mobile roadside vending on any local government controlled area or road within a specified radius of fixed premises which sell or offer for sale, the same or similar goods or services.
  - (c) not—
    - (i) unless authorised by an authorised person—park the vehicle used for the activity for a period longer than is necessary to serve a

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- customer who has hailed down the vehicle; or
- (ii) place a sign or device advertising the activity of the approval holder on any local government controlled area or road; and
  - (d) keep and maintain the vehicle in a clean, tidy and orderly condition at all times; and
  - (e) produce the vehicle for inspection by an authorised person—
    - (i) prior to commencement of the prescribed activity; and
    - (ii) when required by the authorised person; and
  - (f) limit the operation of the activity to vehicles having specified characteristics, appropriate for the operation of the activity; and
  - (g) only serve customers from the non-traffic or kerbside side of a vehicle used in the operation of the activity; and
  - (h) not operate the activity in a manner which is, or may be, a risk to road safety; and
  - (i) unless authorised by an authorised person—not permit or allow an animal in or about any vehicle used in the operation of the activity; and
  - (j) not discharge trade waste generated by the operation of the activity otherwise than in accordance with an approval under the *Water Supply (Safety and Reliability) Act 2008*; and
  - (k) for waste generated by the operation of the activity—
    - (i) only dispose of the waste—
      - (A) in a safe and sanitary manner; and
      - (B) in a manner which maintains the vehicle and its surrounds in a clean, tidy, sanitary and hygienic condition; and
    - (ii) not dispose of the waste—
      - (A) so as to attract pests; or
      - (B) into a water course; or
      - (C) at another location other than a location properly intended for the receipt of the waste.
- (3) If the prescribed activity is footpath dining, the conditions of the approval may also require that the approval holder—
- (a) limit the operation of the activity to a specified area which is contiguous to, or in the vicinity of, a registered café, restaurant, takeaway food shop or similar premises which are operated by the approval holder (*principal*

*premises*); and

- (b) limit the operation of the activity to the footpath immediately adjacent to the principal premises; and
  - (c) keep and maintain a clear unobstructed pedestrian corridor of not less than 2m; and
  - (d) limit the operation of the activity to the normal business hours of the principal premises; and
  - (e) remove all tables, chairs, fixtures and fittings from the area identified in the approval when the principal premises are not open for business; and
  - (f) keep and maintain the area identified in the approval, including all tables, chairs, fixtures, fittings and equipment used in the operation of the activity at all times in a clean, sanitary and tidy condition; and
  - (g) keep and maintain in and about the area identified in the approval, adequate waste disposal facilities, for example, bins, and be responsible for the removal of all waste from the waste disposal facilities at such intervals as an authorised person may direct; and
  - (h) not place or display any sign or device advertising the activity in the area identified in the approval otherwise than in accordance with an approval of the local government which authorises the use of the footpath for that purpose; and
  - (i) not use an umbrella within the area identified in the approval unless the umbrella has not less than 2m clearance above ground level adjacent to the umbrella and is securely anchored to the satisfaction of an authorised person; and
  - (j) only use furniture in the area identified in the approval which is—
    - (i) aesthetically acceptable to the local government; and
    - (ii) kept in a proper state of repair; and
  - (k) provide, for use by patrons of each of the principal premises and the area identified in the approval, adequate toilet facilities; and
  - (l) regularly clean the area identified in the approval—
    - (i) during business hours for the principal premises; and
    - (ii) daily, after the close of business of the principal premises.
- (4) If the prescribed activity is the display of goods for sale on a footpath, the conditions of the approval may also require that the approval holder—
- (a) limit the operation of the activity to a specified area which is contiguous to, or in the vicinity of, retail premises which are operated by the approval

holder (also *principal premises*); and

- (b) limit the operation of the activity to the footpath immediately adjacent to the principal premises; and
- (c) keep and maintain a clear unobstructed pedestrian corridor of a specified width depending on the density of pedestrian traffic; and
- (d) limit the operation of the activity to the normal business hours of the principal premises; and
- (e) only use, for the purposes of display of the goods for sale, a structure which is—
  - (i) of safe construction; and
  - (ii) in good condition and repair; and
  - (iii) securely fixed to the footpath; and
- (f) only display goods for sale if the goods are in an orderly and sightly condition; and
- (g) only display goods for sale if the goods are the property of, or offered for sale by, the approval holder; and
- (h) remove all goods, and any structure designed for the display of the goods for sale, when the principal premises are not open for business.

## **7. Term of an approval**

- (1) The term of an approval may be assessed by having regard to the information submitted by the applicant.
- (2) However, the local government may fix the term for an approval if it is desirable to do so—
  - (a) to provide common expiry dates for approvals; or
  - (b) for some other reason.
- (3) The term of the approval must be specified in the approval.

## **8. Term of renewal of an approval**

- (1) The term for which an approval may be renewed or extended must be determined by 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**

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

## **Schedule 2      Categories of approval that are non-transferable**

Section 7

No category listed.



## **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

**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*.

**goods** includes wares, merchandise, chattels, money, stone, timber, metal, fluid and any other article, substance or material whatsoever.

**mobile roadside vending** means an operator soliciting or carrying on the supply of goods or services (including food or drink) for profit in circumstances where—

- (a) the operator travels from place to place; and
- (b) the operator supplies the goods or services to a customer in response to the customer waiving down the operator.

**principle premises** has the meaning given in schedule 1, sections 2(2)(o), 6(3)(a) and (4)(a).

**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 as 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.

**sale** includes —

- (a) to sell; and
- (b) sell for resale; and
- (c) offer, or expose for sale; and
- (d) agree or attempt to sell; and
- (e) receive, keep or have in possession for sale; and
- (f) cause or permit to be sold or offered or exposed for sale; and
- (g) provide a sample; and
- (h) barter; and
- (i) auction; and
- (j) supply or have available for supply; and
- (k) suffer or permit any of the above acts.

**stationary roadside vending** means an operator soliciting or carrying on the supply of goods or services (including food or drink) for profit in circumstances where—

- (a) the operator carries on the activity from—
  - (i) a specified place; or

- (ii) a number of specified places; but
- (b) the activity is not footpath dining.

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

**waste** has the meaning given in the *Environmental Protection Act 1994*.