

Cloncurry Shire Council

Local Law No. 3 (Gates & Grids) 2010

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Part 1 - Preliminary

1 Short title

This local law may be cited as *Local Law No. 3 (Gates and Grids) 2010*.

2 Objects

The objects of this local law are to ensure—

- (a) gates and grids installed across roads within the local government's area are installed and maintained in accordance with appropriate safety standards; and
- (b) appropriate indemnities are in force to protect the local government and the public against loss or damage resulting from the presence of gates and grids; and
- (c) gates and grids do not unreasonably disrupt or interfere with the use of roads and other public infrastructure by the public.

3 Definitions - the dictionary

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

4 Application of this local law

This local law applies to a gate or a grid if the gate or grid is across, under or over a road under the local government's control.

Part 2 - Control of Gates and Grids

5 Requirement to hold licence

A responsible person for a gate or a grid must obtain a licence under this part.

Maximum penalty - 100 penalty units

6 Application for licence

An application for a licence authorising the installation or utilisation of a gate or grid must include or be accompanied by—

- (a) the full name, address and contact telephone number of the applicant; and
- (b) the full name of the road upon which the gate or grid is, or is proposed to be, located; and
- (c) the real property description of the land which is, or is to be, serviced by the gate or grid; and
- (d) an accurate description of the structure, including a map indicating the location of the structure; and
- (e) the existing number (if any) issued by the local government for the gate or grid; and

- (f) a description relating to the type and size of the gate or grid installed; and
- (g) if approval for anything to be done under the licence is also required under another law—a certified copy, or other appropriate evidence, of the approval; and
- (h) if the area of road to be enclosed by the gate or grid is to be used for grazing—a copy of the relevant permit to occupy issued under the *Land Act 1994*; and
- (i) other information and materials required by subordinate local law.

7 Grant of licence

- (1) The local government may grant a licence authorising the installation or utilisation of a gate or grid if satisfied that the licence may be granted consistently with the objects of this local law and the criteria laid down by subordinate local law.
- (2) A licence cannot be granted for a State-controlled road unless the '*chief executive*' agrees in writing.
- (3) A subordinate local law may specify criteria with which a gate or grid must comply, or will ordinarily be expected to comply.

8 Term of licence

- (1) The term of a licence must be fixed by the local government by subordinate local law.
- (2) The local government may, on application by the holder of a licence, renew the licence from time to time for a period decided by the local government when granting the renewal.
- (3) However, the local government must, on application for renewal of a licence made before the end of the term for which the licence was granted or last renewed, renew the licence for a term of at least 1 year unless—
 - (a) the local government has given the responsible person at least 3 months written notice of its intention not to renew the licence; or
 - (b) the responsible person has failed to remedy a contravention of this local law or a condition of the licence within the time allowed in a compliance notice and the local government—
 - (i) has given written notice to the responsible person of its intention not to renew the licence and the grounds of the proposed non-renewal; and
 - (ii) has allowed the responsible person a period stated in the notice (which must be at least 20 business days from when the notice is given) to make written representations to the local government about the proposed non-renewal of the licence; and
 - (iii) has considered representations made in response to the notice.

9 Conditions of licence

- (1) A licence may be granted on conditions the local government considers appropriate.
- (2) The conditions of a licence may, for example—
 - (a) require compliance with specified safety requirements; and
 - (b) require the proper maintenance of the gate or grid; and
 - (c) require control of declared and noxious plants within the road reserve utilised by stock as the result of installation of the gate or grid; and
 - (d) require that the responsible person for a gate take all steps as may reasonably be required to ensure that the gate remains closed, fastened or latched at all times other than when being used for the movement of stock through the gate.
- (3) The local government may, by subordinate local law, prescribe conditions that must be imposed in a licence or that will ordinarily be imposed in a licence.

10 Compliance with conditions of licence

A responsible person must ensure that the conditions of a licence are complied with.

Maximum penalty - 50 penalty units.

11 Power to change conditions of licence

- (1) The local government may, by written notice given to a responsible person, change¹ the conditions of the person's licence.
- (2) However, the local government may change the conditions of a licence only if—
 - (a) the responsible person agrees to the proposed change; or
 - (b) the local government—
 - (i) gives the responsible person reasonable written notice of the proposed change inviting the responsible person to make written representations about the proposed change within a reasonable period fixed in the notice; and
 - (ii) if the responsible person makes written representations within the time allowed in the notice—takes the representations into account.

12 Transfer of licence

- (1) A responsible person may, with the approval of the local government, transfer the person's licence to another person.
- (2) The local government may impose conditions on the transfer of a licence.
- (3) However, the local government cannot—
 - (a) unreasonably refuse its approval of the transfer of a licence; or
 - (b) impose unreasonable conditions on the transfer of a licence.

¹ A "change" to the conditions of a licence includes a change by omission, substitution, exception or addition (see Acts Interpretation Act 1954, section 36).

Part 3 - Insurance

13 Indemnity

A responsible person must keep the local government insured under a policy of insurance approved by the local government against liability that the local government may incur as a result of the presence of the person's gate or grid or the administration of this local law.

Maximum penalty - 50 penalty units.

14 Public risk policy

A responsible person must take out and maintain throughout the period for which the licence is granted or renewed policies of insurance, on terms and conditions approved by the local government, insuring the responsible person against liabilities for personal injury or damage to property that may arise out of the presence of the gate or grid.

Maximum penalty - 50 penalty units.

15 Evidence of compliance

A responsible person must, if required in writing by the local government or an authorised person, produce evidence showing that the responsible person has the insurance required by this part and that the insurance is current.

Maximum penalty - 10 penalty units.

Part 4 - Enforcement

16 Inspection

An authorised person may enter² land and inspect a gate or grid to find out whether the requirements of this local law and the conditions of the licence are being complied with.

17 Compliance notices

(1) If a responsible person contravenes a provision of this local law or a condition of the licence, an authorised person may give the responsible person a written notice (a "**compliance notice**") under this section.

(2) A compliance notice may—

(a) if the contravention is of a continuing or recurrent nature—require the responsible person to stop the contravention; and

(b) whether or not the contravention is of a continuing or recurrent nature—require the responsible person to take specified action, within a time specified in the notice, to remedy the contravention which may include removal of the gate or grid.

(3) The responsible person must comply with a notice under this section.

Maximum penalty for subsection (3) - 50 penalty units.

²For power of entry, see Chapter 15, parts 4 and 5 of the Act.

18 Local government's power to have work carried out

If a responsible person fails to have work required by a compliance notice carried out, the local government may itself carry out the work.

19 Powers of entry and cost recovery

- (1) If, in order to carry out work under this part, the local government needs to enter land of which it is not the owner or occupier, the local government may enter the land to carry out the work—
 - (a) under section 1066 of the Act, if the responsible person is the owner or occupier of the land; or
 - (b) under section 1070 of the Act³.
- (2) If the responsible person is the owner of the relevant land, the amount properly and reasonably incurred by the local government in performing the work is recoverable (together with interest) under sections 1066, 1067 and 1068 of the Act.
- (3) If the responsible person is not the owner of the relevant land, the amount properly and reasonably incurred by the local government is recoverable as a debt from the responsible person (together with interest) on the same basis as applies to an owner of land under section 1067 of the Act⁴.

20 Suspension or cancellation of licence

- (1) If a responsible person fails to remedy a contravention of this local law or a condition of a licence within the time allowed in a compliance notice, the local government may, by written notice given to the responsible person, suspend or cancel the licence.
- (2) The local government may by written notice to the responsible person cancel the licence if it reasonably determines that such cancellation is in the interests of public safety or otherwise in the public interest.
- (3) However, before suspending or cancelling a licence under subsection (1) or (2), the local government must—
 - (a) give written notice to the responsible person of the proposed suspension or cancellation; and
 - (b) allow the responsible person a period stated in the notice (which must be at least 20 business days from when the notice is given) to make written representations to the local government about the proposed suspension or cancellation; and
 - (c) consider representations made in response to the notice.
- (4) The local government may also cancel a licence by agreement with the responsible person.

³ A magistrate may make an order for entry to the land under section 1063 (Order on occupier who refuses entry) of the Act if the occupier refuses to permit entry.

⁴ Section 1067(2) of the Act provides for the payment of interest on the same basis as for an overdue rate.]

21 Emergency powers of authorised person

- (1) If an authorised person is satisfied on reasonable grounds that urgent action is necessary to prevent or minimise harm or risk to the public, the authorised person may—
- (a) direct the responsible person to take specified reasonable action within a specified reasonable time; or
 - (b) take the action or authorise another person to take the action.
- (2) The direction may be given orally or by written notice.
- (3) However, if the direction is given orally, the authorised person must as soon as practicable, confirm the direction by written notice given to the person.
- (3) A responsible person who is given a direction under this section must comply with the direction.

Maximum penalty for subsection (4) – 20 penalty units.

Part 5 – Miscellaneous

22 Protection of gates and grids

- (1) A person must not damage a gate or grid lawfully installed across a public road.

Maximum penalty—100 penalty units.

- (2) A person must not leave a gate lawfully installed across a road, open, unfastened or unlatched.

Maximum penalty—100 penalty units.

23 Defence of reasonable excuse

If a person is charged with an offence involving a contravention of a provision of this local law, it is a defence to prove that the person had a reasonable and lawful excuse for the contravention.

24 Removal of certain gates and grids

- (1) If no person accepts responsibility for a gate or a grid on a local government road, the local government may remove the gate or grid from the road.
- (2) The local government is not liable for compensation to any person for a gate or grid removed under subsection (1).

25 Subordinate local laws

The local government may make subordinate local laws about—

- (a) the information and materials to be included in, or to accompany, an application for a licence⁵ and
- (b) criteria with which the gate or grid must comply, or will ordinarily be expected to comply if a licence is to be granted⁶ and
- (c) the term of a licence;⁷and

⁵ See section 6(i).

⁶ See section 7(3).

⁷ See section 8(1).

- (d) conditions that must, or will ordinarily, be imposed in a licence⁸ and
- (e) other matters about which this local law specifically allows for the making of subordinate local laws.

⁸ See section 9(3).

SCHEDULE

Dictionary

section 3

authorised person means a person appointed as an authorised person for this local law.

chief executive means the chief executive of the department administering chapter 5 of the *Transport Infrastructure Act 1994*.

compliance notice see section 17(1).

grid includes a gate and grid and means a structure designed to permit the movement of pedestrian or vehicular traffic along a road but to prevent the passage of livestock;

local government road means a road other than a State-controlled road.

responsible person means a person who—

- (a) has installed, or proposes to install, a gate or a grid; or
- (b) is the holder of a licence under this local law; or
- (c) has the benefit of a gate or a grid and accepts responsibility for maintaining the gate or grid.

road includes a State-controlled road.

State-controlled road means a State-controlled road under the *Transport Infrastructure Act 1994*.

the Act means the *Local Government Act 1993*.

Certification

“This and the preceding nine (9) pages bearing my initials is a certified copy of *Local Law No. 3 (Gates and Grids) 2010*, made in accordance with the provisions of the *Local Government Act 1993*, by the Cloncurry Shire Council by resolution dated

Chief Executive Officer