

New Local Law requirements for gates and grids across Central Highlands Regional Council area

1. Introduction

On 14 May 2014 Council resolved to put in place local laws to regulate the installation and ongoing maintenance of gates and grids across the region.

2. Legislative changes

Under *Local Law No.4 (Local Government Controlled Areas, Facilities and Roads) 2012*, section 5, Council may, by subordinate local law, declare an activity to be:-

- a prohibited activity (which is prohibited in a local movement controlled area or a road); or
- a restricted activity (the undertaking of which is restricted, to the extent specified in the subordinate local law, in a local government controlled area or road).

Amending Subordinate Local Law No.4 identifies two (2) new restricted activities as follows:-

- installing a gate or grid, or a gate and a grid, across a road (*which will be relevant in circumstances where no gate or grid is currently installed across a road and a person wishes to install a gate or grid across the road*); and
- being a responsible person for a gate or grid, or a gate and a grid, installed across a road (*which will be relevant in circumstances where a gate or grid is already installed across a road*).

3. 'Responsible person' for gate and or grid

The obvious question is who is a "responsible person".

This expression is defined in Amending Subordinate Local Law No.4 to include:-

- (a) the person who **actually installed** the gate or grid; and
- (b) the person for whose **use or benefit** the gate or grid was installed; and
- (c) the person who **has the benefit** of the gate or grid installed across the road.

Common sense dictates that **persons in close proximity** to a gate or grid, who use the gate or grid on a regular basis, benefit from the installation of the relevant gate or grid.

4. No Responsible Person identified

If it is the case that no one actually benefits from the installation of a gate or grid on a particular road and Council is unable to identify a responsible person, and unable to take enforcement action Council may, simply **remove** the gate or grid at Council's cost in its discretion as part of its normal road maintenance activities.

5. Authorised officer

Under Local Law No.1, section 26, and an authorised person (of Council) may give a written notice (**a compliance notice**) in circumstances where the authorised person is satisfied on reasonable ground that:-

- (a) a person:-
 - (i) is contravening a local law or a condition of an approval; or
 - (ii) has contravened a local law or a condition of an approval in circumstances that make it likely that the contravention will continue or be repeated; and
- (b) a matter relating to the contravention can be remedied; and
- (c) it is appropriate to give the person an opportunity to remedy the matter.

6. Council can remove the gate or grid and recover as a debt

If a recipient of the notice fails to apply for an approval in the manner required under the compliance notice, Council is then entitled to exercise its rights under section 28 of Local Law No.1 which gives Council the power to remove the relevant gate or grid from the local government road and recover the cost of action taken under the section as a debt from the person responsible for the activity.

7. Installation of a new gate or grid

The applicant must provide Council with a plan detailing:

- the design of the proposed gate or grid including all dimensions, alignments and structural elements; and
- the location within the road of the proposed gate or grid; and

- particulars of all warning or similar signage proposed to be erected by the applicant

In addition the applicant proposing to install a gate or grid, Council must be advised on the date and time as well as any impacts on pedestrian or vehicular traffic and materials, equipment and vehicles to be used when installing the gate or grid.

8. Gate or grid already installed in a road

The applicant must provide Council with a plan detailing:

- the design of the gate or grid including all dimensions, alignments and structural elements; and
- the location within the road of the gate or grid; and
- particulars of all warning or similar signage erected about by the applicant

9. Additional criteria Council will consider when considering approval

The gate of grid must not result in:

- Harm to human health or safety, including the safety of vehicular or pedestrian traffic; or
- Property damage or loss of amenity; or
- Nuisance; or
- Unreasonable obstruction of vehicular or pedestrian traffic; or
- Unreasonable prejudice to proper maintenance of a road; or
- Environmental harm or environmental nuisance

10. Conditions to be imposed when considering approval for a new gate or grid

The conditions of the approval may—

- (a) require compliance with specified safety requirements; and
- (b) regulate the time within which the installation of the gate or the grid, or the gate and the grid, must be carried out; and
- (c) specify standards with which the installation of the gate or the grid, or the gate and the grid, 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 the installation of the gate or the grid, or the gate and the grid; and
- (iii) give the local government specified indemnities; and
- (iv) construct the gate or the grid, or the gate and the grid, in accordance with standard plans and specifications which the local government may develop or adopt from time to time; and
- (v) maintain structures erected or installed, or vegetation planted, under the approval, in good condition; and
- (vi) clear and maintain the road in the vicinity of the gate or the grid, or the gate and the grid, (including the destruction of plants and vegetation); and
- (vii) remove a gate, grid or structure erected or installed, under the approval, at the end of a stated period; and
- (viii) remove a gate, grid or structure erected or installed, under the approval, if the gate, grid or structure—
 - (A) is not effective for its intended purpose; or
 - (B) is causing a nuisance, or poses a risk of a nuisance; or
 - (C) constitutes an actual, or potential safety hazard; and
- (ix) if the approval relates to the installation of a grid—also erect a gate at the location of the grid to a standard, and in accordance with the requirements of, the local government; and
- (x) maintain the road, for a distance of 5m on each side of the gate or the grid, or the gate and the grid, as the case may be, in good and sufficient repair —
 - (A) so that vehicular and pedestrian traffic is not impeded or obstructed; and
 - (B) to prevent or minimise the risk of personal injury or damage to property; and

- (xi) exhibit specified signage warning about the conduct of the prescribed activity on the road; and
- (xi) take specified measures to ensure the unrestricted movement of vehicular and pedestrian traffic along the road during construction and installation of the gate or the grid, or the gate and the grid, as the case may be, and minimise obstruction of vehicular or pedestrian traffic or the risk of personal injury or damage to property.

11. Conditions to be imposed when considering a gate or grid already installed in a road

The conditions of the approval may—

- (a) require compliance with specified safety requirements; and
- (b) require the approval holder to—
 - (i) carry out specified 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 within a stated period; and
 - (iii) give the local government specified indemnities; and
 - (iv) maintain the gate or the grid, or the gate and the grid, in accordance with standard plans and specifications; and
 - (v) maintain structures erected or installed, or vegetation planted, under the approval, in good condition; and
 - (vi) clear and maintain the road in the vicinity of the gate or the grid, or the gate and the grid (including the destruction of plants and vegetation); and
 - (vii) remove a gate, grid or structure identified in the approval, at the end of a stated period; and
 - (viii) remove a gate, grid or structure identified in the approval if the gate, grid or structure—
 - (A) is not effective for its intended purpose; or

- (B) is causing a nuisance, or poses a risk of a nuisance; or
 - (C) constitutes an actual, or potential safety hazard; and
- (ix) if the approval relates to a grid—also erect a gate at the location of the grid to a standard, and in accordance with the requirements of, the local government; and
 - (x) maintain the road, for a distance of 5m on each side of the gate or the grid, or the gate and the grid, as the case may be, in good and sufficient repair—
 - (A) so that vehicular and pedestrian traffic is not impeded or obstructed; and
 - (B) to prevent or minimise the risk of personal injury or damage to property; and
 - (xi) exhibit specified signage warning about the conduct of the prescribed activity on the road.

12. Term of approval

The term of an approval must be determined by Council having regard to the information submitted by the applicant and the term of the approval must be specified in the approval.

13. Term of renewal of approval

The term for which an approval may be renewed or extended must be determined by Council having regard to the information submitted by the approval holder and if Council grants the application, the local government must specify in the written notice, the term of the renewal or extension.

14. Further details

Contacting Council on **1300 242 686** or direct to Council officers noted below.

Anita Dwyer	Capella	07 4988 7200
Brett Johnston	Springsure	07 4981 4100
Kirstie Beath	Blackwater/Duaringa	07 4925 6444
Anshuman Kakati	Emerald	07 4982 8333