

# GOLD COAST CITY COUNCIL



LOCAL LAW NO. 15

(TELECOMMUNICATION CABLING)

REPEALED (GZETTE 19/12/08)

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(TELECOMMUNICATION CABLING)**

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**PART 1 - PRELIMINARY**

**Citation**

1. This local law may be cited as *Gold Coast City Council Local Law No.15 (Telecommunication Cabling)*.

**Objects**

2. The objects of this local law are to—
  - (a) protect the amenity of the local government area from visually intrusive telecommunication cabling and associated equipment; and
  - (b) promote the placement of telecommunication cabling and associated equipment underground, taking into account economic and technical issues, where placing such cabling and equipment underground is supported by the affected community; and
  - (c) protect against risk to public safety from the installation of telecommunication cabling; and
  - (d) ensure that the interests of the local community are not prejudiced in other ways by the installation of telecommunication cabling.

**Definitions**

3. In this local law—

**"authorised person"** means a person authorised by the local government to exercise the powers of an authorised person under this local law.

**"associated equipment"** in relation to a telecommunication cable means—

- (a) a structure for holding the cable in place; or
- (b) an amplifier, power box or other equipment related to the transmission of electromagnetic signals by means of the cable.

**"carrier"** means the holder of a carrier licence under the *Telecommunications Act 1997* (Cwth).

**"Court"** means the Planning and Environment Court.

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

**"low impact facilities"** means a facility that is, by determination under clause 6(3) of Part 1 of Schedule 3 to the *Telecommunications Act 1997* (Cwth), a low impact facility.

**"non-discrimination principles"** means the principles that operate under clause 44 of Schedule 3 to the *Telecommunications Act 1997* (Cwth).

**"permit"** means a permit under this local law authorising the installation of a telecommunication cable and associated equipment on a road.

**"road"** means a road as defined for the purposes of the *Land Act 1994* and includes all land to both sides of the centre of the carriageway of a road up to the nearest boundary of adjoining land.

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

**"telecommunication cable"** means a wire, cable, optical fibre, tube, conduit, waveguide or other physical medium used, or for use, for or in connection with carrying electromagnetic signals in a cable television distribution network.

## PART 2—REQUIREMENT FOR PERMIT

### Requirement to hold permit

4. (1) A person must not install a telecommunication cable or associated equipment on a road unless authorised to do so by a permit.

Maximum penalty—850 penalty units.

(2) However, a permit is not required—

(a) for the installation of low-impact facilities; or

- (b) if the installation is authorised under clause 6(1) of Schedule 3 to the *Telecommunications Act 1997 (Cwth)*

(3) A telecommunication cable or associated equipment installed on, above or beneath the ground surface of a road is taken to be installed on the road.

## **PART 3—PERMITS**

### **Division 1—Authorisation conferred by permit**

#### **Authorisation conferred by permit**

5. A permit authorises the holder of the permit to install telecommunication cables and associated equipment on roads in the local government's area in accordance with the conditions of the permit.

### **Division 2—Non-discrimination principle**

#### **Non-discrimination principles**

6. In deciding applications for permits, and exercising other powers under this local law, the local government must comply with the non-discrimination principles.

### **Division 3—Application for permit**

#### **Application for permit**

7. (1) An application for a permit must include or be accompanied by—



- (a) the name and address of the applicant and, if the applicant is a body corporate or a partnership, the name and address of an individual who is authorised by the applicant to act on its behalf; and
- (b) the name and address of the carrier for whom the cable is to be installed; and
- (c) a plan—
- (i) showing the position in which the applicant proposes to install the telecommunication cable and associated equipment by reference to the boundaries of the road; and
  - (ii) indicating where the cable is to be installed above ground and where it is to be installed under ground; and
  - (iii) where the cable is to be installed above ground—indicating the height of the cable above ground and the extent of the clearance between other wires and cables (if any) installed above ground;
- (d) details of the proposed cable and associated equipment including—
- (i) the mass and dimensions of the cable and associated equipment;
  - (ii) the external colour of the cable and associated equipment; and
- (e) an impact assessment prepared by suitably qualified and experienced person to address (so far as relevant) the probable effect of carrying out the proposal on the local government area and in particular its effect on—

- (i) the appearance and visual significance of the area; and
- (ii) the heritage significance of the area; and
- (iii) the environmental significance and sensitivity of the area; and
- (iv) trees and other vegetation that exist at present or might be planted in the future; and
- (v) other aspects of the amenity of the area; and
- (f) and any possible interference with use of the road or access to adjoining properties (and in particular any possible interference with the provision of emergency services); and
- (g) other information and materials required under local law policies.

(2) The applicant must, at the request of the local government, provide further information required by the local government.

(3) A request for further information must be made by the local government within 14 days after the application for the permit is received by the local government.

#### **Consultation required in relation to State-controlled roads**

8. If an application involves a proposal to install telecommunication cable or associated equipment on a State-controlled road, the local government must, as soon as practicable after receiving the application—

- (a) give a copy of the application to the chief executive of the department administering Chapter 5 of the *Transport Infrastructure Act 1994*; and
- (b) invite the chief executive's comments on aspects of the application relevant to State-controlled roads.

**Local government may require consultation or negotiation on possible undergrounding of cables**

9. The local government may require an applicant for a permit to consult or negotiate with other interested authorities and persons about the possibility of undergrounding the proposed telecommunication cable along with other wires and cables on the road on the basis of a cost-sharing arrangement to be agreed between them.

**Application fee**

10. An application for a permit must be accompanied by a fee fixed by, or in accordance with, a local law policy or a resolution of the local government.

**Division 4—Public consultation**

**Public consultation**

11. (1) Before the local government decides an application for a permit, the applicant must publish an advertisement in a form and in publications specified by the local government—

- (a) giving reasonable notice of the nature of the work to be carried out under the proposed permit; and

- (b) inviting interested members of the public to make written representations to the local government before a closing date to be specified in the advertisement.

(2) The local government must—

- (a) give the applicant an opportunity to respond to the representations received from the public; and
- (b) consider the representations and the applicant's response before deciding the application.

(3) The local government may also carry out any other process of public consultation that the local government considers appropriate in the circumstances.

(4) The local government may decline to proceed with consideration of the application until the applicant has complied with this section.

## **Division 5—Grant of permit**

### **Grant of permit**

12. On an application for a permit, the local government may—

- (a) grant a permit on conditions the local government considers appropriate; or
- (b) refuse to grant a permit.

**Matters to be considered by the local government**

**13. (1)** In deciding whether to grant a permit and, if so, the conditions on which the permit is to be granted, the local government must have regard to—

- (a) the probable effect of carrying out the proposal on the local government area and in particular the effect on—
  - (i) the appearance and visual significance of the area; and
  - (ii) the heritage significance of the area; and
  - (iii) the environmental significance and sensitivity of the area; and
  - (iv) trees and other vegetation that exist at present or might be planted in the future; and
  - (v) other aspects of the amenity of the area; and
- (b) any possible interference with use of the road or access to adjoining properties (and in particular any possible interference with the provision of emergency services); and
- (c) any possible risk to public safety that might arise from carrying out the proposal; and
- (d) the results of any public consultation carried out in relation to the proposal; and

- (e) if the proposal involves State-controlled roads—the comments (if any) received from the chief executive of the department administering Chapter 5 of the *Transport Infrastructure Act 1994*; and
- (f) the benefits in extending the range of telecommunication services available to residents of the area to be gained by carrying out the proposal; and
- (g) the effect of the proposal on the provision of other services (such as electricity, water or gas) to residents of the area and, if the proposal is to install cables above ground, the effect that undergrounding the cables might have on the provision of other services to residents of the area; and
- (h) the effect of the proposal on surrounding land and the uses made of surrounding land; and
- (i) the availability of alternative sites for carrying out the proposed work; and
- (j) the impact of the proposal on the local government's plans for developing the local government's area; and
- (k) any relevant criteria set by local law policy; and
- (l) any other relevant matters.

(2) In deciding the conditions of a permit, the local government must have regard to relevant provisions of—

- (a) the *Telecommunications Code of Practice 1997*; and

- (b) industry codes and the industry standards registered under the *Telecommunications Act 1997* (Cwth);

and must ensure that the conditions of the permit are consistent with those provisions.

**Time within which application must be decided**

**14. (1)** The local government must decide an application within 30 days after the completion of the application process.

**(2)** If the local government considers the period prescribed by subsection (1) inadequate, the local government may (after advising the applicant of its intention to do so) extend the period by a further period or periods of up to 20 days (in aggregate).

**(3)** The application process is taken to have been completed when—

- (a) a properly completed application has been lodged with the local government;  
and
- (b) the applicant has complied with any requirements made in relation to the application by the local government; and
- (c) the applicant has responded to public representations made in relation to the application; and
- (d) any further public consultation to be conducted by the local government has been completed.

(4) The local government must, as soon as practicable after deciding an application for a permit, give the applicant written notice of its decision.

**Conditions of permit**

15. (1) A permit may be granted on conditions the local government considers appropriate.

(2) The conditions of a permit may impose different requirements for different parts of the local government area.

(3) Before imposing a condition requiring undergrounding of the cable or associated equipment, or the installation of the cable or associated equipment in a position that differs from the position proposed by the applicant, the local government must ensure that there are proper reasons for imposing the requirement.

(4) The question whether there are proper reasons for imposing such a requirement is to be decided by reference to the matters and criteria to which the local government is required to have regard in deciding the application for the permit.

(5) The local government may, by local law policy, prescribe conditions that must be imposed in a permit or that will ordinarily be imposed in a permit.

**Compliance with conditions of permit**

16. The holder of a permit must—

- (a) comply with the conditions of the permit; and



- (b) ensure that its agents, employees and contractors, and others engaged in the work authorised under the permit, comply with the conditions of the permit.

Maximum penalty—850 penalty units.

## **Division 6—Change of conditions**

### **Power to change conditions of a permit**

**17. (1)** The local government may, by written notice given to the holder of a permit, change the conditions of the permit.

**(2)** In deciding whether to change the conditions of a permit, the local government must have regard to the same matters and criteria as are appropriate to fixing the conditions of the permit.

**(3)** However, the local government may only change the conditions of a permit if—

(a) the holder of the permit agrees to the proposed change; or

(b) the local government—

(i) gives the holder of the permit reasonable written notice of the proposed change inviting the holder to make written representations about the proposed change within a reasonable period fixed in the notice; and

(ii) if the holder makes written representations within the time allowed in the notice—takes the representations into account.

## **Division 7—Compliance orders**

### **Compliance orders**

**18. (1)** If a person contravenes this local law, or a condition of a permit, an authorised person may give the person a written order (a "compliance order") under this section.

**(2)** A compliance order may—

- (a)** if the contravention is of a continuing or recurrent nature— require the person to stop the contravention; and
- (b)** whether or not the contravention is of a continuing or recurrent nature— require the person to take specified action, within a time specified in the order (which must be at least 7 days), to remedy the contravention.

**(3)** A person to whom a compliance order is given under this section must comply with the order.

Maximum penalty—850 penalty units.

## **Division 8—Suspension or cancellation of permit**

### **Suspension or cancellation of permit**

**19. (1)** If the holder of a permit does not comply with a requirement of a compliance order, the local government may, by written notice given to the holder of the permit, suspend or cancel the permit.

**(2)** However, before suspending or cancelling a permit, the local government must—

- (a) give written notice to the holder of the permit of the proposed suspension or cancellation; and
- (b) allow the holder a reasonable period stated in the notice to make written representations to the local government about the proposed suspension or cancellation; and
- (c) consider representations made in response to the notice.

**(3)** When the local government suspends or cancels a permit, it may, by written order given to the holder or former holder of the permit, require that person to remove specified telecommunication cables and associated equipment installed under the permit.

**(4)** A person to whom an order is given under this section must comply with the order.

Maximum penalty—850 penalty units.

## **Division 9—Local government's power to carry out work**

### **Local government's power to carry out work**

**20.** If a person fails to have work required by an order under this Part carried out within the time allowed in the order, the local government may itself have the work carried out.

**(2)** The amount properly and reasonably incurred by the local government in performing the work is recoverable from the person who failed to comply with the order as a debt.

## **PART 4—APPEAL**

### **Right to appeal against local government decisions**

**21.** A person may appeal to the Court against a decision made under this local law as follows:

- (a) an applicant for a permit whose application is refused may appeal against the local government's decision to refuse the application;
- (b) the holder of a permit may appeal against the local government's decision to include a particular condition in the permit or to change a condition of the permit;
- (c) the holder (or former holder) of a permit may appeal against a decision by the local government to suspend or cancel the permit;

- (d) a person against whom an order is made under this local law may appeal against the order.

### **Procedure**

**22. (1)** An appeal must be started within 40 days after the appellant receives written notice of the decision to which the appeal relates or within a longer period allowed by the Court.

**(2)** An appeal is to be started and conducted in the same way as if it were an appeal under the *Environmental Protection Act 1994*.

### **Power to stay operation of compliance order**

**23. (1)** The Court may stay the operation of a decision or order subject to an appeal for the purpose of securing the effectiveness of the appeal.

**(2)** A stay—

- (a) may be given on conditions the Court considers appropriate; and
- (b) operates for the period stated by the Court; and
- (c) may be revoked or amended by the Court.

**(3)** The period of a stay cannot extend past the time the Court decides the appeal.

### **Powers of the Court on an appeal**

**24. (1)** On an appeal, the Court may—

- (a) confirm, vary or revoke the decision or order subject to the appeal; and

(b) give consequential and ancillary orders and directions.

(2) The Court's decision on an appeal must be consistent with the objects of this local law.

## **PART 5—MISCELLANEOUS**

### **Interaction with other local laws**

25. A person who holds a permit under this local law does not require a permit or other authority under any other local law to carry out the work authorised by the permit.

### **Production of permit**

26. The holder of a permit must, at the request of an authorised person, produce the permit at a reasonable time and place for inspection or for endorsement of a condition or change of condition on the permit.

Maximum penalty—20 penalty units.

### **Property not to merge with the land**

27. A telecommunication cable or associated equipment installed on a road remains personal property and does not merge with the land whatever the degree of annexation with the land.

### **Local law policies**

28. The local government may make local law policies about—

- (a) information and materials that must be included in, or accompany, an application for a permit; or
- (b) criteria for granting permits or fixing the conditions of permits; or
- (b) permit conditions; or
- (c) other matters about which this local law specifically allows for the making of local law policies.

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