Temporary Use Licences

What is a temporary use licence?

A temporary use licence (TUL) is a licence that temporarily changes or varies existing development approval conditions or other operating constraints which may prevent a person or business from operating in a desired way during the declared applicable event.

An applicable event may be declared in response to extraordinary circumstances that are temporary in nature. TUL arrangements recognise that businesses may need to innovate or change how they operate in these circumstances. If approved, a TUL can make these changes lawful with respect to the provisions of the P*lanning Act 2016* (the Act).

There are two active applicable events declared by the Minister for Planning under section 275E of the Act:

1. the COVID-19 applicable event 1/2021 (COVID-19 1/2021). This declaration has effect from 29 June 2021 to 24 June 2022, unless extended
2. the Rainfall and Flooding applicable event. This declaration has effect from 4 April 2022 to 30 June 2022, unless extended.

The applicable event provides opportunities for businesses experiencing economic impacts arising from emergency restrictions (such as social distancing) to seek modifications to certain aspects of their existing approvals. If approved, these changes may assist businesses to temporarily adapt and remain viable during this difficult period. The ability to receive TULs also presents opportunities for some businesses to refocus their offerings and products to respond to changing supply chain demands.

The applicable event and use of TULs seeks to ensure that any proposed changes do not result in unacceptable impacts on businesses, community amenity or health and safety.

All TULs issued by Department of State Development, Infrastructure, Local Government and Planning are published on Queensland's planning framework website.

A TUL can change:

- conditions of a material change of use (MCU) of a development approval
- the use of an approved MCU
- the parameters of an *existing lawful* use by allowing:
  - an increase in the intensity or scale of the existing use
  - an additional use
  - replacement of an existing lawful use with a new use.
  - the *requirements* stated in a Ministerial Infrastructure Designation.

How do I apply for a TUL?

To apply for a TUL you will need to:

1. ensure you have read this document in full and comply with these guidelines
2. download the application form
3. engage with your local council to ensure that they support your proposed temporary change to your development approval
4. send the application form and evidence of support from your local council to TUL@dsdilgp.qld.gov.au.

NOTE: *Any TULs issued under a previously ended COVID-19 applicable event do not have effect for the COVID-19 01/2021 applicable event and a new TUL will need to be applied for.*

Any TULs issued under the COVID-19 01/2021 applicable event do not apply to temporary uses in response to the Rainfall and Flooding applicable event and a new TUL will need to be applied for.

What sort of applications could a TUL be for?

A TUL can be applied for only during a declared applicable event. It can relate to multiple uses and/or multiple premises. Some examples where a TUL could be given are to allow:

- A pop up shop, office, accommodation and food a drink outlets to allow flood affected small business to continue operation elsewhere
- Prescribed tidal works for repairs to infrastructure in the river (pontoons, revetment walls, op works in river)

What sort of things can't a TUL be given for?

Some examples where a TUL cannot be given are:

- to amend requirements of other Acts including hours of operations or construction hours
- where the relevant local council indicates there is an existing compliance matter
- changes to make a pre-existing non-compliance compliant
- changes to operational works or building approvals
- changes to material change of use (MCU) conditions where these changes would then be inconsistent with related conditions on operational works or building approvals for the same project
- anything requiring structures or infrastructure to be established that would not be capable of being easily removed at the end of the licence period
- requests to generate noise, traffic and other impacts than would have an unacceptable impact on the amenity of the surrounding area
- changes which would result in unacceptable impacts on residential amenity
- changes which may cause reverse amenity impacts (e.g. introducing uses into an industrial area that might compromise the operations of existing lawful uses)
- if the proposed use is already a declared use in accordance with a declaration of use notice issued under section 275O of the Act.
- to demolish structures when triggered by the planning scheme
- to rebuild or raise a structure above pre-approved heights
- to build below the identified flood level
- to increase the gross floor area through the introduction of permanent structures such as mezzanines

What are the main things the department looks at when assessing a TUL application?

The TUL must be made specifically in response to the impacts created by either the COVID-19 or Flood and Rainfall applicable event.

A TUL application must demonstrate that there are reasonable grounds (Section 275I(2) of the Act) for an approval.

Applications for TULs should demonstrate that there is a need for the TUL, and how the TUL would assist in addressing the impacts being faced due to the applicable events.

While TULs are intended to provide relief from development constraints (including conditions) which may limit the ability to respond to an applicable event, good planning principles still apply in assessing the merits of all applications.

When assessing a TUL application, the department determines:

- whether the premises can be returned to normal operations at the end of the declared applicable event, for example, can it:
    - immediately cease operations
    - remove equipment and/or infrastructure quickly and easily
    - remove stored material
    - return to the original use
    - be operated without lasting adverse impacts.
    - whether the applicant can deliver the 'use' in the period of the applicable event (e.g. involves more than minor building work)
    - whether the proposed use is compatible with surrounding land uses (including reverse amenity)
    - the magnitude and nature of impacts of the proposal on its surrounding environment, in particular, the impact on residential amenity and any affected state interests (e.g. roads, waterways, Environmentally Relevant Activities).

Do I need Owner's Consent to apply for a TUL?

No. Owner's Consent is not required to make an application for a TUL.

How long does assessment and decision of a TUL application take?

There is no statutory timeframe for assessing and deciding a TUL. The department endeavours to process TUL applications as quickly as possible. Enquires will be made to the relevant local council when assessing a TUL application.

Is a TUL a 'one stop shop' for all sorts of approvals?

No. A TUL can only change certain aspects of existing approvals issued under the Act. A TUL operates in conjunction with the existing approval – it does not replace it.

A TUL does not remove the need to obtain any other approvals that might be required by local, state and/or Commonwealth jurisdictions. These will also need to be acquired separate to the TUL.

If I get a TUL is my existing approval still relevant?

Yes. An existing planning approval is still valid if a TUL is issued. The TUL will only change certain conditions of the existing approval, all other elements of the existing approval remain unchanged and are still required to be complied with.

Who is responsible for ensuring compliance with an approved TUL?

The relevant local council is responsible for compliance and enforcement of an approved TUL including any conditions imposed

I have a current MCU approval and want it changed, what details do I need to provide in my TUL application?

If you have a current MCU approval and want it changed, you will need to provide the following in your TUL application:

- details of the current MCU development approval (attach a copy of the assessment manager decision if possible or provide the decision reference number)
- details of the premise or multiple premises over which the proposed TUL would apply
- details of the desired change/s to the MCU approval (changes to the approved use, conditions or both)
- a sketch or plan showing what is being applied for
- details of why the changes being sought are in response to the impacts created by the COVID-19 or Flood and Rainfall applicable event
- details of potential land use impacts including impacts on the amenity of the any surrounding residents and how the impacts will be managed.

I wish to make changes to some of the requirements on a Ministerial Infrastructure Designation, what details do I need to provide in my TUL application?

If you wish to make changes to some of the requirements on a Ministerial Infrastructure Designation (MID), you will need to provide the following in your TUL application:

- the details of the MID
- what changes are sought to which requirements of the MID
- details of why the changes being sought are in response to the impacts created by the COVID-19 or Flood and Rainfall applicable event
- details of potential land use impacts including impacts on the amenity of the any surrounding residents and how the impacts will be managed.

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