

Guidance Notes

Model Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2010

Version 1.3

Disclaimer

These guidance notes have been compiled for your information only and should not be treated as an exhaustive statement on the subject. Nor should they be considered as rendering to you legal or professional service. The department recommends that independent legal advice be sought on any matter of interpretation of the model local laws or template subordinate local laws. The information is provided on the basis that you are responsible for making your own assessment of the topics discussed.

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Purpose

These guidance notes aim to assist local governments interpret and implement the set of seven model local laws gazetted on 25 June 2010. They provide explanatory commentary on each model local law and its relevant subordinate local law template.

The guidance notes set out the scope and purpose of each part of the model local law and associated provisions within the relevant template subordinate local law and explain how the model is intended to be applied. The notes also identify:

- how linkages between the different model local laws form an integrated regulatory regime
- how the model laws link with other relevant legislation including the *Local Government Act 2009* (LGA).

A set of guidance notes is available for each model local law and should be read in conjunction with the relevant model local law and template subordinate local law.

Context – Model local laws 2010

The model local laws were developed following consultation with stakeholders undertaken in 2007–08. The model local laws cover a range of matters considered appropriate for local government to regulate such as:

- undertaking prescribed activities in a local government area
- bathing reserves
- parking
- community and environmental matters
- animal management and the regulation of other activities on local government controlled areas, facilities and roads.

See Appendix 1 for the full list of models.

The model local laws are presented as an integrated package with Model Local Law No.1 (Administration) 2010 (the Administration Model) being the framework for all other model local laws.

The Administration Model sets out common approval processes for:

- undertaking specific activities
- legal proceedings
- enforcement provisions
- miscellaneous matters upon which the other model local laws rely.

This means there is only one set of provisions for obtaining a local government's approval on a matter, rather than duplicating these provisions within each model local law. It ensures the model local laws are streamlined but flexible, enabling local governments to make local laws on new issues in the future without having to repeat relevant approval and enforcement provisions. It also means that a local government needs to adopt the Administration Model to enable any other model local law adopted to have effect.

There are a number of overarching principles upon which all model local laws are based. These include a requirement that a model local law should not duplicate state legislation and it should be necessary and enforceable. A full list of the principles upon which all models are based are set out in the guidance notes for the Administration Model.

Template subordinate local laws 2010

A template subordinate local law is available for each model local law as an additional support tool for local governments adopting the model local laws.

Subordinate local laws are essential to the successful implementation of the model local laws. In recognition of the diversity of local governments throughout the state, and to avoid limiting the application of the model local laws, subordinate local laws provide the means for local governments to specify the details of regulatory requirements that meet their particular needs.

It is intended local governments use the templates as a guide when developing subordinate local laws appropriate for their areas for each model local law adopted. The template provides a subordinate local law structure that is consistent with the heads of power provided in the model local law. While the templates include examples and suggestions for subordinate local law content in italicised text, this text is not intended to provide an exhaustive list of matters for inclusion.

Commentary on model provisions and template subordinate

Model Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2010 (LGCAFR Model) updates and combines into one model local law specific matters that were previously covered by five separate model local laws:

- No. 6 Parks and Reserves 2000
- No. 11 Camping Grounds 2000
- No. 12 Caravan Parks 2000
- No. 17 Swimming Pools 2000
- No. 21 Roads 2000

The Administration Model, in conjunction with the LGA, provides the necessary general enforcement powers for the new models. The Administration Model provides that local government approval is necessary for undertaking specified activities (prescribed activities). Section 5(a) of the Administration Model specifies that an activity is a prescribed activity if it is listed in Schedule 2 of the Administration Model. The following matters, involving local government controlled areas, are deemed prescribed activities for the purposes of the Administration Model and are regulated under that model local law:

- altering or improving local government controlled areas or roads—for example constructing gates and grids
- commercial use of local government controlled areas and roads—for example mobile food vending, advertising, cane growing on roads
- regulated activities on local government controlled areas and roads (driving or leading of animals to cross a road, depositing of goods or materials, holding of a public place activity prescribed by subordinate local law).

The process for obtaining an approval, imposing conditions on approvals and a range of other approval issues including enforcing compliance with approvals for the above prescribed activities are specified in the Administration Model.

Part 1 - Preliminary

S2. Purpose and how it is to be achieved

The LGCAFR Model provides local governments with power to regulate a wide range of matters relating to areas, facilities and roads that are controlled by them (local government controlled areas). Local governments may have control by virtue of ownership or because the area is held under a trustee lease or another legislative or contractual arrangement.

Local governments who are trustees of trust land have specific responsibilities under the *Land Act 1994*. See the section on 'relationship with other laws' in these guidance notes for further information.

Local governments should use the LGCAFR Model to:

- protect the health and safety of persons using local government controlled land, facilities, infrastructure and roads
- preserve features of the natural and built environment and other aspects of the amenity of local government controlled land, facilities, infrastructure and roads.

This purpose may be achieved through exercising powers:

- restricting or setting limits on certain activities
- requiring approvals for particular activities
- disallowing certain activities when considered necessary.

The LGCAFR Model is designed to be sufficiently broad and flexible to provide for, in conjunction with the Administration Model and the LGA, the regulation of access, activities and behaviours on a wide range of local government controlled areas within one model local law.

For example, the LGCAFR Model may apply to:

- parks and reserves including foreshores (Model Local Law No. 6 (Bathing Reserves) 2010 provides for the regulation of bathing reserves)
- camping grounds or caravan parks on land owned or controlled by the local government
- local government swimming pools
- local government child care centres
- jetties and boat ramps under local government control
- local government cemeteries
- council chambers and local government offices
- roads (as defined in the Administration Model)
- malls
- transfer stations/recycling depots.

Matters, such as libraries and meetings, previously provided for under the former model local laws, have been purposefully omitted from the LGCAFR Model as it is not considered necessary to regulate these matters by local law. Local government administrative policies can appropriately deal with library matters. Local government meetings can be dealt with under standing orders, a code of conduct and provisions under the LGA. (The Administration Model also contains a specific provision relating to maintenance of good order at meetings in relation to persons who are not members of the local government).

Model Local Law No. 7 (Indigenous Community Land Management) 2010 (the ICLM Model) has been specifically developed for and is intended for use by Indigenous local governments. That model local law provides for the regulation of specific activities in trust areas within the meaning of the *Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984*. The ICLM Model specifically provides for entry to trust areas, scientific research within the trust area, designation and management of camping sites within the trust area and the designation and regulation of the use of parks and reserves within the local government's area. The ICLM Model, therefore, is the most appropriate regulatory regime for Indigenous local governments wishing to regulate local government areas that are trust areas.

S3. Definitions – the dictionary

The dictionary defines all relevant words used in the model and is designed to be consistent with state legislation. Definitions are included based on the following approach for all the models:

- where a term is used in only one section of the model local law it is defined in that section and not repeated in the dictionary

- where a term is defined in the Administration Model and also used with the same meaning in another model local law, the definition is not repeated in the dictionaries of the other model local laws. Instead the term will be signposted in the other model local law dictionaries to refer the reader to the definition in the Administration Model
- generally, where a term is defined in the LGA it is not replicated in the model local law dictionaries. The first instance of the term's use in the model is footnoted to alert readers to refer to the LGA for its definition
- where a term is defined in another Act and the model local laws rely on the meaning given to the term in that Act, specific reference is made to this effect in the model local law.

S4. Relationship with other laws

Several other pieces of legislation are relevant to understanding and applying the LGCAFR Model. These include, but are not limited to:

The *Land Act 1994* and the Land Regulation 1995

The *Land Act 1994* and the Land Regulation 1995 provide the primary authority for regulating trust land. Where a local government is trustee of trust land it must take into account its rights, powers and obligations as a trustee in the exercise of its powers under the model and ensure it does not make a local law or subordinate local law inconsistent with the requirements of the *Land Act 1994*.

The *Land Act 1994* contains specific requirements regarding the closure of a local government control area which is trust land. Local governments are required to advise the minister under the *Land Act 1994* of a permanent closure of all or part of a local government area that is trust land under that Act. Permanent closure may require a change of tenure for the land. The *Land Act 1994* also contains specific requirements for temporary and permanent closure of roads consequently these matters are not covered by the LGCAFR Model.

Local governments should refer to the *Land Act 1994* and the Land Regulation 1995 regarding their trustee responsibilities when developing a subordinate local law under this model.

The Land Protection (Pest and Stock Route Management Act) 2002

The Land Protection (Pest and Stock Route Management) Act 2002 provides for the declaration and management of particular pests and the management of the stock route network, including fencing for stock routes. That legislation specifies a number of requirements about the fencing of stock routes and the building and maintaining of fences to prevent movement of declared pest animals. The *Land Protection (Pest and Stock Route Management) Act 2002* empowers local governments to require an owner to build and maintain a stock proof fence to prevent stock entering a part of the network so local governments should use those powers rather than the LGCAFR Model's provisions for fencing matters relating to stock routes. Local governments that have responsibilities for the management of stock routes should consider the specific requirements of the *Land Protection (Pest and Stock Route*

Management) Act 2002 for managing stock routes when developing subordinate legislation to ensure there is no inconsistency between activities regulated under the local law and the state legislation.

Local governments should refer to the *Land Protection (Pest and Stock Route Management Act) 2002* regarding their responsibilities under that Act when preparing subordinate local laws for this model.

The LGCAFR Model is intended to cover matters not regulated by state legislation and where state legislation specifically authorises local governments to regulate a matter. For example, section 66(3)(b) of the *Transport Operations (Road Use Management Act) 1995* authorises local governments to regulate by local law, the washing or cleansing, painting, repairing, alteration or maintenance of vehicles on a road. The *Tobacco and Other Products Smoking Act 1998* authorises a local government to make a local law prohibiting smoking in either:

- a public transport waiting point that is not an enclosed place if the place is under local government control
- an outdoor pedestrian mall.

The LGCAFR Subordinate examples show how this may be achieved.

See Appendix 3 for a list of legislation relevant to the LGCAFR Model and the LGCAFR Subordinate.

Part 2 – Use of local government controlled areas, facilities and roads

Part 2 of the LGCAFR Model allows local governments to control the use of local government controlled areas by prohibiting or restricting activities to ensure the purpose of the LGCAFR Model (Section 2) is achieved.

Local governments should use powers to prohibit and restrict activities with consideration and caution. Any prohibition or restriction should warrant the use of enforcement powers available under the Administration Model and be reasonable, fair and not adversely affect an individual's rights and liberties.

Local governments should consider whether there may be more suitable means of achieving the purpose of the LGCAFR Model. For example, local governments should give consideration to whether it may be more effective to run a community education programme to deter activities or behaviour in local government parks or reserves that may lead to undesirable outcomes. Alternatively, establishing and communicating an administrative policy setting out rules on the use of local government cemeteries, swimming pools or transfer stations may provide an effective measure. An assessment of the effectiveness of alternative approaches to the management of local government areas should form part of the process of developing subordinate local laws under this model.

S5. Prohibited and restricted activities

Under Section 5 of the LGCAFR Model local governments can declare, by subordinate local law, restricted and prohibited activities (that warrant the use of the enforcement powers under the Administration Model). Schedule 1 of the LGCAFR Subordinate provides a framework for specifying those activities that a local government may wish to prohibit in a local government controlled area or road. Similarly, Schedule 2 provides for the listing of restricted activities and a description of the extent of any restrictions. This may be done for example by specifying areas with clearly identified boundaries, particular times or certain occasions when restrictions apply. As noted, it is important that these powers are used only where necessary, appropriate and justifiable.

The LGCAFR Model ensures activities or behaviours may be regulated in *all or part* of an area providing flexibility for local governments to determine when and where restrictions and prohibitions might apply. For example, a local government may determine that:

- riding a bike or wheeled recreational device is prohibited on certain footpaths in the local government area (Note that the Transport Operations (Road Use Management—Road Rules) Regulation 2009 specifies certain restrictions on the use of bikes and wheeled recreational devices on roads)
- the cleaning of fish is not allowed on certain or all boat ramps
- restrictions apply to the use of all or some transfer stations by members of the public.

The model local laws provide options for local governments wishing to prohibit or restrict certain activities that also constitute prescribed activities. For example, if the local government wished to regulate the use of a road area to grow sugar cane they have the option of specifying by subordinate local law under the LGCAFR Model that this is a prohibited activity or they can opt to regulate it as a prescribed activity (commercial use of roads) under Section 5 of the Administration Model (and Schedule 8 of the Administration Subordinate).

The LGCAFR Model requires a local government to take reasonable steps to give notice to members of the public about declared prohibited or restricted activities. Local governments may determine what constitutes reasonable steps depending on the size and nature of the place to which the restrictions apply. However, the LGCAFR Model provides that reasonable steps may include the display of a notice at a prominent place within the area about the prohibitions or restrictions where this is appropriate and practical. In certain circumstances a local government may determine the display of a notice is not sufficient and may implement additional measures to inform the community. This could include, the use of public notices, mail outs or advertising or other means the local government considers appropriate. It is important to give appropriate notice as a penalty may be imposed for a breach under section 5(4). It is necessary, fair and accords with natural justice principles to ensure that members of the public are fully informed.

If someone wants to bring a motor vehicle temporarily onto an area that is not a motor vehicle access area an approval under section 7 of the Administration Model is required. Bringing a motor vehicle onto or driving a motor vehicle on any part of a local government controlled area that isn't a motor vehicle access area is a prescribed activity under section 5(b) of the Administration Model. Temporary access may be required to enable participation in ceremonies, festivals, competitions or other events for example. Schedule 25 of the Administration Subordinate provides a template for setting out the requirements and criteria for approvals to bring or drive a motor vehicle onto a place within a local government controlled area that isn't a motor vehicle access area.

S6. Motor vehicle access to local government controlled areas

Section 6(3) of the LGCAR Model provides a local government may, by subordinate local law, declare a specific type of motor vehicle (a prohibited vehicle) prohibited in a specified motor vehicle area. This allows local governments to provide for the exclusion of certain vehicles from a motor vehicle access area to protect the health and safety of persons using the area or to preserve environmental features or the amenity of an area. A local government may consider a certain type of vehicle, for example, trucks over a certain weight or 4x4 vehicles, prohibited from a particular park or reserve because they are more likely to cause environmental harm than smaller vehicles. Local governments may consider trail bikes to be excluded from camping areas or on foreshores because of health and safety risks to persons using the area. Schedule 3 in the LGCAR Subordinate provides a template that can be used for detailing the types of vehicles prohibited and where the prohibition applies.

However a person may be permitted to bring a prohibited vehicle into a local government controlled area by obtaining an approval from the local government under the Administration Model. This allows for circumstances when temporary access of a prohibited vehicle is required for a one-off event—for example holding a trail bike competition. Bringing or driving a prohibited vehicle onto a local government controlled area is a prescribed activity under section 5(b). Schedule 26 in the Administration Subordinate provides a template for setting out the requirements, conditions and criteria for approvals to undertake this prescribed activity.

It is up to each local government to determine how detailed or streamlined an approval process for a particular prescribed activity should be—for example, if a written application is required and how much information should be included in the application. Local governments should consider the potential for dealing with two approvals on a related activity simultaneously to mitigate administrative requirements. For example, it may be appropriate to deal simultaneously with an approval for temporary vehicle access where that vehicle is a prohibited vehicle for which an approval is required.

Section 6(3) of the Administration Model provides an option for a local government to declare by subordinate local law that an approval is not required for a prescribed activity, or to a particular activity that is within the category of a prescribed activity. For example, access to a local government controlled area by an authorised contractor for the purposes of repairing or maintaining a local government facility may not require an approval by some local governments.

A local government must take reasonable steps to provide notice to members of the public about any declarations of motor vehicle access areas or prohibited vehicles. Reasonable steps should include as a minimum:

- the display of a notice in a prominent place within each declared motor vehicle access area
- a description of the declared motor vehicle access areas
- a description of prohibited vehicles for the area
- any general provisions of section 6(2) and section 6(4) in general terms of the LGCAR Model.

Notice is deemed to be provided in local government controlled areas that are clearly marked as a carpark or roadway.

Emergency vehicles, as defined in the model local law, are not covered by this provision and can access an area that is not a motor vehicle access area as necessary.

S7. Opening hours

Local governments should make explicit when a local government controlled area is open to members of the public by placing a notice showing the opening hours at each public entrance. This provides transparency and openness for members of the public. Any limitations on the right to use publicly owned resources must be justified as necessary in accordance with the purpose of the LGCAFR Model. The LGCAFR Subordinate includes a format that provides for local governments to prescribe opening and closing times of facilities such as parks, reserves, libraries, swimming pools, transfer stations and animal pounds.

It is an offence under the LGCAFR Model for a person to enter or remain in a local government controlled area outside the opening hours unless authorised—for example a council employee authorised to perform duties which require access outside permitted hours and a penalty applies for a breach of this provision.

S8. Power of closure

This provision allows a local government to temporarily close a local government controlled area by resolution rather than by a subordinate local law. This approach allows for occasions when local governments must act urgently to close an area. For example, where public safety is at risk or in circumstances of fire or other natural disaster when closure is required to carry out necessary maintenance and construction and local governments need to be able to respond quickly.

This power should be used only when it is absolutely necessary and for the minimum amount of time possible. Local governments must place a notice of closure at each public entrance and the resolution must make it explicit for how long the closure will last. The provision does not limit a local government making subsequent resolutions should unanticipated circumstances arise to require this action.

If closure of local government controlled areas is intended on a more permanent basis, the process for closure should be by subordinate local law due to the permanency of the decision. This provision is only intended to be used in limited circumstances for serious issues affecting the local government controlled area—for example, when required to protect significant cultural or natural resources or protect a breeding area for native wildlife.

It is an offence to enter or remain in a local government controlled area while it is closed to public access unless authorised with a penalty applying for a breach of this section.

Part 3 – Matters affecting roads

Part 3 of the LGCAFR Model must be considered in parallel with Chapter 3, Part 3 of the LGA regarding local government's control of roads, as well as the specific prescribed activities affecting local government controlled roads that require an approval under the Administration Model:

- altering or improving local government controlled roads
- commercial use of local government controlled roads
- regulated activities on local government controlled areas and roads.

S9. Power to require owner of land adjoining road to fence land

This provision provides for a local government to require an owner to fence land adjoining a road to prevent animals escaping from the land onto the road or to prevent the risk of interference with the safe movement of traffic or the safe use of the road. Section 8(2) enables local governments to give a compliance notice to the owner to fence the land or, if the fence is in a state of disrepair, to replace it. This compliance notice is then enforced under Section 27 of the Administration Model which also specifies what information must be included in the notice and the penalty for non compliance. A subordinate local law may set out minimum standards for a fence—see Section 8 of the LGCAFR Subordinate. These standards should be reasonable and appropriate for the purpose and be sufficiently clear to ensure effective enforcement of any compliance notice issued.

This provision is not intended to apply to fencing controls for native, feral or pest animals. The *Land Protection (Pest and Stock Route Management) Act 2002* provides for the building and maintaining of fences to prevent movement of declared pest animals.

S10. Numbering of premises and allotments adjoining a road

This provision is intended to mitigate difficulties experienced by service vehicles trying to locate the correct property. This is particularly important in circumstances of fire or medical emergency but also relevant for postal and other utility service providers.

Section 9 (1) makes it an offence for an owner of land to adopt a number for a building that is inconsistent with a numbering system adopted by the local government. Section 9(2) requires an owner of land to display the number allocated in a way that could be easily identified from the adjoining road. The LGCAFR Model does not prescribe standards for how numbers should be displayed. It is a matter for local governments to determine using the reasonable person test as to whether a number can be easily identified. Local governments may issue a Penalty Infringement Notice (PIN) for a breach of Section 9(1) or Section 9(2) of the LGCAFR Model. Section 26 of the Administration Model also enables local governments to issue a compliance notice requiring a person to remedy the contravention of a local law. It is an offence, enforceable under Section 26 of the Administration Model, not to comply with a compliance notice.

Part 4 – Miscellaneous

S11. Subordinate local laws

Part 4 summarises the subordinate local law making powers available to local governments under LGCAFR Model, which include:

- the declaration of prohibited activities or restricted activities
- the declaration of motor vehicle access areas
- the declaration of prohibited vehicles
- the opening hours for a local government controlled area
- closing a local government controlled area to public access
- minimum standards for fences on land adjoining a road.

The LGCAFR Subordinate sets out a framework for how each of these powers may be specified and applied to help local governments develop a subordinate local law that best meets their needs and those of their local community. Each provision contains examples set out in italics as prompts for local governments to review and consider when developing appropriate content for a LGCAFR Subordinate. The template is a reference tool only. Local governments may wish to develop their own LGCAFR Subordinate within the parameters set by the head of power in the LGCAFR Model.

Schedule – Dictionary

The dictionary, located in the model local law schedule, defines all relevant words used in the model local law.

Appendix 1— Model local laws gazetted in 2010

| Title | Date of gazettal notice |
|--|-------------------------|
| Model Local Law No. 1 (Administration) 2010 | 25 June 2010 |
| Model Local Law No. 2 (Animal Management) 2010 | 25 June 2010 |
| Model Local Law No. 3 (Community and Environmental Management) 2010 | 25 June 2010 |
| Model Local Law No. 4 (Local Government Controlled Areas, Facilities and Roads) 2010 | 25 June 2010 |
| Model Local Law No. 5 (Parking) 2010 | 25 June 2010 |
| Model Local Law No. 6 (Bathing Reserves) 2010 | 25 June 2010 |
| Model Local Law No. 7 (Indigenous Community Land Management) 2010 | 25 June 2010 |

Appendix 2— Summary of offence provisions and maximum applicable penalty

| Provision number | Provision heading | Maximum Penalty (in penalty units) |
|------------------|---|------------------------------------|
| 5(4) | Prohibited and restricted activities | 20 |
| 7(2) | Opening hours of local government controlled areas | 20 |
| 8(5) | Power of closure of local government controlled areas | 20 |
| 10(1) 10(2) | Numbering of premises and allotments adjoining a road | 10 |

Appendix 3— State legislation relevant to the LGCAFR Model

| Title of state legislation | Part of model local law affected |
|---|---|
| <i>Aboriginal Cultural Heritage Act 2003</i> | Part 2 – Use of local government controlled areas, facilities and roads |
| <i>Animal Care and Protection Act 2001</i> | Part 3 – Matters affecting roads |
| <i>Land Protection (Pest and Stock Route Management) Act 2002</i> | Part 2 – Use of local government controlled areas, facilities and roads Part 3 – Matters affecting roads |
| <i>Land Act 1994</i> | Part 2 – Use of local government controlled areas, facilities and roads Part 3 – Matters affecting roads |
| <i>Nature Conservation Act 1992</i> | Part 2 – Use of local government controlled areas, facilities and roads |
| <i>Queensland Heritage Act 1992</i> | Part 2 – Use of local government controlled areas, facilities and roads |
| <i>Recreation Areas Management Act 2006</i> | Part 2 – Use of local government controlled areas, facilities and roads |
| <i>Tobacco and Other Products Smoking Act 1998</i> | Part 2 – Use of local government controlled areas, facilities and roads |
| <i>Torres Strait Islander Cultural Heritage Act 2003</i> | Part 2 – Use of local government controlled areas, facilities and roads |
| <i>Transport Operations (Road Use Management Act) 1995</i> | Part 2 – Use of local government controlled areas, facilities and roads |

Note: The state legislation listed in Appendix 3 is current as at June 2010. Local governments should refer to www.legislation.qld.gov.au for a complete list of all current legislation.