

**IPSWICH CITY COUNCIL
LOCAL LAW NO. 23 (TELECOMMUNICATION CABLING)**

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PART 1 - PRELIMINARY

Citation

1. This local law may be cited as Local Law No. 23 (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.

‘**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, a low impact facility.

‘**non-discrimination principles**’ means the principles that operate under clause 44 of Schedule 3 to the Telecommunications Act 1997¹.

‘**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 1994² 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 Stated-controlled road under the Transport Infrastructure Act 1994.

‘**telecommunications 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.

¹ Clause 44(1) provides as follows:

State and Territory laws that discriminate against carriers and users of carriage services

(1) The following provisions have effect:

- (a) a law of a State or Territory has no effect to the extent to which the law discriminate, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, a particular class of carriers, or against carriers generally;
- (b) without limiting paragraph (a), a person is not entitled to a right, privilege, immunity or benefit, and must not exercise a power, under a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally;
- (c) without limiting paragraph (a), a person is not required to comply with a law of a State or Territory to the extent to which the law discriminates, or would have the effect (whether direct or indirect) of discriminating, against a particular carrier, against a particular class of carriers, or against carriers generally.

Subclause (2) makes similar provision in relation to discrimination against eligible users as defined for the purpose of the clause.

²Section 93 of the Land Act 1994 defines a ‘road’ as follows:

Meaning of ‘road’

93.(1) A ‘road’ means an area of land, whether surveyed or unsurveyed:

- (a) dedicated, notified or declared to be a road for public use; or
- (b) taken under an Act for the purpose of a road for public use.

(2) The term includes:

- (a) a street, esplanade, reserve for esplanade, highway, pathway, thoroughfare, track or stock route; and
- (b) a bridge, causeway, culvert or other works in, on, over, or under a road; and
- (c) any part of a road.

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 permit³.

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 of the Telecommunications Act 1997⁴.
- (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.

³ It should be noted that if a proposal involves the installation of poles or towers, a permit would also be required under the Land Act 1994.

⁴ Clause 6(1) provides as follows:

Installation of facilities

- (1) A carrier may, for purposes connected with the supply of a carriage service, carry out the installation of a facility if:
- (a) the carrier is authorised to do so by a facility installation permit; or
 - (b) the facility is a low impact facility (as defined in subclause (3)); or
 - (c) the facility is a temporary facility for use by, or on behalf of, a defence organisation for defence purposes; or
 - (d) all of the following conditions are satisfied in relation to the installation concerned:
 - (i) the installation occurs before 1 July 2000;
 - (ii) the installation is carried out for the sole purpose of connecting a building, structure, caravan or mobilehome to a line that forms part of a telecommunications network;
 - (iii) the whole or a part of the network was in existence at the end of 30 June 1997.

Division 2 - Non-discrimination principle

Non-discrimination principle

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 - indicating the height of the cable above ground and the extent of the clearance between other wires and cables (if any) installed above ground; and
 - (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 a 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) 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 application 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 fourteen 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 telecommunications 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 officer 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

- 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.

Examples:

- *The local government might have surveys conducted to ascertain the views of the residents affected by the proposal.*
 - *The local government might advertise and hold public meetings to ascertain the views of residents affected by the proposal.*
- (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 plan 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 the 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;

and must ensure that the conditions of the permit are consistent with those provisions⁵.

Time within which application must be decided

- 14.(1) The local government must decide an application within thirty days after 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 twenty 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 condition the local government considers appropriate.

⁵ Section 136 of the Telecommunications Act 1997 provides that the Australian Communication Authority is to maintain a register of codes and standards affecting the activities of participants in the telecommunications industry.

Examples:

- *The conditions will regulate the position in which the cable and associated equipment is to be installed.*
- *The conditions might require the undergrounding of cable (or part of the cable) or associated equipment.*
- *The conditions might require the holder of the permit to carry out specified additional work to screen the cables or equipment to prevent or reduce damage to the streetscape.*
- *The conditions might regulate the time within which the initial installation work is to be carried out.*
- *The conditions might provide that, if it becomes necessary to relocate cable or equipment as a result of future roadwork, the holder of the permit will relocate the cable or equipment as directed by the local government or will indemnify the local government for the cost of the relocation.*
- *The conditions might require the holder of the permit to give the local government specified indemnities.*
- *The conditions might require the holder of the permit to make good any damage resulting from the work carried out under the permit.*
- *The conditions might require the holder of the permit to take out specified insurance or to provide bonds or bank guarantees to ensure that persons who may suffer personal injury, or loss or damage, as a result of the authorised work, or the installation of the cable or associated equipment are adequately compensated, and that work necessary to make good any damage resulting from the work is carried out.*

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

Examples:

- *The permit conditions might require the undergrounding of cables in specified parts of the area - such as a foreshore - without generally requiring the undergrounding of cables throughout the 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 permit⁶.
- (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, change⁷ 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 permit⁸.
- (3) However, the local government may only change the conditions of the 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.

⁶ See section 13(1)

⁷ A 'change' to the conditions of a permit includes a change by omission, substitution or addition (see Acts Interpretation Act 1954, s. 36).

⁸ See section 13

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 seven 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 - 50 penalty units.

Division 9 - Local government's power to carry out work

Local government's power to carry out work

- 20.(1) 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 the 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 governments' 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 forty 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 considered 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 policies⁹

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 permit¹⁰; or
- (b) criteria for granting permits or fixing the conditions of permits¹¹; or
- (c) permit conditions¹²; or
- (d) other matters about which this local law specifically allows for the making of local law policies.

⁹ See section 464 of the Local Government Act 1993

¹⁰ See section 7(1)(g)

¹¹ See section 13(1)(k)

¹² See section 15(5)