

**BANANA SHIRE COUNCIL
LOCAL LAW NO. 8 (GATES AND GRIDS) 2011**

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**BANANA SHIRE COUNCIL
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PART 1 - PRELIMINARY

Citation

1. This local law may be cited as Banana Shire Council Local Law No. 8 (Gates and Grids) 2011.

Objects

2. The objects of this local law are to regulate gates and grids across public roads to ensure that they do not interfere with either -
 - (a) the safe movement of pedestrians and vehicles; and/or
 - (b) the proper maintenance of the public road.

Definitions

3. In this local law -

"**Act**" means the *Local Government Act 1993*;

"**Area**" means the area of the Shire of Banana;

"**authorised person**" means -

- (a) the Chief Executive Officer; and
- (b) a person authorised by the Local Government to exercise the powers of an authorised person under this local law;

"**Chief Executive Officer**" means the Local Government's Chief Executive Officer;

"**gate**" means a moveable barrier, usually hinged, for closing an opening in a wall or fence which is designed to allow passage into or out of a place whether enclosed or not.'

"**grid**" means a structure designed to permit the movement of pedestrian or vehicular traffic along a road but to prevent the passage of livestock but excludes a gate;

"**Local Government**" means Banana Shire Council;

"Planning Scheme" means Banana Shire Council Planning Scheme;

"public road" means a road for which the Local Government is responsible;

"responsible person" for a gate or grid installed, or to be installed, across a public road, means the person who has installed or proposes to install the gate or grid, or for whose use or benefit the gate or grid is, or is to be installed;

"road" has the same meaning as in the Act.

PART 2 - PERMITS

Power to require permit

4.

- (1) This section applies if a person (the **"responsible person"**) -
 - (a) has installed, or proposes to install, a gate or a grid or a gate and a grid across a public road; or
 - (b) has the benefit of a gate or a grid or a gate and a grid installed across a public road.
- (2) The Local Government may, by written notice given to the responsible person, require the responsible person to obtain a permit from the Local Government authorising the use or benefit of the gate or grid or the gate and the grid, as the case may be, within a time specified by that written notice.
- (3) An application for a permit under this section must be made in accordance with the requirements prescribed by local law policy, and must be accompanied by any prescribed fee¹.
- (4) A responsible person must comply with a written notice given by the Local Government under section 4(2) of this local law.

Maximum penalty - 100 penalty units.

¹

See section 19 of the Local Government's (Administration) Local Law No. 1.

Conditions of permit

5.

- (1) The Local Government may approve the installation of a gate or a grid or a gate and a grid across a public road on conditions it considers appropriate.
- (2) A permit may contain, for example, conditions to ensure that -
 - (a) the gate or grid or gate and grid, as the case may be, will not unduly obstruct pedestrian or vehicular traffic; and
 - (b) the gate or grid or gate and grid, as the case may be, will not prejudice the safety of pedestrian or vehicular traffic; and
 - (c) the gate or grid or gate and grid, as the case may be, will not prejudice the proper maintenance of the public road.
- (3) The conditions may also, for example -
 - (a) require the holder of the permit to take specified precautions to prevent or minimise obstruction to traffic or risk of personal injury or damage to property; and
 - (b) impose obligations on the holder of the permit to clear and maintain the road in the vicinity of the gate or grid or gate and grid, as the case may be (including the destruction of noxious plants and weeds); and
 - (c) impose obligations on the holder of the permit to maintain the gate or grid or gate and grid, as the case may be, in good order to ensure its safe use; and
 - (d) impose an obligation on the holder of a permit with respect to the erection of a grid, to also erect a gate, in accordance with the requirements of this local law, at the location of the grid; and
 - (e) impose an obligation on the holder of a permit with respect to the erection of a gate, to also erect a grid, in accordance with the requirements of this local law, at the location of the gate; and
 - (f) require the responsible person to give to the Local Government an indemnity against claims that may result from the existence of the gate.
- (4) The Local Government may, by local law policy, prescribe conditions that must be imposed on a permit or that will ordinarily be imposed on a permit.
- (5) However, the conditions of the permit must be consistent with the conditions of any statutory authorisation or approval for the establishment of the gate or grid or gate

and grid as the case may be.

Compliance with conditions of permit

6. The holder of a permit must ensure that the conditions of the permit are complied with.

Maximum penalty - 100 penalty units.

Power to change conditions of permit

7.

(1) The Local Government may, by written notice given to the holder of a permit, change² the conditions of the permit.

(2) The Local Government may only change conditions of a permit in accordance with this section if -

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

(b) the Local Government -

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

(ii) if the holder of the permit makes written representations within the time allowed in the notice - has taken the representations into account.

Term of permit

8.

- (1) A permit under this Part is granted for a term specified in the permit.
- (2) The Local Government may, from time to time, on application by the holder of the permit and on payment of any prescribed fee³, renew the permit.

Transfer of permit

9.

- (1) A permit under this Part may be transferred, on payment of any prescribed fee⁴, with the approval of the Local Government.
- (2) If a permit contains a condition stating that the relevant gate or grid or gate and grid, as the case may be, exists for the benefit of the owner or occupier of designated land, and the ownership or occupation of the relevant land changes, the new owner or occupier becomes the holder of the permit without any need for formal transfer of the permit.

Cancellation of permit

10. The Local Government may, by written notice given to the holder of a permit under this Part, cancel the permit if -
 - (a) the holder of the permit contravenes a condition of the permit; or
 - (b) the holder of the permit fails to maintain a gate or grid or gate and grid, as the case may be, to the standard required by an authorised person; or
 - (c) the holder of the permit fails to maintain a fence designed to prevent animals from escaping onto a public road from adjoining land to the standard required by an authorised person; or
 - (d) the removal of the gate or grid or gate and grid, as the case may be, becomes necessary in the interests of public safety or otherwise in the public interest.

³ See section 19 of the Local Government's (Administration) Local Law No. 1.

⁴ See section 19 of the Local Government's (Administration) Local Law No. 1.

Removal of gate or grid

11.

- (1) The Local Government may, by written notice to the responsible person, require the responsible person to remove a gate or grid if -
 - (a) the responsible person refuses or fails to obtain a permit relating to the gate or grid or gate and grid, as the case may be, after receiving a written notice under section 4(2) of this local law, within the time specified in that written notice; or
 - (b) a permit relating to the gate or grid or gate and grid, as the case may be, has lapsed or has been cancelled.
- (2) A person must comply with a notice under this section within the time allowed in the notice.

Maximum penalty - 100 penalty units.

- (3) If a person fails to remove a gate or a grid or a gate and a grid, as the case may be, within the time allowed by a notice under this section, the Local Government may itself have the work carried out and recover the cost of the work, as a debt, from the person in default.

PART 3 - MISCELLANEOUS

Road signs

12. The Local Government may erect road signs indicating the existence of a gate or grid⁵.

Protection of gates and grids

13.

- (1) A person must not damage a gate or grid lawfully installed across a public road.

Maximum penalty - 100 penalty units.

- (2) A person must not leave a gate, lawfully installed across a public road, open, unfastened or unlatched.

Maximum penalty - 100 penalty units.

Public liability insurance

14.

- (1) The Local Government may, by subordinate local law, specify insurance a responsible person must take out and maintain against claims for personal injury and property damage resulting from the existence of the gate or grid or gate and grid, as the case may be.
- (2) The responsible person must take out and maintain the insurance required under the subordinate local law.

Maximum penalty – 100 penalty units.

PART 4 – REVIEW

Reviewable decisions

15. A decision of the Local Government or an authorised person under this local law is reviewable unless it is -
 - (a) a decision made by resolution of the local government; or
 - (b) a decision made on an earlier application under section 16.

Application for review

16.

- (1) A person who is aggrieved by a reviewable decision may apply to the Local Government for a review of the decision.
- (2) An application for review of a reviewable decision must –
 - (a) be in writing; and
 - (b) state the reasons why the applicant considers the decision should be reviewed; and
 - (c) be lodged at the office of the Local Government within 28 days after the day on which notice of the decision was given to the applicant or within a

further period allowed by the Local Government (before or after the end of that period).

Carrying out review

17.

- (1) The Local Government must either –
 - (a) carry out a review at a meeting of the Local Government; or
 - (b) have the review carried out by an authorised person.
- (2) An authorised person who carries out a review under subsection (1)(b) must not be the original decision maker and must be a person who is no less senior than the original decision maker.

Decision on review

18.

- (1) On completing a review, the Local Government may confirm, vary or reverse the decision under review.
- (2) The Local Government must give the applicant written notice of the result of the review.
- (3) If the Local Government does not decide an application for review within 28 days after receiving the application, the Local Government is taken to have confirmed the decision under review.

PART 5 – SUBORDINATE LOCAL LAWS

Subordinate local laws

- 19.** The Local Government may make subordinate local laws in relation to those matters about which this local law specifically allows for the making of subordinate local laws.