

Local Law No. 3 2014

LATROBE CITY COUNCIL

ASSET AND ENVIRONMENT PROTECTION DURING BUILDING WORKS

LOCAL LAW NO. 3

Adopted – 22/09/2014

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PART 1 FORMALITIES

1. Objective

As owner of public infrastructure assets and caretaker of the local environment, Council has a duty to ensure building works are monitored and regulated such that public infrastructure assets are kept in a fit state and local environmental values and public safety are not adversely impacted.

This Local Law gives Council additional powers to protect public safety, environmental values and valuable community infrastructure. This protection extends to both their physical integrity and their legitimate use so they can continue to provide the service for which they were designed. This Local Law allows Council to maintain a physical environment which aims to minimise hazards to health and safety of persons attending, adjacent to, opposite or passing building sites.

This Local Law has the following objectives:

1. To take precautions during building works to minimise damage to public infrastructure assets, avoid pollution and maintain public safety;
2. To define standards and determine whether preventative measures are required during building works;
3. To work collaboratively with the applicant/builder/contractor for the duration of building works;
4. To enforce compliance of permit conditions where applicable; and
5. To define the obligations of owners/builders/contractors and suppliers with respect to the repair of damaged public infrastructure assets.

2. Authorising Provisions

This Local Law is made under section 111 of the *Local Government Act 1989*. In addition to the provisions contained in this Local Law, the following legislation (or their successors) has relevance to the issues and must be observed:

- *Building Act 1993*
- *Local Government Act 1989*
- *Planning and Environment Act 1987 and subordinate regulations*
- *Catchment and Land Protection Act 1994*
- *Subdivision Act 1988*
- *Infringements Act 2006*
- *Occupational Health and Safety Act 2004*
- *Environment Protection Act 1970 and subordinate regulations and policies*
- *Road Management Act 2004, and subordinate Regulations and Ministerial Codes of Practice or Guides*

Where inconsistencies exist between legislation and this Local Law, the legislation will prevail.

3. Operational Date of this Local Law

This Local Law operates from the 14th day following receipt of a resolution from Council approving the making of this Local Law No 3.

4. Date this Local Law Ceases Operation

Unless this Local Law is revoked sooner, its operation will cease on the tenth anniversary of its making.

5. Application of this Local Law

This Local Law applies throughout Council's municipal district. Where another statutory body (such as Roads, Water or Park authorities or Government departments) has sole jurisdiction over or ownership of a public infrastructure assets, this Local Law will not apply except where relevant powers have been assigned or allocated to Council via a formal agreement.

6. Revocation of other Local Law

From the first date of this Local Law, the application of the former Local Law No. 3 (2006) Protection of Council Assets and Local Amenity during Building Works will be revoked and will cease to apply.

7. Definitions

Some of the terms used in this Local Law are defined. Defined terms included in this Local Law are:

Applicant means a person who applies for a permit under this Local Law.

Authorised Officer means an Authorised Officer appointed under section 224 of the *Local Government Act 1989*, and has delegated authority to implement this Local Law.

Asset Protection Permit means a written permit issued by Council under this Local Law for the protection of public infrastructure assets the environment and public safety during building works - referred to from hereon as 'permit'.

Building Works Refuse includes any waste or substance generated by or in connection with building works.

Building Works means work for or in connection with the preparation, construction, renovation, alteration, demolition, relocation or removal of a building, building site or related infrastructure (inclusive of works associated with, frontage fences, significant landscaping and swimming pools).

Conditions are requirements set by Council and must be met by the applicant for specific activities during building works.

Council means the Latrobe City Council.

Damage means an action that reduces value or effectiveness of Council's infrastructure and/or the environment.

Fee a sum paid or charged in relation to this Local Law.

Municipal District means the municipal district of Council.

Owner means the owner of land on which the building work is carried out.

Penalty units have the meaning attributed to them under section 110 of the *Sentencing Act 1991*.

Public Infrastructure Assets means Council owned or controlled land or structures.

Pollution means any form of noise, dust, fumes, liquid, sediment, waste, litter, chemical or other material or phenomena that arises from building work and which threatens local amenity or the environment, or which is prohibited by a local law or by any legislation.

Rubbish Facility means a receptacle capable of containing building works refuse, debris and other waste and restricting it from leaving the building site.

Security Bond is a refundable amount paid by the applicant and held by the Council until all conditions relating to building works are deemed satisfactorily completed.

Temporary Fencing is an interim structure erected on the land containing any building works and restricting access to ensure public safety.

Temporary Vehicle Crossing means a Council approved structure that extends from the boundary of land over any public infrastructure asset to a road, and is designed to minimise damage to public infrastructure assets caused by motor vehicles entering and leaving the land during building works.

Toilet a bathroom fixture consisting of a bowl, usually with a hinged seat and lid, and a device for flushing with water, used for defecation and urination.

PART 2 ASSET PROTECTION PERMITS

8. Permits

- 8.1. The Council or an Authorised Officer in its, his or her absolute discretion may issue a permit under this Local Law with or without conditions, including the payment of any fee that Council may require or may refuse to issue a permit.
- 8.2. The Council or an Authorised Officer may prescribe:
 - a) the manner and form in which applications for permits under this Local Law should be made;
 - b) the manner in which any permit under this Local Law is issued; and
 - c) the fee for any such permit application.
- 8.3. The Council or an Authorised Officer may waive payment of any fee for a permit.
- 8.4. The Council or an Authorised Officer may require the applicant for a permit to give notice of the application.

9. Asset Protection Permits

- 9.1. An owner or an owner's authorised representative must notify Council of the intention to commence building works by applying for a permit at least three (3) working days prior to the commencement of any building works inclusive of any deliveries to the building works site.
- 9.2. Upon notification of intended building works (whether oral or in writing), Council or an Authorised Officer will determine if a permit is required.
- 9.3. Where a permit is deemed as required by Council or an Authorised Officer, one or more of the following may be requested:
 - a) provision of additional building works and/or applicant information; and/or
 - b) payment of a permit fee; and/or
 - c) payment of a security bond.
- 9.4. Council will determine the appropriate permit fee based on the types of building works and the risk to public infrastructure assets from the building works.
- 9.5. Council will determine the appropriate security bond (if applicable) based on the types of building works and the risk to public infrastructure assets from the building works.

- 9.6. The date of issue of a permit will be three (3) business days after the receipt and clearance of all funds with respect to the payment of fees and/or security bonds.
- 9.7. An owner must not commence, allow or authorise anyone else to commence building works on the owners land unless:
 - a) a permit in relation to those works has been issued by Council and the issue date has come into effect; or
 - b) written notification by Council has been received advising a permit is not required for the works.
- 9.8. Where an owner or an owner's authorised representative fails to notify Council of intended commencement of building works, this may be considered an offence under this Local Law.
- 9.9. Where an owner or an owner's authorised representative is not a current permit holder and the works being carried out do not comply with standard permit conditions, this may be considered an offence under this Local Law.

10. Asset Protection Permit Conditions

- 10.1. An owner, contractor or supplier must not commence or allow or authorise anyone else to commence building works on the owners land unless the following permit conditions have been implemented to the satisfaction of Council:
 - a) where permanent fencing is not installed or deemed adequate, temporary fencing must be erected; and/or
 - b) where a vehicle crossing does not exist, a temporary vehicle crossing must be installed and used as the only point of vehicle access; and/or
 - c) where an available existing sewered toilet does not exist at the building works site, a closed portable toilet must be provided for the use of the persons visiting and or engaged in the building works; and/or
 - d) locate on the building works site a rubbish facility for the purpose of containing all building works refuse until proper disposal.
- 10.2 All of the above conditions must be maintained to the satisfaction of Council for the duration of the building works.
- 10.3 Failure to comply with permit conditions may result in an infringement being issued.

- 10.4 Structures and/or facilities resulting from implementing the permit conditions must be removed within seven (7) days of the completion of the building works as deemed by Council.
- 10.5 At no time during the building works the owner, contractor or a supplier are to allow the discharge of building works refuse from the building site; and
- 10.6 The owner or the builder/contractor, if the owner can show that it is agreed that the builder/contractor has accepted responsibility to ensure compliance with the conditions of this Local Law, must repair, replace, reinstate or otherwise make good to the satisfaction of Council or an Authorised Officer any damaged public infrastructure assets and/or the environment.

11. Asset Protection Permit Validity

- 11.1 A permit:
 - a) becomes valid from the date of issue stated on the permit;
 - b) remains valid for a period of two (2) years or until building works are complete in relation to this Local Law to the satisfaction of Council or an Authorised Officer, whichever comes first.
- 11.2 Where building works are to extend beyond the permit validity period, a permit extension must be applied for (orally or in writing), which may incur additional permit fees.
- 11.3 If the permit holder continues the building works after the permit has expired such action will be considered an offence under this Local Law.

12. Asset Protection Permit Fees and Charges

- 12.1 A permit may be subject to payment of one or both of the following:
 - a) permit fee
 - b) security bond
- 12.2 Council will determine the level of fees and/or security bond payable.
- 12.3 Council will refund the security bond where a final inspection by Council or the Authorised Officer has been carried out and building works have not caused any damage to public infrastructure assets or pollution.
- 12.4 Where Council or an Authorised Officer deems damage to public infrastructure assets and/or damage to the environment has occurred, the security bond will be retained by Council until the damage is repaired, restored or reinstated to the satisfaction of Council or an Authorised Officer.

- 12.5 Where the damage is not repaired, restored, reinstated or otherwise remedied, the security bond will be applied towards the cost of repairing the damage caused.
- 12.6 Where the security bond does not cover the costs to repair, restore, reinstate or remedy, Council will issue an invoice to the owner / applicant to recover the full cost.

13. Asset Protection Permit Cancellation or Amendments

- 13.1. Where amendments to an existing Permit are required, Council will carry out these amendments in consultation with the permit holder.
- 13.2. Where a permit holder requests the cancellation of a permit (whether oral or in writing), Council will, where applicable:
- a) investigate and/or inspect the building works site;
 - b) cancel the permit;
 - c) refund any fees paid; and/or
 - d) refund any security bonds to the applicant.

14. False Representation

A person who makes a false representation or declaration (whether oral or in writing), or who intentionally omits relevant information in an application for a permit or exemption is guilty of an offence.

15. Notice to comply - Power of Council to Direct

- 15.1 Council may issue a "Notice to Comply" if Council or an Authorised Officer believes on reasonable grounds that a person has committed an offence under this Local Law or direct any property owner, occupier or other relevant person to remedy any situation which constitutes a breach under this Local Law.
- 15.2 A notice issued under this section must set out the following details:
- a) the offence that Council or an Authorised Officer believes has been committed;
 - b) the person/s required to take action; and
 - c) the action/s the person is required to undertake; and
 - d) the time within which the specified action/s must be taken.

16. Reasonable Time to Comply

The time fixed by a “Notice to Comply” served under this Local Law must be reasonable in the circumstances and will take into account if applicable:

- a) the amount of work involved;
- b) the degree of difficulty;
- c) the availability of necessary materials or other necessary items;
- d) climatic conditions;
- e) the degree of risk or potential risk; or
- f) any other relevant factor.

17. Failure to adhere to a Notice to Comply

17.1. Any person who fails to remedy a situation in accordance with a Notice to Comply served under this Local Law is guilty of an offence.

17.2 If a person fails to carry out any work which he or she is required to do by a Notice to Comply issued under this Local Law within the time stated in the notice, then Council in its discretion and wherever practicable may cause the work to be carried out and may recover the cost from that person.

18. Power of Council to Act in Urgent Circumstances

18.1. Where an urgent circumstance is determined, Council may take action to remove, remedy or rectify a situation without serving a Notice to Comply.

18.2. Council will determine an urgent circumstance where risk or threat exists to:

- a) public health and safety;
- b) the environment; or
- c) Council's infrastructure.

18.3. The action taken by Council under sub-clause (10.1) must not extend beyond what is necessary to cause the immediate abatement of or minimise the risk or danger involved and Council may recover the cost of emergency actions from the owner or responsible person/s as is appropriate.

19. Infringement Notices

19.1. Where any permit issued under this Local Law contains conditions, any person who contravenes or fails to comply with a condition of a permit is guilty of an offence and an infringement notice will be issued.

19.2 Where an Infringement Notice is issued under this Local Law the penalty payable in respect of the Infringement Notice will be:

- a) with respect to clause 9.7 - five (5) penalty units; or
- b) with respect to all other clauses - two (2) penalty units.

20. Powers of Authorised Officers

If Council or an Authorised Officer considers that there has been a breach of this Local Law, including a breach of any conditions of a permit, Council or an Authorised Officer may take any or all of the actions provided in this Local Law and may:

- a) direct the person to cease the activity breaching the Local Law; or;
- b) warn the person who is breaching the Local Law, which may also be an official warning issued in accordance with the requirements of the *Infringements Act 2006*:
or;
- c) serve a notice to comply to remedy the breach; or;
- d) issue an infringement notice in accordance with the requirements of the *Infringements Act 2006*.

PART 3 OFFENCES

21. Offences

- 21.1 Where any provision in this Local Law requires that something must be done, any person who fails to do that act may be guilty of an offence.
- 21.2 Where any provision in this Local Law requires that something may not be done, any person who does that act is guilty of an offence.
- 21.3 Where any provision in this Local Law requires that something may not be done between specified hours of the day or night during specified months of the year, on days falling within specified categories or in or at specified locations or specified parts of those locations, any person who does that act between the hours, during the months, on the days, or at the location or a specified part is guilty of an offence.
- 21.4 Where any provision in this Local Law requires that a person obtain a permit from Council before engaging in any particular activity, that person is guilty of an offence if that person engages in that activity without a current permit issued by the Council (unless the Council, at its discretion, has waived the requirement for a permit).
- 21.5 Where any permit issued under this Local Law contains conditions, any person who contravenes or fails to comply with a condition of a permit is guilty of an offence.
- 21.6 Where any offence arises under this Local Law in respect of which a specific penalty has not been indicated, the penalty for that offence is two (2) penalty units.
- 21.7 A person who is guilty of a second or subsequent offence against the same provision in this Local Law is liable to a penalty not exceeding:
- a) with respect to clause 9.7 - ten (10) penalty units; or
 - b) with respect to all other clauses - five (5) penalty units.

PART 4 ADMINISTRATION OF THIS LOCAL LAW

22. Power to Serve Infringement Notices

An infringement notice may be served on a person who the Council or an Authorised Officer has reason to believe has committed an offence against this Local Law. An offence referred to in this clause is an infringement offence within the meaning of the *Infringements Act 2006*.

23. Exercise of Discretions

23.1. In exercising any discretion contained in this Local Law Council or an Authorised Officer must have regard to:

- a) the objectives of this Local Law;
- b) any applicable Council Policy; and
- c) any other relevant matter.

23.2 The Council may from time to time prepare guidelines for use by the Council, Authorised Officers and other persons for the purposes of this Local Law.

23.3 Guidelines prepared by Council must not be inconsistent with the objectives of this Local Law.

23.4 Any guidelines developed cannot change or update a Local Law provision without the Local Law amended and the guideline incorporated by reference.

24 Register of Determinations

24.1 Any determination made or guidelines prepared by the Council for the objectives of this Local Law must be maintained by Council in a register kept for that purpose.

24.2 The register kept for the purposes of this clause must be made available for inspection at the office of the Council during normal office hours.

25 Power to Obtain Necessary Information

The Council may require additional information to enable an application for a permit to be properly considered and for the purposes of administering and enforcing the provisions of this Local Law.

26 Appeals

Any person who is aggrieved by any matter under this Local Law may make a written submission for consideration by the Council, but the making of any submission will not in any way remove that person's obligation to act in accordance with this Local Law and any directions or notices which are applicable under this Local Law.

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