

Temporary Use Licences COVID-19 applicable event

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.

The then Minister for Planning Cameron Dick (now Treasurer and Minister for Infrastructure and Planning) declared the COVID-19 emergency an applicable event under section 275E of the *Planning Act 2016* (the Act). This declaration had effect from 20 March 2020 to 20 June 2020 inclusive. After further consideration of the impacts of the COVID-19 emergency on state interests, the Minister for Planning initially extended the applicable event period to 31 October 2020 and further extended the applicable event period to 31 January 2021 under section 275F of the Act.

An applicable event may be declared in response to extraordinary circumstances that are temporary in nature. Temporary use licence 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 Act.

A TUL issued for the COVID-19 applicable event will now have effect until 31 January 2021. A TUL granted before 31 October 2020 will now be in effect to 31 January 2021. Holders of these TULs are not required to reapply.

The COVID-19 emergency resulted in the need for an immediate statewide health response. While COVID-19 restrictions continue to ensure people's health and safety, significant economic impacts are also being experienced.

The extension of 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 extended period for TULs also presents opportunities for some businesses to refocus their offerings and products to respond to changing supply chain demands. The extension of 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 Queensland Treasury 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 temporary use licence you will need to:

- **ensure you have read this document in full and comply with these guidelines**
- [download the application form](#)
- send the application form to TUL@dsmip.qld.gov.au.

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:

- set up of an emergency medical facility for testing of patients
- establishment of, or change to the hours of operation for, a facility manufacturing medical supplies
- a childcare facility to increase capacity for the children of essential workers
- production of ethanol, as an input to hand sanitiser, in an existing warehouse where this use was not previously allowed
- existing student accommodation facilities to also provide short term accommodation services in response to restrictions including for quarantine purposes
- increase in hours of operations to stagger work forces or to allow staggered patronage of a venue
- increase in floor space of a retail aspect of a development to allow compliance with social distancing requirements
- undertake a use at an alternative location to allow compliance with social distancing requirements.

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

Some examples where a TUL cannot be given are:

- where the relevant local council indicates there is an existing compliance issue with the applicant
- changes to make a preexisting non-compliance compliant
- changes to operational works or building approvals
- changes to 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.

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 the COVID-19 applicable event.

A TUL application must demonstrate that there are reasonable grounds (Section 275I (2) of the Act) for an approval. This applies whether the application is in response to health or economic implications of the COVID-19 emergency.

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 COVID-19 emergency.

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 council when assessing a TUL application.

If I have a TUL what do I have to do on 31 January 2021?

A TUL issued for the COVID-19 applicable event will have effect until 31 January 2021, unless the applicable event is extended.

The department will write to all TUL holders prior to this date reminding them of the expiry of the lawful rights the TUL affords. This will provide the opportunity for operators to make necessary arrangements to ensure they are not operating premises unlawfully after the expiration of the TUL.

If I have a TUL that says it expires on 20 June 2020 or 31 October 2020, do I need to apply for a new one?

No. TULs issued prior to 31 October 2020 are automatically extended until 31 January 2021.

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 government 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 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 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 am an existing lawful use with no MCU approval. What details do I need to provide with my TUL application?

If you are an existing lawful use with no MCU approval, you will need to provide the following in your TUL application:

- evidence in writing from the relevant council that they deem the use to be an existing lawful use
- details of the change to the use and/or operating conditions sought
- reasons for the changes relevant to the COVID-19 applicable event.

I am located in a Priority Development Area (PDA). Is the TUL application process the same?

If the premises are located in a Priority Development Area (PDA) or on PDA-associated land, you will need to apply for a TUL under the *Economic Development Act 2012*.

Find out more on the [TUL process](#) under the *Economic Development Act 2012*.

Can I use a TUL to change hours of construction?

TULs seeking to change hours of construction will no longer be accepted.

This is because hours of construction are normally dealt with by the noise standard for building work (section 440R of the *Environmental Protection Act 1994*). These controls usually sit outside planning approvals, unless a local government has determined for local reasons that more restrictive requirements should apply to ensure commercial builders, their contractors and owner-builders do not carry out building work that causes an audible noise at an affected building during unreasonable hours.

Find out more in the [noise standard for building work](#).