

**McKINLAY SHIRE COUNCIL  
LOCAL LAW NO. 12  
(COMMERCIAL USE  
OF ROADS) 2002**

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## **PART 1 - PRELIMINARY**

### **1. Short title**

This local law may be cited as *Local Law No. 12 (Commercial Use of Roads) 2002*.

### **2. Objects**

The objects of this local law are to -

- (a) regulate soliciting of business on roads; and
- (b) regulate the use of roads for the conduct of business.

### **3. Definitions - the dictionary**

The dictionary in the schedule defines particular words used in this local law.

## **PART 2 - PERMITS**

### **4. Requirement to hold a permit<sup>1</sup>**

- (1) A person must not solicit for business on a road unless authorised by a permit under this local law.

Maximum penalty - 50 penalty units.

- (2) A person must not carry on business on a road unless authorised by a permit under this local law.

Maximum penalty - 50 penalty units.

- (3) However, a permit is not required under this local law for -

- (a) a business on part of a road if the person carrying on the business is authorised by a permit under the *Land Act 1994* to occupy the relevant part of the road for carrying on the business; and
- (b) a person who is authorised to carry on a business under the *Transport Infrastructure Act 1994*; and
- (c) using a road for a particular purpose if the use constitutes development under the *Integrated Planning Act 1997*.

### **5. Application for a permit**

An application for a permit must include or be accompanied by -

- (a) details of the nature, time and place of the proposed activities for which the permit is sought; and

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<sup>1</sup> A person who carries on business as a hawker will need a licence under the *Hawkers Act 1984* as well as a permit under this local law.

- (b) if the applicant wants to use a particular part of a road for serving food or drink or for other business purposes - a plan showing the relevant part of the road; and
- (c) other information and material required by a subordinate local law.

## **6. Grant of a permit**

- (1) The local government may grant a permit if satisfied that -
  - (a) the activities for which the permit is sought would not unduly interfere with the proper use of a road; and
  - (b) if criteria for the grant of a permit have been laid down by subordinate local law - the grant of the permit is consistent with the relevant criteria.
- (2) A subordinate local law may specify criteria for the grant of a permit.
- (3) A permit cannot be granted for a State-controlled road unless the chief executive agrees in writing.

## **7. Term of a permit**

- (1) A permit may be granted for a specified occasion or for a specified term.
- (2) If a permit is granted for a specified term, the local government may, from time to time, on application by the holder of the permit, renew the permit.
- (3) The term for which a permit is granted or renewed is to be -
  - (a) fixed as required by a relevant subordinate local law; or
  - (b) in the absence of a relevant subordinate local law - decided by the local government when it grants the permit or the renewal.
- (4) However, the local government must, on application for renewal of a permit made before the end of the term for which the permit was granted or last renewed, renew the permit for a further term unless -
  - (a) the local government has given the operator reasonable written notice of its intention not to renew the permit; or
  - (b) there are proper grounds for cancellation of the permit<sup>2</sup>.

## **8. Conditions of a permit**

- (1) A permit may be granted on conditions the local government considers appropriate.

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<sup>2</sup> Proper grounds for cancellation of a permit exist if an operator fails to remedy contravention of this local law or a condition of a permit within the time allowed in a compliance notice (See section 13(1)).

- (2) The conditions of a permit may, for example -
- (a) restrict activities under the permit to specified days and times; and
  - (b) prohibit or limit activities under the permit during periods of poor visibility; and
  - (c) limit the activities authorised by the permit to a single specified location or to a specified area; and
  - (d) require the holder of the permit to display the permit in a specified position or to produce the permit for inspection on demand by an authorised person or, if the permit relates to a State-controlled road, a person authorised by the chief executive; and
  - (e) require the holder of the permit to take specified measures to protect the safety of persons who may be involved in, or affected by, the activities authorised by the permit; and
  - (f) require the holder of the permit to take out insurance against personal injury or property damage resulting from activities authorised by the permit; and
  - (g) require the holder of the permit to take specified measures to ensure that the activities authorised by the permit do not cause a nuisance; and

*Example condition -*

If a permit authorises use of a road for serving food or drink, the condition could, for example, require the permit holder to provide and maintain receptacles for waste and to clean the area thoroughly at the conclusion of business on each day.

- (h) if the permit authorises the holder to use a specified part of a road for carrying on a business - require the permit holder to pay specified rental to the local government at specified intervals.
- (3) The local government may, by subordinate local law, prescribe conditions that may be imposed in a permit.

## **9. Compliance with conditions of a permit**

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

Maximum penalty - 50 penalty units.

## **10. Power to change conditions of a permit**

- (1) The local government may, by written notice given to the holder of a permit, change<sup>3</sup> the conditions of the permit.
- (2) However, the local government may only change the conditions of a permit if -
  - (a) the holder of the permit agrees to the proposed change; or
  - (b) the change is urgently necessary in the interests of safety, to prevent a nuisance, or to improve access to the road or the efficiency of vehicle or pedestrian traffic; or
  - (c) the change is necessary to allow for roadworks; or
  - (d) the local government -
    - i) gives the permit holder written notice of the proposed change inviting the holder to make written representations about the proposed change within a reasonable time fixed in the notice; and
    - ii) if the permit holder makes written representations within the time allowed in the notice - takes the representations into account.

## **11. Transfer of a permit**

- (1) The holder of a permit may, with the local government's approval, transfer the permit to another person.
- (2) The local government may impose conditions on the transfer of a permit.
- (3) However, the local government cannot -
  - (a) unreasonably refuse to approve the transfer of a permit; or
  - (b) impose unreasonable conditions on the transfer of a permit.

## **12. Chief executive of department may give directions**

The local government and the permit holder must comply with any directions and guidelines issued by the chief executive of the department which administers Chapter 5 of the *Transport Infrastructure Act 1994* about the exercise of its powers under this local law over permits for State-controlled roads.

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<sup>3</sup> A “change” to the conditions of a permit includes a change by addition, exception, omission or substitution. (See *Acts Interpretation Act 1954*, section 36).

## **PART 3 - ENFORCEMENT**

### **13. Compliance notices**

- (1) If a holder of a permit contravenes a provision of this local law or a condition of the permit, an authorised person may give the holder of the permit a written notice (a “**compliance notice**”) under this section.
- (2) A compliance notice may -
  - (a) if the contravention is of a continuing or recurrent nature - require the holder of the permit to stop the contravention; and
  - (b) whether or not the contravention is of a continuing or recurrent nature - require the holder of the permit to take specified action, within a time specified in the notice, to remedy the contravention.
- (3) Immediate action to remedy a contravention may be required if it is necessary to avoid a risk to public safety.
- (4) The holder of a permit to whom a compliance notice is given must comply with the notice.

Maximum penalty for subsection (4) - 50 penalty units.

### **14. Power to remove structures etc.**

- (1) If a person has brought a structure or other thing onto a road for an activity that is a contravention of this local law, an authorised person may remove and dispose of the structure or other thing if -
  - (a) it gives rise to a risk to public safety; or
  - (b) it is not removed from the road as required by a compliance notice.
- (2) The local government may recover the cost of action taken under this section as a debt from the person by whom, or for whom, the structure or other thing was brought onto the road.

### **15. Suspension or cancellation of a permit**

- (1) If -
  - (a) the holder of a permit contravenes this local law or a condition of the permit; or
  - (b) the local government needs to carry out roadworks or any other local government purpose,

the local government may, by written notice to the holder, suspend or cancel the permit.

- (2) However, the local government may only suspend or cancel a permit if -
- (a) the suspension or cancellation is urgently necessary in the interests of safety or to prevent a nuisance; or
  - (b) the suspension or cancellation is necessary to allow for roadworks or any other local government purpose; or
  - (c) the local government -
    - i) gives the holder of the permit written notice of the proposed suspension or cancellation inviting the holder to make written representations about the proposed action within a reasonable time fixed in the notice; and
    - ii) if the holder of the permit makes written representations within the time allowed in the notice - takes the representations into account.

#### **PART 4 - MISCELLANEOUS**

##### **16. Defences**

It is a defence to any breach of or non-compliance with any provision of this local law if a person has a reasonable and lawful excuse.

##### **17. Review of decisions**

- (1) A person who is aggrieved by a decision made by the local government under this local law (a "**person aggrieved**") is, subject to subsection (2), entitled to a review of the decision.
- (2) A person aggrieved is not entitled to a review of a decision under this section if the decision -
  - (a) was made by a resolution of the local government; or
  - (b) was made as a result of an emergency; or
  - (c) has been carried into full force and effect; or

*Example of decision being carried into full force and effect -*

An action by an authorised person properly taken to remove a structure or other thing from a road if he or she is authorised to do so under a local law in the circumstances of a particular case.

- (d) was made on an earlier application for review.
- (3) An application for review must -
  - (a) be in writing and addressed to the Chief Executive Officer; and

- (b) specify an address in Australia to which notices under this local law may be sent to the person aggrieved; and
  - (c) be lodged with the local government within 14 days after the day on which notice of the decision was given to the person aggrieved; and
  - (d) if the person aggrieved seeks to make representations through an agent - state the name of the agent; and
  - (e) include any other information specified in a subordinate local law.
- (4) The decision of the local government on a review under this section must not be made by the person who made the original decision or any person who holds a less senior position than the person who made the original decision.

*Example -*

If the original decision was made by the Chief Executive Officer then the only entity which can make a decision on the review is the full local government or a local government committee which has been delegated decision making power under the local law.

- (5) The local government must make a decision on the review within 28 days (the "**review decision making period**") of receiving the application under subsection (3).
- (6) If the local government fails to notify the person aggrieved within the timeframe specified in subsection (5), the local government is taken to have confirmed the original decision.
- (7) Both the person aggrieved and the person who made the original decision are entitled to make written representations, either personally or through an agent, to the local government prior to a final decision on the review being made.
- (8) To remove any doubt, the local government in making a decision on the review has the same powers as the person who made the original decision and, without limiting those powers, can -
  - (a) confirm the original decision; or
  - (b) quash or set aside the original decision or part of the original decision and substitute it with a new decision.
- (9) The review of the decision is to be conducted on an informal basis but in accordance with the rules of natural justice.

## **18. Subordinate local laws**

The local government may make subordinate local laws about any matters about which this local law specifically allows for the making of subordinate local laws.

**SCHEDULE**  
**DICTIONARY**

section 3

**“authorised person”** means a person appointed as an authorised person for this local law.<sup>4</sup>

**“business”** means the commercial supply of goods or services (including food or drink or both) but does not include the provision of a public passenger service under the *Transport Operations (Passenger Transport) Act 1994*.

**“chief executive”** means the chief executive of the department responsible for administering the *Transport Infrastructure Act 1994*.

**“compliance notice”** see section 13(1).

**“permit”** means a permit under Part 2.

**“road”** means a road within the meaning of the *Transport Infrastructure Act 1994* and includes -

- (a) a mall; or
- (b) a square, court or other public place under the local government’s control that is declared by subordinate local law to be subject to this local law.

**“State-controlled road”** means a State-controlled road under the *Transport Infrastructure Act 1994*.

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<sup>4</sup> See Section 14 of *Local Law No. 1 (Administration)*.