

**McKINLAY SHIRE COUNCIL
LOCAL LAW NO. 11**

(ROADS)

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PART 1 - PRELIMINARY

1. Citation

This local law may be cited as *Local Law No. 11 (Roads)*.

2. Objects

The objects of this local law are to:

- (a) ensure that the local government has the necessary powers to construct, maintain and improve roads within its area; and
- (b) provide for the naming of roads and the numbering of adjacent properties; and
- (c) ensure that roads and associated structures and vegetation are in harmony with their natural and built environment; and
- (d) regulate the use of roads to prevent nuisances and interference with the safe movement of traffic.

3. Definitions

In this local law:

"authorised person" means:

- (a) for Part 2, Division 3 (Traffic control while roadwork in progress) a person accredited as a road traffic controller under the *Transport Operations (Road Use Management) Act 1995* and authorised by the local government to exercise the powers of an authorised person under this local law; and
- (b) for other provisions of this local law - a person authorised by the local government to exercise the powers of an authorised person under this local law;

"development approval" means a development approval issued under the *Integrated Planning Act 1997*;

"local government road" means a road other than a State-controlled road;

"lot" has the meaning given to it under the *Integrated Planning Act 1997*;

"official traffic sign" means an official traffic sign as defined in the *Transport Operations (Road Use Management) Act 1995*;

"regulated purpose" see section 17(2);

"road" includes a State-controlled road;

"roadwork" means work for the construction, maintenance, repair or improvement of a road under this local law;

"State controlled road" means a State controlled road under the *Transport Infrastructure Act 1994*;

"traffic" includes the use by any person of any road or off-street regulated parking area, or the presence therein or thereon of any person, vehicle, tram, train, animal, or other moveable article or thing whatsoever;

"undedicated road" means a local government road in which the land is not dedicated for public use as a road.

4. Relationship with other laws

- (1) This local law does not derogate from, and is subject to, the provisions of the *Rural Lands Protection Act 1985*.¹
- (2) The *Integrated Planning Act 1997* applies to the carrying out of work under this local law that is in the nature of development as defined in that Act.

PART 2 - CONSTRUCTION, MAINTENANCE AND IMPROVEMENT OF ROADS²

Division 1 - Road construction

5. Construction of roads

- (1) Subject to obtaining the necessary development approval, the local government may construct a local government road.
- (2) A local government road may be constructed on land of the local government or land under the local government's control.

Division 2 - Maintenance, repair and improvement of roads

6. Maintenance and repair

- (1) Subject to obtaining the necessary development approval, the local government may carry out work for the maintenance or repair of a road.
- (2) However, the local government may only carry out work for the maintenance or repair of a State-controlled road with the written approval of the chief executive of the department which administers Chapter 5 of the *Transport Infrastructure Act 1994*.

7. Improvement of roads

- (1) Subject to obtaining the necessary development approval, the local government may carry out work for the improvement of a road.

¹ The Rural Lands Protection Act 1985 contains provisions dealing with stock routes and fencing which, where a road is a declared stock route under the Act, could cover matters dealt with in, for example, section 13 and 18(2)(a) of this local law.

² Under section 901 of the Local Government Act 1993 the local government has the capacity to take all necessary steps for the construction, maintenance and improvement of local government roads [See section 901(2)(b)].

Examples:

- *The local government may carry out landscaping and beautification work, such as the planting of trees and other vegetation on footpaths adjacent to the carriageway and the establishment of nature strips between carriageways with trees of low mature height and small trunk diameter.³*
 - *The local government may construct footpaths and footbridges with associated structures.*
 - *The local government may construct fences, grids and gates to prevent animals from getting onto the road.*
 - *The local government may install official traffic signs to regulate, warn or guide traffic.*
 - *The local government may install facilities for the protection or use of road users.*
- (2) However, the local government may only carry out work for the improvement of a State-controlled road with the written approval of the chief executive of the department which administers Chapter 5 of the *Transport Infrastructure Act 1994*.

Division 3 - Traffic control while roadwork in progress

8. Official traffic signs

If roadwork has started or is about to start on a road, an authorised person may regulate traffic by installing official traffic signs to facilitate the roadwork, or to avoid risk to life or property that may result from carrying out the roadwork.⁴

9. Power to direct traffic

- (1) An authorised person may give directions to the driver of an animal or a motor vehicle or to a pedestrian if the direction is necessary to facilitate roadwork or to avoid risk to life or property that may result from carrying out the roadwork.
- (2) A person must not contravene a direction given by an authorised person under this section.

Maximum penalty - 40 penalty units

PART 3 - MANAGEMENT POWERS

10. Power to assign a name, or change the name, of a road

- (1) The local government may, by resolution, assign a name to a local government road, or change the name of a local government road.

³ Section 31(4) of the Transport Infrastructure Act 1994 provides that approval from the chief executive (see section 7(2) of this local law) is necessary if the work interferes with a State-controlled road.

⁴ A person who contravenes an indication by an official traffic sign commits an offence and is liable to a maximum penalty of 40 penalty units or 6 months imprisonment (See section 74(1) of the *Transport Operations (Road Use Management) Act 1995*).

- (2) With the written approval of the chief executive of the department which administers Chapter 5 of the *Transport Infrastructure Act 1994*, the local government may, by resolution, assign a name to a State-controlled road in its area, or change the name of a State-controlled road in its area.

11. Road signs

- (1) The local government may erect road signs showing the name of roads in the local government's area and conditions of use.
- (2) However, the local government may only erect a road sign on or adjacent to a State-controlled road under this section with the written approval of the chief executive of the department which administers Chapter 5 of the *Transport Infrastructure Act 1994*.
- (3) Road users must comply with any conditions of use shown on the road sign.

Maximum Penalty - 50 penalty units

12. Numbering of adjacent premises and lots

- (1) The local government may, by resolution, adopt a numbering system for buildings and lots adjoining a road.
- (2) Notice of a resolution adopting a numbering system for a particular road must be given by advertisement in a newspaper circulating generally in the local government's area.
- (3) An owner of land must not adopt a number for a building or lot that is inconsistent with a numbering system adopted by the local government under this section.

Maximum Penalty - 20 penalty units

- (4) An owner of land, (other than vacant land), must display the number allocated so as to be easily identified from the adjoining road.

Maximum Penalty - 20 penalty units

13. Power to require adjoining owner to fence land

- (1) If, in the local government's opinion, the land adjoining a road should be fenced to prevent animals escaping from the land onto the road, the local government may, by written notice given to the owner (a "fencing notice"), require the owner to fence the land so as to prevent animals escaping from the land onto the road.⁵
- (2) The notice:
 - (a) may fix a minimum standards with which the fence must comply; and
 - (b) fix a reasonable time for compliance with the notice.

⁵ Section 36(1) of the *Transport Infrastructure Act 1994* provides that the chief executive of the department which administers chapter 5 of the *Transport Infrastructure Act* does not have to contribute to the fencing of the boundary both land and a State-controlled road.

- (3) An owner of land must comply with a notice under this section.

Maximum Penalty - 50 penalty units

PART 4 - CONTROL OF LOCAL GOVERNMENT ROADS

Division 1 - Alteration or improvement of roads

14. Requirement to hold permit

- (1) A person (other than the local government) must not make an alteration or improvement to a local government road unless authorised by a permit under this division.⁶

Maximum Penalty - 200 penalty units

- (2) A person makes an alteration or improvement to a local government road if the person:
- (a) interferes with the structure or materials of the road; or
 - (b) interferes with a structure associated with the road; or
 - (c) interferes with vegetation on the road, or clears vegetation from the road.
- (3) A permit for removing vegetation from a road is not required under this local law if the removal of vegetation is authorised by a tree clearing permit under the *Land Act 1994* and, if a tree clearing permit would, apart from this local law, be required for removing vegetation from a road, a permit under this local law cannot authorise the removal of the vegetation.⁷

15. Application for permit

An application for a permit to make an alteration or improvement to a local government road 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) full details of the proposed alteration or improvement; and
- (c) other information and material required under a local law policy.

⁶ The local government must obtain the written approval of the chief executive of the department which administers Chapter 5 of the *Transport Infrastructure Act 1994* if carrying out road works on a local government road which would impact on a State-controlled road (See section 40 of the *Transport Infrastructure Act 1994*).

⁷ See section 255 of the *Land Act 1994*.

16. Grant of permit

- (1) The local government may grant a permit authorising an alteration or improvement to a local government road if satisfied that the permit may be granted consistently with the objects of this local law and the criteria laid down by a local law policy.⁸
- (2) A local law policy may specify criteria with which a proposed alteration or improvement to a local government road must comply.

17. Conditions of permit

- (1) A permit to make an alteration or improvement to a local government road may be granted on conditions the local government considers appropriate.
- (2) The conditions of a permit may:
 - (a) require compliance with specified safety requirements;
 - (b) require the holder of the permit to carry out specified additional work such as earthwork and drainage work;
 - (c) regulate the time within which work must be carried out;
 - (d) regulate standards with which work must comply;
 - (e) require the holder of the permit to give the local government specified indemnities;
 - (f) require the holder of the permit to take out specified insurance indemnifying persons who may suffer personal injury, or loss or damage, as a result of the work.
- (3) The local government may, by a local law policy, prescribe conditions that may be imposed in a permit to make an alteration or improvement to a local government road.

Division 2 - Use of local government roads for regulated purposes

18. Requirement to hold permit

- (1) A person must not use a local government road for a regulated purpose unless authorised by a permit under this division.

Maximum Penalty - 50 penalty units

- (2) A "regulated purpose" is:
 - (a) the depasturing or travelling of stock⁹; or
 - (b) the discharge of stormwater or wastes; or

⁸ This would be subject to any conditions imposed under section 40 of the *Transport Infrastructure Act*.

⁹ See section 4 and its footnote.

- (c) the deposit of goods or materials; or
 - (d) another purpose classified under a local law policy as a regulated purpose,
- but does not include a purpose which is development under the *Integrated Planning Act 1997*.

19. Application for permit

An application for a permit to use a local government road for a regulated purpose 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) full details of the proposed use of the road; and
- (c) other information and material required under a local law policy.

20. Grant of permit

- (1) The local government may grant a permit authorising the use of a local government road for a regulated purpose if satisfied that the permit may be granted consistently with the objects of this local law and the criteria laid down by a local law policy.
- (2) A local law policy may specify criteria for the grant of a permit authorising the use of a local government road for a regulated purpose.

21. Conditions of permit

- (1) A permit authorising the use of a local government road for a regulated purpose may be granted on conditions the local government considers appropriate.
- (2) The conditions of a permit may:
 - (a) require compliance with specified safety requirements; and
 - (b) require the holder of the permit to exhibit specified warning notices and to take other specified precautions for the safety of road users; and
 - (c) require the holder of the permit to give specified indemnities and to take out specified insurance.
- (3) The local government may, by a local law policy, prescribe conditions that may be imposed in a permit authorising the use of a local government road for a regulated purpose.

Division 3 - Permits generally

22. Power to change conditions of a permit

- (1) The local government may, by written notice given to the holder of a permit, change¹⁰ 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 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.

23. Compliance with conditions of permit

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

Maximum penalty - 50 penalty units

Division 4 - Compliance notices

24. Compliance notices

- (1) If the holder of a permit contravenes this local law, a requirement of a local law policy, or a condition of the permit, an authorised person may give the holder 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 to stop the contravention; and
 - (b) whether or not the contravention is of a continuing or recurrent nature, require the holder to take specified action, within a time specified in the notice, to remedy the contravention.
- (3) The holder of the permit must comply with a notice under this section.

Maximum Penalty - 100 penalty units

¹⁰ A "**change**" to the conditions of a permit includes a change by omission, substitution or addition (see *Acts Interpretation Act 1954, s 36*).

Division 5 - Revocation or suspension or cancellation of permit

25. Revocation or suspension or cancellation of permit

- (1) The local government may by written notice given to the holder of the permit revoke or suspend a permit issued under this local law if:
 - (a) the holder of a permit does not comply with a requirement of a compliance notice; or
 - (b) changes in circumstances since the permit was issued make the continued operation of the permit inappropriate.
- (2) Sub-section (1) is in addition to the local government's powers under section 9 of Local Law No.1 (Administration).

Division 6 - Load limits on roads

26. Load limits on roads

- (1) The local government may by a local law policy or resolution determine:
 - (a) the maximum combined weight of a vehicle and load; and
 - (b) the types or classes of vehicles,that may be driven or carried over any bridge, culvert or road.
- (2) However the local government may only make a determination under subsection (1) for a State-controlled road with the written approval of the chief executive of the department which administers Chapter 5 of the *Transport Infrastructure Act 1994*.
- (3) Where the local government makes a determination under subsection (1) it must place in a clearly visible area at each approach to the bridge, culvert or road a sign advising of its determination.
- (4) A person must not drive or bring any vehicle onto or upon any bridge, culvert or road if:
 - (a) the combined weight of the vehicle and its load exceeds the limit determined under subsection (1)(a); or
 - (b) the vehicle is other than one of the type or class determined under subsection (1)(b).

Maximum Penalty - 20 penalty units

27. Emergency declarations

- (1) An authorised person may declare:
 - (a) the maximum combined weight of a vehicle and load; and
 - (b) the types of classes of vehicles,

that may be driven or carried over any bridge, culvert or road, if, in an authorised person's opinion, there is an urgent need for an emergency declaration due to special conditions on roads caused by weather or otherwise.

- (2) However the local government may only make an emergency declaration under subsection (1) for a State-controlled road with the written approval of the chief executive of the department which administers Chapter 5 of the *Transport Infrastructure Act 1994*.
- (3) An emergency declaration under this section comes into force immediately signs are placed indicating the emergency declaration in a clearly visible area at each approach to the bridge, culvert or road upon which the emergency load limit has been declared.
- (4) The emergency declaration expires 4 weeks after the placing of the sign, or a local government resolution under section 26(1) whichever is the earlier.
- (5) A person must not drive or bring onto or upon a bridge, culvert or road in contravention of the signs under subsection (2).

Maximum Penalty - 20 penalty units

PART 5 - MISCELLANEOUS

Division 1 - Local government's power to carry out work

28. Local government's power to carry out work

If a person fails to have work required by a compliance notice or a fencing notice carried out within the time allowed in the notice, the local government may itself have the work carried out.

29. Powers of entry and cost recovery

- (1) If work required by a compliance notice is to be carried out on land of which the local government is not the owner or occupier, the local government may enter the land to perform work:
 - (a) under section 1066 of the Act, if the person who has failed to perform the work is the owner or occupier of the relevant land; or
 - (b) under section 1070 of the Act, if the person who has failed to perform the work is not the owner or occupier of the relevant land¹¹.
- (2) If the person who failed to comply with the compliance notice is the owner of the relevant land, the amount properly and reasonably incurred by the local government in performing the work is recoverable (together with interest) under section 1066, 1067 and 1068 of the Act.
- (3) If the person who failed to comply with the compliance notice is not the owner of the relevant land, the amount properly and reasonably incurred by the local government is recoverable as a debt from the person in default together with

¹¹ A magistrate may make an order for entry under section 1063 (Order on occupier who refuses entry) if the occupier refuses to permit entry.

interest on the same basis as applies to an owner of land under section 1067 of the Act¹².

Division 2 - Property in road structures on undedicated roads¹³

30. Property in road structures

- (1) If a structure is erected or installed in, on, across, under or over an undedicated road, the structure becomes the property of the local government.
- (2) However, if a permit (under this local law or another law) makes other provision about ownership of a structure erected or installed under the permit, the provision of the permit prevails.

Division 3 - Damage to local government roads

31. Damage

- (1) A person who, without the local government's authority, intentionally or negligently damages a local government road or structure associated with a local government road is liable to the local government in damages.
- (2) The local government may recover damages under this section in the same way as damages for a tort.

Division 4 - Local law policies

32. Local law policies

The local government may make local law policies in relation to those matters about which this local law specifically allows for the making of local law policies.

¹² Section 1067(2) of the *Local Government Act 1993* provides for the payment of interest on the same basis as for an overdue rate.

¹³ Under section 95 of the *Land Act 1994* the land in all roads dedicated and opened for public use (and hence the property in fixtures in or on that land) vests in, or remains vested in, the State.