

**DOUGLAS SHIRE COUNCIL
LOCAL LAW NO. 59
(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. 59 (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.

4. Repeal

This local law repeals *Local Law No. 15 (Stalls and Itinerant Vendors)*.

PART 2 - PERMITS

5. Requirement to hold a permit¹

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

Maximum penalty for subsection (1) - 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 for subsection (2) - 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*.

¹ 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.

6. 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 licence is sought; and
- (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.

7. 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.

8. 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 permit².

9. Conditions of a permit

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

Example of a condition under subsection (2)(g) -

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.

- (3) The local government may, by subordinate local law, prescribe conditions that may be imposed in a permit.

² 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 14(1)).

10. 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.

11. Power to change conditions of a permit

- (1) The local government may, by written notice given to the holder of a permit, change³ 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.

12. 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.

13. 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.

PART 3 - ENFORCEMENT

14. 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.

15. 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.

16. 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

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

- (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 - REVIEW OF DECISIONS

17. Reviewable decisions

A decision of the local government, the CEO or an authorised person under this local law is reviewable (a "**reviewable decision**") unless it is -

- (a) a decision made by a resolution of the local government; or
- (b) a decision made on an earlier application for review.

18. Application for review

- (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) specify an address in Australia to which notices under this local law may be sent to the person aggrieved; and
 - (c) be lodged at the office of the local government within 14 days after the day on which notice of the decision was given to the applicant; and
 - (d) if the person seeks to make representations through an agent - state the name of the agent; and

- (e) state the reasons why the applicant considers the decision should be reviewed; and
 - (f) include any other information specified in a subordinate local law.
- (3) However, notwithstanding subsection (2), the local government must take steps which are reasonable in the circumstances to assist a person to make an application which will be in a form that complies with subsection (2).

19. Carrying out the review

- (1) Subject to section 18(2) 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 the CEO or an authorised person.
- (2) The 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.
- (3) The person aggrieved and the original decision maker are entitled to make written representations, either personally or through an agent, to the local government prior to a decision being made on the review.
- (4) The review under this Part is to be conducted on an informal basis but in accordance with the rules of natural justice.

20. Decision on the review

- (1) For the purposes of this section, the local government must make its decision on the review within 28 days after the local government has received the application for review (the "**decision making period**").
- (2) In undertaking a review, the local government may confirm, vary or reverse the decision under review and must make a decision (its "**final review decision**") within the decision making period.
- (3) If the local government does not make its final review decision within the decision making period, the local government is taken to have confirmed the decision under review (a "**deemed confirmation**").
- (4) The local government after making its final review decision (other than a decision which is a deemed confirmation) must give the applicant written notice of the result of the review within the decision making period.
- (5) If, in its final review decision, the local government has confirmed the decision under review the written notice under subsection (4) should state the reasons for reaching that decision.

PART 5 - MISCELLANEOUS

21. Defences

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

22. 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 4

“authorised person” means a person appointed as an authorised person for this local law.⁴

“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*.

“CEO” means the Chief Executive Officer of the local government.

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

“compliance notice” see section 14(1).

“decision making period” see section 20(1).

“deemed confirmation” see 20(3).

“final review decision” see section 20(2).

“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.

“reviewable decision” see section 17.

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

“the Act” means the *Local Government Act 1993*.

⁴ See section 13(1) of *Local Law No. 2 (Administration)*.