

THURINGOWA CITY COUNCIL

LOCAL LAW NO. 8M (TRAMWAYS)

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PART 1 - PRELIMINARY**Citation**

1. This local law may be cited as Local Law No. 8M (Tramways).

Objects

2. The objects of this local law are to ensure that:-
 - (a) tramways within the local government's area are maintained and operated in accordance with appropriate safety standards; and
 - (b) appropriate indemnities are in force to protect the local government and the public against loss or damage resulting from the operation of tramways; and
 - (c) the use of a tramway does not unreasonably disrupt or interfere with the use of roads and other public infrastructure by the public.

Definitions

3. In this local law:-

“authorised person” means a person authorised by the local government to exercise the powers of an authorised person under this local law.

“compliance notice” see section 18(1).

“operator” of a tramway means the person who operates (or proposes to operate) the tramway and, if the tramway is operated for a mill owner within the meaning of the *Sugar Industry Act 1991*, includes the mill owner.

“relocation notice” see section 20(1).

“removal and reinstatement notice” see section 21(1).

“stop order” see section 17(1).

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

“track” means a track for the operation of locomotives and other rolling stock.

“tramway” means a system for transporting passengers or freight (or both) along a fixed track by means of a locomotive and other rolling stock and includes the associated tramway infrastructure.

“tramway infrastructure” means:-

- (a) the track and its supporting and associated structures (including earthworks); and
- (b) all passenger stations and installations for loading or unloading freight; and
- (c) all crossings, traffic control devices and other installations associated with the tramway.

“tramway to which this local law applies” see section 4.

Application

4. This local law applies to a tramway if the track passes along a road¹, or passes across, under or over a road at any point.

PART 2-CONTROL OF TRAMWAYS

Requirement to hold permit

5. A person must not operate a tramway to which this local law applies unless authorised by a permit under this Part.

Maximum penalty-500 penalty units.

Application for permit

6. An application for a permit authorising the operation of a tramway to which this local law applies must include or be accompanied by:-
- (a) details of the route of the tramway and the tramway infrastructure; and
 - (b) a detailed description of the rolling stock to be used; and
 - (c) a detailed statement of when and how the tramway is to be operated; and
 - (d) if approval for anything to be done under the permit is also required under another law-a certified copy, or other appropriate evidence, of the approval; and
 - (e) other information and materials required under local law policies.

Grant of permit

7. (1) The local government may grant a permit authorising the operation-of a tramway to which this local law applies if satisfied that the permit may be granted consistently with the objects of this local law and the criteria laid down by local law policies.

- (2) A local law policy may specify criteria with which the operation of a tramway must comply.

Term of permit

8. (1) The term of a permit must be fixed by the local government having regard to:-

- (a) the expected economic life of the tramway; and
- (b) the operator's need to have a reasonable assurance that the operator will (subject to compliance with this local law and the conditions of the permit) be able to operate the tramway for a reasonable period given the extent of the investment in the tramway.

- (2) The local government may, on application by the operator, renew the permit from time to time for a period decided by the local government when granting the renewal.

- (3) 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 term of at least 3 years unless:-

- (a) the local government has given the operator at least 2 years written notice of its intention not to renew the permit; or
- (b) the operator has failed to remedy a contravention of this local law or a condition of the permit within the time allowed in a compliance notice and the local government:-
 - (i) has given written notice to the operator of its intention not to renew the permit and the grounds of the proposed non-renewal; and
 - (ii) has allowed the operator a period stated in the notice (which must be at least 2 months from when the notice is given) to make written representations to the local government about the proposed non-renewal of the permit; and
 - (iii) has considered representations made in response to the notice.

Conditions of permit

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

- (2) The conditions of a permit may, for example:-

- (a) require compliance with specified safety requirements;
- (b) require the operator to carry out specified work (which may include specified earthwork or drainage work);
- (c) require the installation of traffic control devices, cattle grids and other equipment incidental to the proper operation of the tramway;

- (d) require that work carried out under the permit, and materials used for the purpose of the work, comply with specified quality standards and other specifications;
 - (e) require the proper maintenance of the track and other tramway infrastructure;
 - (f) impose reasonable speed limits on locomotives and rolling stock.
- (3) However, the conditions of the permit must be consistent with the conditions of any statutory authorisation or approval for the establishment of the tramway.
- (4) The local government may, by local law policy, prescribe conditions that must be imposed in a permit or that will ordinarily be imposed in a permit.

Power to change conditions of permit

- 10.(1) The local government may, by written notice given to an operator, change² the conditions of the operator's permit.
- (2) However, the local government may only change the conditions of a permit if:-
- (a) the operator agrees to the proposed change; or
 - (b) the local government:-
 - (i) gives the operator reasonable written notice of the proposed change inviting the operator to make written representations about the proposed change within a reasonable period fixed in the notice; and
 - (ii) if the operator makes written representations within the time allowed in the notice-takes the representations into account.

Compliance with conditions of permit

11. An operator must ensure the conditions of a permit are complied with.
- Maximum penalty-500 penalty units.

Transfer of permit

- 12.(1) An operator may, with the approval of the local government, transfer the operator's 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 its approval of the transfer of a permit; or
 - (b) impose unreasonable conditions on the transfer of a permit.

PART 3-INSURANCE

Indemnity

13. An operator must keep the local government insured under a policy of insurance approved by the local government against liability that the local government may incur through the operation of the tramway or the administration of this local law.

Maximum penalty-500 penalty units.

Public risk policy

14. An operator must take out and maintain throughout the period for which the permit is granted or renewed policies of insurance, on terms and conditions approved by the local government, insuring the operator against liabilities for personal injury or damage to property that may arise out of the operation of the tramway.

Maximum penalty-500 penalty units.

Evidence of compliance

15. An operator must, if required in writing by the local government or an authorised person, produce evidence showing that the operator has the insurance required by this Part, and that the insurance is current.

Maximum penalty-10 penalty units.

PART 4-ENFORCEMENT

Division 1-Inspection

Inspection

16. An authorised person may enter³ land and inspect a tramway to find out whether the requirements of this local law and the conditions of the permit are being complied with.

Division 2-Stop orders

Stop orders

- 17.(1) If a person operates a tramway without a permit under this local law, an authorised person may, by written notice given to the person (a “**stop order**”), order the person to stop operating the tramway.

(2) A person against whom a stop order is made must comply with the order.

Maximum penalty-500 penalty units.

- (3) However, if a person against whom a stop order is made undertakes to make an application for a permit as soon as practicable, the authorised person may suspend the stop order to give the person a reasonable opportunity to apply for and obtain a permit.

Division 3-Compliance notices

Compliance notices

- 18.(1) If the operator contravenes a provision of this local law or a condition of the permit, an authorised person may give the operator 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 operator to stop the contravention; and
- (b) whether or not the contravention is of a continuing or recurrent nature-require the operator to take specified action, within a time specified in the notice, to remedy the contravention.

- (3) The operator must comply with a notice under this section.

Maximum penalty-50 penalty units.

Division 4-Suspension or cancellation of permit

Suspension or cancellation of permit

- 19.(1) 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, the local government may, by written notice given to the operator, suspend or cancel the permit.

- (2) However, before suspending or cancelling a permit under subsection (1), the local government must:-

- (a) give written notice to the operator of the proposed suspension or cancellation; and
- (b) allow the operator a period stated in the notice (which must be at least 2 months from when the notice is given) to make written representations to the local government about the proposed suspension or cancellation; and
- (c) consider representations made in response to the notice.

- (3) The local government may also cancel a permit by agreement with the operator (which may include provision for the payment of compensation by the local government for the cancellation).

Division 5-Relocation or removal of tramway

Relocation of tramway

20.(1) The local government may, by written notice given to the operator of a tramway (a “**relocation notice**”), require the operator to:-

(a) remove and relocate (in whole or part) the track and other tramway infrastructure; and

(b) take specified action to reinstate roads and other property of the local government affected by the removal of the track and tramway infrastructure.

(2) A relocation notice must fix a reasonable time (which must be at least 1 year) within which the work required by the notice is to be carried out.

(3) The operator must comply with a relocation notice within the time fixed by the notice.

Maximum penalty-500 penalty units.

(4) The operator is entitled to compensation from the local government for the reasonable cost of carrying out the requirements of a relocation notice.

(5) The amount of the compensation must be fixed by agreement between the local government and the operator or, if they fail to reach agreement, by a court with jurisdiction to decide monetary claims of the amount claimed by the operator.

Removal of tramway

21.(1) If a permit is cancelled or comes to an end and is not renewed, the local government may, by written notice given to the operator (a “**removal and reinstatement notice**”), require the operator to:-

(a) remove the track and the tramway infrastructure; and

(b) take specified action to reinstate roads and other property of the local government affected by the removal of the track and tramway infrastructure.

(2) A removal and reinstatement notice must fix a reasonable time (which must be at least 1 year) within which the work required by the notice is to be carried out.

(3) The operator must comply with a removal and reinstatement notice within the time fixed by the notice.

Maximum penalty-500 penalty units.

Division 6-Local government's power to carry out work

Local government's power to have work carried out

22. If an operator fails to have work required by a compliance notice, a relocation notice or a removal and reinstatement notice carried out, the local government may itself have the work carried out.

Powers of entry and cost recovery

- 23.(1) If work required by a compliance notice, a relocation notice, or a removal and reinstatement 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 carry out the work:-
- (a) under section 1066 of the Act, if the operator is the owner or occupier of the relevant land; or
 - (b) under section 1070 of the Act, if the operator is not the owner or occupier of the relevant land⁴.
- (2) If the operator 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 sections 1066, 1067 and 1068 of the Act.
- (3) If the operator 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 operator together with interest on the same basis as applies to an owner of land under section 1067 of the Act⁵.

PART 5-LOCAL LAW POLICIES

Local law policies

24. The local government may make local law policies about:-
- (a) the information and materials that must be included in or accompany an application for a permit;⁶ or
 - (b) criteria for granting permits;⁷ or
 - (c) conditions that must, or will ordinarily, be imposed in a permit;⁸ or
 - (d) other matters about which this local law specifically allows for the making of local law policies.

Footnotes

1 Under section 4 of the Act, a “road” is defined as:-

- (a) an area of land dedicated to public use as a road; or
- (b) an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; or
- (c) a bridge, culvert, ferry, ford, tunnel or viaduct; or
- (d) a pedestrian or bicycle path; or
- (e) a part of an area, bridge, culvert, ferry, ford, tunnel, viaduct or path mentioned in paragraphs (a) to (d);

but does not include a State-controlled road under the *Transport Infrastructure Act 1993*.

- 2 A “**change**” to the conditions of a permit includes a change by omission, substitution or addition. (See *Acts Interpretation Act 1954*, s. 36)
- 3 For power to enter premises, see Chapter 15, Parts 4 and 5 of the Act.
- 4 A magistrate may make an order for entry to the land under section 1063 (Order on occupier who refuses entry) of the Act if the occupier refuses to permit entry.
- 5 Section 1067(2) of the Act provides for the payment of interest on the same basis as for an overdue rate.
- 6 See section 6(e).
- 7 See section 7(2).
- 8 See section 9(4).

This and the preceding 9 pages bearing my initials is a certified copy of Local Law No. 8M (Tramways) made in accordance with the provisions of the Local Government Act 1993, by the Thuringowa City Council by resolution dated nineteenth day of May, 1999.

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Chief Executive Officer