

THURINGOWA CITY COUNCIL

LOCAL LAW NO.13M (COMMERCIAL USE OF ROADS)

SUMMARY OF PROVISIONS

PART 1 - PRELIMINARY

1. Citation
2. Objects
3. Definitions

PART 2 - PERMITS

4. Requirement to hold permit
5. Application for permit
6. Grant of permit
7. Term of permit
8. Conditions of permit
9. Power to change conditions of permit
10. Compliance with conditions of a permit
11. Transfer of permit
12. Chief executive may give directions

PART 3 - ENFORCEMENT

Division 1 - Compliance notices

13. Compliance notices
14. Power to remove structures etc.

Division 2 - Suspension or cancellation of permit

15. Suspension or cancellation of permit

PART 4 - LOCAL LAW POLICIES

16. Local law policies

PART 1 - PRELIMINARY

Citation

1. This local law may be cited as Local Law No.13M (Commercial Use of Roads).

Objects

2. The objects of this local law are to:-
 - (a) regulate soliciting of business on roads and associated public places; and
 - (b) regulate the use of roads and associated public places for the conduct of business.

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.

“**business**” means the commercial supply of goods or services (including food or drink or both) but does not include the commercial supply of goods or services for a religious, charitable, educational or political purpose¹.

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

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

“**road**” includes:-

(a) a State-controlled road under the *Transport Infrastructure Act 1994*; or

(b) a mall; or

(c) a square, court or other public place under the local government’s control that is declared under the local law policies to be subject to this local law.

PART 2-PERMITS

Requirement to hold permit²

4. (1) A person must not solicit for business on a road unless authorised by a permit.

Maximum penalty-50 penalty units.

(2) A person must not carry on business on a road unless authorised by a permit.

Maximum penalty-50 penalty units.

(3) However:-

(a) a permit is not required under this local law for 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 business³; and

(b) a permit is not required under this local law for using a road for a particular purpose if the use constitutes development under the *Integrated Planning Act 1997*.⁴

Application for permit

5. 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
- (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 under local law policies.

Grant of permit

6. (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 under local law policies-the grant of the permit is consistent with the relevant criteria.

(2) A local law policy may specify criteria for the grant of a permit.

(3) A permit cannot be granted for a State-controlled road unless the chief executive of the department which administers of the *Transport Infrastructure Act 1994* agrees in writing.

(4) A permit cannot authorise the holder of the permit to carry out building work or do anything else that constitutes development under the *Integrated Planning Act 1997*.⁵

Term of permit

7. (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 local law policy; or
- (b) in the absence of a relevant local law policy-decided by the local government when it grants the permit or the renewal.

Conditions of permit

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

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

- (a) limit the activities authorised by the permit to a single specified location or to a specified area;

- (b) 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;
- (c) 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;
- (d) require the holder of the permit to take out insurance against personal injury or property damage resulting from activities authorised by the permit;
- (e) require the holder of the permit to take specified measures to ensure that the activities authorised by the permit do not cause a nuisance;
- (f) if the permit authorises the holder of the permit to use a specified part of a road for carrying on a business-require the holder of the permit to pay specified rental to the local government at specified intervals.

Example of a condition under subsection (2)(e):-

If a permit authorises use of a road for serving food or drink, the condition could, for example, require the holder of the permit 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 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

- 9. (1)** The local government may, by written notice given to the holder of a permit, change⁶ 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 or to prevent a nuisance; or
- (c) the change is necessary to allow for roadworks; or
- (d) the local government:-
 - (i) gives the holder of the permit 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 holder of the permit makes written representations within the time allowed in the notice-takes the representations into account.

Compliance with conditions of a permit

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

Maximum penalty-50 penalty units.

Transfer of permit

- 11.(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.

Chief executive may give directions

- 12.** The local government must comply with 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

Division 1-Compliance notices

Compliance notices

- 13.(1)** If a person contravenes a provision of this local law or a condition of the permit, an authorised person may give the person 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 person to stop the contravention; and
 - (b) whether or not the contravention is of a continuing or recurrent nature-require the person 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)** A person to whom a compliance notice is given must comply with the notice.

Maximum penalty-50 penalty units.

Power to remove structures etc.

14. 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.

Division 2-Suspension or cancellation of permit

Suspension or cancellation of permit

- 15.(1) If the holder of a permit contravenes this local law or a condition of the permit, 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
 - (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 with the time allowed in the notice-takes the representations into account.

PART 4-LOCAL LAW POLICIES

Local law policies

16. The local government may make local law policies about:-
- (a) public places under the local government's control declared to be roads for the purposes of this local law;⁷ or
 - (b) the information and materials that must be included in or accompany an application for a permit;⁸ or
 - (c) criteria with which business activities on roads must comply;⁹ or
 - (d) the term for which a permit is to be granted or renewed;¹⁰ or
 - (e) conditions that must, or will ordinarily, be imposed in a permit;¹¹ or

- (f) other matters about which this local law specifically allows for the making of local law policies.

Footnotes

- 1 Compare the definition of “roadside vending” in section 9 of the *Traffic Act 1949*.
- 2 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. (See section 5(5) of the *Traffic Act 1949*.)
- 3 See section 177 of the *Land Act 1994*.
- 4 If the use constitutes “development” under the *Integrated Planning Act 1997*, a permit is necessary under section 3.1.4 of that Act.
- 5 A development permit is necessary under the *Integrated Planning Act 1997* for “development” within the meaning of that Act.
- 6 A “**change**” to the conditions of a permit includes a change by omission, substitution or addition. (See *Acts Interpretation Act 1954*, s.36)
- 7 See definition of “**road**” in section 3.
- 8 See section 5(c).
- 9 See section 6(2).
- 10 See section 7(3)(a).
- 11 See section 8(3).

This and the preceding 6 pages bearing my initials is a certified copy of Local Law No. 13M (Commercial Use of Roads) 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.

.....
Chief Executive Officer