

FLINDERS SHIRE COUNCIL
LOCAL LAW NO.10 (ROADS)
SUMMARY OF PROVISIONS

PART 1-PRELIMINARY

1. Citation
2. Objects
3. Definitions
4. Relationship with other laws

PART 2-CONSTRUCTION, MAINTENANCE AND IMPROVEMENT OF ROADS

Division 1-Road construction

5. Construction of roads

Division 2-Maintenance, repair and improvement of roads

6. Maintenance and repair
7. Improvement of roads

Division 3-Traffic control while roadwork in progress

8. Official traffic signs
9. Power to direct traffic

PART 3-MANAGEMENT POWERS

10. Power to assign a name, or change the name, of a road
11. Road signs
12. Numbering of adjacent premises and allotments
13. Power to require adjoining owner to fence land

PART 4-CONTROL OF LOCAL GOVERNMENT ROADS

Division 1-Alteration or improvement of roads

14. Requirement to hold permit
15. Application for permit
16. Grant of permit
17. Conditions of permit

Division 2-Use of local government roads for regulated purposes

18. Requirement to hold permit
19. Application for permit
20. Grant of permit
21. Conditions of permit

Division 3-Permits generally

22. Power to change conditions of a permit

23. Compliance with conditions of permit

PART 5-ENFORCEMENT

Division 1-Compliance notices

24. Compliance notices

Division 2-Suspension or cancellation of permit

25. Suspension or cancellation of permit

Division 3-Local government's power to carry out work

26. Local government's power to have work carried out
27. Powers of entry and cost recovery

PART 6-MISCELLANEOUS

Division 1-Property in road structures on undedicated roads

28. Property in road structures

Division 2-Damage to local government roads

29. Damage

PART 7-LOCAL LAW POLICIES

30. Local law policies
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PART 1-PRELIMINARY

Citation

1. This local law may be cited as Local Law No.10 (Roads).

Objects

2. 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.

Definitions

3. In this local law-

“allotment” means a single parcel of land.

“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.

“local government road” means a road other than a State-controlled road.

“official traffic sign” means a sign, signal, marking, light or device for regulating, warning or guiding traffic that is an official traffic sign under the *Traffic Act 1949*.¹

“regulated purpose”-see section 18(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 movable article or thing whatsoever.

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

Relationship with other laws

4. (1) This local law does not derogate from, and is subject to, the provisions of the *Rural Lands Protection Act 1985*.²

(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 ROADS³**Division 1-Road construction****Construction of roads**

5. (1) 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**Maintenance and repair**

6. (1) 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*.

Improvement of roads

7. (1) The local government may carry out work for the improvement of a road.

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.*⁴
- *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

Official traffic signs

8. 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.⁵

Power to direct traffic

9. (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

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

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

(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.

Road signs

11. (1) The local government may erect road signs showing the name of roads in the local government's area and other information of use to road users.

(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*.

Numbering of adjacent premises and allotments

12. (1) The local government may, by resolution, adopt a numbering system for buildings and allotments 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 allotment that is inconsistent with a numbering system adopted by the local government under this section.

Maximum penalty- 10 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- 10 penalty units.

Power to require adjoining owner to fence land

13. (1) If, in the local government's opinion, 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 land⁶.

(2) The notice-

- (a) may fix minimum standards with which the fence must comply; and
- (b) must fix a reasonable time for compliance with the notice.

(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

Requirement to hold permit

14. (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.⁷

Maximum penalty-200 penalty units.

(2) A person makes an alteration or improvement to a local government road if the person-

- (a) erects or installs a structure in, on, across, under or over the road; or
- (b) changes or interferes with the structure or materials of the road; or
- (c) changes, interferes with or removes a structure associated with the road; or
- (d) plants a tree or other vegetation on the road, interferes with vegetation on the road, or clears vegetation from the road.

(3) However-

(a) this section does not apply to-

- (i) an alteration or improvement to a road which is development under the *Integrated Planning Act 1997*; and
- (ii) the removal of vegetation from a road for which a tree clearing permit has been issued under the *Land Act 1994*;⁸ and

(b) a permit under this division cannot authorise work which is development under the *Integrated Planning Act 1997* or for which a tree clearing permit is required under the *Land Act 1994*.

Application for permit

15. 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) if the applicant proposes to erect or install a structure on, over or under the road- plans and specifications of the structure; and
- (d) details of building or other work to be carried out under the permit; and
- (e) other information and materials required under local law policies.

Grant of permit

16. (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 local law policies.⁹

(2) A local law policy may specify criteria with which a proposed alteration or improvement to a local government road must comply.

Conditions of permit

17. (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, for example-

- (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;
- (g) require the holder of the permit to maintain structures erected or installed, or vegetation planted, under the permit in good condition;
- (h) require the holder of the permit to remove a structure erected or installed under the permit at the end of a stated period.

(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 to make an alteration or improvement to a local government road.

Division 2-Use of local government roads for regulated purposes

Requirement to hold permit

18. (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 stock¹⁰; or
- (b) the discharge of stormwater or wastes; or
- (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*.

Application for permit

19. 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 materials required under local law policies.

Grant of permit

20. (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 local law policies.

(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.

Conditions of permit

21. (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, for example-

- (a) require compliance with specified safety requirements;
- (b) require the holder of the permit to exhibit specified warning notices and to take other specified precautions for the safety of road users;
- (c) require the holder of the permit to give specified indemnities and to take out specified insurance.

(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 authorising the use of a local government road for a regulated purpose.

Division 3-Permits generally

Power to change conditions of a permit

22. (1) The local government may, by written notice given to the holder of a permit, change¹¹ 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.

Compliance with conditions of permit

23. The holder of a permit must ensure that the conditions of the permit are complied with. Maximum penalty-200 penalty units.

PART 5-ENFORCEMENT

Division 1-Compliance notices

Compliance notices

24. (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-50 penalty units.

Division 2-Suspension or cancellation of permit

Suspension or cancellation of permit

25. (1) 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;

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

- (2) However, before suspending or cancelling a permit, the local government must-
- (a) give written notice to the holder of the permit of the proposed suspension or cancellation; and
 - (b) allow the holder a reasonable period stated in the notice to make written representations to the local government about the proposed suspension or cancellation; and
 - (c) consider representations made in response to the notice.

Division 3-Local government's power to carry out work

Local government's power to have work carried out

26. 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.

Powers of entry and cost recovery

27. (1) If work required by a compliance notice or a fencing 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 the 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 land.

(2) If the person who failed to comply with the 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 sections 1066, 1067 and 1068 of the Act.

(3) If the person who failed to comply with the 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 interest on the same basis as applies to an owner of land under section 1067 of the Act¹².

PART 6-MISCELLANEOUS

Division 1-Property in road structures on undedicated roads¹³

Property in road structures

28. (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 2-Damage to local government roads

Damage

29. (1) A person who, without the local government's authority, intentionally or negligently damages a local government road or a 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.

PART 7-LOCAL LAW POLICIES

Local law policies

30. The local government may make local law policies about-

- (a) information and materials that must be included in, or accompany, an application for a permit;¹⁴ or
- (b) criteria for granting permits;¹⁵ or
- (c) the conditions that must, or will ordinarily, be imposed in a permit;¹⁶ or
- (d) classifying a particular purpose of use as a regulated purpose;¹⁷ or
- (e) other matters about which this local law specifically allows for the making of local law policies.

¹ The design and the methods, standards and procedures for the installation and use of an official traffic sign must conform with the Manual of Uniform Traffic Control Devices issued by Queensland Transport under the *Traffic Act 1949* or be approved by Queensland Transport (See the definition of “**official traffic sign**” in section 9 of the *Traffic Act 1949*).

² *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, sections 13 and 18(2)(a) of this Local Law.

³ Under section 901 of the Act 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)).

⁴ 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.

⁵ A person who contravenes an indication given 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 12F of the *Traffic Act 1949*).

⁶ 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 between land and a State-controlled road.

7 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*)

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

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

10 See section 4 and its footnote.

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

12 Section 1067(2) of the Act 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.

14 See sections 15(e) and 19(c).

15 See sections 16(2) and 20(2).

16 See sections 17(3) and 21(3).

17 See section 18.
