

# GOLD COAST CITY COUNCIL



LOCAL LAW No. 11

(ROADS AND MALLS)

REPEALED (GAZETTED 19/12/08)

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(ROADS AND MALLS)**

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REPEALED (GAZETTE 19/12/08)

## **LOCAL LAW NO. 11 (ROADS AND MALLS)**

### **CHAPTER 1 – PRELIMINARY**

#### **Citation**

1. This local law may be cited as *Gold Coast City Council Local Law No. 11 (Roads and Malls)*.

#### **Objects**

2. The objects of this local law are to enable the Council to:-
  - (a) ensure that the Council 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) prevent or minimise environmental harm (within the meaning of the *Environmental Protection Act 1994*) when carrying out construction of roads and associated structures; and
  - (e) regulate the use of roads to prevent obstruction, inconvenience, annoyance nuisances, damage to property and interference with the safe movement of traffic; and
  - (f) restrict the economic scope of the conduct of commercial activities on roads, where such activities are permitted, in recognition of the fact that such activities may otherwise enjoy an unfair commercial advantage over competitive activities conducted from fixed premises in the Area for which rates and other charges are paid, and to which planning and other regulatory legislation applies; and
  - (g) provide for and encourage public access to and use and enjoyment of pedestrian malls for both active and passive recreation; and
  - (h) ensure that such access use and enjoyment occurs consistently with the preservation and enhancement of public safety and amenity; and
  - (i) protect and preserve the facilities installed within pedestrian malls and all aspects of the environment within pedestrian malls; and
  - (j) assist in the enforcement of vehicle load limits and other restrictions on the use of roads within the Area by particular classes of vehicle.

#### **Definitions**

3. In this law:-

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

“**allotment**” means a single parcel of land.

“**approved vehicle**” means a vehicle approved under section 40 of this local law.

“**approved vehicle label**” means a label issued by the Council to identify a vehicle as an approved vehicle.

“**authorised person**” means -

- (a) for chapter 2, part 1, 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 Council to exercise the powers of an authorised person under this law; and
- (b) for other provisions of this law, a person authorised by the Council to exercise the powers of an authorised person under this law.

“**carriageway**” has the meaning given by the *Traffic Act 1949*.

“**chief executive**” means the chief executive of the Department which administers Chapter 5 of the *Transport Infrastructure Act 1994*.

“**Council road**” means a road other than a State-controlled road.

“**crossing**” has its ordinary meaning<sup>1</sup> and includes a culvert, pipe or other structure or component which permits flow of water through or under the relevant vehicle access.

“**delivery vehicle**” means a vehicle approved under section 40(1)(a).

“**essential services vehicle**” means a motor vehicle that is in the care or control of any officer of:-

- the Queensland Ambulance Transport Brigade
- a Fire Brigade
- a fuel gas supplier franchised under the Gas Act 1965
- Australia Post
- an electricity entity under the Electricity Act 1994
- the police force
- the State Emergency Service
- Road Transport Construction Services (Department of Main Roads)
- a carrier or service provider licensed under the Telecommunications Act 1997 (Cwlth)
- the Council
- another entity specified by local law policy

“**footway**” has the meaning given by the *Traffic Act 1949*.

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<sup>1</sup> Macquarie dictionary defines “crossing” to mean “a place at which a road, river, etc may be crossed”.

“**install**” means construct, make, mark, place or erect, or affix to or paint on any surface or structure, and repair, maintain, manage and control.

“**official mall sign**” means any sign, signal, marking, light or device installed for the purpose of regulating, prohibiting, warning or guiding persons or traffic on a pedestrian mall which is either:-

- (a) an official traffic sign; or
- (b) contained in a local law policy.

“**official traffic sign**” has the meaning given by the *Traffic Act 1949*.

“**owner**”, when used in respect of a vehicle, means:-

- (a) a person who is the owner within the meaning of that term given by the *Traffic Act 1949* or *Justices Act 1886*; and
- (b) a person who is the owner within the meaning of that term given by the *Transport Infrastructure (Roads) Regulation 1991*, or by a corresponding law of a State or Territory of Australia.

“**pedestrian mall**” means a road or part of a road established as a mall pursuant to Chapter 9, Part 3 of the Act.

“**prescribed hours**” - see Section 4 of this Local Law.

“**regulated purpose**” - see Section 28(2) of this Local Law.

“**road**” includes a State-controlled road, and otherwise has the same meaning as in the Act.

“**roadside vending**” has the meaning given by the *Traffic Act 1949*.

“**roadwork**” means work for the construction, maintenance, repair or improvement of a road under this law.

“**service vehicle**” means a vehicle approved by the Council under section 40(1)(b).

“**special vehicle**” means a vehicle approved by the Council under section 40(1)(c).

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

“**toy vehicle**” has the meaning given by the *Traffic Act 1949*.

“**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.

“**undedicated road**” means a Council road on land which is not dedicated for public use as a road.

“vehicle” has the meaning given by the *Traffic Act 1949*<sup>2</sup>.

#### Prescribed hours

4. In this law, “prescribed hours” means:-

- (a) the period between 10:00 pm on one day and 10:00 am on the next day; or
- (b) if another time period is prescribed by local law policy, the time period so prescribed.

#### Relationship with other laws

5. This law is in addition to and does not derogate from:-

- (a) other laws regulating the use of vehicles<sup>3</sup>; and
- (b) other laws about roads<sup>4</sup>; and
- (c) other laws about the keeping or control of animals.

## CHAPTER 2 - ROADS

### PART 1 - CONSTRUCTION MAINTENANCE AND IMPROVEMENT OF ROADS

#### *Division 1 - Road construction*

#### Construction of roads

6.

- (1) The Council may construct a Council road.
- (2) A Council road may be constructed on land owned by the Council or land under the Council’s control.

#### *Division 2 - Maintenance, repair and improvement of roads*

#### Maintenance and repair

7.

- (1) The Council may carry out work for the maintenance or repair of a road.
- (2) However, the Council may only carry out work for the maintenance or repair of a State-controlled road with the written approval of the chief executive.

#### Improvement of roads

8.

<sup>2</sup> A pedicab is a vehicle under this definition.

<sup>3</sup> Principally the Traffic Act 1949 which imposes restrictions on the making of local laws dealing with traffic. This law is to be read to operate to the full extent of, but does not to exceed, the Council’s law making powers with respect to matters concerning traffic.

<sup>4</sup> For example, the *Rural Lands Protection Act 1985* which contains provisions dealing with fencing of roads which are declared stock routes. Also, s. 40 of the Transport Infrastructure act 1994 and s. 145 of the Transport Operations (Passenger Transport) Act 1994 may apply to roadworks carried out or authorised under this law which have an impact on a State-controlled road.



- (1) The Council may carry out work for the improvement of a road.

*Examples -*

*The Council 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.*

*The Council may construct footpaths and footbridges with associated structures.*

*The Council may construct fences, grids and gates to prevent animals from getting onto the road.*

*The Council may install official traffic signs to regulate, warn or guide traffic.*

*The Council may install facilities for the protection or use of road users.*

- (2) However, the Council may only carry out work for the improvement of a State-controlled road with the written approval of the chief executive.
- (3) The Council may enter into an agreement with any owner of land adjoining or abutting a road regarding the cost of construction of a footway and kerbing on Council's road.

### ***Division 3 - Traffic control while roadwork in progress***

#### **Official traffic signs**

9. 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 safety or property that may result from carrying out the roadwork.

#### **Power to direct traffic**

##### **10.**

- (1) An authorised person may give directions<sup>5</sup> to a person driving or riding an animal or a vehicle, or to a pedestrian, if the direction is necessary to facilitate roadwork or to avoid risk to safety or property that may result from carrying out roadwork.
- (2) A person must not contravene a direction given by an authorised person under this section.
- Maximum penalty - 40 penalty units.

- (3) However, subsection (2) does not apply where obedience to a direction would contravene a provision of the *Traffic Regulation 1962*, unless the direction is a signal to which section 21(3) of that Regulation applies<sup>6</sup>.

<sup>5</sup> An authorised person under this Part must be an accredited traffic controller (see s.3 definition), who has a general power, under s 4D of the *Transport Operations (Road Use Management) Regulation 1995*, to direct traffic when there is a danger or obstruction to traffic.

<sup>6</sup> This law cannot in itself override a specific requirement under *the Traffic Regulation 1962*. However, under s 21(3)(b) of that Regulation, if a direction which would otherwise be inconsistent with that Regulation is a signal to stop, proceed or stop, at an indicated place as specified in Schedule 9 of the Regulation, the signal must be complied with even if compliance would otherwise constitute a contravention of the Regulation.

## PART 2 - MANAGEMENT POWERS

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

#### 11.

- (1) The Council may, by resolution, assign a name to a Council road, or change the name of a Council road.
- (2) With the written approval of the chief executive, the Council 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

#### 12.

- (1) The Council may erect road signs showing the name of roads in the Council's area and other information of use to road users.
- (2) However, the Council 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.

### Numbering of adjacent premises and allotments

#### 13.

- (1) The Council 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 Council'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 Council 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.

### Power to require adjoining owner to fence land

#### 14.

- (1) If, an authorised person forms the opinion that construction of a fence on or adjacent to the boundary between any land and a road is necessary to prevent animals escaping from the land onto the road, the Council may, by written notice given to the owner (a "**fencing notice**"), require the owner to fence the land<sup>7</sup>.
- (2) A fencing notice must -
  - (a) fix minimum standards with which the fence must comply; and
  - (b) state the time by which construction of the fence must be completed.
- (3) An owner of land to whom a fencing notice is given must comply with the notice.

Maximum penalty - 50 penalty units.

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<sup>6</sup>Note that section 36(1) of the *Transport Infrastructure Act 1994* provides that the chief executive does not have to contribute to the fencing of the boundary between land and a State-controlled road.

**Power to require fence to be repaired****15.**

- (1) If an authorised person forms the opinion that a fence on or adjacent to the boundary between any land and a road has fallen into a state of disrepair such that it has an adverse effect on the amenity of the locality, the Council may, by written notice given to the owner (a **“fencing repair notice”**), require the owner to, at the owner’s choice, repair or replace the fence so that it no longer has the adverse effect.
  - (2) An adverse effect on amenity mentioned in subsection (1) must be more than a trivial effect, but need not be an extremely adverse effect.
  - (3) A fencing repair notice must -
    - (a) fix minimum standards with which the repaired or replacement fence must comply; and
    - (b) state the time by which repair or construction of the fence must be completed.
  - (4) An owner of land who is given a fencing repair notice must comply the notice.
- Maximum penalty - 50 penalty units.

**PART 3 - CONTROL OF COUNCIL ROADS*****Division 1 - Vehicular crossings*****Required authority**

16. A person must not construct a crossing to provide vehicle access between the carriageway of a Council road<sup>8</sup> and an allotment unless the construction is:-
  - (a) authorised by a permit issued to the person under division 2; or
  - (b) pursuant to a notice given under this division.

Maximum penalty - 50 penalty units.

**Council may require construction of crossing****17.**

- (1) The Council may by notice in writing to the owner of any allotment of land (a **“crossing notice”**) require the owner to construct a crossing to provide vehicle access between the carriageway of a Council road and the allotment.
- (2) A notice under subsection (1) must:-
  - (a) include or be accompanied by a minimum specification for the crossing which is required to be constructed; and
  - (b) state the time by which construction of the crossing must be completed.
  - (c) state any specific precautions to prevent or minimise obstruction to traffic or risk of personal injury or damage to property including the payment of any bond or security deposit by the owner of the allotment of land to the Council.
- (3) An owner of any allotment of land who is given a crossing notice must comply with the notice.

<sup>8</sup>Construction of access to a State-controlled road is regulated by ss 47 and 52 of the *Transport Infrastructure Act 1994*.

Maximum penalty - 50 penalty units.

### Maintenance, repair and removal of crossings

#### 18.

- (1) The owner of an allotment to which a vehicular crossing provides access from a Council road must maintain and, as required, repair the crossing so that it remains effective for its intended purpose and does not cause a nuisance or safety hazard.
- (2) The Council may by notice in writing to the owner of any allotment (a “**crossing repair notice**”) require the owner to carry out maintenance of or repairs to, a crossing to a Council road if, in the opinion of an authorised person, the crossing:-
  - (a) is not effective for its intended purpose; or
  - (b) is causing a nuisance or poses a risk of nuisance; or
  - (c) constitutes an actual or potential safety hazard.
- (3) However, if it appears or is made to appear to the Council that access from the allotment to the carriageway is no longer required at the location of the crossing, the Council may, instead of giving notice under subsection (2), give the owner of the relevant allotment a notice requiring the owner to remove the existing crossing, and to carry out other work reasonably necessary in consequence of the removal of the crossing<sup>9</sup>.
- (4) A notice under subsections (2) or (3) must:-
  - (a) include or be accompanied by sufficient details of the maintenance, repairs, removal or other work which is required to be carried out; and
  - (b) state the time by which the requirements of the notice must be completed.
- (5) A person who is given a crossing repair notice must comply with the notice.

Maximum penalty - 50 penalty units.

### Alteration of inadequate crossings

#### 19.

- (1) If an authorised person is of the opinion that a crossing to a Council road (including a crossing which is lawfully constructed under this law, or was lawfully constructed prior to the commencement of this law) is no longer adequate having regard to:-
  - (a) the volume or nature of traffic using the crossing;
  - (b) the manner in which the crossing is used by traffic;
  - (c) changes in the use of the allotment to which the crossing provides access; or
  - (d) changes in the usual or expected standard of crossing provision in the relevant locality,

the Council may give the owner of the relevant allotment a notice (also a “**crossing notice**”) requiring the owner to construct a new or modified crossing.

- (2) Section 17 applies, with any necessary modifications, to a crossing notice given under this section.

<sup>9</sup>For example, construction or reinstatement of roadside drainage or, in an urban area, construction or reinstatement of kerb and channel.

**Division 2 - Alteration or improvement of roads**

**Requirement to hold permit**

**20.**

- (1) Except as provided in division 1, a person (other than the Council) must not make an alteration or improvement to a Council road unless authorised by a permit under this division.

Maximum penalty - 200 penalty units.

- (2) For subsection (1), a person makes an alteration or improvement to a Council 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) a permit for removing vegetation from a road is not required under this division if the removal of the vegetation is authorised by a tree clearing permit under the *Land Act 1994*; and
  - (b) if a tree clearing permit would, apart from this law, be required for removing vegetation from a road, a permit under this law cannot authorise the removal of the vegetation.

**Application for permit**

- 21.** An application for a permit to make an alteration or improvement to a Council 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 a local law policy.

**Grant of permit**

**22.**

- (1) The Council may grant a permit authorising an alteration or improvement to a Council road if satisfied that the permit may be granted consistently with the objects of this law and the criteria (if any) specified in a local law policy.

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

### Conditions of permit

#### 23.

- (1) A permit to make an alteration or improvement to a Council road may be granted on conditions the Council 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, with particular regard to sensitive areas (such as, for example, schools) to minimise conflict;
  - (d) regulate standards with which work must comply;
  - (e) require the holder of the permit to give the Council specified indemnities;
  - (f) require the holder of the permit to take out specified insurance indemnifying the holder and the Council against claims by 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 landscaping of areas not forming part of the carriageway, including planting of native trees and retention of trees of conservation significance (including habitat trees) within such areas, and also including implementation of weed management programs during the establishment of such areas;
  - (i) 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 Council may, by local law policy, prescribe conditions that must be imposed in a permit under this division, or that will ordinarily be imposed in a permit under this division.

### *Division 3 – Prohibited conduct on roadways*

#### Abandonment of vehicles etc

#### 24.

- (1) A person must not park, leave or abandon on a Council road any:-
- (a) unregistered vehicle or trailer;
  - (b) boat or other water craft; or
  - (c) structure or other thing.

Maximum penalty – 50 penalty units

- (2) Subsection (1) does not apply to anything specifically authorised under *Local Law No. 2 (Regulated Parking)*.

### Display, storage etc on roads prohibited without approval

#### 25.

- (1) A person must not use a Council road for displaying, storing, depositing, placing or erecting goods, materials, articles or any other thing or substance (including an animal) unless the person has obtained the written approval of the Council.

Maximum penalty – 20 penalty units.

- (2) A person must not park or stand on a Council road a vehicle bearing a sign, advertisement or other indication that the vehicle is for sale or hire.

Maximum penalty – 20 penalty units

- (3) Subsection (1):-

- (a) does not permit approval to be granted for an activity prohibited by subsection (2); and  
(b) does not apply to anything done by a charitable, religious, educational or political entity.

### Certain vehicles or animals may be prohibited

#### 26.

- (1) The Council may, by local law policy, prohibit on a footway, water channel or gutter:-

- (a) the riding or use of a bicycle, tricycle, power assisted cycle or toy vehicle; or  
(b) the riding, leading, or standing of animals.

- (2) A local law policy under subsection (1) may:-

- (a) prohibit the use of all or particular types of vehicle or animals;  
(b) apply to all footways or to particular footways as identified in the policy;  
(c) provide for particular circumstances in which the prohibition does not apply<sup>10</sup>;  
(d) designate areas on footways for exclusive use of vehicles or animals.

- (3) If the Council acts under subsection (2)(b) to impose a prohibition in relation to all footways, it must give notice of the prohibition by notice published in a newspaper circulating in the Area.

- (4) If the Council acts under subsection (2)(b) to impose a prohibition in relation to particular footways, it must define the footways to which the prohibition applies by means of official traffic signs or, if there is no applicable official traffic sign, by means of signs as specified in a local law policy.

- (5) A person must not ride, lead, stand or use a bicycle, tricycle, power assisted cycle or toy vehicle or animal on a footway, water channel or gutter contrary to a prohibition imposed under subsections (1), (2) and (3) or a designation under subsection (3).

Maximum penalty - 100 penalty units

<sup>10</sup>For example, children riding bicycles to and from school along a footpath.

**Seizure of certain goods, etc. & vehicles used in contravention of s 25 or s 26****27.**

- (1) This section applies if an authorised person finds a person committing an offence against either section 25 or section 26(5) and:-
  - (a) the person does not immediately cease to commit the offence upon being directed by the authorised person so to do; or
  - (b) the person has failed to comply with any written direction or notice given by an authorised person within the time limit specified in the direction or notice;
  - (c) the authorised person has found the person committing an offence of the same or a similar type within the preceding 28 days.
- (2) Where this section applies, the authorised person may seize and remove the goods, materials, articles, other thing or vehicle (including a bicycle, tricycle, power assisted cycle or toy vehicle).
- (3) The authorised person may use reasonably necessary force to effect the seizure and removal.
- (4) However, the force an authorised person may use under this section does not include force likely to cause bodily harm to a person.
- (5) A good, material, article, other thing or vehicle (including a bicycle, tricycle, power assisted cycle or toy vehicle) seized and removed under subsection (2) must be dealt with in accordance with section 55.

***Division 4 - Use of Council roads for regulated purposes*****Requirement to hold permit****28.**

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

Maximum penalty - 50 penalty units.

- (2) For subsection (1), a “**regulated purpose**” is -
  - (a) the depasturing or travelling of stock; or
  - (b) the discharge of stormwater or wastes; or
  - (c) the discharge of ground water; or
  - (d) roadside vending; or
  - (e) another purpose specified by local law policy as a regulated purpose.

**Application for permit****29.** An application for a permit to use a Council 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 a local law policy.

### Grant of permit

#### 30.

- (1) The Council may grant a permit authorising the use of a Council road for a regulated purpose if satisfied that the permit may be granted consistently with the objects of this law and the criteria (if any) specified in a local law policy.
- (2) A local law policy may specify criteria for the grant of a permit authorising the use of a Council road for a regulated purpose.
- (3) However, for the regulated purpose of roadside vending, and regardless of anything else in this local law or in a local law policy, the Council may refuse to grant a permit if the goods or services proposed to be sold by roadside vending, or goods and services of a similar type, are available for sale from ordinary (fixed) retail or commercial premises within the Area.

### Conditions of permit

#### 31.

- (1) A permit authorising the use of a Council road for a regulated purpose may be granted on conditions the Council 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 the Council specified indemnities;
  - (d) require the holder of the permit to take out specified insurance indemnifying the holder and the Council against claims by persons who may suffer personal injury, or loss or damage, as a result of the permitted activity.
- (3) The Council 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 Council road for a regulated purpose.
- (4) For the regulated purpose of roadside vending, conditions prescribed under subsection (3) may include conditions specifying that roadside vending must not be carried on at a place which is less than a specified distance from ordinary (fixed) retail or commercial premises within the Area at which the goods or services proposed to be sold by roadside vending, or goods and services of a similar type, are available for sale.

### *Division 5 - Permits generally*

### Power to change conditions of a permit

#### 32.

- (1) The Council may, by written notice given to the holder of a permit:-
  - (a) change the conditions of the permit; or
  - (b) require any structure or work carried out pursuant to the permit to be changed.
- (2) However, the Council may only change the conditions of a permit if:-
  - (a) the holder of the permit agrees to the proposed change; or

- (b) the Council -
- (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**

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

Maximum penalty - 50 penalty units.

***Division 6 - Entry to drains etc***

**Entry prohibited**

**34.** A person must not enter a drain, pipe or culvert located in or under a road without lawful excuse.

Maximum penalty - 50 penalty units.

***Division 7 – Road Closures (Act, s 915)***

**Contravention of road closure**

**35.**

- (1) The Council may close a road to all traffic or particular classes of traffic<sup>11</sup> under s 915 of the Act<sup>12</sup>.
- (2) A person must not drive a vehicle on a road if the road is closed to:-
  - (a) all traffic; or
  - (b) vehicles of the class being driven by the person.Maximum penalty – 20 penalty units.
- (3) If an authorised person reasonably suspects that a vehicle is being driven on a road contrary to subsection (2), the authorised person may:-
  - (a) require the driver of the vehicle to stop the vehicle;
  - (b) require the driver to state his or her name and address and, if that authorised person has reasonable grounds to suspect that the name and address given is false, to supply evidence of the correctness thereof.
  - (c) inspect, examine, measure and weigh the vehicle.
- (4) A person must not fail to comply with a requirement under subsection (3)(a) or (b).

Maximum penalty – 40 penalty units

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<sup>11</sup> For example, vehicles exceeding a certain load or unloaded weight

<sup>12</sup> Section 915 gives the Council power to close a road to all traffic, or particular classes of traffic, in certain circumstances specified in the section.

## PART 4 - MISCELLANEOUS

### *Division 1 - Property in road structures on undedicated roads*

#### Property in road structures

**36.**

- (1) If a structure is erected or installed in, on, across, under or over an undedicated Council road, the structure becomes the property of the Council.
- (2) However, if a permit (under this 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 and nuisance to Council roads*

#### Council's remedies

**37.**

- (1) A person who, without the Council's authority:-
  - (a) intentionally or negligently damages a Council road or a structure associated with a Council road; or
  - (b) obstructs or creates an obstruction on a Council road; or
  - (c) creates a nuisance on a Council road,has the same civil liability to the Council as if the Council were the owner and occupier of the road.
- (2) The Council may:-
  - (a) recover damages under this section in accordance with the law relating to recovery of damages for a tort; and
  - (b) seek an injunction or other equitable remedy under this section in accordance with the law by which remedies may be sought for a tort.

## CHAPTER 3 - PEDESTRIAN MALLS

### PART 1 - VEHICLES IN MALLS

#### Use of vehicles in a pedestrian mall

**38.**

- (1) Subject to subsection (2), a person must not have, ride or use a bicycle, tricycle, power assisted cycle or toy vehicle on a pedestrian mall.

Maximum penalty - 50 penalty units

- (2) Subsection (1) does not apply to:-
  - (a) an approved vehicle during the prescribed hours<sup>13</sup>;
  - (b) an essential services vehicle which is being used to provide the service for which it is designed or ordinarily used;

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<sup>13</sup>See section 4

- (c) a vehicle used by an occupier of an accommodation building adjacent to a pedestrian mall if:-
  - (i) it is not possible to enter the building except by driving on the mall;
  - (ii) the vehicle is driven directly into or out of the building from or to the nearest road;
  - (iii) the vehicle is not stood or parked on the mall;
- (d) a vehicle used by an occupier of business premises adjacent to a pedestrian mall if the vehicle is to be parked in an off-street parking space (on the business premises or elsewhere) and:-
  - (i) it is not possible to reach the parking space except by driving on the mall;
  - (ii) the vehicle is driven directly into or out of the parking space from or to the nearest road; and
  - (iii) the vehicle is not stood or parked on the mall;
- (e) a bicycle which is walked from the road directly to a bicycle rack on a pedestrian mall.

#### Seizure of certain vehicles

#### 39.

- (1) This section applies if an authorised person finds a person committing an offence against section 38(1) involving a bicycle, tricycle, power assisted cycle, pedicab or toy vehicle and:-
  - (a) the person does not immediately cease to commit the offence upon being directed by the authorised person so to do; or
  - (b) the authorised person has found the person committing an offence of the same or a similar type within the preceding 28 days.
- (2) Where this section applies, the authorised person may seize and remove the bicycle, tricycle, power assisted cycle or toy vehicle.
- (3) The authorised person may use reasonably necessary force to effect the seizure and removal.
- (4) However, the force an authorised person may use under this section does not include force likely to cause bodily harm to a person.
- (5) A bicycle, tricycle, power assisted cycle or toy vehicle seized and removed under subsection (2) must be dealt with in accordance with section 55.

#### Approval of vehicles

#### 40.

- (1) The Council may:-
  - (a) approve a vehicle as a delivery vehicle, if the vehicle is used to deliver goods or pick up goods from premises adjacent to a pedestrian mall; or
  - (b) approve a vehicle as a service vehicle if the vehicle is used to provide services (not being personal transportation) to premises adjacent to a pedestrian mall; or

- (c) approve a vehicle as a special vehicle if the vehicle is used for a special purpose in connection with premises adjacent to a pedestrian mall.
- (2) An application for approval of a vehicle under subsection (1) must contain or be accompanied by the material required under a local law policy.
- (3) Without limiting subsection (2), a local law policy may require an application to be accompanied by:-
- (a) for a delivery vehicle, evidence that the vehicle is regularly used to deliver goods or pick up goods from premises adjacent to a pedestrian mall;
- (b) for a service vehicle, evidence that the vehicle is regularly used to provide services to premises adjacent to a pedestrian mall.
- (4) The Council must give to the applicant:-
- (a) written notice of the Council's decision on the application; and
- (b) if the application is approved, an approved vehicle label in respect of the vehicle.
- (5) The owner of an approved vehicle must ensure that the approved vehicle label is affixed:-
- (a) to the left hand extremity of its windscreen; or
- (b) if the vehicle is not fitted with a windscreen, to the vehicle in a conspicuous position, whenever the vehicle is on a pedestrian mall.

Maximum penalty - 10 penalty units

- (6) An approval remains in force from the date of issue until the expiry date written on the face of the approval or, if no expiry date is so written, until 30 August next following the date of issue of the approval.
- (7) The owner of an approved vehicle and any other person who uses an approved vehicle must comply with the conditions of approval.

Maximum penalty - 50 penalty units.

#### Other offences

#### 41.

- (1) To avoid doubt, this section applies to vehicles which are otherwise lawfully on a pedestrian mall by virtue of section 38(2), but also creates additional offences in respect of vehicles which are not lawfully on the pedestrian mall.
- (2) person must not:-
- (a) drive a vehicle in or upon a pedestrian mall at a speed in excess of:-
- (i) where a speed is indicated by an official sign, the speed so indicated; or
- (ii) in any other case, 10 kilometres per hour;
- (b) drive a vehicle into or out of a pedestrian mall at any point other than a designated entry or exit point; or
- (c) stop, stand or park a vehicle in or upon a pedestrian mall so as to hinder the free passage of other vehicles lawfully using the pedestrian mall; or

- (d) cause, suffer or permit a vehicle to be or to remain in or upon a pedestrian mall for a continuous period exceeding 1 hour without the written approval of the Council first having been obtained; or
- (e) cause or permit a service access route so defined on the pavement to be blocked, obstructed or otherwise limited for a period exceeding 5 minutes;
- (f) cause or permit an entry or exit point to or from any premises adjacent to a pedestrian mall to be blocked, obstructed or otherwise limited at any time whatsoever.

Maximum penalty for each of paragraphs (a) to (f) - 20 penalty units

- (3) When a vehicle is found in or upon a pedestrian mall in contravention of subsection (2)(c),(d),(e) or (f) for a continuous period in excess of 2 hours, a separate offence is committed at the conclusion of each hour calculated from the time when the vehicle was first so found during which the vehicle continuously remains in contravention.

*Example: If a vehicle is detected at 10:00 am as being parked contrary to subsection (2)(c), and is proved to have been continuously parked contrary to the subsection from that time to 1:10 pm on the same day, 3 separate offences are committed.*

#### Damage to malls

42. A person must not:-

- (a) cause damage to the surface of, or any structures, fixtures or the like in, a pedestrian mall; or
- (b) interfere with the ordinary and reasonable use of a pedestrian mall by any other person within the pedestrian mall.

Maximum penalty - 50 penalty units.

#### Damage to property in malls

43.

- (1) This section does not limit or affect section 42(a).
- (2) If a driver of a vehicle by driving, standing or parking such vehicle in or upon a pedestrian mall causes any damage to any property of the Council:-
  - (a) the driver and the owner of the vehicle (if not the driver) are jointly and severally liable to pay the Council the cost incurred by the Council in repairing the damage; and
  - (b) that cost may be recovered by the Council as a liquidated debt.
- (3) Without limiting the operation of subsection (2), if oil or any other product falls from a vehicle in or upon a pedestrian mall:-
  - (a) the driver of the vehicle is taken to have caused damage to property of the Council<sup>14</sup>; and
  - (b) the cost of cleaning up and/or removing the oil or product is a cost incurred by the Council in repairing that damage.

<sup>14</sup> An offence is committed under s 42. A contravention of this section may also constitute an offence under ss 31 or 32 of the *Environmental Protection (Water) Policy 1997*, but an offence may be committed under this section and s 42 whether or not there is actual or potential run-off to drainage or water as is required to establish an offence under the Policy.

**Seizure, detention and removal of property**

44.

- (1) For the purposes of this section, “**property**” includes goods, materials, and any other thing whatsoever, whether animate or inanimate, but does not include a vehicle or animal.
- (2) If an authorised person finds any property on a pedestrian mall in circumstances which, in the reasonable opinion of an authorised officer, constitute a contravention of this law, the authorised person may seize and remove the property.
- (3) However, if the property is in the possession or apparent possession of a person (the “**other person**”), an authorised person may not act under subsection (2) unless:-
  - (a) the authorised person has given the other person an oral or written direction to remove the property or otherwise deal with it so as to stop the contravention of this law within a reasonable time specified by the authorised person; and
  - (b) the other person fails to comply with that direction<sup>15</sup>.
- (4) The authorised person may use reasonably necessary force to effect the seizure and removal.
- (5) However, the force an authorised person may use under this section does not include force likely to cause bodily harm to a person.
- (6) Property seized and removed under subsection (2) must be dealt with in accordance with section 55.

**PART 2 - ANIMALS IN MALLS****Prohibition of animals in a mall**

45.

- (1) A person must not:-
  - (a) take an animal into a pedestrian mall; or
  - (b) have the custody or control of an animal on a pedestrian mall, except in pursuance of a permit in writing issued by the Council.

Maximum penalty - 50 penalty units
- (2) Subsection (1) of this provision does not apply to:-
  - (a) animals being delivered to or collected from pet shops or veterinary surgery located in pedestrian malls; or
  - (b) dogs being walked through a pedestrian mall under effective control and in accordance with the *Gold Coast City Council Local Law No. 12 (Keeping and Control of Animals)*. Section 19(1) of *Local Law No. 12 (Keeping and Control of Animals)* has no application in pedestrian malls.
- (3) An application for a permit under subsection (1) must:-
  - (a) specify the purpose for which the animal is to be brought onto the pedestrian mall; and

<sup>15</sup>Such a failure may be an offence under s 46, but the powers under this section may be exercised instead of or in addition to the power of prosecution for an offence against s 46.

- (b) include or be accompanied by such other information as is prescribed in a local law policy.
- (4) Subsection (1):-
- (a) is subject to section 5 of the *Guide Dogs Act 1972*; and
- (b) does not apply to a police officer who takes a police horse or police dog into a pedestrian mall in the course of the officer's duties.
- (5) An authorised person may seize, detain and impound an animal found in a pedestrian mall in contravention of subsection (1).
- (6) An animal seized detained and impounded under subsection (4) must be dealt with in accordance with the provisions of *Local Law No. 12 (Keeping and Control of Animals)* in all respects as though the animal had been seized detained and impounded under that law.

### PART 3 - MALL MANAGEMENT AND OPERATION

#### Mall Manager

46. The Council may appoint a mall manager to carry out such duties relating to the use and operation of a pedestrian mall or any number of pedestrian malls as may be assigned to the manager.

#### Conduct in a pedestrian mall

##### 47.

- (1) This section has effect subject to the *Peaceful Assembly Act 1992* and to Part 11 of the *Police Powers and Responsibilities Act 1997*.
- (2) The section does not apply to anything which is done or authorised to be done under a lease of part of a pedestrian mall.
- (3) A person must not:-
- (a) sell or offer for sale any goods; or
- (b) display any goods for sale or otherwise stack or store or expose goods; or
- (c) carry on any business; or
- (d) set up and/or use any stalls, booths, stands, standing vehicles, tables or the like for the purpose of or in connection with the carrying on of any business, calling or employment; or
- (e) perform, busk or promote any form of entertainment; or
- (f) take part in any public demonstration or any public address; or
- (g) use or permit or suffer to be used any megaphone, sound, amplifier, radio, loud speaker, or the like or any other means of mechanically, electrically or artificially increasing or reproducing sound; or
- (h) provide food or drink or both to members of the public; or
- (i) put up any advertising device; or



- (j) take, have or be in control of, anything used, or which is apparently designed or capable of being used, for or in connection with any of the purposes stated in paragraphs (a) to (i),

onto, in or upon a pedestrian mall unless the activity is conducted under a permit from the Council.

Maximum penalty for each of paragraphs (a) to (j) - 50 penalty units

- (4) A person must not use or permit or suffer to be used any megaphone, sound amplifier, radio, loud speaker, gramophone or the like or any other means of mechanically, electrically or artificially increasing or reproducing sound in any place or premises on or adjacent to a pedestrian mall for the purpose of advertising any goods, services, entertainment or other matter or thing whatsoever so as to produce such a volume of sound that the same may be heard by persons on or in the near vicinity of the pedestrian mall, unless such activity is conducted under a permit from the Council.

Maximum penalty - 50 penalty units.

#### Permits for certain conduct

#### 48.

- (1) An application for a permit referred to in section 47 must contain or be accompanied by the material required under a local law policy.
- (2) The Council must give to the applicant:-
- (a) written notice of the Council's decision on the application; and
  - (b) if the application is approved, a written permit in respect of the activity to which the application relates.
- (3) It is a condition of every permit issued under this section that the permit:-
- (a) must be kept undefaced and otherwise legible; and
  - (b) must be:-
    - (i) displayed conspicuously on or in close proximity to any stall, booth, stand or the like to which it relates; or
    - (ii) where such display is not possible, produced to an authorised person forthwith upon request
- (4) A permit issued under this section remains in force:-
- (a) for the time specified in the permit; or
  - (b) if no time is specified, until the conclusion of the event or activity in respect of which the permit was granted; or
  - (c) if (a) and (b) do not apply, until 30 June next following the date of issue of the permit.
- (5) The applicant must ensure that the conditions of a permit are complied with.

Maximum penalty - 50 penalty units.

**Official mall signs**

**49.**

- (1) The Council may install official mall signs at, in, on or near a pedestrian mall.
- (2) A person must not contravene an indication or direction given by an official mall sign.

Maximum penalty - 50 penalty units.

**Directions by authorised persons**

**50.**

- (1) An authorised person who finds a person in a pedestrian mall contravening a provision of this law may give that person any reasonable direction requiring the person to stop the contravention.
- (2) A person must obey a direction given to the person under subsection (1).

Maximum penalty - 10 penalty units.

**CHAPTER 4 - GENERAL  
PART 1 – ENFORCEMENT**

*Division 1 - Compliance notices*

**Compliance notices to permit holders**

**51.**

- (1) If the holder of a permit contravenes this law, a requirement of a local law policy which applies to the holder, 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 a permit who is given a compliance notice must comply with the notice.

Maximum penalty - 100 penalty units

*Division 2 - Suspension or cancellation of permit*

**Suspension or cancellation of permit**

**52.**

- (1) If –
  - (a) the holder of a permit does not comply with a requirement of a compliance notice; or

- (b) the holder of a permit contravenes this law, a requirement of a local law policy which applies to the holder, or a condition of the permit, and it is not reasonable or practical in the circumstances to give the holder a compliance notice before invoking this section; or
- (c) changes in circumstances since the permit was issued make the continued operation of a permit inappropriate; or
- (d) it appears to the Council that a permit was issued because of a materially false or misleading representation or declaration (made orally or in writing),

the Council 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 Council must -
  - (a) give written notice to the holder of the permit of the proposed suspension or cancellation, including a statement of the grounds upon which it proposed to take the action; and
  - (b) allow the holder a reasonable period stated in the notice to make written representations to the Council about the proposed suspension or cancellation; and
  - (c) if representations made in response to the notice, consider the representations.
- (3) Subsection (2) does not apply where:-
  - (a) urgent or summary suspension or cancellation of the permit is necessary to protect public health or safety; or
  - (b) the circumstances of the case are such that acting under subsection (2) would defeat the operation of the power of suspension or cancellation.

*Example for paragraph (b): a permit for a "one-off" event where a significant breach has occurred or is occurring, but where the event would be over, and the power of suspension or cancellation meaningless, if subsection (2) were complied with.*

### ***Division 3 - Council's power to carry out work***

#### **Council's power to carry out work 53.**

- (1) If a person fails to have work required by a fencing notice, fencing repair notice, crossing notice, crossing repair notice or compliance notice<sup>16</sup> carried out within the time stated in the notice, the Council may itself have the work carried out.
- (2) Subsection (1) applies whether or not there has been a prosecution for an offence.

#### **Powers of entry and cost recovery 54.**

- (1) If work required by a fencing notice, fencing repair notice or a compliance notice is to be carried out on land of which the Council is not the owner or occupier, the Council may enter the land to perform the work -

<sup>16</sup>These notices are given under sections 14, 15, 17, 18,19 and 51.

- 
- (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, on the basis that the work becomes, by force of this section, work of the Council, 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 Council 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 Council 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 Act.
  - (4) Subsections (2) and (3) apply in relation to a crossing notice and a crossing repair notice and, for that purpose:-
    - (a) the “**relevant land**” referred to in those subsections is the land to which the crossing provides access; and
    - (b) the relevant provisions of sections 1066, 1067 and 1068 of the Act are incorporated into this law by reference, to the intent that:-
    - (c) all references in those provisions to work done on land are read as references to work done in accordance with a crossing notice relating to the provision of access to land; and
    - (d) all references to a charge on land on which work is done are read as references to a charge on the land to which the crossing provides access.

#### *Division 4 - Dealing with seized property*

##### **Procedure on seizing property** **55.**

- (1) This section applies where a vehicle or toy vehicle or other property (in this section, referred to generically as “**property**”) is seized under sections 27, 39 or 44 of this law.
- (2) An authorised person who seizes property must, where the property is seized from a person, or where the person with actual or apparent possession of that property prior to its seizure can be ascertained:-
  - (a) give the person a receipt for the property; and
  - (b) advise the person that it may be reclaimed on or after a day specified by the authorised person, being a day not less than 14 days after the date of seizure, by attending at the place specified by the authorised person and paying the prescribed fee.
- (3) If the person, or some other person who satisfies an authorised person that he or she is the owner of the property, reclaims the property and pays the prescribed fee on or within 30 days after the day specified under subsection (2), the property must be returned to the person.
- (4) However, subsection (3) does not apply to property which has been seized under this law twice (or more often) within the period of 12 months prior to the date of the latest seizure.
- (5) If property is not reclaimed under subsection (3), or if subsection (3) does not apply to the property, an authorised person may:-

- 
- (a) if, in the opinion of the authorised person, the property is reasonably saleable, sell the property; or
- (b) if paragraph (a) does not apply, or if the authorised person is unable to sell the property after making reasonable efforts, destroy or otherwise dispose of the property.
- (6) The process for sale under subsection (5)(a) must include reasonable and appropriate advertising, but the sale need not be by way of auction and may be made by private contract.
- (7) If a receipt and notice were not given to a person under subsection (2) when the property was seized:-
- (a) the advertising under subsection (6) must include information about the date, time and place of the seizure;
- (b) the property must not be sold earlier than 30 days after the date of commencement of the advertising.
- (8) If a person who satisfies an authorised person that he or she is the owner of the property reclaims the property and pays the prescribed fee and the costs (if any) incurred in relation to the sale after the time prescribed in subsection (3) but before the sale of the property, the property must be returned to the person.
- (9) However, subsection (8) does not apply to property which has been seized under this law twice (or more often) within the period of 12 months prior to the date of the latest seizure.
- (10) An amount realised on sale of property must be applied:-
- (a) first towards the costs of the sale; and
- (b) second by payment to the former owner of the property.
- (11) If the identity of the former owner of property is unknown, and no person establishes a valid claim to the proceeds of sale within 1 year of the date of the sale, the proceeds to which the former owner would have been entitled under subsection (10)(b) become the absolute property of the Council.
- (12) A sale or disposal of property under this section confers valid and paramount title to the property sold or disposed of on the purchaser or donee of the property as though the Council were the owner of the property regardless of the amount or value of the consideration (if any) and despite a failure to comply with a provision of this section.
- (13) However, subsection (12) does not affect a right which a person would otherwise have to claim damages against the Council if, because of a failure to comply with this section, the Council sells or disposes of property which it was not lawfully entitled to sell or dispose of.

## PART 2- LOCAL LAW POLICIES

### Local law policies

#### 56.

The Council may make local law policies in respect of any matter which this law requires or permits to be prescribed or dealt with by local law policy.