

Subordinate Local Law No. 1.2 (Commercial Use of Local Government Controlled Areas and Roads) 2011

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Part 1 Preliminary

1 Short title

This subordinate local law may be cited as *Subordinate Local Law No. 1.2 (Commercial Use of Local Government Controlled Areas and Roads) 2011*.

2 Purpose and how it is to be achieved

- (1) The purpose of this subordinate local law is to supplement *Local Law No. 1 (Administration) 2011* which provides for a legal and procedural framework for the administration, implementation and enforcement of the local government's local laws, subordinate local laws and other regulatory powers, and for miscellaneous administrative matters.
- (2) The purpose is to be achieved by providing for—
 - (a) various matters regarding the granting of approvals for prescribed activities; and
 - (b) further specification of the definitions relevant to various prescribed activities.
- (3) In particular, the purpose of this subordinate local law is to supplement the legal and procedural framework for the prescribed activity named in schedule 1, section 1.

3 Authorising local law

The making of the provisions in this subordinate local law is authorised by *Local Law No. 1 (Administration) 2011* (the **authorising local law**).

4 Definitions

- (1) Particular words used in this subordinate local law have the same meaning as provided for in the authorising local law.
- (2) The dictionary in schedule 4 defines particular words used in this subordinate local law.

Part 2 Approval for prescribed activity

5 Matters regarding the prescribed activity—Authorising local law, ss 6(3), (4), 8(2)(a), 9(1)(d), 10(3), 12, 13(a), 14(1)(a)

- (1) Schedule 1—
 - (a) names a prescribed activity in section 1; and
 - (b) prescribes the matters specified in this section for the prescribed activity.
- (2) For section 6(3) of the authorising local law, it is declared that section 6(2) of the authorising local law does not apply to the particular activities stated in section 2 of schedule 1.

- (3) For section 6(4) of the authorising local law, it is declared that the prescribed activity named in section 1 of schedule 1 is a category 1 activity.
- (4) For section 8(2)(a) of the authorising local law, the documents and materials that must accompany an application for approval for the prescribed activity are stated in section 3 of schedule 1.
- (5) For section 9(1)(d) of the authorising local law, the local government may only grant an approval for the prescribed activity if it is satisfied the proposed operation and management of the activity would be consistent with the additional criteria prescribed in section 4 of schedule 1.
- (6) For section 10(3) of the authorising local law, the conditions that must be imposed on an approval for the prescribed activity are stated in section 5 of schedule 1.
- (7) For section 10(3) of the authorising local law, the conditions that will ordinarily be imposed on an approval for the prescribed activity are stated in section 6 of schedule 1.
- (8) For section 13(a) of the authorising local law, the term of an approval for the prescribed activity is provided for in section 7 of schedule 1.
- (9) For section 14(1)(a) of the authorising local law, the further term for renewal or extension of an approval for the prescribed activity is provided for in section 8 of schedule 1.
- (10) For section 12 of the authorising local law, in Table 1 of schedule 1—
 - (a) column 1 lists the application requirements for which the local government may accept as evidence the certificate of a third party certifier; and
 - (b) column 2 lists the individuals or organisations that are declared to be third party certifiers for the corresponding application requirement in column 1; and
 - (c) column 3 lists the qualifications that are necessary for an individual or organisation to be a third party certifier for the corresponding application requirement in column 1.

6 Approvals that are non-transferable—Authorising local law, s 15(2)

For section 15(2) of the authorising local law, it is declared that the categories of approval listed in schedule 2 are non-transferable.

Part 3 Application to State-controlled roads

7 State-controlled roads to which the local law applies—Authorising local law, schedule 1

For the purposes of the definition of *road* in schedule 1 of the authorising local law, the State-controlled roads listed in schedule 3 are roads to which the authorising local law applies unless otherwise provided in the local law.

Schedule 1 Commercial use of local government controlled areas and roads

Section 5

1. Prescribed activity

Commercial use of local government controlled areas and roads.

2. Activities that do not require an approval under the authorising local law

No activities stated.

3. Documents and materials that must accompany an application for an approval

- (1) Details of the nature, time and place of the prescribed activity for which the approval is sought.
- (2) If the applicant wants to use a particular part of a local government controlled area or road for serving food and drink or for other business purposes—a plan showing the relevant part of the local government controlled area or road.
- (3) If the prescribed activity is to be operated from a site, stall or vehicle—specifications for the site, stall or vehicle which is proposed to be used in the operation of the prescribed activity.
- (4) Details of the name, street address, telephone number, facsimile number and email address of the person responsible for the operation of the prescribed activity.
- (5) A copy of the current registration certificate for each vehicle proposed to be used in the operation of the prescribed activity.
- (6) Details of the operation of the prescribed activity including—
 - (a) if goods or services are to be supplied—the nature of the goods and services to be supplied; and
 - (b) if the goods or services are to be supplied at particular times—the times during which the goods or services will be supplied; and
 - (c) if goods or services are to be supplied—the method of sale of the goods or services; and
 - (d) a copy of each policy of insurance of the applicant which relates to the operation of the prescribed activity; and
 - (e) how the applicant proposes to dispose of waste generated by the operation of the prescribed activity; and
 - (f) if signage is intended to be displayed – details of the signage and how the signage will be secured whilst displayed.

- (7) Subsection (8) applies if—
 - (a) the prescribed activity is to be operated at a place on a local government controlled area or road; and
 - (b) the place abuts, or is adjacent to, land other than a local government controlled area or road; and
 - (c) the operation of the prescribed activity may cause a nuisance, inconvenience or annoyance to the occupier of the land.
- (8) The application must be accompanied by—
 - (a) the written consent of the occupier of the land to the operation of the prescribed activity at the place; or
 - (b) a written statement from the occupier of the land in support of the operation of the prescribed activity at the place.

4. Additional criteria for the granting of an approval

- (1) The prescribed activity for which the approval is sought must not unduly interfere with the proper use of the local government controlled area or road.
- (2) There must be a public demand for the prescribed activity in respect of which the approval is sought.
- (3) The physical characteristics of the local government controlled area or road must be suitable for the prescribed activity.
- (4) The prescribed activity must not cause nuisance, inconvenience or annoyance to—
 - (a) the occupier of any land which adjoins the location of the prescribed activity; or
 - (b) vehicular traffic; or
 - (c) pedestrian traffic.
- (5) The prescribed activity must not have a detrimental effect on the amenity of the surrounding area.
- (6) If the prescribed activity is mobile roadside vending or stationary roadside vending—
 - (a) whether the prescribed activity for which the approval is sought is competitive with business activities operated from fixed premises in the local government area; and
 - (b) whether the business activities operated from the fixed premises are sufficient to meet public demand for the goods or services proposed to be sold as part of the operation of the prescribed activity; and
 - (c) whether the grant of the approval will result in substantial competition

between the applicant for the approval and operators of business activities operated from fixed premises in the local government area; and

- (d) whether the goods or services proposed to be sold as part of the operation of the prescribed activity, or similar goods or services, are available for sale from fixed premises near the location of the prescribed activity.

5. Conditions that must be imposed on an approval

No conditions prescribed.

6. Conditions that will ordinarily be imposed on an approval

- (1) The conditions of an approval may require that the approval holder—
 - (a) limit the activities authorised by the approval to 1 or more of—
 - (i) a single specified location;
 - (ii) a number of specified locations;
 - (iii) a specified area;
 - (iv) a number of specified areas; and
 - (b) limit the activities to specified days and times; and
 - (c) limit the activities to—
 - (i) a specified period of time; or
 - (ii) specified periods of time; and
 - (d) display the approval in a specified position, and produce the approval for inspection on demand by an authorised person; and
 - (e) take specified measures to protect the safety of persons who may be involved in, or affected by, the activities authorised by the approval; and
 - (f) give specified indemnities and take out and maintain insurance against personal injury and property damage resulting from the activities authorised by the approval; and
 - (g) take specified measures to ensure that the activities authorised by the approval do not cause a nuisance; and
 - (h) if the approval authorises the approval holder to use a specified part of a road for the operation of the activity — pay a specified rental to the local government at specified intervals; and
 - (i) submit the operation of the activity, including any vehicle or premises used in the operation of the activity, for inspection by an authorised

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- person; and
- (j) prominently and permanently display at a specified location the approval number granted by the local government in numbers not less than 50mm in height; and
 - (k) if the approval relates to an activity on a road—give a written indemnity to the State; and
 - (l) limit the activities authorised by the approval such that the activities may not be operated within a specified radius of—
 - (i) fixed premises which sell or offer for sale, the same or similar goods or services; or
 - (ii) the site of operation of another prescribed activity—
 - (A) the operation of which is authorised by an approval granted by the local government; and
 - (B) at which the same or similar goods or services are sold or offered for sale; and
 - (m) limit the operation of the prescribed activity so that it does not—
 - (i) create a traffic nuisance; or
 - (ii) increase an existing traffic nuisance; or
 - (iii) detrimentally affect the efficiency of the road network in which the activity is undertaken; and
 - (n) limit the operation of the prescribed activity so that it does not detrimentally affect the amenity of the neighbourhood in which the prescribed activity is undertaken; and
 - (o) ensure that the operation of the prescribed activity does not create a road safety risk; and
 - (p) ensure that all facilities and equipment used in the operation of the prescribed activity are, at all times, maintained—
 - (i) in good working order and condition; and
 - (ii) in a clean and sanitary condition; and
 - (q) if the approval authorises the operation of a roadside vending activity on a road on specified days—remove the vehicle from the road after the close of business each day unless otherwise specified by the local government.
- (2) If the prescribed activity is mobile roadside vending, the conditions of the approval may also require that the approval holder—
- (a) limit the operation of the activity to—

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- (i) a specified vehicle; or
 - (ii) a number of specified vehicles; and
 - (b) if the approval holder is selling or offering for sale, goods, for example, food, or services—not engage in mobile roadside vending on any local government controlled area or road within a specified radius of fixed premises which sell or offer for sale, the same or similar goods or services.
 - (c) not—
 - (i) unless authorised by an authorised person—park the vehicle used for the activity for a period longer than is necessary to serve a customer who has hailed down the vehicle; or
 - (ii) amplify, or cause to be made, any noise identifying or otherwise drawing attention to the vehicle, except in accordance with standards laid down under the *Environmental Protection Act 1994*; or
 - (iii) place a sign or device advertising the activity of the approval holder on any local government controlled area or road; and
 - (d) keep and maintain the vehicle in a clean, tidy and orderly condition at all times; and
 - (e) produce the vehicle for inspection by an authorised person—
 - (i) prior to commencement of the prescribed activity; and
 - (ii) when required by the authorised person; and
 - (f) limit the operation of the activity to vehicles having specified characteristics, appropriate for the operation of the activity; and
 - (g) only serve customers from the non-traffic or kerbside side of a vehicle used in the operation of the activity; and
 - (h) not operate the activity in a manner which is, or may be, a risk to road safety; and
 - (i) unless authorised by an authorised person—not permit or allow an animal in or about any vehicle used in the operation of the activity; and
 - (j) not discharge trade waste generated by the operation of the activity otherwise than in accordance with an approval under the *Water Supply (Safety and Reliability) Act 2008*; and
 - (k) for waste generated by the operation of the activity—
 - (i) only dispose of the waste—
 - (A) in a safe and sanitary manner; and

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- (B) in a manner which maintains the vehicle and its surrounds in a clean, tidy, sanitary and hygienic condition; and
 - (ii) not dispose of the waste—
 - (A) so as to attract pests; or
 - (B) into a water course; or
 - (C) at another location other than a location properly intended for the receipt of the waste.
 - (3) If the prescribed activity is footpath dining, the conditions of the approval may also require that the approval holder—
 - (a) limit the operation of the activity to a specified area which is contiguous to, or in the vicinity of, a registered café, restaurant, takeaway food shop or similar premises which are operated by the approval holder (*principal premises*); and
 - (b) limit the operation of the activity to the footpath immediately adjacent to the principal premises; and
 - (c) keep and maintain a clear unobstructed pedestrian corridor of a specified width depending on the density of pedestrian traffic; and
 - (d) limit the operation of the activity to the normal business hours of the principal premises; and
 - (e) remove all tables, chairs, fixtures and fittings from the area identified in the approval when the principal premises are not open for business; and
 - (f) keep and maintain the area identified in the approval, including all tables, chairs, fixtures, fittings and equipment used in the operation of the activity at all times in a clean, sanitary and tidy condition; and
 - (g) keep and maintain in and about the area identified in the approval, adequate waste disposal facilities, for example, bins, and be responsible for the removal of all waste from the waste disposal facilities at such intervals as an authorised person may direct; and
 - (h) not place or display any sign or device advertising the activity in the area identified in the approval otherwise than in accordance with an approval of the local government which authorises the use of the footpath for that purpose; and
 - (i) not use an umbrella within the area identified in the approval unless the umbrella has not less than 2m clearance above ground level adjacent to the umbrella and is securely anchored to the satisfaction of an authorised person; and
 - (j) only use furniture in the area identified in the approval which is—

- (i) aesthetically acceptable to the local government; and
- (ii) kept in a proper state of repair; and
- (k) provide, for use by patrons of each of the principal premises and the area identified in the approval, adequate toilet facilities; and
- (l) regularly clean the area identified in the approval—
 - (i) during business hours for the principal premises; and
 - (ii) daily, after the close of business of the principal premises.
- (4) If the prescribed activity is the display of goods for sale on a footpath, the conditions of the approval may also require that the approval holder—
 - (a) limit the operation of the activity to a specified area which is contiguous to, or in the vicinity of, retail premises which are operated by the approval holder (also *principal premises*); and
 - (b) limit the operation of the activity to the footpath immediately adjacent to the principal premises; and
 - (c) keep and maintain a clear unobstructed pedestrian corridor of a specified width depending on the density of pedestrian traffic; and
 - (d) limit the operation of the activity to the normal business hours of the principal premises; and
 - (e) only use, for the purposes of display of the goods for sale, a structure which is—
 - (i) of safe construction; and
 - (ii) in good condition and repair; and
 - (iii) securely fixed to the footpath; and
 - (f) only display goods for sale if the goods are in an orderly and sightly condition; and
 - (g) only display goods for sale if the goods are the property of, or offered for sale by, the approval holder; and
 - (h) remove all goods, and any structure designed for the display of the goods for sale, when the principal premises are not open for business.

7. Term of an approval

- (1) The term of an approval must be determined by the local government having regard to the information submitted by the applicant.
- (2) The term of the approval must be specified in the approval.
- (3) An approval may be granted for a term of up to 1 year.

8. Term of renewal of an approval

- (1) The term for which an approval may be renewed or extended must be determined by the local government having regard to the information submitted by the approval holder.
- (2) The term for which an approval may be renewed or extended must not exceed 1 year.
- (3) If the local government grants the application, the local government must specify in the written notice, the term of the renewal or extension.

Table 1 – Third party certification

Column 1 Application requirement	Column 2 Individuals or organisations that are third party certifiers	Column 3 Qualifications necessary to be a third party certifier
No application requirement stated.		

Schedule 2 Categories of approval that are non-transferable

Section 6

Each approval for the prescribed activity named in schedule 1, section 1 is transferable.

Schedule 3 State-controlled roads to which the local law applies

Section 7

Subject to the chief executive's written agreement under the *Transport Operations (Road Use Management) Act 1995*, section 66(5)(b), every State-controlled road in the local government area of the local government.

Schedule 4 Dictionary

Section 4

footpath has the meaning given in the *Transport Operations (Road Use Management) Act 1995*.

goods includes wares, merchandise, chattels, money, stone, timber, metal, fluid and any other article, substance or material whatsoever and also includes an animal.

mobile roadside vending means an operator soliciting or carrying on the supply of goods or services (including food or drink) for profit in circumstances where—

- (a) the operator travels from place to place; and
- (b) the operator supplies the goods or services to a customer in response to the customer waiving down the operator.

principal premises has the meaning given in schedule 1, section 6(3)(a) and (4)(a).

sale includes —

- (a) to sell; and
- (b) sell for resale; and
- (c) offer, or expose for sale; and
- (d) agree or attempt to sell; and
- (e) receive, keep or have in possession for sale; and
- (f) cause or permit to be sold or offered or exposed for sale; and
- (g) provide a sample; and
- (h) barter; and
- (i) auction; and
- (j) supply or have available for supply; and
- (k) suffer or permit any of the above acts.

stationary roadside vending means an operator soliciting or carrying on the supply of goods or services (including food or drink) for profit in circumstances where—

- (a) the operator carries on the activity from—
 - (i) a specified place; or
 - (ii) a number of specified places; but
- (b) the activity is not footpath dining.

vehicle has the meaning given in the *Transport Operations (Road Use Management) Act 1995*.

waste has the meaning given in the *Environmental Protection Act 1994*.