CLONCURRY SHIRE COUNCIL LOCAL LAW NO. 9 (ROADS) 2001

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PART 1 - PRELIMINARY

1. Short title

This local law may be cited as *Local Law No. 9 (Roads) 2001*.

2. Objects

The objects of this local law are to -

(a) confer on the local government certain powers incidental to its responsibilities for roads within its area; and

(b) provide for the naming of roads and the numbering of adjacent properties; and

(c) regulate the making of alterations and improvements to local government roads.

3. Definitions - the dictionary

The dictionary in the schedule defines particular words used in this local law.

4. Relationship with other laws

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

(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, IMPROVEMENT AND CLOSURE OF ROADS

Division 1 - Road construction

5. Construction of roads

(1) The local government may, subject to the *Integrated Planning Act 1997*, construct a local government road.

(2) The local government may only construct a State-controlled road if authorised to do so under the *Transport Infrastructure Act 1994*.

Division 2 - Maintenance, repair and improvement of roads

6. Maintenance and repair of roads

(1) The local government may, subject to the *Integrated Planning Act 1997*, carry out work for the repair or maintenance of a road.

(2) However, the local government may only carry out work for the repair or maintenance of a State-controlled road if authorised to do so under the *Transport Infrastructure Act 1994*.

7. Improvements of roads

(1) The local government may, subject to the *Integrated Planning Act 1997* 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.*

- *The local government may construct footpaths and footbridges with associated structure.*

- *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 if authorised to do so under the *Transport Infrastructure Act 1994*.

Division 3 - Traffic control while roadwork in progress

8. Official traffic signs

If roadwork has started or is about to start on a road, an authorised person may, subject to the *Transport Operations (Road Use Management) Act 1995*, regulate traffic by installing an official traffic sign to facilitate the roadwork, or to avoid risk to life or property that may result from carrying out the roadwork.

9. Power to facilitate roadwork

(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 for subsection (2) - 40 penalty units.

Division 4 - Road closures and official traffic signs

10. Road closures

If a local government closes a road in accordance with section 915 of the Act and gives public notice by installing an official traffic sign at each approach to the closed road, a person must not contravene an indication on such an official traffic sign.

Maximum penalty - 40 penalty units.

PART 3 - MANAGEMENT POWERS

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

(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, 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.

12. Road signs

(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.

13. Numbering of adjacent premises and allotments

(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 for subsection (3) - 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 for subsection (4) - 10 penalty units.

14. Power to require adjoining owner to fence land

(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 land.

(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 for subsection (3) - 50 penalty units.

PART 4 - CONTROL OF LOCAL GOVERNMENT ROADS

Division 1 - Alteration or improvement of roads

15. Requirement to hold approval

(1) A person (other than the local government) must not make an alteration or improvement to a local government road unless authorised by an approval under this division.

Maximum penalty for subsection (1) - 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, an approval under this division -

(a) cannot authorise an alteration or improvement for which a development permit is required under the *Integrated Planning Act 1997* or a tree clearing permit is required under the *Land Act 1994*[1]; and

(b) is not required in addition to a development permit under the *Integrated Planning Act 1997* or a tree clearing permit under the *Land Act 1994*.

[1] See section 255 of the *Land Act 1994*.

16. Application for approval

An application for an approval 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 approval; and

(e) other information and materials required by subordinate local law.

17. Grant of approval

(1) The local government may grant an approval authorising an alteration or improvement to a local government road if satisfied that the approval may be granted consistently with the objects of this local law and the criteria laid down by subordinate local law.

(2) A subordinate local law may specify criteria for granting an approval authorising a proposed alteration or improvement to a local government road.

18. Conditions of approval

(1) An approval 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 an approval may, for example -

(a) require compliance with specified safety requirements; and

(b) require the holder of the approval to carry out specified additional work such as earthwork and drainage work; and

(c) regulate the time within which work must be carried out; and

(d) require the holder of the approval to give the local government specified indemnities; and

(e) require the holder of the approval to take out specified insurance indemnifying persons who may suffer personal injury, or loss or damage, as a result of the work; and

(f) require the holder of the approval to maintain structures erected or installed, or vegetation planted, under the approval in good condition; and

(g) require the holder of the approval to remove a structure erected or installed under the approval at the end of a stated period.

(3) The local government may, by subordinate local law, prescribe conditions that must be imposed in an approval or that will ordinarily be imposed in an approval to make an alteration or improvement to a local government road.

Division 2 - Use of local government roads for regulated purposes

19. Requirement to hold approval

(1) A person must not use a local government road for a regulated purpose unless authorised by an approval under this division.

Maximum penalty for subsection (1) - 50 penalty units.

(2) A "regulated purpose" is -

(a) depasturing animals, or driving or leading animals across a road; or

(b) discharge of stormwater or wastes; or

(c) the deposit of goods or materials;

(d) but does not include a purpose for which a development permit is required under the *Integrated Planning Act 1997*.

20. Application for approval

An application for an approval 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 by subordinate local law.

21. Grant of approval

(1) The local government may grant an approval authorising the use of a local government road for a regulated purpose if satisfied that the approval may be granted consistently with the objects of this local law and the criteria laid down by subordinate local law.

(2) A subordinate local law may specify criteria for granting an approval authorising the use of a local government road for a regulated purpose.

22. Conditions of approval

(1) An approval 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 an approval may, for example -

(a) require compliance with specified safety requirements; and

(b) require the holder of the approval to exhibit specified warning notices and to take other specified precautions for the safety of road users; and

(c) require the holder of the approval to give specified indemnities and to take out specified insurance.

(3) The local government may, by subordinate local law, prescribe conditions that must be imposed in an approval or that will ordinarily be imposed in an approval authorising the use of a local government road for a regulated purpose.

Division 3 - Approvals generally

23. Compliance with conditions of approval

The holder of an approval must ensure that the conditions of the approval are complied with.

Maximum penalty - 200 penalty units.

24. Power to change conditions of an approval

(1) The local government may, by written notice given to the holder of an approval, change[2] the conditions of the approval.

(2) However, the local government may only change conditions of an approval if -

(a) the holder of the approval agrees to the proposed change; or

(b) the local government -

(i) gives the holder of the approval 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.

[2] A **"change"** to the conditions of an approval includes a change by omission, substitution or addition (See *Acts Interpretation Act 1954*, section 36).

PART 5 - ENFORCEMENT

25. Compliance notices

(1) If the holder of an approval contravenes a provision of this local law or a condition of the approval, 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 approval must comply with a notice under this section.

Maximum penalty for subsection (3) - 50 penalty units.

26. Local government's power to have work carried out

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 carry out the work.

27. Powers of entry and cost recovery

(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 carry out the work is the owner or occupier of the land; or

(b) under section 1070 of the Act, if the person who has failed to carry out 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 section 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 Act.[3]

[3] Section 1067(2) provides for the payment of interest on the same basis as for an overdue rate.

28. Suspension or cancellation of approval

(1) If -

(a) the holder of an approval does not comply with a requirement of a compliance notice; or

(b) changes in circumstances since the approval was issued make the continued operation of the approval inappropriate;

(c) the local government may, by written notice given to the holder of the approval, suspend or cancel the approval.

(2) However, before suspending or cancelling an approval, the local government must -

(a) give written notice to the holder of the approval of the proposed suspension or cancellation; and

(b) allow the holder of the approval 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.

PART 6 - MISCELLANEOUS

29. Property in road structures on undedicated roads[4]

(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 an approval under this local law or an approval or permit under another law makes other provision about ownership of a structure erected or installed under the approval or permit, the provision of the approval or permit prevails.

30. Damage to roads

(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.

(3) However, this section does not apply to an employee or agent of the local government if that person causes damage to a road which is necessarily associated with the local government's general powers of control over roads under Chapter 13, Part 2 of the Act and this local law.

[4] 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.

31. Defences

It is defence to any breach of or non-compliance with any provision of this local law if a person has a reasonable and lawful excuse.

32. Subordinate local laws

The local government may make subordinate local laws in relation to those matters about which this local law specifically allows for the making of subordinate local laws.

SCHEDULE

DICTIONARY

section 3

"allotment" means a single parcel of land.

"authorised person" means a person appointed as an authorised person for this local law.[5]

"chief executive" means the chief executive of the department administering chapter 5 of the *Transport Infrastructure Act 1994*.

"compliance notice" see section 25(1).

"fencing notice" see section 14(1).

"freehold land" has the meaning given to that term by the *Vegetation Management Act 1999*.

"local government road" means a road other than a State-controlled road.

"official traffic sign" means an official traffic sign under the *Transport Operations (Road Use Management) Act 1995*.

"private road" means any road that has not been dedicated for public use as a road; driveway or access easement which is contained wholly within any part of freehold land.

"regulated purpose" see section 19(2).

"road" includes a State-controlled road.

"roadwork" means work for the construction, maintenance, repair or improvement of a road.

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

"the Act" means the *Local Government Act 1993*.

"undedicated road" means a local government road in which the land is not dedicated for public use as a road but does not include a private road.

[5] See section 18 of *Local Law No. 1 (Administration) 2001*.