

PART 13 - SCHEDULE 3 - PERMIT CONDITIONS

17. STANDARD PERMIT CONDITIONS

The following standard permit conditions, as determined by Council and amended from time to time, are incorporated in this local law and apply to all Permits issued or corrections to permits issued by Gannawarra Shire Council. They are in addition to, and, if in conflict with, override any conditions applicable to any specific type of permit. These conditions should form part of or be attached to every permit issued.

- (1) The permit application must be accompanied by the appropriate fee, and the permit application will not be processed until the appropriate fee is paid in full to Council, or the fee due is made subject to an approved payment system.
- (2) If application is approved and issuing the permit involves an additional fee or fees, the permit is not valid until the appropriate fee or fees are paid in full to the Council, or the fee due is made subject to an approved payment system.
- (3) The applicant may be required to give public notice, or written notice to adjoining landowners and other specified parties of such application inviting submissions.
- (4) Except where otherwise expressly stated in this Permit, a Permit will operate from the date it is issued until 30 June next following that date.
- (5) This Permit may be fully or partially cancelled or suspended by Council at any time, if in the opinion of the Authorised or Delegated Officer:
 - (a) there has been any material misstatement or concealment in relation to the application for a Permit; or
 - (b) there has been a failure to comply with any condition or conditions subject to which the Permit was issued.

Where paragraph (a) of this clause applies, the Permit may be suspended by giving seven (7) days' notice of the decision to propose full or partial cancellation and of advice that an appeal may be lodged with the Council. If an appeal is lodged within that seven (7) days, the suspension continues until full or partial restoration or cancellation of the Permit is determined in the appeal to the Council.

Where paragraph (b) of this clause applies, any cancellation will not take place unless:

- (i) a Notice to Comply has been served upon the Permit Holder;
 - (ii) there has been a failure to comply with the Notice to Comply within the time required;
 - (iii) the failure to comply continues for a period of seven (7) days after the time specified in the Notice.
- (6) Where the Permit Holder is not the owner of the property to which the Permit applies and the owner's consent was required to be given to the application for the Permit, the owner must be notified of any and all Notices to Comply and the reasons why it has been served on the Permit Holder.
- (7) The Council reserves the right to correct or modify any Permit in relation to a clerical mistake or other error arising unintentionally or by an omission; or an evident material miscalculation of figures or an evident material mistake in description of any person, thing or property referred to in the Permit. The Council will give notice of any correction or modification of a Permit to the Permit Holder.
- (8) Permit applicants should also be aware that under the Local Law any person who makes any false representation or declaration (whether oral or in writing) in, or who omits any relevant information from, an application for a Permit or exemption is guilty of an offence with a maximum penalty of 20 Penalty Units. Also any person who fails to comply with a Notice to Comply within the required time is guilty of an offence with a maximum penalty of 10 Penalty Units.
- (9) Any permit applicant or holder who is aggrieved by any matter in the granting, reviewing, modification, suspension, cancellation or renewal of this Permit, and/or in relation to any written notice, Notice to Comply or Infringement Notice issued in relation to breaches of conditions of this Permit, may by written request within twenty-eight (28) days of the date of the incident, notice or matter concerned, seek a review by Council (including by its delegated appeals officers) of the matter. However, the making of any such request will not in any way remove that person's obligation to act in accordance with any directions or notices which are applicable under the Permit or any notices issued pursuant to matters related to this Permit.
- (10) As Council is the final review authority in matters relating to this Permit, Council's review decision is final. However, if the review involves any infringement or penalty notice issued in relation to the permit, then

during the review process such a notice will be suspended pending the review decision. Following any such Infringement Notice review decision, there is a further right to be heard in the Magistrate's Court provided notice is given to Council within 14 days.

ITINERANT OR ROADSIDE, PARKS & RESERVE TRADING PERMIT CONDITIONS

Compliance

- (11) The permit holder must at all times comply with all relevant legislation and regulation, including but not limited to: the *Food Act 1984*, the *Public Health and Wellbeing Act 2008*, the *Road Safety Rules 2009*, the *Disability Discrimination Act 1992* and its subordinate regulations and Australian Standards, and Councils' Local Laws. There is also a requirement for compliance with the *Building Act 1993* (and associated regulations),. If the road is *VicRoads* managed road, permission must be separately obtained from *VicRoads*. This clause relates to issues including but not limited to food service registration, waste water, litter and garbage disposal, noise management, road safety, parking, vehicle registration, lighting, clearance and visibility, pedestrian access, temporary structures, utility connectivity and electrical cabling.
- (12) The permit holder is required to have and maintain public liability insurance to an amount of not less than \$10 million dollars.
- (13) The permit holder is required to complete and sign an indemnity form for Council prior to any trading activity is undertaken. (*attached *Indemnity Form*)

Parking

- (14) The permit holder may only park or locate any vehicle trailer or other trading equipment on the area of the trading site, and may not park any vehicle on any Council Land other than on a road or ancillary car parking area.

Operations

- (15) The permit holder must take all reasonable steps to ensure the activity does not disturb, annoy or disrupt adjacent property owners or occupiers and is not detrimental to the amenity of the area, including but not limited to visual impact, lighting, fire prevention, wind-blown equipment, excessive noise, odour and waste management.
- (16) The permit holder is responsible for waste management and litter disposal in the near vicinity of the trading site (within a distance of thirty metres, except where this extends onto another occupied trading site). A waste management plan, if required by Council, must be implemented.
- (17) Under this permit the following matters are not permitted unless a Special Condition exempts the trader or prior written permission is obtained from Council:
 - (a) service of alcohol;
 - (b) fireworks;
 - (c) flashing or backlit commercial signage;
 - (d) music amplification or public address systems;
 - (e) outdoor dining facilities;
 - (f) advertising signage (subject to separate permit);
 - (g) occupying more than one site in trading location at any one time;
- (18) Unless otherwise stated under Special Conditions, Council does not provide or warrant the availability of any facilities, utilities or any other services at the trading site.
- (19) Council accepts no responsibility, and the permit holder is solely responsible for the security of their property and equipment at all times.

General

- (20) Local Law permits are not transferrable. The trading permit may not be sold or the trading site sub-let to any other party.
- (21) Council retains the right to terminate or refuse to renew any trading permit.

- (22) Council retains the right to alter or terminate any itinerant trading site by seven (7) days written notice.
- (23) Council or an Authorised or Delegated Officer may in urgent circumstances request the trader cease trading on the site and remove all trading facilities, vehicles, signage, waste, and/or any other equipment in the shortest reasonable time. If such a request is made the trader must comply.
- (24) Council or an Authorised or Delegated Officer may impose any reasonable condition upon the activity from time to time, which Council believes is necessary or which will increase the likelihood of the itinerant trading activity being compatible with road safety, pedestrian safety, protection of Council assets, or community amenity.

Special Conditions of Permit

- (25) The permit holder is not to trade on the site outside of the approved trading hours specified on the permit.
- (26) The permit holder, whether or not permitted by registration under the Food Act 1984 or any other legislation, may be required to limit trading on the Council Site subject of this permit to: specified food and beverages only or, specified goods and services only.
- (27) Hours of operation:
 - Cohuna - Garden Park:**
 - Monday to Friday - 4:00 pm to 10:30 pm
 - Saturday - 11:00 am to 10:30 pm
 - Sunday 9:00 am to 10:30 pm
 - Kerang - Atkinson Park:** Monday to Sunday - 8:00 am to 10:30 pm
 - Kerang - RSL Drive:** Monday to Sunday - 8:00 am to 10:30 pm

PART 7 - BUSINESS AND BUILDERS

BUSINESS

52. ROADSIDE TRADING, BUSKING AND PERFORMING

- (1) A Person must not, without a Permit, erect or place on any Road or Council Land a Vehicle, caravan, trailer, table, stall or other similar structure for the purpose of selling or offering for sale any goods or services.

Penalty: 20 Penalty Units

- (2) A Person, must not, without a Permit, on any Road or Council Land Busk or perform to the public, or play any musical instrument or use any sound amplification equipment.

Penalty: 5 Penalty Units

- (3) Sub-clauses (1) and (2) do not include short-term outdoor community events on Council Land, although such events may be subject to a Permit under Clause 76 of this Local Law.

- (4) Sub-clause (2) does not apply to any sounds within a motor vehicle which cannot be heard outside that motor vehicle or any sound or noise conveyed through any headphones which sound or noise is not audible to a Person other than the wearer of the headphones.

Guidelines for roadside trading, performing or busking, as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

PART 11 - SCHEDULE 1: DISCRETION GUIDELINES

52. ROADSIDE TRADING OR PERFORMING

These Guidelines as determined by Council from time to time are incorporated in this local law for determining whether to grant a permit for Roadside Trading or Performing (busking).

In determining whether to grant a Permit to allow trading or performing from a Road or to a person on a Road, an Authorised or Delegated Officer must have regard to:

- (1) whether the safety of Road users or the passage of Vehicles will be affected by the placement or performance;
- (2) and:
 - (a) whether Permits required by *Public Health and Wellbeing Act 2008*, *Food Act 1984* or any other legislation have been obtained;
 - (b) whether the activity will disturb, annoy or disrupt adjacent property owners or occupiers;
 - (c) whether the activity will be detrimental to the amenity of the area;
 - (d) the nature and duration of any performance and whether it should be time limited;
 - (e) whether an alternative performance location can be identified to reduce any annoyance or disruption to property owners or occupiers or other persons lawfully using the area;
 - (f) whether audience attracted by a performance may cause traffic, pedestrian or trader disruption;
 - (g) whether other performers will be unfairly impacted or excluded by the location or duration of any permit;
 - (h) whether appropriate arrangements can be made for:
 - waste water disposal;
 - litter and garbage;
 - lighting; and
 - advertising signs;
- (3) whether the consent of Vic Roads has been obtained where the road is an arterial or Vic Roads controlled road;
- (4) whether any indemnity/guarantee has been provided to the Council;
- (5) whether the activity will be detrimental to local businesses in the vicinity; and
- (6) any other matter the Authorised or Delegated Officer reasonably believes is relevant to the application.

PRIVACY NOTIFICATION

Please note: Council collects your personal information for the purposes of processing your application for a permit. If you have any questions, concerns or complaints regarding privacy, please write to: Information Privacy Officer, Gannawarra Shire Council, PO Box 287, KERANG 3579. For a copy of Council's Privacy Policy please contact Council's Customer Service or email council@gannawarra.vic.gov.au