



DISTRICT COUNCIL OF LOXTON WAIKERIE

Alterations & Business Use of a Public Road

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<i>Responsible Officer(s):</i>	Director Infrastructure Services
<i>Strategic reference</i>	Economic activity: strategy 2.1.1 support and encourage development and diversification of our local small business sector.
<i>Relevant Delegations:</i>	
<i>Council File GDS Reference:</i>	14.63.1
<i>Other Relevant Policies:</i>	
<i>Related Procedures:</i>	Permit to undertake work on Council land
<i>Relevant Legislation:</i>	Sec 221 & 222 Local Government Act 1999
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Introduction

We will facilitate, wherever possible, a change in business use that may assist a small to medium business to develop and grow to the benefit of the community.

The purpose of this policy is to ensure that alterations and or business use of a public road be appropriately authorised and a permit issued by Council and that such authorised use is conducted in a manner which does not compromise the health and safety of the general community.

The predominant land use in the District Council of Loxton Waikerie, eg vineyards and orchards, gives rise to the requirement for public roads (and road reserves) to be utilised by adjacent land owners.

Other potential business purposes include (although are not limited to) things such as:

- water dispersal
- extending a café or restaurant to include outside tables and seating on a footpath or roadside; or
- operating a business from a mobile vehicle, or kiosk on the side of a road.

Strategic reference

Economic activity; strategy 2.1.1: support and encourage development and diversification of our local small business sector.

Application of Policy

This Policy applies to all persons that are seeking to alter and/ or use a public road (or road reserve) which the Council owns by virtue of Section 208 of the Local Government Act 1999 (“the Act”).

Aim

This document sets out the Council’s policy with respect to:

- alterations; and/or
- business use,

of public roads (which includes road reserves) in the Council area.

Defined Terms

The term “public road” is defined in the Local Government Act 1999 to mean:

- any road¹ that is owned by the Council or is under the care, control or management of the Council;
- any land transferred or surrendered to the Crown for use as a public road; and
- any road or land shown as a street or road on a plan of division which is declared by the Council to be a public road.

Role of Council

In accordance with Sections 221 and 222 of the Local Government Act 1999 a public road cannot be “altered” or “used for a business purpose” unless the Council has issued an authorisation and/or a permit.

In circumstances therefore, where a public road is to be altered and/or used for business purposes, the Council is the administering authority to authorise and/ or permit such alteration and/or use. For the purposes of issuing an authorisation and/or a permit the following issues have been identified as requiring consideration. (This is not an exhaustive list and other issues may be taken into consideration at the discretion of the Council, depending upon the circumstances of the matter):

- the location of the proposed alteration and/ or use;
- the nature of the proposed alteration and/ or use, eg the installation of fixtures and fittings in addition to any that may require approval under the Development Act 1993);
- the length of time the public road is required;
- the maintenance requirements of any proposed fixtures and fittings;
- the extent and method of any (road) closure)
- management of the area;
- items of civic administration (eg imposition of fee, insurance requirement, monitoring and enforcement)

¹ The term “road” is defined in the Local Government Act 1999 (“the Act”) to mean: a public (or private) street, road or thoroughfare to which the public have access on a continuous, or substantially continuous basis, to vehicles and pedestrians including a bridge, alley, laneway, viaduct, subway or walkway.

Policy

The majority of all terms and conditions of the authorisations and permits are contained in the authorisations and permits (copies of which are annexed to this Policy). This Policy however, should be read in conjunction with the authorisation(s) and permit(s) and should be used as a guide to the requirements of the Council with respect to the alteration and/or use of a public road generally.

Authorisations (Alterations)

It is a breach Section 221 of the Act if a person, with the exception of the Council or a person acting under some other statutory authority alters a public road unless authorised by the Council. A maximum penalty of \$5,000.00 may be imposed.

An “alteration” of a public road is defined by the Act to include:

- altering the construction or arrangement of the road to permit or facilitate access from an adjacent property;
- erecting or installing a structure (including pipes, wires, cables, fixtures, fittings and other objects) in, on, across, under or above a public street or road;
- changing or interfering with the construction, arrangement or materials of the street or road;
- changing, interfering with or removing a structure (including pipes, wires, cables, fixtures, fittings or other objects) associated with the street or road; or
- planting a tree or other vegetation on the street or road, interfering with vegetation on the street or road, or removing vegetation from the street or road.

A person can apply to the Council for an authorisation to alter a public road by making an application to the Council in the form attached at Annexure One. The applicant may be required to provide a site plan, drawn to scale to show the actual proposed area for use.

The Council has the discretion to issue an authorisation under Section 221 of the Local Government Act 1999 on such terms and conditions the Council sees fit. Annexed to this Policy as Annexure 2 is a copy of such terms and conditions as may apply from time to time. Where the alternation is a structure to be erected on a public road, for the purpose of making its determination as to whether to grant an authorisation and/or the terms and conditions of such grant, the Council must give consideration as to whether the structure will:

1. unduly obstruct the use of the road; or
2. unduly interfere with the construction of the road; or
3. have an adverse effect on road safety.

Such matters may effect, amongst other things, the time granted under the authorisation and other terms and conditions. An authorisation may be issued for a particular occasion or act, but it cannot be issued for a term exceeding 42 years. A person may apply to renew an authorisation, however, such application must be made within the time prescribed under the authorisation.

Any person holding an authorisation, is required to comply with the terms and conditions contained therein.

Permits (Business Use)

If a person intends on using a public road for a business purpose, the person must, in accordance with Section 222 of the Act hold a permit. That is, it is a breach of the Act to use a public road for business unless authorised by the Council to do so, by a permit. A maximum penalty of \$2,500.00 and an expiation fee of \$210.00 may be imposed.

Business purposes include (although are not limited to) things such as:

- depasteurising stock;
- cropping;
- extending a café or restaurant to include outside tables and seating on a footpath or roadside; or
- operating a business from a mobile vehicle, or kiosk on the side of a road.

A permit may grant rights of exclusive occupation in relation to part of a public road.

A person may apply to renew a permit, however, such application must be made within the time prescribed under the permit. Any permit issued cannot exceed a term of five years.

A person can apply to the Council for a permit to use a road for a business purpose by making an application to the Council in the form attached as Annexure Three. The applicant may be required to provide a site plan, drawn to scale to show the actual proposed area for use. The Council has the discretion to issue a permit under Section 222 of the Act on such terms and conditions the Council sees fit. Annexed to this Policy as Annexure Four is a copy of such terms and conditions as may apply from time to time.

Any person holding a permit, is required to comply with the terms and conditions contained therein.

Administration Issues

Public Consultation

Where a Council proposes to grant an authorisation or permit:

- (1) that would result in any part of a road being fenced, enclosed or partitioned so as to impede the passage of traffic to a “material degree”; or
- (2) in relation to a use or activity for which public consultation is required under the Local Government (General) Regulations 1999,

then the Council must prior to granting the authorisation and/or permit follow the relevant steps set out in its public consultation policy.

Conditions of an Authorisation and/or a Permit

The Council may grant an authorisation or permit under the Act on such conditions as the Council considers appropriate and reasonable in the circumstances.

By way of example, conditions such as the following may be imposed:

- require compliance with specified safety requirements – for example, planting of buffer zones or the erection of fences;

- require maintenance of structures erected or installed, or vegetation planted, under the authorisation and/or permit in good condition and to specified standards;
- require the removal of a structure erected or installed under the authorisation at the expiration of the authorisation.

Compliance with and Cancellation of an Authorisation and/or Permit

Authorised Officers (of the Council) will monitor the compliance of authorisations and permits and all persons holding an authorisation and/or permit are required to comply with any (reasonable) direction given by such an officer.

The Council may by notice in writing to the holder of an authorisation and/or permit cancel an authorisation and/or permit for breach of a condition. Before cancelling, the Council will give at least one months notice, however, it may in certain circumstances give a longer period of time.

The Council will specify in the notice the grounds on which the Council proposes to cancel the authorisation and/or permit. The holder of the authorisation and/or permit will be given the opportunity to make a written reply to the Council as to why the authorisation and/or permit should not be cancelled.

The Council will consider any representation made by the holder of the authorisation and/or permit to the notice of proposed cancellation of the authorisation and/or permit, prior to and for the purposes of determining, whether to cancel the authorisation and/or permit.

Fees and Charges for Authorisations or Permits

The Council may impose fees on the application for and the granting of an authorisation or permit. These fees or charges will be reviewed on an annual basis. A copy of the applicable fees are available at www.loxtonwaikerie.sa.gov.au - Fees & charges register 2010/2011

Where a person wishes to “alter” a road for the purpose of using it for a business purposes, an authorisation and a permit will be required. Separate applications must be made and although separate fees may be charged in respect of each grant, the Council may apply a concession and/or discount to either of these fees to those persons requiring both. The entitlement and amount of such concession and/or discount shall be at the discretion of the Council.

Unauthorised Alterations or Business Use of a Public Street or Road (Encroachments)

Section 234(1) of the Act permits the Council to remove or dispose of any structure, object or substance from a road where:

- it has been erected, placed or deposited on road without the authorisation and/or permit required; or
- where an authorisation and/or permit has been granted but has since expired or been cancelled.

If the Council uses its powers under Section 234(1), the Council may recover the cost in doing so (as a debt) from the person who erected, placed or deposited the structure, object or substance on the road.

The Council has absolute discretion as to whether it notifies the person who erected, placed or deposited the structure, object or substance on the road, to allow them an opportunity to remove or

dispose of the structure, object or substance. Discretion will be exercised by the Council having due regard to the hazard and risk the structure, object or substance has to users of the road and the members of the community in particular circumstances.

An authorisation and/or a permit is NOT approval under the Development Act 1993. You may need to apply for development approval and the Council makes no warranties that approval will be granted, notwithstanding you may be granted an authorisation and/or permit.

Availability of the Policy

This Policy will be available for inspection at the Council Offices at Loxton or Waikerie during ordinary business hours at no charge.

Copies of this Policy will also be available from Councils website www.loxtonwaikerie.sa.gov.au or postal copies may be obtained from the Council Office free of charge.