

PART 8 ENFORCEMENT AND PERMIT

101. INTRODUCTION

The aim of this Part is to provide for means of enforcing this Local Law and a means of granting, amending and revoking Permits where one is required under this Local Law.

Division 1 - Enforcement

102. POWER OF AUTHORISED OFFICER

An Authorised Officer may, on behalf of Council, issue a warning to, serve a notice to comply on or issue an infringement notice to a Person who is breaching the Local Law and may, on behalf of Council, commence legal proceedings (including proceedings for injunctive relief) and/or may impound items, goods or equipment in relation to a breach of the Local Law.

103. DIRECTIVE POWERS

A Person who, in the opinion of an Authorised Officer, is in contravention of this Local Law, must immediately obey any reasonable request of the Authorised Officer relating to that contravention.

Penalty: 3 Penalty Units

104. URGENT POWERS

An Authorised Officer may, in urgent circumstances arising from a failure to comply with this Local Law, issue a direction under clause [103](#) of this Local Law or a Permit, to take action to remove, remedy or rectify a situation, provided:

- a) the Authorised Officer considers the circumstances or situation to be sufficiently urgent and that the time involved or difficulties associated with the serving of a notice to comply may place a Person, Animal, Property or thing at risk or in danger; and
- b) details of the circumstances and remedying action are as soon as possible forwarded to the Person on whose behalf the action was taken; and
- c) Council is advised of the action taken at the first available opportunity; and
- d) the action taken does not extend beyond what is necessary to cause the immediate abatement of or to minimise the risk or danger involved.

105. RECOVERY OF EXPENSES

Any expense incurred by the Council in consequence of a breach of this Local Law or in the execution of work directed pursuant to this Local Law to be executed by any Person and not executed by him or her must be paid by the Person committing such breach or failing to execute such work. Any costs incurred by Council may be recoverable by it as a debt due and payable.

106. NOTICES TO COMPLY

1. A notice to comply must state the:
 - a) nature of any breach of the Local Law; and

- b) time and date by which the breach must be remedied.
2. The time required by a notice to comply must be reasonable in the circumstances, having regard to:
- a) the amount of work involved; and
 - b) the degree of difficulty; and
 - c) the availability of necessary materials or other necessary items; and
 - d) climatic conditions; and
 - e) the degree of risk or potential risk; and
 - f) any other relevant factor.

107. FAILURE TO COMPLY WITH A NOTICE TO COMPLY

A Person who fails to comply with a notice to comply served on that Person is guilty of an offence.

Penalty: 10 penalty units

108. OBJECTION TO NOTICE TO COMPLY

1. A Person on whom a notice to comply has been served may lodge an objection with the Authorised Officer who issued the notice to comply within 7 days of the service of the notice to comply, stating the grounds of objection.
2. If a Person lodges an objection the notice to comply must be stayed pending determination of the objection by the Authorised Officer.
3. Within 14 days of the lodging of an objection the Authorised Officer may:
 - a) confirm the notice to comply; or
 - b) vary the notice to comply, if the Authorised Officer is satisfied that the variation will appropriately address the breach; or
 - c) withdraw the notice to comply, if the Authorised Officer is satisfied that there is no longer any case for the notice to comply to be served.
4. If the Authorised Officer:
 - a) confirms the notice to comply he or she must, all by written notice, specify a new time within which the Person must comply with the notice to comply; and
 - b) varies the notice he or she must issue a replacement notice to comply and specify a new time within which the Person must comply with the replacement notice to comply.
5. If the Authorised Officer fails to confirm, vary or withdraw the notice to comply within the 14 day time period referred to in subclause [108.3](#) he or she will be deemed to have confirmed the notice to comply and specified a new time period within which to comply with the notice of 7 days following the end of that 14 day period.
6. Failure to comply with a notice as confirmed or replaced is a contravention of this Local Law in accordance with clause [107](#).

109. POWER OF AUTHORISED OFFICERS TO IMPOUND

1. If an Authorised Officer has impounded anything in accordance with this Local Law, Council may refuse to release it until the Appropriate Fee or charge for its release has been paid to Council.
2. As soon as it is reasonably practicable to do so, the Authorised Officer must serve a notice of impoundment on the Owner or Person responsible for the impounded item setting out the fees and charges payable and time by which the item must be retrieved. The time for payment must be not less than 14 days.
3. If, after the time required in a notice of impoundment, an impounded item is not retrieved, an Authorised Officer may take action to dispose of the impounded item according to the following principles:
 - a) where the item has no saleable value, it may be disposed of in the most economical way; and
 - b) where the item has some saleable value the item may be disposed of either by tender, public auction or private sale but failing sale may be treated as in paragraph [109.3.a](#)); and
 - c) where the Owner has advised Council in writing that Council may dispose of the goods because he or she does not intend to retrieve them, Council may dispose of them by the method identified in either paragraph [109.3.a](#)) or [109.3.b](#)).
4. When the identity or whereabouts of the Owner or Person responsible for the impounded item is unknown, the Authorised Officer must take reasonable steps to ascertain the identity or whereabouts of that Person and may proceed to dispose of the impounded item in accordance with subclause [109.3](#) once he or she is satisfied that all reasonable efforts have been made to contact the Owner or Person responsible for the impounded item.
5. Any proceeds from the disposal of impounded items under this Local Law must be paid to the Owner or to the Person who, in the opinion of Council, appears to be authorised to receive the money except for the reasonable costs incurred by Council in the administration of this Local Law.
6. If a Person described in subclause [109.4](#) cannot be identified or located and the money is held by Council for 12 months, Council must comply with requirements of the *Unclaimed Money Act 2008*.

110. INFRINGEMENT NOTICE

1. As an alternative to prosecution, an Authorised Officer may serve an infringement notice on a Person who:
 - a) has contravened; or
 - b) is reasonably suspected of having contravened this Local Law.
2. The penalties fixed in respect of an infringement notice served under this clause [110](#) are the penalties specified in Schedule 1.

111. PAYMENT OF PENALTY

1. A Person served with an infringement notice may pay the penalty specified in the infringement notice to Council within 28 days of service, failing which legal proceedings can be instituted against that Person.

2. Any Person served with an infringement notice is entitled to disregard the infringement notice and defend any subsequent prosecution in Court.
3. An Authorised Officer may, following consideration of correspondence from any Person served with an infringement notice, waive the infringement notice.
4. An infringement notice may be waived, even if the appropriate penalty has been paid provided that the penalty shown on the infringement notice is paid in the manner described in subclause [111.1](#) or before the issuing (even if not yet served) of a Charge in respect of the Offence.
5. Once an infringement notice has been waived, any penalty paid before the waiver must be refunded.

112. CONTINUING OFFENCE

Where a Person has been convicted of an Offence, that Person will be liable to a penalty for a continuing Offence of **1 penalty** unit for each day after conviction for an Offence during which the contravention continues.

Division 2 – Permits, Fees and Delegations

113. APPLICATION FOR A PERMIT

1. Any Person who wishes to apply for a Permit may do so by:
 - a) lodging with Council an application containing any information required by this Local Law; and
 - b) paying to Council any Permit Fee.
2. Council may in its discretion:
 - a) require further information from the applicant in relation to the Permit applied for; or
 - b) grant the application for a Permit; or
 - c) grant the application by issuing a Permit with conditions; or
 - d) refuse to grant the application.
3. In exercising its discretion whether to grant the application for a Permit Council may have regard to any or all of the following:
 - a) any policy, code of practice, standards or guidelines adopted by Council; and
 - b) any submission that may be received in respect of the application; and
 - c) any comments that may be made in respect of the application by any Public Body, community organisation or other body or Person; and
 - d) any other matter it considers relevant.
4. Any Permit issued by Council will not be operative until the applicant pays any Permit Fee and satisfies any other conditions listed on the Permit.

114. FEES AND CHARGES

1. Council may, from time to time, by resolution determine fees and charges for the purposes of this Local Law.

2. In determining any fees and charges Council may establish a system or structure of fees and charges, including a minimum or maximum fee or charge, if it considers it is appropriate to do so.
3. Council's power to determine fees or charges for the purposes of this Local Law does not apply to any lease or licence that may be entered into.

115. PUBLIC NOTICE

1. Before considering any application for a Permit, Council may require the applicant to:
 - a) give notice of the application to any Persons whom Council considers may be detrimentally affected by the grant of the Permit; and
 - b) publish notice of the application in a newspaper generally circulating in the Municipal District.
2. Every notice under sub clause [115.1](#) must consist of:
 - a) a true copy or summary of the application; and
 - b) an indication that Council will consider the application after the expiry of 14 days following the giving of the notice or publication of the public notice; and
 - c) a statement to the effect that all Persons who may be affected by the issue of a Permit may lodge with Council a written submission; and
 - d) a statement to the effect that all written submissions received within 14 days of the date of the notice or public notice will be taken into account in the determination of the application.
3. Where Council has required the giving of notice or publication of a public notice it must not further consider the application until:
 - a) it is satisfied that the applicant has given the notice and/or published the public notice in the required manner; and
 - b) at least 14 days have elapsed since the giving of the notice or publication of the public notice.
4. All written submissions received within the 14 day period must be considered by Council.

116. CONDITIONAL PERMITS

1. A Permit may be issued which contains conditions considered to be appropriate in the circumstances, including (but not limited to) the following:
 - a) the payment of a fee or charge; and
 - b) the payment of a security deposit, bond or guarantee to Council to secure the proper performance of conditions on a Permit or to rectify any damage caused to Council Assets as a result of the use or activity allowed by the Permit; and
 - c) a time limit to be applied specifying the duration, commencement or completion date; and
 - d) that the applicant be insured against a particular risk and to provide a written indemnification of Council against liability arising from the activity or use; and

- e) the rectification, remedying or restoration of a situation or circumstance; and
 - f) where the applicant is not the Owner of the subject property, the consent of the Owner; and
 - g) the granting of some other Permit or authorisation.
2. The conditions of a Permit must be set out in the Permit.

117. PERMITS - REVOCATION, EXPIRY AND AMENDMENTS.

1. Council may revoke a Permit if it considers that:
- a) there has been a serious or ongoing breach of the conditions of the Permit; or
 - b) a notice to comply has been issued, but not complied with within 7 days after the time specified in the notice to comply; or
 - c) there was a significant error or misrepresentation in the application for the Permit; or
 - d) in the circumstances, the Permit should be revoked.
2. If Council proposes to revoke a Permit, it must:
- a) give the Permit holder an opportunity to make submissions on whether the revocation should occur; and
 - b) take into account those submissions in deciding whether to revoke the Permit.
3. Council may correct a Permit if it contains:
- a) a clerical mistake or an error arising from any accident, slip or omission; or
 - b) an evident material miscalculation of figures or an evident material mistake in the description of any Person, thing or Property referred to in the Permit.
4. Council may, during the currency of a Permit, amend the conditions of a Permit if it considers it to be appropriate to do so.
5. In considering whether it is appropriate to amend the conditions on the Permit, Council must have regard to:
- a) the purposes for which the conditions were imposed; and
 - b) whether those purposes are adequately achieved by the current conditions; and
 - c) the impact of the proposed amendment on the Permit holder and any relevant third parties; and
 - d) any other relevant matter.
6. If Council proposes to amend the conditions on a Permit, it must:
- a) give the Permit holder an opportunity to make submissions on whether the amendment should be made; and
 - b) take into account those submissions in deciding whether to amend the Permit.

- 7. Unless it is sooner revoked or is renewed or contains an earlier expiry date, a Permit will continue in force for a period of 12 months from the date of its issue or renewal.
- 8. A Permit-holder must not assign, transfer or encumber his or her Permit.

118. PERSON MUST PRODUCE PERMIT WHEN REQUESTED

A:

- a) Permit holder; and
- b) employee or agent of a Permit holder

must:

- i) give his or her name and address when asked to do so by an Authorised Officer; and
- ii) produce any Permit (or a true copy of any Permit) granted by Council to an Authorised Officer who requests its production.

Penalty: 3 Penalty Units

119. AUTHORISED OFFICERS

- 1. Where in this Local Law the authority of Council is required, that authority may be granted by an Authorised Officer.
- 2. Where in this Local Law, something may be done by Council, it may be done by an Authorised Officer.
- 3. Where in this Local Law Council is required to form an opinion on any matter before it may perform any function or exercise any power under this Local Law, it is sufficient for a delegate or an Authorised Officer of Council to form that opinion.

120. OBSTRUCTION OF AN AUTHORISED OFFICER

A Person must not:

- a) interrupt; or
- b) otherwise interfere with

any Authorised Officer while such Authorised Officer is acting in the proper execution or exercise of his or her duties, functions or powers.

Penalty: 5 Penalty Units

The Common Seal of the Melton City Council was hereunto affixed in the presence of:)
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..... Councillor

..... Chief Executive Officer