

*District Council of Peterborough*



*Amalgamated 1997*

**DISTRICT COUNCIL  
of  
PETERBOROUGH**

**Permits for Business  
Purposes - Section 222  
Policy**



# DISTRICT COUNCIL of PETERBOROUGH

## PERMITS FOR BUSINESS PURPOSES - SECTION 222 POLICY

<b>Adoption Reference:</b>	Council Meeting 28/08/2023 Resolution 63/23
<b>Applicable Legislation:</b>	Section 222 of the Local Government Act 1999
<b>Version:</b>	The electronic version of this document is the controlled version. Printed copies are considered uncontrolled. Before using a printed copy, verify that it is the current version.
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<b>Grievances:</b>	Any grievances in relation to this Policy or Code, or its application, should be forwarded in writing addressed to the Chief Executive Officer of Council.
<b>Review Dates:</b>	

## 1. INTRODUCTION

In compliance with Permits for Business Purposes - Section 222 of the Local Government Act 1999 (**Act**), Council is responsible for issuing Section 222 permits to businesses for the purpose of allowing moveable signs, footpath trading and/or roadside business activity.

## 2. PURPOSE OF POLICY

To provide a framework and terms and conditions for the application and approval associated with these types of activities.

## 3. LEGISLATION

*Local Government Act 1999, Land-Chapter 11, Roads-Part2, Control of work on roads-Division 6.*

### **222—Permits for business purposes**

(1) A person must not use a public road for business purposes unless authorised to do so by a permit.

Maximum penalty: \$2 500.

Expiation fee: \$210.

Examples—

- carrying on business from a pie-cart drawn up on the side of the road;
- establishing a kiosk on the side of a road;
- extending the business of a restaurant or café to outside tables situated on a footpath or roadside;
- depasturing stock;
- cropping.

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

(3) A permit may be granted for a particular occasion or for a term stated in the permit.

(4) The term of a permit cannot exceed five years.

(5) This section does not apply to a person who is simply travelling along a road.

(6) This section does not apply to any water/sewerage infrastructure established or used (or to be established or used) by or on behalf of a water industry entity under the Water Industry Act 2012.

(7) In this section—

water/sewerage infrastructure has the same meaning as in the Water Industry Act 2012.

### **Council By-Laws:**

Moveable Signs By-Law 2018 – By-law No.2 of 2018

Roads By-Law 2018 – By-law No.3 – Roads

Local Government Land By-Law 2018 – By-law No.4 of 2018

**Note 1:** A public road includes the carriageway, footpaths and verges.

**Note 2:** Pursuant to section 5 of the Act, land may be used for a "business purpose" even if it is not intended to make a profit.

## **4. GENERAL CONDITIONS OF SECTION 222 PERMITS**

### **The Permit Is Not Effective Until:**

- A. The Permit Holder has received a copy of this Permit signed by the Council.
- B. The Permit Holder agrees to comply with the General Conditions set out in this Permit.
- C. The Permit Holder agrees to comply with any Special Conditions, which are set out in this Permit.
- D. The Permit Holder will pay the fees as per Council's Fees and Charges Schedule in advance. (Council's current Fees and Charges Schedule can be viewed on Council's website: [www.peterborough.sa.gov.au](http://www.peterborough.sa.gov.au) or at the Council Office).
- E. The Permit Holder will provide a copy of all insurances, which are required by either the General Conditions or the Special Conditions of this permit in advance.

### **General Conditions**

The Council grants the Permit Holder a permit under Division 6 of Chapter 11 of the *Local Government Act 1999* ("**the Act**") to use that portion of the street identified on the attached plan ("**the Area**") for the purpose(s) of Moveable Signs and/or Footpath Trading for the agreed 12 month period.

### **The Permit Holder Is To:**

- 1. Comply with all reasonable directions given by any employee or officer of the Council in relation to the Permit and any activities carried out under this Permit.
- 2. Ensure that at all times during the term of this Permit, it will hold the necessary permissions, certificates and other authorisations required to undertake the proposed business use, which must be provided to the Council upon request.
- 3. Ensure that for the duration of this Permit that the road and any area in the vicinity of the road are kept in a clean and tidy state with any of the Applicant's waste, rubbish or unused or excess materials removed or otherwise disposed of.

### **The Permit Holder Agrees Further:**

#### **1. Term**

- 1.1 The Permit Holder agrees to hold the Permit for as specified.

#### **2. Indemnifications and Release**

- 2.1 The Permit Holder is to indemnify and release the Council, its employees and/or agents against all actions, costs, claims and demands for injury, loss or damage arising out of any negligent act or omission of the Applicant in relation to any activities under this Permit or arising out of breach of any condition attaching to this Permit.
- 2.2 The Permit Holder agrees that the Council will have no responsibility or liability for any loss or damage to the Permit Holder's fixtures or fittings or personal property.

#### **3. Public Liability Insurance**

- 3.1 For the term of this Permit, the Permit Holder must take out and keep current a Public Liability Policy of insurance for the minimum sum of \$20,000,000.

#### **4. Disclosure and Evidence of Policy**

- 4.1 The Permit Holder must not commence to use the Area until evidence of the Public Liability Insurance policy is given to the Council. The policy must bear an endorsement from the Insurer indicating the Insurer accepts the indemnity given by the Permit Holder.

4.2 The insurance policy must also bear an endorsement from the Insurer that it will notify the Council if the premium is not paid or the policy is allowed to lapse or is cancelled.

4.3 The Permit Holder must provide the Council with a copy of a Certificate of Currency for Public Liability Cover from their Insurance provider.

## **5. Standards**

5.1 During the period in which this Permit is current the Permit Holder must comply with all applicable industry or health and safety standards, current Australian Standards or any applicable Codes of Practice. The Permit Holder must ensure that the activity to be carried out by this Permit is conducted in a safe and responsible manner.

## **6. Permit Not Transferable**

6.1 This Permit is not transferable.

## **7. Compliance with Statutory Requirements**

7.1 The Permit Holder must comply with any Act of Parliament, regulation or by-law relating to the use of the Area.

7.2 Where the permit is to include Outdoor Dining Areas (see page 1), the Permit Holder must ensure that no person smokes within the Area at any time that food is being offered for purchase or is otherwise being provided for consumption within the Area. This requirement applies regardless of whether the person smoking is or is not dining in the Area.

Please note that a breach of this requirement constitutes breaches of section 52 of the *Tobacco and E-Cigarette Products Act 1997* and regulations 15 of 16 of the *Tobacco and E-Cigarette Products Regulations 2019* and criminal penalties and expiations apply.

7.3 Wherever there is any cost involved in complying with the preceding requirements, the Permit Holder will be responsible for payment of those costs.

## **8. Authorised Use**

8.1 Not to use or allow the Area to be used for any purpose or activity other than that authorised by this Permit.

## **9. Notification of Damage**

9.1 The Permit Holder must take all reasonable precautions to avoid damage to the Area and any improvements and structures located in the Area. The Permit Holder must immediately notify the Council of damage to the Area or any Council owned property located within or adjacent to the Area.

9.2 The Permit Holder will be responsible to reimburse the Council for all its reasonable costs to repair or rectify any damage caused as a result of the Permit Holder's use or misuse of the Area.

## **10. Alterations**

10.1 The Permit Holder may not alter or remove any existing fixtures and fittings within the Area nor install any structures or items within or adjacent to the Area without Council's prior approval.

## **11. Breach**

11.1 If the Permit Holder breaches a provision of this Permit, the Council may give the Permit Holder written notice to remedy the breach and the notice will identify that

the failure to remedy the breach will result in cancellation of the Permit.

11.2 If the Permit Holder fails to remedy the breach within a time specified in the Council's notice, then the Council may cancel the Permit.

11.3 This is subject to section 225 of the Act.

## **12. Contractual Rights Only**

12.1 This permit does not confer on the Permit Holder any exclusive right, entitlement or interest in the Area.

## **13. Interpretation**

13.1 In this Permit reference to: -

“**The Council**” includes its members, employees and agents.

“**The Permit Holder**” include its employees and agents.

## **5. SPECIAL CONDITIONS 1 – MOVEABLE SIGNS OF SECTION 222 PERMITS**

The Permit is pursuant to By-Law No 2 – Moveable Signs. A full outline of conditions of By-Law No 2 can be found on Council's website: [www.peterborough.sa.gov.au/Our-Council/Policies](http://www.peterborough.sa.gov.au/Our-Council/Policies)

A summary of some conditions applicable to the Permit Holder are outlined below:-

### **1. Design and Construction**

A moveable sign displayed on a road must:

- 1.1 be constructed so as not to present a hazard to any member of the public;
- 1.2 be constructed so as to be stable when in position and to be able to keep its position in adverse weather conditions;
- 1.3 not be unsightly or offensive in appearance;
- 1.4 not contain flashing or moving parts;
- 1.5 be not more than 1.2 metres high, 80cm in width or 80cm in depth;
- 1.6 not have a display area exceeding 1m<sup>2</sup> in total or, if the sign is two-sided 1m<sup>2</sup> on each side;
- 1.7 in the case of an 'A' frame or sandwich board sign:
  - 1.7.1 be hinged or joined at the top;
  - 1.7.2 be of such construction that its sides can be and are securely fixed or locked in position when erected;
- 1.8 in the case of an inverted 'T' sign, contain no struts or members than run between the display area of the sign and the base of the sign.

### **2. Placement**

A moveable sign displayed on a road must:

- 2.1 not be placed anywhere except on the footpath;
- 2.2 not be placed on a sealed footpath, unless the sealed part is wide enough to contain the sign and still leave a clear thoroughfare at least 1.2 metres wide;
- 2.3 be placed at least 40cm from the kerb (or if there is no kerb, from the edge of the roadway);
- 2.4 not be placed on a landscaped area, other than on landscaping that comprises only lawn;
- 2.5 not be placed on a designated parking area or within 1 metre of an entrance to any premises;
- 2.6 not be fixed, tied or chained to, leaned against or placed closer than 2 metres to any other structure, object or plant (including another moveable sign);
- 2.7 not be placed in a position that puts the safety of any person at risk;

- 2.8 not be placed on a median strip, roundabout, traffic island or on a carriageway;
- 2.9 not be placed on a footpath with a minimum height clearance of a structure above it of less than 2 metres;
- 2.10 not be within 6 metres of an intersection of a road.

### **3. Restrictions**

A moveable sign displayed on a road must:

- 3.1 only contain material which advertises a business being conducted on commercial premises adjacent to the sign, or the goods and services available from that business;
- 3.2 be limited to one per 10 metres of business premises to which the sign relates;
- 3.3 notwithstanding subparagraph 5.6 of this by-law, be placed 6 metres from another moveable sign relating to the same business;
- 3.4 not be displayed unless the business to which it relates is open to the public;
- 3.5 be securely fixed in position such that it cannot be blown over or swept away;
- 3.6 not be displayed during the hours of darkness unless it is clearly visible.

### **4. Appearance**

A moveable sign displayed on a road must:

- 4.1 be painted or otherwise detailed in a competent and professional manner;
- 4.2 be legible and simply worded to convey a precise message;
- 4.3 be of such design and contain such colours that are compatible with the architectural design of the premises adjacent to the sign and are compatible with the townscape and overall amenity of the locality in which the sign is situated;
- 4.4 contain a combination of colours and typographical styles that blend in with and reinforce the heritage qualities of the locality and the buildings in which the sign is situated;
- 4.5 not have any balloons, flags, streamers or other things attached to it.

### **5. Banners**

A banner must:

- 5.1 only be displayed on a road, footpath or road related area;
- 5.2 be securely fixed to a pole, fence or other structure so that it does not hang loose or flap;
- 5.3 not be attached to any building, structure, fence, vegetation or other item owned by the Council on a road, or other improvement to a road owned by the Council;
- 5.4 not be displayed more than one month before and two days after the event it advertises;
- 5.5 not be displayed for a continuous period of more than one month and two days in any twelve month period;
- 5.6 not exceed 3m<sup>2</sup> in size.

## **6. SPECIAL CONDITIONS 2 – FOOTPATH TRADING OF SECTION 222 PERMITS**

The Permit Holder will:-

- 1 Be responsible for and ensure the orderly conduct of members of the public within the Area;
- 2 Not cause any disturbances or nuisances to users of land adjacent to the Area or to vehicles or pedestrians travelling along .....Street;



- 3 Place items (except moveable signs) against the wall of the premises;
- 4 Not permanently fix to the ground surface any items;
- 5 Ensure items are not placed on a sealed part of any footpath area, unless the sealed part is wide enough to contain the items and still leave a clear thoroughfare at least 1.2 metres wide;
- 6 Not place items in a position that puts the safety of any person at risk;
- 7 Not place items within six (6) metres of the corner of a street or road;
- 8 Remove all items from the footpath at the close of business each day; and
- 9 Be responsible for the cleanliness of the area by making sure that any food scraps or rubbish left on the ground is picked up and if necessary, the footpath is hosed down.

## **7. SPECIAL CONDITIONS 3 – ROADSIDE BUSINESS ACTIVITY SECTION 222 PERMITS**

The Permit Holder will:-

On the road related area immediately adjacent to the business, be subject to the following conditions:

- a) Ensure that all safety requirements are addressed in regards to public safety and traffic warning signs.
- b) Ensure that all insurances and indemnities are current.
- c) Ensure that vehicles and machinery are only allowed in-situ between the hours of 7am and 7pm.
- d) Ensure that all hazards, spills, parts and all other materials be removed before close of business each day.
- e) Ensure that all fees and charges be paid to Council on an annual basis

## **8. FURTHER INFORMATION**

- 1.1 This Policy will be kept on the Council's website for the public to view.
- 1.2 Council may revise or review this Policy at any time (but not so as to affect any process that has already commenced).