

BURNIE CITY COUNCIL
HIGHWAYS BY-LAW
BY-LAW NO. 3 OF 2013

A By-Law of the Burnie City Council made under Section 145 of the *Local Government Act 1993* for the purpose of regulating and controlling conduct on the highways in the municipal area.

PART 1
PRELIMINARY

Short Title

1. This By-Law may be cited as the *Highways By-Law No. 3 of 2013*.

Interpretation

2. In this By-Law:

‘authorised officer’ means an employee of Council authorised by Council for the purpose of this by-law;

‘Council’ means the Burnie City Council;

‘crossing’ means any construction in or over a highway, including a verge, kerb and channel or table drain, and footpath or nature strip to provide a vehicular access;

‘customer server’ means a facility in a building that enables a business or person to trade, distribute or sell, goods and / or services to the members of the public without entering the building;

‘General Manager’ means the General Manager of the Council;

‘hawker’ includes a pedlar or itinerant vendor who, in the course of a business, profession, trade or calling, travels around the area by any means whatsoever (other than to commercial premises) to sell goods and / or services to the public;

‘highway’ means a “local highway” or “highway under local management as defined in the *Local Government (Highways) Act 1982*” and includes part of a highway and a mall;

‘highway pavement’ means that portion of the highway between the kerb and channel and / or table drains, primarily used for vehicles;

‘infringement notice’ means a notice issued by an authorised officer to a person who commits an offence against this by-law;

'livestock' includes but is not limited to horses, cattle, swine, sheep, goats and deer;

'local highway' has the meaning assigned to it in the *Local Government (Highways) Act 1982*;

'material' includes stones, clay, earth, metal, cement, concrete, glass, dust, ashes, refuse, oil, liquid and animal droppings or other offensive or noxious substances;

'occupy a highway' means to place on or above a highway any advertisement, goods, items, tables and chairs, or build or locate or establish any structure for sale or to enable the service of food and / or beverages and / or for any other purpose or to fence off any part of the highway;

'penalty unit' means the amount of money set under the *Penalty Units and Other Penalties Act 1987* as amended;

'permit' means a statement in writing with or without conditions issued by an authorised officer authorising an activity regulated by this by-law;

'recovery fee' is a fee payable to the Council to recover the expenses incurred in dealing with an impounded sign;

'roadside vendor' means any person who in the course of a business, profession, trade or calling, sets up a stall in or on any highway to sell wares to the public;

'sale' includes to sell, agree to sell, offer or expose for sale, or keep in possession for sale;

'Environmental Health Officer' means an environment health officer appointed pursuant to section 61 of the *Local Government Act*.

'shopping trolley' includes any wheeled apparatus used for conveying items from one place to another.

'signboard' means any board, sign, plaque, or banner, that in any way makes an announcement or is an advertisement for any restaurant, shop, place of business, product, goods or services or any other thing which is not permanently attached to any building or other structure;

'stall' means any table, wagon, trailer, wheelbarrow, vehicle or transportable structure used by any person to sell and distribute goods and / or services to the public, solicit donations and / or sell raffle/lottery tickets;

'table drain' means a constructed depression adjacent to a highway pavement which conveys surface water away from the area;

'vehicle' means a vehicle of any description of designed to move or to be moved on one (1) or more wheels or tracks and includes but is not limited to, passenger vehicles, trucks and construction equipment;

'vehicular access' means that part of a highway designed for, or used as a means of entry and exit by vehicles between the highway pavement and the frontage of land adjoining a highway;

'vending machine' means any device from which goods are able to be dispensed and includes an automatic teller machine.

PART 2
USE OF HIGHWAYS

Division 1 - Occupation

Occupation, Obstruction or Enclosure of Highway

3. (1) A person must not occupy a highway or place any obstruction or enclose a highway for any purpose unless that person has first obtained a permit under this by-law.

Penalty: a fine not exceeding 2 penalty units and for a continuing offence a further daily fine not exceeding 1 penalty unit.

- (2) Any person may apply under Part 7 of this by-law for a permit.

Vending Machines / Customer Servery

4. (1) A person must not install or cause to be installed a vending machine or customer servery in such a position that any part of the vending machine or customer servery is placed on or projects over a highway.

Penalty: a fine not exceeding 10 penalty units and for a continuing offence a further daily fine not exceeding 2 penalty units.

- (2) A person must not install or cause to be installed a vending machine or customer servery in such a position that in order to operate the machine or use the servery a person must stand or queue on a highway, unless the owner or operator has first obtained a permit under this By-law authorising the installation.

Penalty: a fine not exceeding 10 penalty units and for a continuing offence, a further daily fine not exceeding 2 penalty units.

- (3) Any person may apply under Part 7 of this by-law for a permit.

Division 2 - Signboards

Signboard Permits

5. (1) A person must not place or display a signboard on a highway unless the person has first obtained a permit under this by-law.

Penalty: a fine not exceeding 2 penalty units and for a continuing offence a further daily fine not exceeding 1 penalty unit.

- (2) Any person placing a signboard on a highway must ensure that:

- (i) it is constructed and located in accordance with any conditions stipulated in the permit;
- (ii) any directions given to that person by an authorised officer concerning that signboard are complied with.

Penalty: a fine not exceeding 2 penalty units, and for a continuing offence a further weekly fine not exceeding 1 penalty unit.

- (3) An authorised officer may remove and impound a signboard that:
 - (i) has not been placed so that it complies with a direction by an authorised officer, or
 - (ii) has not been placed so that it complies with a permit issued under this by-law.
- (4) A person may recover an impounded signboard by payment of a recovery fee as determined by the Council.
- (5) Any person may apply under Part 7 of this by-law for a permit.

Division 3 - Hawkers

Permit Required for Hawking

- 6. (1) A person must not act as a hawker unless the person has first obtained a permit under this by-law.

Penalty: a fine not exceeding 2 penalty units.

- (2) Any person may apply under Part 7 of this by-law for a permit.

Permit required for roadside vendors

- 7. (1) A person must not act as a roadside vendor unless the person has first obtained permit under this by-law to do so.

Penalty: a fine not exceeding 2 penalty units

- (2) Any person may apply under Part 7 of this by-law for a permit.

Prohibition of trading activities in certain areas

- 8. A person must not act as a roadside vendor on any highway, unless:

- (1) the land has been designated as land upon which a roadside vendor may carry on trading activities; and

Penalty: a fine not exceeding 2 penalty units

- (2) the person has a permit pursuant to this clause to carry on trading activities on the land; and
- (3) Any person may apply under Part 7 of this by-law for a permit.

Permit required for stalls

9. (1) A person must not set up, place, keep, maintain or park any stall on a highway to sell wares or to pursue any business, trade or employment without first obtaining a permit under this by-law to do so.

Penalty: a fine not exceeding 2 penalty units

Division 4 - Vehicles for Sale

Sale of Vehicles on a Highway

10. A person must not park a vehicle on a highway for the purpose of attempting to sell that vehicle.

Penalty: a fine not exceeding 2 penalty units.

Division 5 - Noise

Making Noise on a Highway

11. (1) A person must not on any highway play, allow or cause to be played any musical instrument nor use nor allow to be used nor cause to be used any amplifier, loud speaker or loudhailer fitted to the exterior of a vehicle unless that person has first obtained a permit under this by-law.

Penalty: a fine not exceeding 2 penalty units.

- (2) Any person may apply under Part 7 of this by-law for a permit.

Leaving shopping trolleys on a highway

12. A person must not leave unattended or abandoned a shopping trolley on a highway.

Penalty: a fine not exceeding 2 penalty units.

PART 3
MATERIALS ON HIGHWAYS

Materials on Highways

13. (1) No person other than an authorised officer or Council contractor or employee is to deposit or allow to be deposited any material from that vehicle onto a highway unless the person has first obtained a permit under this by-law.

Penalty: a fine not exceeding 5 penalty units and for a continuing offence a further daily fine not exceeding one (1) unit.

- (2) Any person may apply under Part 7 of this by-law for a permit.

Wheels of Vehicles to be Cleaned

14. Unless a permit pursuant to clause 13 has been obtained a person must not drive any vehicle for a commercial purpose or allow any such vehicle to be driven onto or over a highway unless the wheels of that vehicle are first cleaned of any material adhering to those wheels.

Penalty: a fine not exceeding 5 penalty units.

Directions

15. (1) An authorised officer may issue a written direction
- (a) to any person who drives any vehicle or who permits any vehicle to be driven on any highway from which any material has been dropped or deposited onto a highway to remove that material.
 - (b) to any person who is the owner or occupier of any land in the municipal area from which the material referred to in sub- clause (a) has come to remove that material.

- (2) A person to whom a direction is given must comply with that direction.

Penalty: a fine not exceeding 10 penalty units.

Council Expenses in Carrying Out Work

16. (1) Upon the expiry of any time limit contained in a direction issued pursuant to clause 15 the Council may undertake all or part of any work that is the subject of that direction.

- (2) Any expense incurred by the Council in undertaking the work referred to in sub-clause (1) is to be paid by the person to whom that direction was issued and the Council may recover any such expense as a debt due to it.
- (3) The Council may immediately undertake the work referred to in sub-clause (1) if it believes that the failure to carry out such work poses an immediate danger to those using the highway.

PART 4
FOOTPATHS, KERBS AND CHANNELS,
TABLE DRAINS AND VEHICULAR ACCESS

Division 1 - Traversing of Footpaths, Kerbs and Channels, Table Drains or Vehicular Access

Construction of a new or altered vehicular access from local highway

17. (1) A person must not create, relocate, or alter a vehicular access over any verge, kerb, channel or table drain, footpath or nature strip of a highway without first obtaining a permit under this by-law.

Penalty: a fine not exceeding 5 penalty units and for a continuing offence a further daily fine not exceeding 1 penalty unit.

- (2) Any person may apply under Part 7 of this by-law for a permit.

Temporary or occasional access

18. (1) A person must not create a temporary access to drive a vehicle or allow a vehicle to be driven over any verge, kerb and channel, table drain, footpath or nature strip of a highway to or from any adjoining land, including land where building or excavating works are in progress or are about to commence unless the owner of the land or the builder or contractor who has conduct of the work has first obtained a permit under this by-law.

Penalty: a fine not exceeding 5 penalty units and for a continuing offence, a further daily fine not exceeding 1 penalty unit.

- (2) Any person may apply under Part 7 of this by-law for a permit.

Damaging footpath etc

19. A person must not cause or allow to be caused any damage to a foot path, kerb and channel, table drain, footpath or nature strip or vehicular access.

Penalty: a fine not exceeding 5 penalty units.

Factors to be considered in granting a permit

20. In deciding whether or not to grant a permit pursuant to clause 17 or 18 of this by-law, regard must be had to the following:

- (1) minimising the risk of damage to the highway;
- (2) minimising the risk to vehicular and pedestrian safety;

- (3) minimising the risk of damage to any infrastructure located within the highway.

Directions

21. An authorised officer may issue a written direction to any person who damages a highway, including any pavement, kerb and channel, table drain, footpath or nature strip for vehicular access to re-instate the damaged area in a proper and workmanlike manner and in doing so must comply with any relevant Council standard or specifications and must do so within the time specified in the direction.

Penalty: a fine not exceeding 10 penalty units.

Council Expenses in Carrying Out Work

22. (1) Upon the expiry of any time limit contained in a direction issued pursuant to clause 21 the Council may undertake all or part of any work that is the subject of that direction.
- (2) Any expense incurred by the Council in undertaking the work referred to in sub-clause (1) is to be paid by the person to whom that direction was issued and the Council may recover any such expense as a debt due to it.
- (3) The council may immediately undertake the work referred to in sub-clause (1) if it believes that the failure to carry such work poses an immediate danger to those using the highway.

Division 2 – Construction of Crossings

Construction of a Crossing Over Footpaths, Kerbs and Channels Table Drains or Vehicular Accesses

- 23 (1) A person must not construct nor cause to be constructed nor place nor cause to be placed any crossing over a verge, kerb and channel, table drain, footpath or nature strip that forms part of a highway for vehicular access unless the person has first obtained a permit under this by-law.

Penalty: a fine not exceeding 10 penalty units.

- (2) If a permit is granted the crossing is to be constructed in a proper and workmanlike manner, complying with any relevant Council standard or specification.
- (3) Any person may apply under Part 7 of this by-law for a permit.

Direction to Construct a Crossing Over a Footpath, Kerb and Channel, Table Drain or Vehicular Access

24. (1) The owner of any land that abuts a highway if required to do so by an authorised officer must provide a crossing over the verge, kerb and channel, table drain, footpath or nature strip for vehicular access.

Penalty: a fine not exceeding 10 penalty units.

- (2) The crossing must be constructed in a proper and workmanlike manner and must comply with any relevant Council standard or specification.

Penalty: a fine not exceeding 10 penalty units.

Directions

25. (1) An authorised officer may issue a written direction to any person to:
- (a) repair or carry out maintenance to a crossing over which access to that person's land is gained;
 - (b) remove a crossing;
 - (c) reinstate the verge, kerb and channel, table drain or footpath or nature strip following the removal of a crossing; or
 - (d) construct a crossing.
- (2) Any work that is the subject of a written direction is to be carried out in a proper and workmanlike manner and in accordance with any relevant Council standard or specification and must be completed within the time specified in the direction.

Penalty: a fine not exceeding 10 penalty units.

Council Expenses in Carrying Out Work

26. (1) Once any time limit imposed by a direction issued pursuant to clause 25 has expired the Council may undertake all or part of any work that is the subject of any such direction.
- (2) Any expense incurred by the Council in undertaking the work referred to in sub-clause (1) is to be paid by the person to whom that direction was issued and the Council may recover any such expense as a debt due to it.
- (3) The Council may immediately undertake the work referred to in sub-clause (1) if it believes that the failure to carry out such work poses an immediate danger to those using the highway.

PART 5
DAMAGE TO HIGHWAYS

Carrying out works on highway

27. (1) A person other than an authorised officer or Council employee or contractor must not carry out any work or allow any work to be carried out to a highway unless the person has first obtained a permit under this By-law.

Penalty: a fine not exceeding 10 penalty units and for a continuing offence a further daily fine not exceeding 2 penalty units.

- (2) Any person may apply under Part 7 of this by-law for a permit.

Directions

28. An authorised officer may issue a written direction to any person to reinstate the damage caused to a highway and to do so in a proper and workmanlike manner, complying with any relevant Council standard or specification and to do so within the time specified in the direction.

Penalty: a fine not exceeding 10 penalty units.

Council Expenses in Carrying Out Work

29. (1) Once any time limit imposed by a direction pursuant to clause 28 has expired the Council may undertake all or any part of the work that is the subject of that direction.

- (2) Any expense incurred by the Council in undertaking the work referred to in sub-clause (1) is to be paid by the person to whom that direction was issued and the Council may recover any such expense as a debt due to it.

- (3) The Council may immediately undertake the work referred to in sub-clause (1) if it believes that the failure to carry out such work poses an immediate danger to those using the highway.

Removal of Trees

30. A person must not wilfully destroy, cut, pluck, remove or injure any tree, shrub, flower or other vegetation growing on a highway other than for the purpose of destroying weeds or lopping trees under power lines.

Penalty: a fine not exceeding 10 penalty units.

PART 6
DRIVING LIVESTOCK ON HIGHWAYS

Stock on the highway

31. (1) The owner of livestock must not cause, allow or permit such livestock to be on a highway.
- (2) Sub-clause 1 does not apply when the livestock are on a highway and are under the effective control of the owner of the livestock or another competent person.
- (3) For the purpose of this by-law, 'effective control' means that the livestock are being moved, are crossing or being driven as provided for in Part 6 of the Burnie City Council Highways By-law No. 3 of 2013 or are being led as provided for in Division 3 of Part 22 of the Traffic (Road Rules) Regulations 1999.

Penalty: a fine not exceeding 10 penalty units and for a continuing offence a further daily fine not exceeding 2 penalty units.

Grazing

32. (1) A person must not allow livestock to graze on a highway unless the person has first obtained a permit under this by-law.

Penalty: a fine not exceeding 10 penalty units and for a continuing offence, a further daily fine not exceeding 2 penalty units.

- (2) Any person may apply under Part 7 of this by-law for a permit.

Holding Yard

33. (1) A person must not use any part of a highway as a holding yard unless that person has first obtained a permit under this by-law.

Penalty: a fine not exceeding 10 penalty units.

- (2) Any person may apply under Part 7 of this by-law for a permit.

Movement of Livestock along a Highway

34. (1) A person must not drive livestock along a highway for the purpose of moving the livestock from one area to another if it is reasonably practical to use an alternative route.

Penalty: a fine not exceeding 10 penalty units.

- (2) A person must not drive livestock along a highway more often than once per month without first obtaining a permit under this by-law.

Penalty: a fine not exceeding 10 penalty units.

- (3) Any person may apply under Part 7 of this by-law for a permit.

Livestock Crossing

35. (1) A person must not drive livestock across a highway more often than once per week for the purpose of moving the livestock from one part of that person's land to another or from one farm to another without first obtaining a permit under this by-law.

Penalty: a fine not exceeding 10 penalty units.

- (2) Any person may apply under Part 7 of this by-law for a permit.

Driving Livestock within Town Areas

36. A person must not drive any livestock at any time on any highway within the town areas of Burnie and Ridgley.

Penalty: a fine not exceeding 10 penalty units.

PART 7

PERMITS

Applications

37. Any application for a permit pursuant to this by-law is to be in accordance with the relevant form and should where applicable be accompanied by the following:
- (a) A statement in writing of the type of activity proposed to be undertaken by the applicant; the date or dates when the activity will be carried out; the duration of the activity;
 - (b) A drawing with sufficient detail to determine the location and extent of the proposed activity;
 - (c) A statement in writing of the goods or services the person proposes to sell;
 - (d) A statement in writing of the location where the person proposes to sell or distribute the goods or services;
 - (e) Such other information as an authorised officer may reasonably require or as may be required by any act or regulation;
 - (f) For permits sought pursuant to Part 5 the application must state the name of the person or persons who will carry out the works; lodge a plan of the proposed work and where appropriate specifications for the work;
 - (g) For a permit sought pursuant to Part 6 the application must include the relevant matters required in earlier parts of this clause but also include details of how the livestock will be driven, how many people will accompany them and any other relevant information concerning controlling the animals on the highway.
 - (h) Any applicable fee.

Grant of Permits

38. An authorised officer may grant a permit pursuant to the provisions of this by-law.

Factors to be Considered when Granting a Permit

39. In addition to any matter elsewhere specified in this by-law, in deciding whether or not to grant a permit pursuant to this Division the authorised officer may have regard to the following and any other relevant matters:
- (a) pedestrian amenity and safety; and
 - (b) pedestrian access in the area; and

- (c) the maintenance of public order in the area; and
- (d) the movement of traffic in the area; and
- (e) the manner of any proposed advertising; and
- (f) the nature, size, shape, extent and location of any proposed highway furniture; and
- (g) the effect on premises in the area, including other stalls, or vendors which trade in similar or associated wares to those proposed for sale; and
- (h) the availability of suitable parking for motor vehicles in the area; and
- (i) damage to any highway asset; and
- (j) obstruction to any part of the highway; and
- (k) any representations made by a commissioned police officer.

Factors to be considered by the Environmental Health Officer

40. In deciding whether or not the proposed method and manner of selling wares is satisfactory on the grounds of public health the authorised officer must have regard to the advice of an Environmental Health Officer on requirements of the *Food Act 2003* and the *Public Health Act 1997*, and any regulations made under those Acts, and the Food Standards Code.

Compliance with Terms and Conditions

41. The holder of a permit issued pursuant to this Division must comply with the terms and conditions thereof or the permit could be subject to cancellation in accordance with Clause 45.

Standard Conditions

42. A permit may be issued pursuant to this by-law subject to the following conditions where appropriate:
- (a) any stall to be used in, during, or for purposes connected with the sale of food must be maintained to the satisfaction of the Environmental Health Officer; and
 - (b) hawking, itinerant sale of wares and the itinerant purchasing of wares is not permitted in the central business district; and
 - (c) such other conditions as the authorised officer may consider necessary in accordance with any matter under this by-law;
 - (d) the applicant signing an indemnity in the form approved by the General Manager; and

- (e) the applicant providing evidence that he or she holds a current public liability policy that provides indemnity in the sum of 10 million dollars for the applicant for the activity for which the permit is sought.

Referral to the Council

- 43. No provision of this by-law is to be construed as preventing an authorised officer from referring any application for a permit to the General Manager or the Council.

Permits Generally

- 44. Every permit issued pursuant to any Division of this Part of the by-law is to:
 - (a) bear the date on which it was issued; and
 - (b) remain in force for the period for which it was issued, unless it is cancelled or surrendered; and
 - (c) be carried by the holder at all times; and
 - (d) be surrendered to the Council if it is cancelled or when it is due for renewal.

Cancellation of Permits

- 45. (1) An authorised officer may cancel any permit issued pursuant to this by-law if a permit holder commits any breach of this by-law or of any condition of any permit issued under this by-law.
- (2) The authorised officer may serve a notice in writing on a permit holder stating that a permit has been cancelled and the reason for the cancellation.
- (3) The notice of cancellation may be served in any of the following ways:
 - (a) On the holder of the permit;
 - (b) By being posted to the address shown on the application for the permit.
- (4) Cancellation of any permit is effective from the day of service of the notice.

Production of the Permit

- 46. A permit holder is to immediately produce a permit issued pursuant to this By-law when requested to do so by a police officer, an authorised officer or in the case of a hawker a member of the public who is offered goods or services for sale.

Penalty: a fine not exceeding 2 penalty units.

Failure to Comply with the Condition of a Permit

47. Any person who is the holder of a permit issued pursuant to this by-law and who fails to comply with any condition of that permit is guilty of an offence.

Penalty: a fine not exceeding 10 penalty units.

PART 8
SUPPLY NAME & ADDRESS

Supply of name and address

48. (1) If required to do so by an authorised officer, in relation to a matter arising under this by-law a person must provide his or her name and address.
- (2) A police officer may arrest a person if an authorised officer finds the person offending against this clause.

Penalty: a fine not exceeding 5 penalty units

PART 9
INFRINGEMENT NOTICES

Infringement Notices

49. (1) In this clause “**specified offence**” means an offence against the clause specified in Column 1 of Schedule 1.
- (2) An infringement notice may be used in respect of a specified offence and the monetary penalty set out adjacent to the offence in Column 3 of Schedule 1 is the penalty payable under the infringement notice for that offence.

Amounts Payable

50. (1) An authorised officer may:
- (a) Issue an infringement notice to a person that the authorised officer has reason to believe is guilty of a specified offence;
- (b) Issue one infringement notice in respect of more than one specified offence.
- (2) An infringement notice alleging that a vehicle has been used in relation to a specified offence may be served by affixing it to that vehicle.
- (3) The *Monetary Penalties Enforcement Act 2005* applies to an infringement notice issued under this by-law.

CLAUSE	GENERAL DESCRIPTION OF OFFENCE	Penalty (Penalty units)
3	Occupation, obstruction or enclosure of highway	1
4 (1) & (2)	Vending machines	2
5 (1) & (3)	Signboard permits	1
6	Hawking	1
7	Permit for roadside vendors	1
8(1)	Prohibition on trading activities	1
9(1)	Permit for stalls	1
10	Sale of vehicles on a highway	1
11	Making a noise on a highway	1
12	Leaving shopping trolley on highway	1
13	Materials on the highway	1

CLAUSE	GENERAL DESCRIPTION OF OFFENCE	Penalty (Penalty units)
14	Wheels of vehicles to be cleaned	1
15	Directions	2
17	New or altered road access from highway	1
18	Driving over footpath etc when excavation works in progress	2
19	Damaging footpath etc	2
21	Directions	2
23(1)	Construction of crossing	2
24 (1) & (2)	Direction to construct a crossing	2
25	Directions	2
27	Carrying out works on a highway	2
28	Directions	2
30	Removal of trees	2
31	Stock on the highway	2
32(1)	Grazing	2
33(1)	Holding yard	2
34(1)	Movement of livestock	2
35	Livestock crossing	2
36	Driving livestock	2
46	Production of permit	1
47	Failure to comply with permit	2
48	Supply of name and address	1

51. A person who fails to pay the fine specified in an infringement notice within the time specified therein, may be prosecuted for the alleged offence to which the notice relates and upon conviction will be liable to:
- (a) a penalty no greater than the penalty prescribed for the offence; and
 - (b) in the case of a continuing offence a further penalty as prescribed for the offence.

Certified as being in accordance with the *Local Government Act 1993* by A Wardlaw, General Manager.

Certified as being in accordance with the law by G.W. Tremayne, Legal Practitioner.

The common seal of the Burnie City Council has been hereunto affixed pursuant to a resolution of the Council pass on the 10th day of December 2013 in the presence of A Wardlaw, General Manager

Dated this 13th day of December 2013 at Burnie.