



## Activity or Work within a Council Street

Burnie City Council By-Law No. 3 of 2013

### GENERAL TERMS & CONDITIONS

#### ACTS & REGULATIONS

- (1) The Permit Holder must observe and conform to the requirements of all statutory rules, provisions and regulations of the Commonwealth of Australia and/or the State of Tasmania for the time being in force as are relevant to the proposed activity or work, and will be liable for any breach of such *Acts* or *Regulations*.

Grant of a permit to occupy a local highway does not constitute an exemption from the need to obtain any approval, license, permit or other sanction required by the Council or by any other authority under any other *Act*, *Regulation* or *By-Law*.

- (2) The Permit Holder must comply with *Burnie City Council Highways By-Law No. 3 of 2013*.

#### PERMISSION TO OCCUPY

- (3) The Permit Holder is required to immediately produce this Permit if requested to do so by a police officer or an authorised officer.

A copy of the Permit must be held at the location of the activity.

- (4) The Permit Holder will be responsible for all costs associated with the occupation, obstruction or enclosure of a local highway and with management of the local highway.
- (5) The Permit Holder is only entitled to occupy and use the particular part or parts of the local highway as identified in the Permit on the dates and at the times and for the purposes allowed by this Permit.

A separate application must be made for any occupation or use of the highway outside the times and dates as approved, or for a purpose not identified by the Permit.

- (6) The Permit may be cancelled if the Permit Holder commits any breach of the By-Law or any condition of this Permit.
- (7) The Council reserves the right to close a highway for use, or to redirect users to an alternate location, where in the opinion of an authorised officer, there is an emergency impacting on use of the highway or conditions render the highway unsafe and/or unsuitable for use.

The Council will not be liable for any loss or damage sustained by the Permit Holder in the event it determines to close a highway to occupation and/or use.

Where the Council closes a highway to use the Council will have no obligation to provide the Permit Holder with an alternate location.

## **INSURANCE AND INDEMNITIES**

- (8) The Permit Holder must not do, or neglect to do, or permit to be done or left undone, anything which will affect the Council's Insurance Policy or Policies relative to public risk in connection with the hire of this highway and the Permit Holder hereby agrees to indemnify the Council to the extent that such policies are affected by commission or omission.
- (9) The Permit Holder must at all times during the allocated period of occupation be the holder of a current Public Liability Policy of Insurance ("The Public Liability Policy") in respect of the activities specified in the Application for Use of a Highway in the name of the Permit Holder and providing coverage for an amount of not less than \$20 million.

The Public Liability Policy is to be with an insurer approved by the Council.

It is the Council's preference that the policy notes the Council as a joint named insured. Alternatively, the Council may require a principal's indemnity extension be provided to the Council under the permit holder's policy.

The Public Liability Policy is to be subject only to such conditions and exclusions as are approved by the Council and is to extend to cover the Council in respect to claims for personal injury or property damage arising out of the negligence of the Permit Holder.

The Permit Holder must not access or occupy any part of the highway in the event that the insurance and indemnity requirements of this Permit have not been completed, are inadequate or have lapsed.

- (10) The Permit Holder agrees to indemnify and to keep indemnified the Council, its servants and agents, and each of them from and against all actions, costs, claims, charges, expenses, penalties, demands and damages whatsoever which may be brought or made or claimed against them, or any of them, arising from the Permit Holder's performance or purported performance of its obligations under this Permit and be directly related to the negligent acts, errors, or omission of the Permit Holder.

The Permit Holder's liability to indemnify the Council will be reduced proportionally to the extent that any act or omission of the Council, its servants or agents, contributed to the loss or liability.

- (11) The Permit Holder agrees to hold harmless the Council, its servants and agents and each of them from and against all actions, claims, charges, expenses, penalties, demands and damages whatsoever which may be brought about or made or claimed against it by any of them arising out of or in any way related to the granting of this Permit and/or the use of the highway.

## **LICENSE AND PERMISSIONS**

- (12) The Permit Holder must not produce, or perform, or offer to be produced or performed on any local highway any dramatic, musical or other work in infringement of the copyright, or performing right of any owner of such rights, and it is a condition and term of this occupation that the Permit Holder indemnifies Council against any claim for breach of copyright during such occupation, and any costs incurred in connection therewith.
- (13) No intoxicating liquor is to be served, or sold in association with the occupation unless the necessary approval has been obtained from Council and evidence of Licensing Commission permits are produced.
- (14) The Permit Holder will not conduct or promote any gambling at which either directly or indirectly money is passed as a prize unless the written consent of the Council is first obtained and all relevant gaming licences are granted.

- (15) The Permit Holder must not permit or allow cigarettes, cigars, tobacco products or tobacco related products to be bought or sold or to be advertised or promoted in any manner within or from the highway.

Council maintains and supports a “No Smoking” policy within all public buildings and public places.

#### **MATERIALS AND EQUIPMENT OF THE HIRER**

- (16) Equipment and materials owned, purchased or supplied by the Permit Holder and brought onto and/or stored on the highway, other than items deemed to become a fixture or fitting, remain the property of the Permit Holder and are not the responsibility of the Council.
- (17) Personal belongings, money or private property brought onto the highway by any person are not the responsibility of the Council.
- (18) Neither the Council or its servants and agents will be liable for any loss or damage sustained by the Permit Holder or any person, firm or corporation entrusting to or supplying any article or thing to the Permit Holder by reason of any such article or thing being lost, damaged or stolen. The Permit Holder indemnifies the Council against any claim by such person, firm or corporation in respect of such article or thing.

#### **PATRON AND PUBLIC BEHAVIOUR**

- (19) The Permit Holder is responsible for maintenance and preservation of good order and the supervision of all persons associated with the activity or work conducted on the highway during the approved period/s of occupancy and use, and must take appropriate measures for participant and crowd behaviour and control so as to ensure the safety and security of persons and property within and adjacent to the approved location.

#### **RISK MANAGEMENT**

- (20) The Permit Holder is responsible to identify and assess risks and liability associated with the proposed occupation or use, and to consider and implement measures and strategies to eliminate, reduce or manage identified risks. The Council may require a risk management plan.
- (21) The Permit Holder must be satisfied that the highway is safe and suitable in all respects for the approved purpose on EACH occasion the highway is used.

While the Council will take all reasonable measures to ensure the highway is suitable for and remains safe and fit for the approved purpose of use by the Permit Holder, a final decision on whether to proceed to use on EACH occasion is the responsibility of the Permit Holder.

In this regard the Permit Holder must complete and make a written record using the Form attached as Annexure 1 to this Agreement of an inspection of the highway in the immediate vicinity of the approved use prior to EACH use. The record of inspection must be kept in the records of the Permit Holder.

#### **TRAFFIC MANAGEMENT**

- (22) Traffic management must be undertaken in accordance with AS 1742.3 Manual of Uniform Traffic Control Devices - Part 3 - Traffic Control Devices for Work on Roads and DIER's Traffic Control at Work Sites – Code of Practice.

Traffic management must be designed and supervised by a person certified for Advanced Worksite Traffic Management.

The Permit Holder is required to liaise with Tasmania Police, Tasmania Fire Service, Tasmania Ambulance Service and the Burnie City Council with regard to any closure of a traffic lane.

Full road closure will require a separate application in accordance with the *Local Government Act 1993* and the *Local Government (Highways) Act 1982*.

#### **CLEANLINESS AND SECURITY**

- (23) The site is to be kept clean and tidy at all times. All rubbish and waste material is to be removed for proper disposal by the organisers at the conclusion of each day.
- (24) The Permit Holder is responsible to leave the highway in a clean, tidy and secure manner and must immediately after the conclusion of EACH use remove all rubbish and waste for disposal in an approved waste receptacle;

#### **DAMAGE**

- (25) The Permit Holder must not damage, deface or use inappropriately any equipment, facility or improvement on the highway.
- (26) The Permit Holder must not alter, erect or remove any structure, equipment, or vegetation, or display, affix, paint or exhibit any advertisement or sign on any building, structure, equipment or improvement on the highway unless approved under this Permit.
- (27) No modification or improvement must be made to any part of the highway or to any equipment or facility on the highway other than as approved under this Permit.
- (28) The Permit Holder will accept full responsibility for abuse, damage, destruction or loss of Council property except for normal wear and tear.

A bond may be required by the Council prior to grant of a Permit.

- (29) Any damage, defect or fault caused by, occurring to or noted in any area, equipment or facility on the highway must be reported to the Council immediately if in working hours or not later than the next working day immediately following the use.

Where the damage, defect or fault is considered by the Permit Holder to present an immediate risk to the health or safety of any person or property on the highway, the Permit Holder must take immediate action to mitigate such risk to the approved use and/or to prevent exposure to the risk, including terminating as required its use of all or part of the highway.

The Council will not be liable for any loss or damage sustained by the Permit Holder or any other person arising from a decision by the Permit Holder not to use or to discontinue its use of all or part of a highway.

- (30) The Permit Holder undertakes to reinstate the highway to a standard agreed by the Council and to make good any damage and to reimburse the Council and any other agency their costs for any work required to repair or to reinstate the highway or any utility or improvement within the highway.

The Permit Holder must meet the cost of any claims or proceedings arising from any damage that the work may cause to infrastructure associated with other utility services, unless:—

- records given to the Permit Holder by the Council or other utility operator did not indicate the presence of the damaged infrastructure; or
- records given to the Permit Holder by the Council or other utility operator did not accurately show the location and depth of the damaged infrastructure; or
- at the relevant time, any signs required to be provided by any person under the Gas (Safety) Regulations 2002 to warn of the presence of the damaged infrastructure were not in place.

**INSPECTIONS AND ACCESS BY COUNCIL**

- (31) The Permit Holder must provide an authorised officer with reasonable access to the highway during the period of hire for the purpose of examining the condition of the highway or for monitoring the compliance of requirements under this Permit.

**ASSIGNMENT**

- (32) The Permit Holder must not assign the right of occupation and use approved under this Permit to any other person, organisation or body.

**DISPUTES**

- (33) In the event of any dispute or difference arising as to the interpretation of this Permit or as to the question of compliance by the Permit Holder, the matter will be referred to a person nominated by the General Manager, and the decision of that person shall be final notwithstanding the right of each party for recourse to a process of judicial determination.

**BREACHES**

- (34) An authorised office will issue directions to remedy any detected breach of the Permit or the By-Law and may issue an Infringement Notice in respect to each breach.

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