



**NORTHERN
MIDLANDS
COUNCIL**

Footpath Trading By-Law

By-Law No.1 of 2021

A by-law of Northern Midlands Council made under Section 145 of the *Local Government Act 1993* for the purpose of regulating and licensing footpath trading in the Northern Midlands municipal area.

PART 1 – PRELIMINARY

1. Short title

This By-law may be cited as the Footpath Trading By-Law Number 1 of 2020.

2. Commencement

This By-law commences on the day that this By-law is published in the Tasmanian Government Gazette.

3. Application

This By-law applies to footpath trading anywhere in the Northern Midlands municipal area.

PART 2 – DEFINED TERMS

4. Definitions

In this By-law unless contrary intention appears:

- ‘Act’** means the *Local Government Act 1993* (Tas);
- ‘Authorised Officer’** A person appointed as an authorised officer by the General Manager for the purposes of this By-law;
- ‘By-law’** is a reference to this Footpath Trading By-law No. 1 of 2020;
- ‘Council’** means Northern Midlands Council (ABN 70 695 934 223) constituted pursuant to the Act;
- ‘display of goods’** means the offer, display or exposure for sale of, any goods, services, merchandise, wares, commodity, article or thing;
- ‘footpath’** means that part of the road reservation between the formed road and the property boundary and includes areas of nature strip;

'footpath trading'	means the use of a public footpath for commercial purposes, including but not limited to; display of goods, display of freestanding signs and on street dining;
'freestanding sign'	means a freestanding, portable advertising device, including but not limited to: <ul style="list-style-type: none"> (a) a sandwich board sign or an A frame sign; and (b) a flag or banner, including in a teardrop or feather shape;
'General Manager'	means the person appointed by Council from time to time to the position of General Manager in accordance with section 61 of the Act;
'highway'	means a local highway within the meaning of the <i>Local Government (Highways) Act 1982</i> ;
'infringement notice'	means an infringement notice within the meaning of the <i>Monetary Penalties Enforcement Act 2005</i> ;
'licence'	means a licence issued under this By-law;
'main road'	means Marlborough & Wellington Streets, Longford; Russell & High Streets, Evandale; Main Road, Perth; Main Street, Cressy; Falmouth Street, Avoca; High Street, Campbell Town; and Church & Bridge Streets, Ross;
'municipal area'	means the municipal area of the Northern Midlands Council as defined in section 16 of the Act;
'on street dining'	means the consumption of food or beverages or both by persons seated in an area that is part of a highway;
'penalty unit'	means the sum as prescribed under the provisions of the <i>Penalty Units and Other Penalties Act 1987</i> ;
'person'	includes an individual and a body corporate;
'premises'	means a house or building, together with its land and outbuildings, occupied by a business or considered in an official context;
'public place'	has the meaning given to the term in section 3(1) of the <i>Police Offences Act 1935</i> (Tas);
'specified offence'	means an offence against the clause specified in Column 1 of Schedule 1 to this By-law.

PART 3 – FOOTPATH TRADING

5. Requirements for Footpath Trading

No person shall carry on footpath trading on a footpath or on any other public place unless that person:

- a) is the holder of a valid licence; and
- b) is acting in compliance with this By-law.

PENALTY: A fine not exceeding 4 penalty units and in the case of a continuing offence, a further fine not exceeding 2 penalty unit for each day that the offence continues.

6. Structures

- 1) All structures and objects used for footpath trading must:
 - a) be located and setback far enough from the kerb to allow people to readily enter and exit cars;
 - b) be located to retain an unobstructed 1.5m wide pedestrian pathway along the footpath;
 - c) be adequately weighted so as to be secure;
 - d) be brought in if weather renders them unstable;
 - e) not encroach beyond the side boundaries of the property;
 - f) be of a design that prevents damage to footpath paving;
 - g) be removed from the road reserve when the business is closed, and any footpath sockets plugged; and
 - h) be strongly designed and constructed for a public environment.
- 2) Umbrellas used for footpath trading must comply with the following:
 - a) the edge of umbrellas must be set back far enough from the kerb that they don't cause a hazard to people entering and exiting cars;
 - b) there must be a minimum clearance of 2.1m between the underside of umbrellas and the footpath; and
 - c) umbrellas must not extend into the pedestrian pathway so as to cause a hazard to people moving past the site.

7. Amenity

The licence holder must:

- a) maintain the area for on street dining in a clean and sanitary manner including, but not limited to, emptying waste bins and washing pavements, promptly cleaning and washing away any liquid, food, debris, broken glass, or waste from the area;
- b) not use the existing street rubbish bins for disposal of table waste;
- c) not sweep rubbish into the street gutter or adjacent footpath areas;
- d) be responsible for the conduct of patrons at tables and chairs;
- e) ensure patrons do not obstruct the footpath by rearranging the tables and chairs;
- f) not place or use sound amplification equipment, juke boxes, or loudspeakers in the outdoor dining area for the purpose of announcements, broadcasts, playing of music, or similar purposes;
- g) not allow live entertainment in the outdoor dining area; and

- h) ensure that freestanding heaters comply with Australian Standard AS1596 (Storage and Handling) and must be certified by the Australian Gas Association.

8. Requirements for Freestanding Signs

- 1) This clause applies to freestanding signs placed on a footpath.
- 2) The number of freestanding signs must be no more than two per premises.
- 3) For premises not located on a main road, one of the signs may be located at the intersection of the main road.
- 4) Freestanding signs must be no higher than 1m and no wider than 60cm, except that flag/banner signs may be 2.5m high x 90cm wide.
- 5) Freestanding signs must not be rotating, animated, or illuminated.

PART 4 – LICENCE REQUIREMENTS

9. Licence requirements and procedures

- 1) A person seeking to do anything for which a licence is required under this By-law is to apply to Council for the relevant licence using the form approved by the General Manager.
- 2) In order to be valid, an application for a licence must:
 - a) include the full name and postal address of the person making the application;
 - b) specify the location for which the licence is sought;
 - c) be accompanied by an accurate plan to scale showing the location of the activity;
 - d) be accompanied by a copy of a Certificate of Currency of Insurance for \$20 million Public and Products Liability Cover which covers the proposed footpath trading area; and
 - e) be accompanied by any applicable fee.
- 3) Council or an Authorised Officer may request further information from an applicant within 14 days of receipt of a valid application.
- 4) If further information requested by Council is not provided within 14 days of a request made under sub-clause 9(3) of this By-law, Council may reject the application or consider it on the basis of the information that has been provided.
- 5) A licence granted by Council expires on the 30th of June following the date on which the licence was issued unless earlier cancelled.
- 6) Prior to the expiration of a licence, the holder may apply to renew it by making application to Council in the form approved by the General Manager and accompanied by the application fee prescribed by Council.
- 7) The General Manager is to keep a register of all licences issued and is to note any amendments, corrections or cancellations to that register.

- 8) The holder of a licence must comply with all of the conditions attaching to that licence.
PENALTY: A fine not exceeding 4 penalty units.

- 9) Any Person applying for a licence, or variation or renewal of a licence under this By-law must not wilfully make or cause to be made any false representation or declaration as part of their application.

PENALTY: A fine not exceeding 4 penalty units.

10. Council may approve, refuse or cancel a licence

- 1) After considering an application, Council or an Authorised Officer has the discretion to:
- a) grant a licence, with or without conditions determined by Council or an Authorised Officer; and
 - b) in the case of an existing licence, grant a renewal and add or vary the conditions of that licence.
- 2) At any time, Council or an Authorised Officer may:
- a) amend or vary the conditions of any licence by giving one month's written notice to the holder of the relevant licence; and
 - b) correct any accidental slip, omission or evident mistake or error in any licence by giving seven days written notification to the holder of the relevant licence.
- 3) Council or an Authorised Officer may cancel a licence by giving 21 days' written notice of cancellation of the holder of the relevant licence. Cancellation takes effect 21 days after the date of the written notice of cancellation.
- 4) Before cancelling any licence, Council or an Authorised Officer must:
- a) give one month's written notice to the holder of the relevant licence and ask that they show cause within 21 days of the date of the notice why the relevant licence should not be cancelled; and
 - b) give consideration to any representation made by the holder of the relevant licence in response to a notice given.
- 5) Clause 10(4) does not apply, and a licence may be cancelled immediately if:
- a) any licence fee has been outstanding for 28 days or more; or
 - b) there has been a serious breach of any licence conditions or this By-law, including but not limited to a failure to obtain or maintain the required public and products liability insurance cover.

11. Council may refuse to issue a licence

The Council may refuse to issue a licence if:

- a) the applicant has committed a breach of this By-law;
- b) the proposed freestanding sign, display of goods or on street dining is in the opinion of Council unsuitable in any respect to the location for which the licence is sought;

- c) Council has not been provided with a Certificate of Currency for a policy of public and products liability insurance which includes a principal's indemnity extension to the Northern Midlands Council with a minimum cover of \$20 million; or
- d) the application does not comply with the requirements of this By-Law.

12. Requirements for licence

A licence shall specify:

- a) the name and address of place which the licence applies;
- b) the receipt number of payment;
- c) the applicants full name;
- d) the dates of issue and expiration of the licence; and
- e) the particulars of what the licence is issued for.

13. Insurance

It is a condition of all licences issued under this By-law that the licence holder must hold public and products liability insurance cover that extends to cover the licensed activity and provides a clear statement that acknowledges that the insurer is aware of the extension to the business to cover the freestanding sign(s) / on street dining / display of goods. The cover must provide a 'principals indemnity extension' to the Northern Midlands Council with a minimum cover of \$20 million.

PART 5 – BY-LAW COMPLIANCE

14. Costs

In addition to a penalty imposed in relation to a failure to comply with or a contravention of this By-law, any expense incurred by Council in consequence of that failure or contravention is recoverable by Council as a debt payable by the person so failing to comply.

15. Notices

- 1) Where an Authorised Officer reasonably believes that footpath trading is occurring in contravention of this By-law, that Authorised Officer may serve a notice on the Person (or Persons) who own the premises and/or is conducting the footpath trading which requires the Person (or Persons) named in the notice to:
 - a) cease footpath trading; or
 - b) obtain a licence with respect to the footpath trading;within 14 days of the date of service of the notice, or such other period of time as may be specified in the notice.
- 2) A person served with a notice under sub-clause 15(1) of this By-law must comply

with the requirements of that notice.

PENALTY: A fine not exceeding 4 penalty units

- 3) A person served with a notice under sub-clause 15(1) of this By-law may apply to the General Manager within 14 days of the date of service of the notice seeking:
 - a) withdrawal of the notice; or
 - b) additional time in which to comply with the requirements of the notice.

16. Removal and sale of items

- 1) Where an Authorised Officer reasonably believes that footpath trading is occurring in contravention of this By-law, that Authorised Officer may do the following, with the assistance of another person who is employed by or engaged by Council:
 - (a) remove any freestanding signs, street furniture (including but not limited to tables, chairs, umbrellas, display stands) or any other items which may be used for footpath trading (collectively referred to in this clause as "seized items"); and
 - (b) take the seized items to a place of safety and hold the seized items until:
 - (i) any penalty required to be paid pursuant to this By-law has been paid to Council; and
 - (ii) any cost incurred by Council for the removal and detention of a seized item has been paid to Council.
- 2) Within two business days of the seizure, Council must provide notice to the person who is, or appears to the Authorised Officer to be, the owner of the seized items that they have been seized and may be recovered from Council, subject to the requirements of this clause.
- 3) If the seized items have not been collected pursuant to clause 16(1)(b) for a period of 14 days, the seized items may be sold or destroyed by Council at its discretion.
- 4) If a seized item is sold pursuant to clause 16(3), Council may retain the following from the sale proceeds:
 - (a) any amounts outstanding pursuant to clause 16(1)(b); and
 - (b) any expenses associated with the sale of the seized item, including any auctioneer's fees.
- 5) If a seized item is destroyed pursuant to this clause or if the sale proceeds are less than the total of the amounts specified in clause 16(1)(b), the balance must be paid by the owner of the seized items and are recoverable by the Council as a debt due to it.
- 6) Council is not required to take any steps pursuant to this clause and may take other steps to prevent footpath trading, such as placing bollards on the footpath.

17. Offences

- 1) A person who breaches any other provision of this By-Law is guilty of an offence under this By-Law.
- 2) The penalty for an offence under this By-Law shall not exceed 4 penalty units and in the case of a continuing offence a daily fine not exceeding 2 penalty unit.
- 3) A person who breaches this By-Law or any condition imposed hereunder may in addition to any other penalty be required to pay any expenses incurred by Council in consequence of the breach of this By-Law.

PART 6 – MISCELLANEOUS PROVISIONS

18. Obstruction of an Authorised Officer

A Person must not obstruct, assault, threaten, harass or intimidate an Authorised Officer engaged in the performance on any function or the exercise of any power under this By-law.

PENALTY: A fine not exceeding 4 penalty units.

PART 7 – INFRINGEMENT NOTICES

19. Infringement Notices

- 1) An infringement notice may be issued 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 specified offence.
- 2) An Authorised Officer may:
 - a) issue an infringement notice to a person whom the Authorised Officer has reason to believe is guilty of a specified offence; and
 - b) issue one infringement notice in respect of more than one specified offence;
 - c) Impose a monetary penalty for the specified offence in respect of which the Infringement notice is issued.
- 3) Payment of an infringement notice issued under this By-law must be made to the General Manager within 28 days of the issue of the infringement notice to avoid the Infringement notice being referred to the Director, Monetary Penalties Enforcement Service.
- 4) The *Monetary Penalties Enforcement Act 2005* (Tas) applies to an infringement notice issued under this By-law.

SCHEDULE 1

INFRINGEMENT NOTICES – OFFENCES AND PENALTIES

Column 1 CLAUSE	Column 2 DESCRIPTION OF OFFENCE	Column 3 PENALTY (Penalty Units)
5(1)	Footpath trading without licence	2
5(1)	Daily offence for footpath trading without a licence.	1
9(8)	Fail to comply with conditions of licence	2
9(9)	Make false representation or declaration	2
15(2)	Fail to comply with requirements of notice	2
18(1)	Obstruction of Authorised Officer	2

From: Phillip Groves <sausageshop@icloud.com>
Sent: Tuesday, 23 March 2021 6:56 PM
To: Tammi Axton <tammi.axton@nmc.tas.gov.au>
Subject: Re: Footpath Trading By-Law - Stakeholder

Hi Tammi

Please pass on my comments on the proposed footpath trading by law

I can not understand why council would spend so much time on this when I believe that every business that has a sign all ready has public liability insurance

Also as far as I know in Perth there would be lucky to be 3 or 4 signs

Hardly an amount worth worrying about

The cost of compliance would not even get close to covering administrative costs

Thanks

Phillip Groves

04 May 2021 - Perth Local District Committee

7.1 Footpath Trading By Law

15 February 2021 Council meeting Minute and Agenda Attachments were tabled for discussion.

The Committee noted that Council may wish to include a requirement for the demarcation of the licensed area for on-street dining, as is the case in Launceston City.

04 May 2021 - Evandale Advisory Committee

ii) Footpath Trading By Law

The 15 February 2021 Council meeting Minute and Agenda Attachments were circulated for information.

Mr Lawson raised the following concerns

- the General Manager being listed as the authorised officer, the Committee noted that the authorised officer is an officer delegated by the General Manager to act
- EVENTS had not been catered for in the by law



NORTHERN
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COUNCIL

FOOTPATH TRADING BY-LAW

REGULATORY IMPACT STATEMENT

By-law No. 1 of 2020

A by-law for the purpose of regulating footpath trading in the municipal area of the Northern Midlands.

PROPOSED FOOTPATH TRADING BY-LAW
BY-LAW No.1 OF 2020
REGULATORY IMPACT STATEMENT
Section 156A Local Government Act 1993

1. BACKGROUND

The Northern Midlands Council previously had three by-laws regulating footpath trading and associated activities:

- Display of Goods on Highway By-Law
- On Street Dining By-Law
- Freestanding Sign By-Law

The Northern Midlands Council also has in place a Footpath Trading Policy.

The *Northern Midlands Interim Planning Scheme 2013* and the State Planning Provisions' (SPPs) do not regulate footpath dining and temporary signs. On this basis a by-law is required to regulate these displays.

In accordance with *Section 155 of the Local Government Act 1993* (LG Act), a by-law expires 10 years after the date on which it first took effect.

The previous By-Laws: Display of Goods on Highway By-Law No. 1 of 2009, On Street Dining By-Law No. 2 of 2009 and Freestanding Sign By-Law No.3 of 2009 expired on 26th January 2020.

As a consequence, the Council has resolved in accordance with *s.156 of the Local Government Act 1993* its intention to make the proposed Footpath Trading By-Law No. 1 of 2020.

The purpose of this by-law is to create one regulatory document to regulate footpath trading in the municipal area of the Northern Midlands.

The by-law applies to all businesses operating within the Northern Midlands municipal area.

If the by-law is not introduced council will have no power to regulate footpath trading.

In preparing the proposed by-law due regard has been given to the provisions within existing relevant legislation and the need to ensure that the new by-law does not duplicate or conflict with those statutory provisions. Particular regard has been had to the *Local Government Act 1993*, the *Local Government (Highways) Act 1982* and the *Land Use Planning & Approvals Act 1993*.

2. THE OBJECTIVES OF THE BY-LAW (Section 156A(2)(a))

The objective of the proposed by-law is to regulate footpath trading in the Northern Midlands municipality by:

- Preventing excessive use of signage by businesses in the Northern Midlands municipality.
- Preventing danger/hazard to patrons caused by crowded streets/shopfronts.
- Establishing clear guidelines for footpath trading to ensure fairness to all businesses.
- Trying to protect both the Council and the public against damages and loss by setting the basic level of public liability insurance to be held by the operator of such an enterprise, including products extension.

The means by which the proposed by-law is intended to achieve the objective are by:

- Providing an administrative framework within which the council can approve the operation of a footpath trading enterprise.
- Providing clear guidelines for the trading of goods and services in an outdoor environment.
- Providing for a licence system allowing, under specified standards, footpath trading.

3. NATURE OF ANY RESTRICTION ON COMPETITION (Section 156A(2)(b))

The by-law seeks to regulate footpath trading within Northern Midlands municipal area.

Council believes the by-law will create fairness among the businesses as the same rules will apply to all businesses in the municipality.

The only provision in the by-law that potentially restricts competition is that it gives a power to the Council to determine who can be licensed to operate a footpath trading enterprise. The purpose of the by-law is to prohibit the conduct of such activities on public streets in the absence of the permit.

4. COSTS AND BENEFITS OF ANY RESTRICTION ON COMPETITION (Section 156A(2)(c)(i))

The by-law seeks to create the opportunity for the operation of footpath trading enterprises because without it such enterprises cannot be legally operated on the streets within Northern Midlands municipal area.

Such power is unlikely to be exercised provided applicants are operating in accordance with council's guidelines.

The by-law restricts what businesses can display on a footpath, however, provides a benefit to all businesses as they are treated equally, and all have to comply with the same obligations.

Existing business may need to change practice or become compliant.

The by-law will place no restriction on competition as the requirement to obtain a licence for the operation of footpath trading enterprises on a public street will ensure that the practice is managed and controlled as per the guidelines contained within Council's Footpath Trading Policy.

Within the by-law, a framework is created to enable the Council to approve and police the operation of footpath trading enterprises.

Without this by-law businesses are unable to legally operate on the street.

Apart from the costs identified in section 5 there are no major disadvantages or restrictions that the by-law will impact on the conduct of business and competition within the Northern Midlands municipal area.

5. COSTS AND BENEFITS OF ANY IMPACT ON THE CONDUCT OF BUSINESS (Section 156A(2)(c)(ii))

Benefits

- Street signs advise people that the business is open.
- Street signs advertise particular items that the business sells.
- Signs, trade displays and on- street dining attract customers to the business.
- Added atmosphere, ambience and uniformity to the street scape.
- Street signs let customers know that businesses are open on non-traditional shopping days such as weekends and public holidays.
- Expanded serving/display areas for businesses.
- Uniformity of requirements for businesses, meaning no business is unfairly disadvantaged.
- Consolidation of three previous by-laws to one.

Costs

- more regulation
- application process
- application fees
- increased public liability for on street activities
- restriction on size and types of signs
- restricted location of signage

- penalties for non-compliance

6. ALTERNATIVE OPTIONS CONSIDERED BY COUNCIL (Section 156A(2)(d))

In preparing the By-law the following options were explored:

- (a) **Do nothing.** This option was not acted upon because of the perceived need to provide a means for permitting and encouraging footpath trading as a result of community complaints around signage.
- (b) **Continue with Councils existing By-laws.** This was not seen as an option as the previous by-laws expired on 26th January 2020 and would need to be remade. three by-laws that deal with footpath trading are unnecessary as they can be consolidated to create one by-law for footpath trading.

Without an appropriate by-law proper standards cannot be imposed to ensure that;

- (a) pedestrians are not inconvenienced by footpath trading; and
- (b) that diners are not required to sit in an area that maybe unsafe because of the presence of traffic on the adjacent road pavement.

7. ASSESSMENT OF GREATEST NET BENEFIT OR LEAST NET COST TO THE COMMUNITY (Section 156A(2)(e))

Net Benefits

- Improved ambience within streets by enabling footpath trading to occur in a safe manner.
- Fairness to all businesses by having uniform rules

Net Cost

- Administration costs

This by-law will ensure that the activity associated with the practice of providing goods and service to the public on streets within the Northern Midlands Council area, is regulated and in compliance with the provisions contained within the Policy Guidelines for Footpath Trading.

The administrative costs of a permit system will be covered by the cost of the permit and thus will not impose any burden on the ratepayers generally. The enforcement costs will

be minimal as the Council will use its existing staff to police the by-law. The cost of the legal enforcement of the by-law should be largely met by the recovery of penalties and legal costs. The Council believes that any restriction that flows from the by-law is justified as the benefits to the community far outweigh the costs of complying with the proposed bylaw.

8. ASSESSMENT OF DIRECT AND INDIRECT ECONOMIC, SOCIAL AND ENVIRONMENTAL IMPACT (Section 156A(2)(f))

Social Impact

- Safer access for pedestrians as there will be a continuous accessible path of travel
- Safer access for people with disabilities

Economic Impact

The direct economic impact of the by-law related to the fees associated with the licensing of businesses and possible increase in public liability insurance. The cost of new signage may also impact on some businesses.

Indirect economic impacts could relate to perceived loss of income associated with restricted location of signs, trade display and on street dining areas.

The economic benefit.

- extra seating and food areas for patrons allowing business to seat more.
- displaying of goods on the footpath
- extra signage that allows businesses to attract customers.

Environmental Impact

From an environmental perspective clutter on the streets is reduced and the proposed regulatory framework will provide improved uniformity.

Conclusion

Council believe that a by-law is the best way to regulate footpath trading and ensure fairness for all business owners.

9. PROPOSED PUBLIC CONSULTATION PROCESS (Section 156A(2)(g))

The Public Consultation process will consist of: -

- (a) Referral of the proposed by-law to the following persons or organisations: -
- Local District committees
 - Businesses
 - Northern Midlands Business Association
 - Tasmanian police

- Royal Guide Dog Association
 - Royal Society for Blind and Deaf
 - Department of State Growth
 - Anti-Discrimination Commissioner
 - Department of Health
- (b) Mention on Council's website nmc.tas.gov.au, Council's Facebook page and the Northern Midlands Courier.
- (c) In accordance with the *Local Government Act 1993*, and as part of the by-law making process, submissions will be invited from the public.

Any person wishing to comment on this proposed by-law may do so in writing addressed to the General Manager, within 21 days from the date of publication of the initial notice in the Examiner newspaper.

Council will take into consideration all submissions properly made to it during the public comment period.

- (d) Copies of the proposed By-law and regulatory impact statement are available from the Council Office at 13 Smith Street, LONGFORD and on the Council's website.
- (e) Reference to the draft By-Law in media articles and press releases.
- (f) For further information about the proposed By-law the public will be directed to visit the Northern Midlands Council – 13 Smith Street, LONGFORD or www.northernmidlands.tas.gov.au
- (g) The Communication and Consultation Partnership Agreement between State and Local Government requires that Councils consult with relevant State Agencies during the by-law making process. In this instance only the Department of State Growth and the Department of Health has been consulted.

Des Jennings
GENERAL MANAGER

DATED the [X] day of [X] 201[X]