



# TASMANIAN GOVERNMENT GAZETTE

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## Cities Councils



NORTHERN  
MIDLANDS  
COUNCIL

### Footpath Trading By-Law

#### By-Law No.1 of 2022

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 2022.

**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 the contrary intention appears:

- |                      |   |
|----------------------|---|
| ‘Act’                | means the <i>Local Government Act 1993</i> (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 2022;   |
| ‘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; |

<b>‘footpath’</b>	means that part of the road reservation between the formed road and the property boundary and includes areas of nature strip;
<b>‘footpath trading’</b>	means the use of a footpath for commercial purposes, including but not limited to: display of goods, display of freestanding signs and on street dining;
<b>‘freestanding sign’</b>	means a freestanding, portable advertising device, including but not limited to: <ul style="list-style-type: none"> <li>(a) a sandwich board sign or an A frame sign; and</li> <li>(b) a flag or banner, including in a teardrop or feather shape;</li> </ul>
<b>‘General Manager’</b>	means the person appointed by Council from time to time to the position of General Manager in accordance with section 61 of the Act;
<b>‘highway’</b>	means a local highway within the meaning of the <i>Local Government (Highways) Act 1982</i> ;
<b>‘infringement notice’</b>	means an infringement notice within the meaning of the <i>Monetary Penalties Enforcement Act 2005</i> ;
<b>‘licence’</b>	means a licence issued under this By-law;
<b>‘main road’</b>	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;
<b>‘municipal area’</b>	means the municipal area of the Northern Midlands Council as defined in section 16 of the Act;
<b>‘on street dining’</b>	means the consumption of food or beverages or both by persons seated in an area that is part of a highway;
<b>‘penalty unit’</b>	means the sum as prescribed under the provisions of the <i>Penalty Units and Other Penalties Act 1987</i> ;
<b>‘person’</b>	includes an individual and a body corporate;
<b>‘premises’</b>	means a house or building, together with its land and outbuildings, occupied by a business or considered in an official context; and
<b>‘specified offence’</b>	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 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 units for each day that the offence continues.

## 6. Structures

- 1) All structures and objects used for footpath trading must:
  - a) be located and set back 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;
  - h) be strongly designed and constructed for a public environment; and
  - i) not obstruct regulatory and wayfinding signage.
- 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, washing pavements, and 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 are 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.
- 6) Freestanding signs must not obstruct regulatory and wayfinding signage.

### **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 30<sup>th</sup> 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 any 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 the place to which the licence applies;
- b) the receipt number of payment;
- c) the applicant's 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 28 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 units.
- 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;
  - b) issue one infringement notice in respect of more than one specified offence; and
  - 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**

<b>Column 1 CLAUSE</b>	<b>Column 2 DESCRIPTION OF OFFENCE</b>	<b>Column 3 PENALTY (Penalty Units)</b>
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

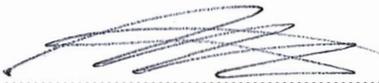
**FOOTPATH TRADING BY-LAW, BY-LAW NO 1 OF 2022**

I Desmond Jennings certify that the Northern Midlands Council has made this by-law in accordance with the *Local Government Act 1993*.



.....  
GENERAL MANAGER

This by-law is certified as being in accordance with the Law.



.....  
NATHAN STREET  
LEGAL PRACTITIONER

The Common Seal of the Northern Midlands Council has been hereunto affixed on  
..... 11 October 2022 ..... pursuant to a resolution of the Council passed on  
the 26<sup>th</sup> September 2022.



.....  
GENERAL MANAGER





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