

BURNIE CITY COUNCIL
HIGHWAYS BY-LAW
BY-LAW NO. 10 OF 2003

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. 10 of 2003.

Interpretation

2. In this By-Law:

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

‘business district’ means all that part of the City of Burnie bounded by the Bass Highway, Marine and North Terraces;

‘Council’ means Burnie City Council;

‘crossing’ means that part of a highway being constructed in or over the kerb and channel or table drain that allows entry of vehicles from the highway pavement onto a vehicular access;

‘customer servery’ 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;

‘discretionary circumstances’, in respect of a highway, includes any of the following circumstances:

- (a) the nature or volume of traffic carried or to be carried by that highway;
 - (b) the nature of the terrain (including its surface and sub-surface) traversed or to be traversed by a highway;
 - (c) the nature or type of the development that has occurred, is occurring or is likely to occur, on land adjacent to that highway;
 - (d) the amenity of the area adjacent to a highway;
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‘footpath’ means that area of a highway between the highway pavement and / or property line paved or unpaved, primarily used by pedestrians;

‘General Manager’ means the General Manager of 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*”;

‘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*;

‘mall’ means an area of a highway that has been set aside primarily for pedestrian traffic and recreational purposes;

‘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;

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

‘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;

‘terms’ includes conditions (whether imposed pursuant to this By-Law or not) of a permit issued under this By-Law or by virtue of a provision of the *Local Government Act 1993* or the *Local Government (Highways) Act 1982*;

‘vehicle’ means any description of a vehicle 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 by vehicles to or from the highway pavement to a property;

‘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. A person must not occupy a highway or place any obstruction or enclose or use 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.

Vending Machines / Customer Servery

4. (1) A person must not install nor 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 nor 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.

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 sign board on a highway must ensure that:
(i) It is constructed and located in accordance with any conditions stipulated in the permit;

- (ii) it is located on the highway in accordance with any conditions stipulated in the permit;
- (iii) any directions given to that person by an authorised officer concerning that sign 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 has not been placed so that it complies with a direction by an authorised officer.
- (4) A person may recover an impounded signboard by payment of a recovery fee as determined by the Council.

Division 3 - Hawkers

Permit Required for Hawking

- 6. 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.

Division 4 - Vehicles for Sale

Sale of Vehicles on a Highway

- 7. 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

- 8. 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 the vehicle unless that person has first obtained a permit under this By-Law.

Penalty: a fine not exceeding 2 penalty units.

PART 3
MATERIALS ON HIGHWAYS

Materials on Highways

9. Any person other than an authorised officer or council contractor who owns or operates a vehicle must not allow any material to be deposited or dropped 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.

Wheels of Vehicles to be Cleaned

10. Unless a permit pursuant to clause 9 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

11. (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 from which any material has been dropped or deposited on any highway; or
 - (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

12. (1) Upon the expiry of any time limit contained in a direction issued pursuant to clause 11 the Council may undertake all or part of any work that is the subject of that direction.
- (2) Any expense incurred by Council in undertaking the work referred to in sub-clause (1) is to be paid to the Council by the person to
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whom the direction was issued and the Council may recover any such expense as a debt due 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 road.

PART 4

FOOTPATHS, KERBS AND CHANNELS, TABLE DRAINS AND VEHICULAR ACCESS

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

13. A person must not drive a vehicle or allow a vehicle to be driven over the footpath, kerb and channel, table drain or vehicular access of a highway to or from any site or premises where building or excavating works are in progress or are about to commence unless the owner of the premises 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.

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

Penalty: a fine not exceeding 5 penalty units.

Directions

15. An authorised officer may issue a written direction to any person who damages a footpath, kerb and channel, a table drain or 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

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 Council in undertaking work referred to in sub-clause (1) is to be paid by the person to whom 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 road.

Division 2 – Construction of Crossings

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

17. (1) A person must not construct nor cause to be constructed nor place nor cause to be placed any crossing over a footpath, kerb and channel, table drain or vehicular access that forms part of a highway 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.

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

18. (1) The owner of any premises which abuts a highway if required to do so by an authorised officer must provide a crossing over the footpath, kerb and channel, table drain or 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

19. 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 property is gained;
 - (b) remove a crossing;
 - (c) reinstate the footpath, kerb and channel, table drain or vehicular access following the removal of a crossing; or
 - (d) construct a crossing.

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

20. (1) Once any time limit imposed by a direction issued pursuant to clause 19 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 Council in undertaking work is to be paid by the person to whom a direction under clause 19 was issued in addition to any penalty imposed by that clause and both are recoverable by Council as a debt due to the Council.
- (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 road.

PART 5
DAMAGE OF HIGHWAYS

21. A person 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.

Directions

22. An authorised officer may issue a written direction to any person to reinstate 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

23. (1) The Council may undertake all or any part of the work that is the subject of a direction that has been given in accordance with clause 22 of this By-Law.
- (2) Any expense incurred by Council in undertaking work under sub-clause (1), is to be paid by the person to whom a direction under clause 22 was issued in addition to any penalty imposed by that clause and both are recoverable by Council as a debt due to the Council.

Removal of Trees

24. 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

Grazing

25. 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.

Holding Yard

26. 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.

Movement of Livestock along a Highway

27. (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.

Livestock Crossing

28. 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 persons 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.

Driving Livestock within Town Areas

29. No person shall 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

30. 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;
 - (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) any applicable fee.

Grant of Permits

31. An authorised officer may issue a permit pursuant to the provisions of this By-Law.

Cancellation of Permits

32. (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

33. A permit holder is to immediately produce a permit issued pursuant to this By-law when requested to do so by a police officer, officer of the Council 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

34. 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 **INFRINGEMENT NOTICES**

Infringement Notice

35. (1) An authorised officer;
- (a) may issue an infringement notice to a person in respect of any contravention of this By-Law;
 - (b) may issue one infringement notice in respect of more than one contravention or offence of or against this By-law; and
- (2) An infringement notice service on a person is to include:
- (a) the date, time and place the alleged offence occurred;
 - (b) the penalty for such infringement;
 - (c) the place or places at which the penalty may be paid;
 - (d) the date of issue of the notice and a statement that the penalty may be paid within a period of 14 days after that date;
 - (e) a summary of the provisions of this By-Law relating to the withdrawal of infringement notices;

- (3) The General Manager may, at any time after an infringement notice is issued, withdraw an infringement notice.
- (4) If, before the expiration of the period specified in the infringement notice for the payment of the penalty or, where the authorised person giving the notice so allows, at any time before service of a summons in respect of the infringement, the amount of the penalty specified in the notice is paid no further proceedings are to be taken in respect of the infringement.
- (5) Where an infringement notice has been served in accordance with this Part and the amount of the penalty is not paid in accordance with clause (4) nothing in the Part shall in any way prejudice the institution or prosecution of proceedings for the offence in question.
- (6) The penalty for an infringement in respect of which an infringement notice is issued shall be as follows:-

Part 2

Clause 3	1 penalty unit
Clause 4 (1) and (2)	5 penalty units
Clause 5 (1) and (3)	1 penalty unit
Clause 6	1 penalty unit
Clause 7	1 penalty unit
Clause 8	1 penalty unit

Part 3

Clause 9	1 penalty unit
Clause 10	2 penalty units
Clause 11(2)	2 penalty units

Part 4

Clause 13	2 penalty units
Clause 14	2 penalty units
Clause 16 (1) and (2)	5 penalty units
Clause 17 (1)	5 penalty units
Clause 18 (1) and (2)	5 penalty units
Clause 19	5 penalty units
Clause 20	5 penalty units

Part 5

Clause 21	5 penalty units
Clause 22	5 penalty units
Clause 24	5 penalty units

Part 6

Clause 25	5 penalty units
Clause 26	5 penalty units
Clause 27 (1) and (2)	5 penalty units
Clause 28	5 penalty units
Clause 29	5 penalty units

Part 7

Clause 33	0.5 penalty units
Clause 34	5 penalty units

- (7) 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.

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

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G W TREMAYNE
LEGAL PRACTITIONER

The Common Seal of the Burnie City Council
was affixed this day of 2003
for and on behalf of the Burnie City Council.

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GENERAL MANAGER

Confirmed by me this day of 2003 at Hobart

J COX
MINISTER ASSISTING THE
PREMIER ON LOCAL
GOVERNMENT