

PROPOSED BY-LAW NO. 1 OF 2025

BURNIE CITY COUNCIL

PUBLIC PLACES BY-LAW

REGULATORY IMPACT STATEMENT

The following Regulatory Impact Statement (**RIS**) has been prepared for the proposed Public Places By-law to be made by the Burnie City Council (**the Council**).

The By-law will replace the Public Reserves & Public Buildings By-law 2011 that was made in May 2011.

1. Purpose & Process of Regulatory Impact Statement

The *Local Government Act 1993* (**the Act**) requires that when a council wishes to make a by-law it must prepare a Regulatory Impact Statement. The preparation of an RIS requires the Council to analyse and determine the most effective way of regulating the subject matter of a proposed by-law. In the present case the proposed by-law is to regulate what are defined to be “public places” in the proposed by-law. Shortly stated public places includes Council owned and controlled land including structures on such land but excludes roads that are under the control of Council. The Council must consider whether there is any restriction on competition and if so, what are the benefits or otherwise of that restriction. It must also consider whether there is an impact on business that will result from the terms of the by-law. A council is required to:

1. Assess the nature of any restriction on competition;
2. Assess the costs and benefits of –
 - (i) any restriction on competition; or
 - (ii) any impact on the conduct of business;
3. Assess any alternative option considered by the council;
4. Make an assessment of the greatest net benefit or least net cost to the community;
5. Make an assessment of the direct and indirect economic, social and environmental impact of the by-law;
6. Provide details of the proposed public consultation process.

The Act, under Section 156A, provides that once the RIS has been prepared the Council must submit it to the Director of Local Government, Department of Premier and Cabinet, for assessment. If the Director is satisfied that the RIS meets the statutory requirements he or she will issue a certificate

to that effect and Council may then commence the public consultation process.

Pursuant to section 158 of the Act copies of the by-law and RIS are available by contacting the Council one of the following ways:

Telephone:	03 64305700
Email:	burnie@burnie.tas.gov.au
Mail:	PO Box 973, Burnie, Tasmania 7320
Internet:	https://www.burnie.tas.gov.au
In person:	80 Wilson Street, Burnie
Office hours:	8.30 am — 5.00 pm Monday to Friday

Copies may either be inspected at the Council's office or alternatively are also available for purchase at a cost of \$1.10 each.

2. Background

The Public Places By-law has been developed for the purpose of regulating and providing for the management of Council owned and controlled land within the municipal area of Burnie.

Since 2011 the Council has controlled and managed its reserves and land under its control by its Public Reserves and Public Buildings By-law No. 1 of 2011. Since it expired the Council has not had an effective means of regulating the safe and peaceful use of the recreation grounds, public reserves and related spaces under its management. It is proposed that the new by-law incorporate only the more important of the provisions that were included in the previous by-law. It has introduced new measures to more efficiently deal with those matters it has identified as likely to interfere or conflict with other users or to damage the condition or values of a public place as defined under the by-law. However, it also seeks to avoid unreasonable barriers and provide a fair opportunity for access to and use of the public places.

Periodically there is a need for Council to take steps to have informal entrances to its reserves that are created by adjoining land owners closed off or to allow access to them. The by-law prohibits, except with the Council's approval, such entrances.

Broadly, it is important that public places, buildings & other structures on them and vegetation are managed in a manner that ensures they can be used for the maximum public benefit and damage prevented. Inappropriate activities need to be controlled and/or prevented, which is not possible if there is no regulatory safeguard and the Public Places By-law has been prepared to serve this purpose.

In preparing this by-law due regard has been given to:

- The merits in incorporating previous by-law provisions in the new by-law;
- The consistency with existing by-law provisions within similar by-laws administered by

other Tasmanian Councils; and

- The provisions within existing relevant legislation and the need to ensure that the new by-law neither duplicates nor conflicts with those statutory provisions.

In regard to this last dot point the most relevant legislation is:

- *Burnie City Council Parking By-law No. 1 of 2017*
- *Local Government (Highways) Act 1982*
- *Vehicle and Traffic Act 1999*
- *Road Rules 2019*
- *Police Offences Act 1935*
- *Environmental Management and Pollution Control Act 1994*
- *Dog Control Act 2000*

3. Objectives of the By-law

The Council's public places are primarily intended for community, recreation and sports use, and not as a place from which to regularly conduct a business unless that business is consistent with and adds to the purpose of the place. The by-law seeks to regulate the public places accordingly.

There is need for a power to prevent and respond to an activity which may damage, destroy or interfere with the assets and values of a public place, disrupt operations for maintenance and improvement, or which may create risk of inconvenience or harm to other users. The by-law seeks to do this.

The Council periodically identifies incidents and activities which cause or have the potential to cause harm to the physical attributes and conditions of a public place. These include storage of vehicles, or materials such as firewood; cultivation as a garden; cutting and removal of plants or plant material; excavation and removal of soil; formation of pathways involving removal of vegetation and changes in ground surface; graffiti; driving of vehicles on grassed surfaces, including playing fields; and modification or damage to a building. The by-law aims to prevent such activities.

It is not the intention of the By-law to interfere with fair and responsible use and enjoyment of a public place – however, there is need to control activity which may create a risk of harm or inconvenience to other users.

The following table summarises the various issues that the by-law provides for, identifies what the by-law will do to achieve these objectives.

Issue	Objective	Means to achieve Objective
A public place being hired or let to individuals or entities for private purposes	To ensure that public place can be hired or let for private purposes where such usage does not unreasonably affect the public use of public places.	The by-law contains provisions for a public place or part of a public place, including a berthing space at a wharf or marina, to be hired or let for a private purpose, subject to agreed terms and conditions.
A public place being used as a means of vehicular or pedestrian access to adjoining property	To prevent unnecessary damage to public places by ensuring that entrances from adjoining properties are not randomly established	The by-law includes provisions to prevent entrances to public places from adjoining land being created without Council consideration and approval.
A public place being used such that peaceful enjoyment by the public is not adversely affected	To try and ensure that public usage of public places is not affected by unruly and uncontrolled individuals or gatherings	The by-law contains provisions to control activity that interferes with peaceful public use of public places and prohibits the holding of large gatherings without prior permission.
Use of a public place for commercial purposes	To ensure that public enjoyment of public places is not affected by inappropriate commercial activity	The by-law includes provisions dealing with the sale of goods including food and drink in public places subject to council authorisation.
Organised Use affecting public use of a public place	To ensure that organised events do not unreasonably affect the public use of public places	The by-law includes provisions that allow for organised public and private use in a public place where council has authorised such activity.
Misuse of or damage to children's playground equipment or Council property	To ensure that playground equipment provided for use by children and other Council property in public places is not misused or damaged	The by-law includes provisions dealing with the misuse or damage of children's playground equipment and other Council property within public places.
Private camping affecting public use of a public place which may be regulated by requiring anyone who wishes to camp in a public place to obtain a permit from the Council	To ensure that public enjoyment of public places is not adversely affected by camping whilst allowing the use of such places after obtaining a permit.	The by-law includes provisions to control camping or the occupation of caravans or motor homes in public places without first obtaining a permit. There are no restrictions on who may obtain a permit.
Prohibiting the discharge of firearms or firing or releasing projectiles in public places	To ensure that public safety in public places is not threatened by the use of firearms or other devices that release projectiles	The by-law contains provisions that prevent, without council authorisation, the use in public places of firearms or devices that fire or release projectiles.
Protecting wildlife in public places	To ensure that wildlife is not adversely affected by activity in public places	The by-law contains provisions that prevent interference with wildlife or wildlife products in a public place without written permission.
To prevent the use of aircraft which includes the use of drones in a public place unless they are used by the police or SES	To protect the public from being hit by a flying object, to prevent overlooking o activities and to prevent the	Regulate the use of aircraft by requiring authorisation for commercial or private operators of aircraft (including drones) when on public land. An exception applies when used by the police or SES.

Issue	Objective	Means to achieve Objective
	noise that emanates from such objects	

4. Potential restriction on competition

The following possible uses of public places are dependent upon gaining the Council's consent:

- Dining including the sale of liquor with the public place.
- Organized public and private events.
- The use of food vans without authorisation and a total prohibition of using such vans from a parking space.

It is reasonable to expect that there will be limits on these opportunities as the public places controlled by this by-law are primarily required for public use. The by-law does provide some guidance as to how an application for using the public place for a purpose that is otherwise prohibited except by the grant of what is called a "Use Agreement".

It is not reasonable to expect that the commercial access to these public facilities can occur without constraint. In some cases choices will need to be made that restrict or prevent commercial access.

The practicably usable space available without compromising public safety and access will in some instances be a limiting factor in deciding whether or not a permit can be issued.

Potentially the permits that are issued under the auspices of this by-law will also include conditions that restrict competitive activity – such as limiting the hours of operation, restricting the use of signs, restricting the use of parking areas within the public place, requiring supervision of events and allowing organisers of events to levy a charge for attending and excluding people who do not pay such a charge.

Any such conditions would be based upon the objective and balanced criteria prescribed within the by-law and only imposed where considered appropriate to minimise adverse impact on general public access, community events and public amenity.

5. Assessment of costs/benefits of restriction on competition

Issue	Costs	Benefits
A permit will be required for commercial dining conducted in public places	Restrictions will be imposed on the space occupied within a public place for this purpose	Any restrictions will apply to achieve maximum public access to spaces and walkways in public places
Written permission will be required for the conduct of sales and commercial activity in public places	Areas used for sales or commercial activity reduce the space available for general public use	Commercial activity in public places can be controlled to minimise the impact on public access and enjoyment

Issue	Costs	Benefits
Camping and occupation of motor homes in public places will only be permitted if authorised by the Council	Campers and occupiers of motor homes will have to use sites other than the public places unless authorised to park in such public places. However, for those in need of a place to camp and for financial or other reasons cannot afford commercial camping grounds can obtain a permit and camp in a public place.	The space within public places available for general public use and enjoyment will be maximised. The areas where camping will be permitted can be vetted to make sure they are safe and appropriate for that purpose.

The permit system allows the Council to prevent any attempt to set up a permanent camping site in a public place. The Council recognises that the bylaw prevents those who wish to camp in a public place out of necessity from doing so. However, that wish must be balanced against the need to ensure that the public reserve fulfills its purpose of providing for the ongoing enjoyment and recreational use by the public including to its infrastructure. The Council will refer those in genuine need of a place to sleep to a local welfare agency.

It is virtually impossible to accurately quantify the potential impact of the by-law on the cost of business in the community because of the difficulty of predicting likely scenarios but, in any event, the costs are unlikely to be significant.

Public reserves and parking areas are primarily provided for public convenience and are not generally used for regular commercial purposes and, where they are, the situation is normally unique to a particular business enterprise and circumstance.

Nevertheless, a subjective assessment suggests that the benefits of public safety and convenience will outweigh what are relatively low costs associated with any restriction on competition the by-law does impose. There will be restrictions on the commercial use of public infrastructure, but only for the purpose of protecting public access and safety and achieving the most orderly and efficient use of the facilities for the occasional commercial purpose. Any potential restriction to competition will be outweighed by protection of the public interest and safety.

6. Assessment of economic, environmental or social impacts

The following table summarises the economic, environmental and social impacts of the by-law.

		Direct Impacts	Indirect Impacts
Environmental	Benefits	The controls within the by-law are intended to protect the environment within the public places	Reduced depositing of materials and pollution generating activities in public places
	Costs	Nil	Nil

		Direct Impacts	Indirect Impacts
Social	Benefits	• Provision of a safe, controlled and clean area for outings and recreation • Reducing anti-social behaviour within public places	• Supplement the <i>Dog Control Act</i> and control of litter
	Costs	• Nil	
Economic	Benefits	• Provides for a commercial use within public places in an orderly manner • Business are able to generate additional income through the appropriate use of adjoining or nearby public land	• The by-law facilitates some appropriate commercial activity • Council could impose fees which could be used to upgrade the public places
	Costs	• May limit some commercial users where a Permit is not granted	• Enforcement costs for Council in dealing with complaints and responding to higher community expectations

7. Discussion of alternatives

There are alternatives to preparing a Public Places By-law.

The Council could simply do nothing, which is not really a viable option as it has an obligation to ensure that public places are used in a safe manner and a responsibility to provide for suitable controls to ensure equitable community access, safety and amenity standards are maintained – and to enforce those controls.

Were there no regulatory controls in place then individuals could determine their own standards which inevitably leads to an immediate or progressive reduction in the access, safety and amenity standards associated with the public places. Such an approach creates considerable uncertainty and ambiguity.

An alternative is to rely on other statutory provisions or regulations. Examples include environmental nuisances being pursued under the *Environmental Management and Pollution Control Act 1993*, anti-social behaviour being referred to the Police, or Abatement Notices being issued under the *Local Government Act 1993*. Abatement Notices are normally issued in circumstances when a person is required to actually abate a nuisance – requiring work to be carried out to remove the nuisance. By contrast, the penalty unit infringement notice provisions in a by-law present a mechanism for dealing with breach issues that is both less costly for the council and potentially more immediate than the alternative.

Other types of other regulatory alternatives are inadequate in providing the controls needed to deal with uses and activities involving public places. Additionally, there are benefits in defining the actual activities (within the by-law) that are to be controlled, rather than seeking to apply rather generalised provisions within other legislation. The more precise definition makes it much clearer to everyone exactly what is expected and so reduces, “grey” areas, arguments and conflicts. It

provides the clarity needed for effective enforcement.

The other legislation also does not provide for a permit system that has the capacity to allow yet provide appropriate control over commercial activities. Without such a permit system Council would either have to rely upon informal agreements or consider leasing the space to a commercial operator on the basis that it remains also available for public use. Both of these alternative options are inadequate and present difficulties for both parties. The by-law provides a practical means of permitting commercial activities whilst giving Council the opportunity to prevent any unsafe or inappropriate use.

8. Assessment of public costs and benefits

The overall objective of preparing a Public Places By-law is to minimise the risk to misuse and damage such places and more particularly, to protect the community's built assets and provide for improved public safety.

The proposed by-law will benefit the Burnie community because it will provide the necessary regulatory safeguards to ensure that people are able to access public places in a relatively safe and unimpeded manner.

It would also provide a means by which Council is able to control inappropriate behaviour and protect public amenity and enjoyment.

There are clear financial benefits to Council (and the broader community) in having an appropriate regulatory regime in place that protects the condition of Council public places.

There are significant community costs incurred when conflict arises from inconsiderate use of public places. These and other unreasonable behaviour or activity need to be regulated.

Regulation is the most feasible option to achieve the by-law's objectives and the by-law and it is framed to impose as little regulatory burden on the community as possible.

9. Proposed public consultation process

The public consultation that Council proposes following certification by the Director of Local Government, in accordance with Section 156A (6) of the *Local Government Act* 1993 will include all of the following:

- Copies of the by-law will be sent to the Department of State Growth, Department of Justice, Department of Police, Fire and Emergency Management, Department of Natural Resources and Environment, and Tasmania Police.
- An advertisement will be placed in the Advocate newspaper indicating the Council's intention and seeking public comment.
- Council will display the proposal on its website and in its social media pages on Facebook and on noticeboards at the Council offices at Burnie.