



NORTHERN  
MIDLANDS  
COUNCIL

# **FOOTPATH TRADING BY-LAW**

## **REGULATORY IMPACT STATEMENT**

### **By-law No. 1 of 2022**

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 2022**  
**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 26<sup>th</sup> 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 26<sup>th</sup> 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
  - Tasmania 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](http://nmc.tas.gov.au), Councils 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](http://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 26 day of July 2022