

KINGBOROUGH COUNCIL

**HEALTH AND ENVIRONMENTAL SERVICES BY-LAW**

BY-LAW 3 OF 2011

BY-LAW MADE UNDER SECTION 145  
OF THE LOCAL GOVERNMENT ACT 1993

FOR THE PURPOSE OF REGULATING MATTERS OF HEALTH AND  
ENVIRONMENTAL SERVICES IN THE MUNICIPAL AREA

**PART 1 - PRELIMINARY**

**Short Title**

- 1 — This By-law may be cited as the Health and Environmental Services By-Law.

**Interpretation**

- 2 — In this By-law:

"**approved container**" in relation to the disposal of sharps, means any container which is impervious, rigid, durable, tamper resistant, clearly labeled and which is able to be securely fastened;

"**authorised officer**" means an employee of the Council authorised by the Council or General Manager for the purposes of this By-law or a police officer of the Tasmania Police Service;

"**barbecue**" means any device, structure, or equipment used, designed or adapted for cooking food in the open air for human consumption;

"**builder**" means:

- (a) a person engaged by the owner of a building to manage or carry out building work on the building; or
- (b) if such a person does not exist or is unable to be found, the owner of that building;

"**building work**" means work relating to:

- (a) erecting, re-erecting, constructing, altering, repairing, underpinning, demolishing or removing a building; and
- (b) adding to a building; and
- (c) excavating or filling incidental to an activity referred to in paragraph (a) or (b); and

(d) any other prescribed work;

**"building site"** means a place where building work is carried out;

**"caravan"** means any object or structure having the general characteristics of a caravan, a house or dwelling on wheels, a covered van or trailer, and any vehicle used or adapted for human habitation or occupation, whether the wheels or axles are removed or not and whether it is resting directly on the ground or is placed on blocks or other supports, and any structure, awning, verandah, lean-to, car-port or other enclosed or partly enclosed area used or capable of being used in connection with or appurtenant to any caravan but does not include a building or temporary structure for which a permit is required under the *Building Act 2000*;

**"Council"** means the Kingborough Council;

**"General Manager"** means the General Manager appointed by the Council;

**"incinerator"** includes any outside fireplace, construction or container outside a building, which:

- (a) is used for the purpose of disposal of waste by combustion;
- (b) is not permitted under a condition of an environment protection notice under the *Environmental Management and Pollution Control Act 1994* or under the conditions of a permit granted under the *Land Use Planning and Approvals Act 1993*; and
- (c) does not include a barbecue, whilst being used in connection with the cooking of food for human consumption;

**"kept"** and **"keep"** includes the provision of food or shelter;

**"municipal area"** means the area of land under the control of the Council and defined in section 16 of the *Local Government Act 1993*;

**"on-site wastewater management system"** means an on-site system for the management of waste water that is:

- (a) a disposal or treatment system servicing one or more blocks; or
- (b) an on-site composting toilet or system; or
- (c) an on-site incinerating toilet;

**"occupier"** includes any person having the care, control or management of any land or premises;

**“occupy”** includes reside or live in or use any caravan for entertainment, sleeping, resting, cooking, eating, commercial or retail activities or for any similar use whether temporary or permanent;

**“open air fire”** means a fire burning in the outside environment and not housed or contained;

**“owner”** means any person who, whether jointly or severally, is seized or possessed of, or entitled to, any estate or interest in land;

**“poultry”** includes ducks, fowl, geese, guinea fowl, peacocks, turkeys, pheasants, pigeons or game bird or any other birds kept in an aviary or structure, especially as a source of food;

**“premises”** includes land or any part of any premises or land;

**“prescribed work”** has the same meaning as “prescribed work” under the *Building Act 2000* and the *Building Regulations 2004*;

**“residential zone”** means a zone defined in a planning scheme applicable to the municipal area as being for a residential zone;

**“sharps”** includes objects or devices having acute rigid corners, edges, points or protuberances capable of cutting or penetrating the skin and includes hypodermic needles, intravenous sets, Pasteur pipettes, lancets, scalpel blades, and other similar objects or devices used in medical, dental, veterinary and nursing applications;

**“toilet”** includes an enclosed facility which has a seat and a removable pan, a water closet or a portable toilet;

**“urinal”** means a facility used solely for the receipt of human urine;

**“waste”** includes, without limitation, domestic refuse, hazardous waste, trade waste, recyclables, and any other garbage, rubbish, debris, litter, or vegetation that is the result or product of mowing, trimming, pruning, weeding, or any other similar matter;

**“waste facility”** means any area set aside by the Council as a waste facility, disposal area, waste transfer station, resource recovery facility, recycling centre, or landfill.

## PART 2 - DISPOSAL OF REFUSE

### Times for use of disposal areas

- 3 — A person must not deposit, place or drop or allow any person to deposit, place or drop any waste in or on any waste facility except on the days and within the periods of time fixed by the Council.

Penalty: Fine not exceeding 3 penalty units.

### Directions for deposit of refuse

- 4 — (1) For the purposes of this Part an "authorised officer" includes a person, firm or organisation contracted by the Council for the purposes of administering or managing a waste facility.

(2) An authorised officer may give directions to any person within a waste facility.

(3) Any person depositing refuse at a waste facility must:

(a) obey any direction given by an authorised officer in a waste facility;

(b) obey any direction on any sign in a waste facility.

Penalty: Fine not exceeding 2 penalty units.

### Prohibitions in the disposal area

- 5 — A person must not in a waste facility:

(a) light any fire or feed or extend any fire which is already burning;

(b) remove any article or thing deposited on the disposal area without the consent of the Council; or

(c) deposit any material capable of becoming airborne without first securing it from being scattered by the wind.

Penalty: Fine not exceeding 5 penalty units

### Refusal to accept refuse at a disposal site

- 6 — An authorised officer may refuse to accept any waste at a waste facility which in the opinion of the authorised officer may not be accepted under the conditions of an environment protection notice issued under the *Environmental Management and Pollution Control Act 1994* or under the conditions of a permit granted under the *Land Use Planning and Approvals Act 1993*.

## **PART 3 – HOUSEHOLD REFUSE & RECYCLING**

### **Kerbside refuse collection**

- 7 — (1) For the purposes of this Part, “notice” means a notice approved by the Council or the General Manager that is displayed or set up in a public place within the municipal area, or in a daily newspaper circulated in the municipal area, or forwarded by the Council, General Manager or an authorised officer to a person to whom this By-law applies.
- (2) The Council will provide a kerbside collection service for domestic waste only within an area designated by the Council.
- (3) The General Manager may determine by notice classes of materials as being recyclables for the purpose of kerbside collection.
- (4) The General Manager may determine by notice the management and control of the storage, collection, transport and disposal of waste within the municipal area.
- (5) Every tenement within a designated kerbside collection area will, upon request, be provided with a mobile garbage bin for the storage and collection of household waste and a mobile recycling bin for the storage and collection of recyclables.
- (6) Bins provided in accordance with sub-clause (5) remain the property of the Council.
- (7) The Council may impose a charge for the replacement or repair of any mobile garbage or recycling bin.
- (8) The Council or its agent or contractors will only collect household waste that is contained within a mobile garbage bin with the lid closed that has been provided by or purchased from the Council for that purpose, or nominated recyclables that are wholly contained within a mobile recycling bin with the lid closed provided by or purchased from the Council for that purpose.
- (9) No person other than the Council or its agent or contractor is to collect recyclables placed in a mobile recycling bin for collection by Council’s recycling collection service.

Penalty: Fine not exceeding 2 penalty units

## **General Provisions**

**8** — A person within the designated area entitled to receive the kerbside collection service is to:

- (a) store the mobile garbage bin and mobile recycling bin wholly within their property boundaries unless otherwise authorised by the Council, except when the bins are placed on the kerbside for collection in accordance with the General Manager's notice relating to collections;
- (b) keep the mobile garbage and recycling bins in good repair and in a clean and sanitary condition;
- (c) clean and disinfect the mobile garbage and recycling bins if required to do so by the General Manager or an authorised officer;
- (d) keep the lid of the mobile garbage bin and recycling bin closed except when matter is being placed in them; and
- (e) leave the mobile garbage and recycling bins for collection on a day and in a manner and location approved by the General Manager at least once per fortnight, or empty the mobile garbage bin at a waste facility at least once per fortnight, or whenever required to do so by the General Manager or an authorised officer;
- (f) ensure that the contents of the mobile garbage bin do not exceed 50 kilograms;
- (g) not place in any Council mobile recycling bin any matter except recyclables in accordance with the General Manager's notice under clause 7(3);
- (h) remove the mobile garbage and recycling bins from the kerbside as soon as practicable after collection of their contents.

Penalty: Fine not exceeding 2 penalty units.

## **Dangerous substances**

**9** — The owner or occupier of any premises must not place in any mobile garbage or recycling bin which is placed for Council collection any thing or substance which:

- (a) is hot;
- (b) may, or is likely to explode;
- (c) may interact with other substances in the bin and generate toxic or poisonous gases or fumes;

- (d) is corrosive;
- (e) contains sharps or potentially infectious waste;
- (f) is in any other way dangerous;
- (g) is defined as a controlled waste within the *Environmental Management and Pollution Control (Waste Management) Regulations 2010*.

Penalty: Fine not exceeding 5 penalty units

## **PART 4 - CONTROL OF ANIMALS AND POULTRY**

### **Keeping of hooved animals**

**10**—The occupier or owner of a property must not allow any hooved animal to be kept on a property having an area of less than 2000 square metres.

Penalty: Fine not exceeding 5 penalty units

### **Keeping of poultry**

**11**—(1) A person must not allow any structure for the keeping of poultry to be within 2 metres of a property boundary or within 5 metres of a dwelling.

Penalty: Fine not exceeding 5 penalty units

(2) A person must not keep more than 6 birds which fall within the definition of poultry on premises within or partly within a residential zone.

Penalty: Fine not exceeding 5 penalty units

(3) A person must not keep a rooster on premises within or partly within a residential zone.

Penalty: Fine not exceeding 5 penalty units

(4) If a person keeps a rooster on premises other than those within or partly within a residential zone it must be kept and housed in such a manner to ensure it does not create a nuisance.

Penalty: Fine not exceeding 5 penalty units

### **Maintenance of premises used by animals or poultry**

**12**—The occupier or owner of any premises where an animal or poultry is kept must:

- (a) maintain any structures, buildings, enclosures or areas to which the animal or poultry has access so that they are clean and sanitary;

- (b) not allow the animal or poultry to cause any nuisance, including through smell, noise, rodents or flies;
- (c) abate any nuisance that may arise as a result of keeping of the animal or poultry.

Penalty: Fine not exceeding 5 penalty units

## **PART 5 - BUILDING SITE SANITATION**

### **General duty of the builder**

13—A builder must ensure that toilets and/or urinals in accordance with this Part are provided on the building site, or within 100 metres of the building site, prior to the commencement of any building work on the building site.

Penalty: Fine not exceeding 5 penalty units

### **Number of toilets provided**

14—The builder is to provide 1 toilet for every 10 people or part thereof on the building site.

Penalty: Fine not exceeding 5 penalty units

### **Location of toilets and urinals**

15—The builder must comply with any directions given by an authorised officer about the location of the toilets or urinals.

Penalty: Fine not exceeding 5 penalty units

### **Toilet design and construction –**

16— (1) A portable toilet installed on a building site must be installed in accordance with the following requirements:

- (a) the toilet must be provided with a plentiful supply of toilet paper and, where appropriate, must be provided with sanitary disposal units that are regularly serviced;
- (b) if required by the Council or General Manager, the portable toilet is to be connected to the sewerage system or temporary on-site system;
- (c) the toilet must have a suitable and appropriately sized hand wash basin supplied with running water, soap and paper towel.

Penalty: Fine not exceeding 5 penalty units



- (2) The builder must comply with any direction given by an authorised officer about the provision of, and/or, the design and installation of a portable toilet.

Penalty: Fine not exceeding 5 penalty units

#### **Emptying and cleanliness of portable toilets**

- 17— (1) The builder must ensure that any portable toilet provided on the building site is emptied:

- (a) regularly; and
- (b) whenever required by an authorised officer; and
- (c) in any manner required by an authorised officer.

Penalty: Fine not exceeding 5 penalty units

- (2) The builder must ensure that any portable toilet provided on the building site is maintained in a clean and sanitary condition.

Penalty: Fine not exceeding 5 penalty units.

## **PART 6 - CONTROL OF INCINERATORS, OPEN AIR BURNING AND WOOD HEATERS**

#### **Property size and zoning for burning**

- 18— (1) Except as provided in sub-clause (2) a person must not light an incinerator or open air fire or allow an incinerator or open air fire to be lit or remain alight on any premises:

- (a) having an area of less than 2000 square metres; or
- (b) within or partly within a residential zone.

Penalty: Fine not exceeding 5 penalty units

- (2) A person may burn unpainted, untreated and uncontaminated wood, pellet fuel, a briquette, paper, coal, charcoal or peat in an incinerator or open air fire where:

- (a) the fire is for cooking food, heating liquids or warming human beings; and
- (b) an exemption has been granted by the General Manager.

#### **Construction of incinerators**

- 19— A person must not install an incinerator unless it is constructed of a suitable non-combustible material such as brick, metal or concrete and is in accordance with applicable Australian Standards.

Penalty: Fine not exceeding 5 penalty units

**Maintenance of incinerators**

**20**— The owner or occupier of premises on which an incinerator is located must maintain the incinerator in good repair and in a manner which promotes efficient combustion.

Penalty: Fine not exceeding 5 penalty units

**Incinerator lid**

**21**— All incinerators must be fitted with a lid and a spark arrester in accordance with the relevant Australian Standards to prevent ash or other particles from escaping.

Penalty: Fine not exceeding 5 penalty units

**Position of incinerators and open air fires**

**22**— A person must position an incinerator or an open air fire:

- (a) not less than 5 metres from any boundary of the property; and
- (b) not less than 30 metres from any dwelling not on the property; and
- (c) clear of any overhanging foliage or other combustible material.

Penalty: Fine not exceeding 5 penalty units

**Burning not to be a nuisance or dangerous**

**23**— (1) A person must not burn any matter or allow any waste, material or substance to be burned in a manner or to an extent which causes a nuisance, is unsafe, or is dangerous to health.

Penalty: Fine not exceeding 5 penalty units

(2) A person who is burning any waste, material, or substance which in the opinion of an authorised officer contravenes any clause of Part 6 of this By-law, must extinguish the fire if instructed to do so by an authorised officer.

Penalty: Fine not exceeding 5 penalty units

(3) The Council may extinguish the fire if the person fails to comply with the instructions given in accordance with sub-clause (2) within a reasonable time.

(4) In addition to a penalty imposed under sub-clause (2), an expense incurred by the Council in consequence of that failure or contravention is recoverable by the Council as a debt payable by the person so failing to comply or contravening.

### Access to water supply

24—A person must not light an incinerator or open air fire or allow an incinerator or open air fire to be lit or to remain alight unless:

- (a) a water supply, or another suitable means of fire extinguishment, is provided; and
- (b) a person aged 18 years or older is in attendance at all times.

Penalty: Fine not exceeding 5 penalty units

## PART 7 – TREES ON PRIVATE PROPERTY

### Removal of trees on private property

25— (1) In this Part –

“**high conservation value tree**” means a tree that is of a species that is listed in the *Threatened Species Protection Act 1995* or the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* and/or which provide habitat for a threatened species listed in either of those acts.

“**offset**” means an offset under the Council’s Policy 6.10 *Biodiversity Offset* Policy as amended from time to time, or in the absence of any current Council policy, an action the Council requires a person to take that aims to compensate for an environmental impact that results in a loss of biodiversity caused by the person. An offset can include active management, a financial contribution and other actions that demonstrate a conservation benefit for a particular natural value.

- (2) A person must not cut down, top, lop, remove, ringbark, injure or wilfully destroy any tree which:
- (a) has a trunk circumference of greater than 80cm at 1.5 m or more above ground level, unless authorised by a permit to do so; or
  - (b) is listed on a register of significant trees applicable to the municipal area, unless authorised by a permit to do so; or,
  - (c) is protected under an agreement under Part 5 of the *Land Use Planning and Approvals Act 1993* or covenant on the title.
- Penalty: Fine not exceeding 15 penalty units
- (3) Sub-clause (2) does not apply to:
- (a) an environmental weed as listed in a planning scheme applicable to the land on which the environmental weed is located;
  - (b) a declared weed under relevant State weed legislation;
  - (c) an exotic species (including non-Tasmanian natives) not listed on a register of significant trees applicable to the municipal area; or,
  - (d) a tree whose removal is approved under a permit in respect of a use or development that is issued under the *Land Use Planning and Approvals Act 1993*.
- (4) Where a permit is granted under sub-clause (2) the Council may require an offset if the tree that is the subject of the permit is listed on a register of significant trees applicable to the municipal area or is a high conservation value tree.

## PART 8 – CARAVANS

### Structures treated as caravans

#### Exemptions

- 26 — This By-law does not apply to a caravan that is:
- (a) situated in a caravan park;
  - (b) used by a travelling show person in the ordinary course of their business;

- (c) used by Council employees or contractors involved in performing duties for and on behalf of the Council, the Federal Government or the State Government;
- (d) situated at a person's principal residence and used solely for the purpose of storage;
- (e) the subject of a permit or licence granted or issued under any other By-law of the Council.

### **Permit**

**27**—(1) Unless authorised by a permit to do so, a person who is the owner of any land must not use, permit or allow the land to be used to set up a caravan or caravans which are being used on the land for human habitation or occupation for more than fourteen days in a calendar year.

Penalty: Fine not exceeding 2.5 penalty units

- (2) For the purpose of reckoning time in (1), each day that any caravan is set up and being used on the land for human habitation or occupation is to be counted. If multiple caravans are set up and being used on the land for human habitation or occupation, the cumulative time for which they are set up and being used on the land for human habitation or occupation must not exceed fourteen days in a calendar year.

### **Application for permit**

**28**—An owner of land on which a caravan is to be set up may apply in writing to the Council for a permit to set up a caravan.

### **Refusal of permit**

**29**—In deciding whether or not to grant a permit, the Council may have regard to the following:-

- (a) whether the use of the caravan will adversely affect or is likely to adversely affect the amenity of the neighbourhood in which the caravan is to be set up;
- (b) whether the caravan has sufficient or satisfactory facilities for the supply of water or disposal of sewage available to the occupants;
- (c) whether the occupation of the caravan is likely to cause a health hazard;

- (d) any relevant policy of the Council;
- (e) any other relevant matter.

#### **Occupation of a caravan**

**30**—A person must not occupy a caravan unless the owner of the land on which the caravan is set up is the holder of a valid permit.

Penalty: Fine not exceeding 1 penalty unit and in the case of a continuing offence, a further daily penalty of 0.5 penalty unit

#### **Fee for occupation of a caravan**

**31**—A person must not accept any fee or reward from any person in return for the occupation of any caravan set up on private property unless the property is registered as a caravan park.

Penalty: Fine not exceeding 5 penalty units

## **PART 9 – ON-SITE WASTEWATER MANAGEMENT SYSTEMS**

### **Installation**

**32**—(1) The owner of premises on which an on-site wastewater management system is installed must ensure that an appropriately trained and accredited service agent carries out maintenance and reporting in relation to the on-site wastewater management system in accordance with the manufacturer's specifications for the system.

Penalty: Fine not exceeding 5 penalty units

(2) The owner of premises on which an on-site wastewater management system is installed must ensure that the Council is notified in writing within 14 days of the completion of each inspection, maintenance operation, or other action, that is required to be carried out by the manufacturer's specifications for the system.

Penalty: Fine not exceeding 5 penalty units

### **Maintenance**

**33**—(1) For the purposes of this clause, an "authorised agent" includes any person and any company by its servants or agents authorised or engaged by the Council to inspect, monitor or maintain an on-site wastewater management system.

- (2) An on-site wastewater management system installed within the municipal area is subject to inspection by the Council or its employee or authorised agent in accordance with the specifications of the manufacturer and the requirements of the Council.
- (3) For the purposes of sub-clause (2), an employee or authorised agent of the Council may enter upon the land upon which an on-site wastewater management system is situated in accordance with any relevant requirements of the *Local Government Act 1993* and the *Building Act 2000*.
- (4) The Council may carry out in relation to an on-site wastewater management system any other inspection or maintenance operation, or other action, that is authorised by law, or in the opinion of the General Manager, is appropriate.
- (5) The owner of premises on which an on-site wastewater management system is installed must ensure that the wastewater disposal area and/or irrigation area for the premises on which an on-site wastewater management system within the municipal area is installed is maintained to the satisfaction of the General Manager.  
Penalty: Fine not exceeding 5 penalty units

## **PART 10 - PERMITS AND APPROVALS**

### **Applications**

- 34**—Any application for a permit pursuant to this By-law should be made to the Council and be accompanied by the following:
- (a) a statement in writing of the type and nature of the activity proposed to be undertaken by the applicant;
  - (b) a scaled drawing showing the location and extent of the proposed occupation or activity;
  - (c) a safety management plan or a description of any necessary safety measures that are appropriate for the proposed activity; and such other information as the Council may reasonably require.

### **Factors to be considered when granting a permit**

- 35**—In deciding whether or not to grant a permit pursuant to this Part the Council may have regard to the following:
- (a) the potential for damage to Council infrastructure

- (b) public amenity and safety;
- (c) public access in the area;
- (d) the maintenance of public order in the area;
- (e) the movement of traffic in the area;
- (f) the manner of any proposed advertising;
- (g) the nature, size, shape, extent and location of any proposed road furniture;
- (h) the availability of suitable parking for motor vehicles in the area;
- (i) representations made by a police officer;
- (j) any other relevant matters.

**Conditions of permit or approval**

36—A permit or approval issued under this By-law may be subject to such conditions as the Council considers appropriate.

**Compliance with terms and conditions**

37—The holder of a permit issued under this By-law must comply with the terms and conditions thereof.

Penalty: Fine not exceeding 5 penalty units

**Permits generally**

38—Every permit granted pursuant to this By-law is to:

- (a) be in writing and may be in the form of a letter;
- (b) bear the date on which it was issued;
- (c) include such terms and conditions as the Council may consider necessary;
- (d) remain in force for the period for which it was issued, unless it is cancelled, suspended or surrendered;
- (e) be carried by the permit holder at all times while undertaking the activity approved under the permit; and
- (f) be surrendered to the Council if it is cancelled or suspended or when it is due for renewal.

**Cancellation and suspension of permits**

39—(1) The Council may cancel or suspend a permit if a permit holder fails to comply with or offends against this By-law or any condition of a permit.

(2) The Council may cancel a permit if the permit holder is:



- (a) convicted of any offence involving dishonesty; or
  - (b) convicted of any offence involving a breach of public order.
- (3) To cancel or suspend a permit the Council is to serve a notice on the permit holder stating that the permit is cancelled or suspended and the reason for that cancellation or suspension.
- (4) Cancellation or suspension of any permit is effective from the day the notice is served on the permit holder or the date specified in the notice whichever is the later.
- (5) Nothing in this clause is to be construed as preventing or prohibiting the Council from cancelling or suspending a permit if this is required due to the exercise or intended exercise of any local government functions, powers, rights or duties by the Council.
- (6) Notwithstanding, sub-clauses (3) and (4), the Council may cancel or suspend a permit by any communication conveyed to the permit holder by any means including notice by radio or television in emergency situations or in a situation considered appropriate by the Council.

#### **Production of the permit**

**40**—A permit holder must produce the permit immediately when requested to do so by an authorised officer.

Penalty: Fine not exceeding 5 penalty units

#### **Assignment of permit**

**41**—A permit must not be assigned to any person except with the written consent of the Council.

#### **Referral to Council**

**42**—No provision of this By-law is to be construed as preventing the General Manager from referring any application for approval or a permit to the Council.

## **PART 11 – ENFORCEMENT, FEES AND CHARGES**

#### **Supply of name and address**

**43**—(1) An authorised officer may require a person to give his or her name and address if the authorised officer reasonably believes that the person is offending or has offended against this By-law,

(2) A person who fails or refuses to comply with a request to give his or her name and/or address is guilty of an offence.

Penalty: Fine not exceeding 5 penalty units.

(3) A police officer making a request under sub-clause (1) may arrest a person who is on land owned by, or under the control of, the Council and whom the police officer reasonably believes is offending against sub-clause (1).

**Abuse or obstruction of an authorised officer**

**44**—(1) A person must not:

- (a) threaten, intimidate or use abusive language to an authorised officer in or on land owned by or under the control of the Council while the officer is acting in the course of his or her duties; or
- (b) assault, resist or obstruct an authorised officer in the execution of his or her duty.

Penalty: Fine not exceeding 10 penalty units.

**Enforcement and removal of articles**

**45**—(1) An authorised officer may:

- (a) refuse to admit a person to any land owned by, or under the control of the Council whom the authorised officer reasonably believes is offending against this By-law;
- (b) direct any person to leave any land owned by, or under the control of the Council whom the authorised officer reasonably believes is offending against this By-law;
- (c) remove anything which is on any land owned by, or under the control of the Council without the approval of the Council;
- (d) remove any person from any land owned by, or under the control of the Council whom the authorised officer reasonably believes is offending against this By-law.

(2) A person who fails to comply with a direction under sub-clause (1)(b) is guilty of an offence.

Penalty: Fine not exceeding 5 penalty units

**Removed articles**

**46**—(1) If an article is not claimed by the owner or person on behalf of the owner within 48 hours following its removal under this Part, the General Manager is to give notice to the owner of the article.

- (2) A notice is to give the following details -
  - (a) a description of the article and any distinguishing features;
  - (b) the place from where it was removed;
  - (c) the date on which it was removed;
  - (d) the place from which the article may be claimed;
  - (e) the fees, costs and charges payable in respect of the removal, maintenance and storage of the article.
  - (f) that if not claimed within 14 days that the article may be disposed of by the Council.
- (3) A notice is to be given in writing.
- (4) If the owner of the removed article cannot be ascertained or found, and if the General Manager is of the opinion that the value of the article warrants the cost of advertising, the General Manager is to publish on at least one occasion a notice containing the particulars specified in sub-clause (2) in a newspaper circulating in the municipal area.

#### **Fees, Costs and Charges**

- 47 — (1) The owner of any article is liable to pay:
- (a) any fees, costs and charges specified in a notice given under clause 46; and
  - (b) any further fees, costs and charges incurred in the storage and further maintenance of an article removed under this Part.
- (2) Any unpaid fees, costs and charges are a debt due to the Council and may be recovered by the Council in a court of competent jurisdiction.
- (3) The Council may retain an article until any fees, costs and charges specified in a notice are paid.

#### **Disposal of unclaimed articles**

- 48 — (1) The Council may dispose of an article if:
- (a) the article is not claimed within 14 days of the issue of a notice given under clause 46;
  - (b) any fees, costs and charges specified in a notice have not been paid within 14 days of that notice.

- (2) An article may be disposed of under sub-clause (1) –
  - (a) by tender or public auction following notification in a local newspaper circulating in the municipal area; or
  - (b) in such manner as the General Manager determines if –
    - (i) the General Manager is of the reasonable belief that the article has a value that does not warrant the costs of a tender or a public auction; or
    - (ii) no tender is received or no bid is made at a public auction.
- (3) If an article is disposed of under this clause the General Manager must notify the owner of the article as soon as possible if the owner can be ascertained or found by reasonable enquiries.
- (4) If the owner of the article so requests, then the proceeds obtained from the disposal or sale of the article must be paid to the owner, less any fees that are due to the Council, advertising costs, and any other costs incurred by the Council in the removal and disposal of the article.

#### **Article required for prosecution**

- 49 — (1) Where an article is required by the Council for the prosecution of an offence under this By-law, the article is to be released to the owner following the completion of the prosecution proceedings and on payment of any relevant fees, costs and charges unless otherwise directed by a court.
- (2) The Council may, under clause 48, dispose of an article required under sub-clause (1) which is not claimed by the owner, or in relation to which fees, costs and charges have not been paid, within 30 days of the completion of court proceedings.

## **PART 12 – NOTICES**

#### **Notices and directions generally**

- 50 — (1) A notice given under this by-law is to be given in writing, which may be in the form of a letter, and is to be given in accordance with section 29AB(1)(a) of the *Acts Interpretation Act 1931*.
- (2) A direction given under this By-law may be given verbally or in writing and may be in the form of a letter.

- (3) A notice or direction given under this By-law may be subject to such conditions and requirements and allow such period for action as the Council, General Manager or authorised officer may determine.
- (4) Unless otherwise specified in a notice or direction, a person to whom a notice or direction is given is to comply with the notice or direction at the cost of that person.
- (5) A notice or direction given under this By-law requiring a person to carry out or undertake action or work may direct that the action or work be in or of such materials, carried out within the periods, and carried out in the manner the Council or an employee or agent of the Council directs or be done only by a person with a specified appropriate qualification.
- (6) The Council may require the person carrying out the work to pay to the Council, or enter into a bond for payment to the Council of, an amount it thinks fit to provide security against costs which it may incur as a result of the execution of the work.

#### **Non compliance with notice or direction**

51 — (1) A person to whom a notice or direction has been given under this By-law must comply with that notice or direction within the time period specified in the notice or direction.

Penalty: Fine not exceeding 10 penalty units

- (2) The Council may undertake any work required to be carried out in a notice or direction given pursuant to this By-law if the person to whom a notice or direction is given fails to comply with the notice or the direction within the time specified in the notice or direction.

## **PART 13 - INFRINGEMENT NOTICES AND RECOVERY OF DEBTS**

### **Infringement Notices**

52 — (1) In this clause –

“**specified offence**” means an offence against a clause specified in Column 1 of Schedule 1.

- (2) 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 offence.
- (3) Payment of the monetary penalty set out in an infringement notice must be made to the Council.
- (4) The monetary penalty set out in an infringement notice must be paid within 28 days of the service of the infringement notice, after which time the infringement notice may be referred to the Director, Monetary Penalties Enforcement Service.
- (5) The General Manager or an authorised officer may:
  - (a) issue an infringement notice to a person who the General Manager or authorised officer believes on reasonable grounds has committed a specified offence; and
  - (b) issue a single infringement notice in respect of more than one specified offence.
- (6) The *Monetary Penalties Enforcement Act 2005* applies to an infringement notice issued under this By-law.

#### **Debt Due**

- 53**—All monies payable to the Council under this By-law are a debt due to the Council and recoverable at law.

#### **Offences**

- 54**—A person who contravenes or fails to comply with a provision of this by-law is guilty of an offence and is liable on conviction to a penalty as specified in this by-law in respect of such an offence.

#### **Failure to Comply**

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

**SCHEDULE 1  
INFRINGEMENT NOTICE OFFENCES**

<b>Column 1 CLAUSE</b>	<b>Column 2 OFFENCE GENERAL DESCRIPTION OF OFFENCE</b>	<b>Column 3 PENALTY (Penalty Units)</b>
Clause 3	Deposit matter at waste facility outside time	1
Clause 4(3)	Disobey direction of authorised officer or direction sign	1
Clause 5	Prohibitions in the disposal area	1
Clause 7(9)	Remove articles from mobile recycling bin	1
Clause 8	Proper use of mobile garbage and recycling bins	1
Clause 9	Placement of dangerous substances in mobile bins	2
Clause 10	Keeping of hooved animal on land less than 2000m <sup>2</sup>	1
Clause 11(1)	Keeping of poultry too close to boundary or house	1
Clause 11(2)	Keeping of more than 6 poultry	1
Clause 11(3)	Keeping of rooster in residential area	1
Clause 11(4)	Fail to house rooster in proper manner	1
Clause 12	Maintenance of housing for poultry	1
Clause 13	Fail to provide sanitary facility on building site	1.5
Clause 14	Fail to provide sufficient sanitary facilities	1.5
Clause 15	Fail to obey direction of authorised officer	1
Clause 16	Fail to provide sanitary facility to appropriate standard	1
Clause 17(1)	Fail to empty sanitary facility	1
Clause 17(2)	Fail to keep sanitary facility clean	1
Clause 18(1)	Light an incinerator or open fire in residential area	1



*Health and Environmental Services By-Law*

Clause 19	Incorrect construction of incinerator	1
Clause 20	Fail to keep incinerator in good order	1
Clause 21	Fail to fit lid and spark arrestor	2
Clause 22	Site incinerator too close to dwelling or boundary	1
Clause 23(1)	Burn matter hazardous to health or nuisance	2
Clause 23(2)	Fail to extinguish fire	2
Clause 24	Light an incinerator or fire with water supply or supervision	2
Clause 25(2)	Remove tree without permit	2
Clause 27(1)	Set up caravan for occupation for more than 14 days	1
Clause 30	Occupy caravan without a permit	1
Clause 31	Receive fee for occupation of caravan	1.5
Clause 32(1)	Ensure maintenance carried out	1
Clause 32(2)	Fail to notify Council of inspection	0.5
Clause 33(5)	Fail to maintain on-site aerated wastewater treatment system	1
Clause 37	Fail to comply with conditions of permit	1
Clause 40	Fail to produce permit	1
Clause 43(2)	Fail to supply name and address	1
Clause 44	Abuse or obstruction of authorised officer	2
Clause 45(2)	Fail to comply with direction to leave land	1
Clause 51(1)	Fail to comply with notice or direction	2

Certified as being in accordance with the law by:

*PKW*, Solicitor

Dated this *3<sup>rd</sup>* day of *August*, 2011 at Hobart

Certified as being made in accordance with the Local Government Act 1993:

*Purvesh*, General Manager

Dated this *4<sup>th</sup>* day of *August*, 2011 at Hobart

The Common Seal of Kingborough Council was hereunto affixed in the presence of:

*[Signature]*, Mayor / Councillor

*Purvesh*, General Manager.

