

KINGBOROUGH COUNCIL

ROADS, PARKING AND STORMWATER BY-LAW

BY-LAW 4 OF 2011

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

FOR THE PURPOSE OF REGULATING CONDUCT AND ACTIVITIES ON
ROADS AND HIGHWAYS, WITHIN PARKING AREAS AND RELATING TO
STORMWATER MANAGEMENT IN THE KINGBOROUGH MUNICIPAL AREA

PART 1 - PRELIMINARY

Short Title

- 1 — This By-law may be cited as the *Roads, Parking and Stormwater By-Law 2011*.

Application

- 2 — (1) This By-law applies to the municipal area of the Kingborough Council.
(2) This By-law does not apply to a councillor or an employee of the Council or a contractor or agent of the Council where such person is carrying out activities on the road or highway in the course of their duties for and on behalf of the Council

Interpretation

- 3 — In this By-law:-

"**Act**" means the *Local Government Act 1993*;

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

"**bank**" means the sides of a watercourse from the adjacent land surface to the bed;

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

"**crossing**" means that part of a road constructed in or over a footpath, kerb, gutter, drain, culvert, pavement or nature strip that is designed for or used as a means of access by vehicles, bicycles or trailers from a road to land;

"event" means an assembly of people and includes a parade, performance, spectacle, entertainment, exhibition, rally, march, demonstration or other event which causes or is likely to cause people to assemble on a road or parking area or part of a road or parking area or for any purpose which excludes the public's normal use of that road or parking area;

"furniture" includes chairs, fortables, barriers, panels and umbrellas, plus other chattels used in the preparation or service or consumption of food and drink;

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

"material" includes stones, clay, earth, cement, concrete, glass, filth, dust, ashes, oil, liquid and animal droppings or other offensive or noxious substances;

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

"nature strip" means that part of the road reservation between the kerb and gutter (or the edge of the constructed road formation) and the front boundary of, or footpath in front of, the adjoining property;

"occupy" includes to place on a road, footpath or nature strip any wares, goods, chattels, items, tables and chairs, or structure to enable the service and/or sale of food or beverages or for any other purpose or to fence off or obstruct any part of the road to exclude members of the public;

"park" in relation to a vehicle, means to stop the vehicle or allow it to remain in a place where the driver or person in charge of the vehicle intends it to remain stationary, otherwise than –

- (a) because the stopping of traffic prevents movement; or
- (b) for so long only as is required to set down or take up passengers or goods without waiting;

"parking area" includes any area owned by the Council or under the delegated control of the Council and designated for the parking of vehicles and all buildings, equipment, signs, access ways, land, fences, chattels and structures used or connected in any way with the parking area;

"parking meter" means a device installed adjacent to a parking space for the measuring time on the insertion of a coin or coins of the name or value shown on the device;

"parking space" means a space within a parking area or a space controlled by a parking meter, indicated by lines or other marks on the ground or indicated by any other method, of sufficient clear space to accommodate a vehicle within that space;

"parking voucher" or **"voucher"** means a document issued by a voucher machine;

"penalty unit" means a sum provided for under the provisions of the *Penalty Units and Other Penalties Act 1987*;

"permit" means a permit granted under Part 5 of this By-law;

"permit holder" means a person who has obtained a permit from the Council for any purpose under this By-law;

"premises" means any premises registered by the Council pursuant to the requirements of the *Public Health Act 1997* or the *Food Act 2003*;

"reserved parking area" means an area designated by the Council for long term parking;

"reserved parking space" means a parking space designated by the Council for long term parking;

"road" includes a part of a road, road reservation, footpath, or walkway or nature strip which are wholly or partly maintained by Council or under the control of Council;

"roadside vendor" means any person who, in the course of a business, profession, trade or calling, sets up a stall in or on any road to sell wares to the public;

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

"shared installation" means a stormwater installation to more than one property on separate land titles and which is owned by the owners of the land the subject of the connection;

"sign" means any board, sign, plaque or banner which in any way makes an announcement or is an advertisement which is not permanently attached to any building or other structure;

"skip bin" means a receptacle not owned by the Council or supplied by the Council to residents of the municipal area for depositing waste or refuse, particularly larger refuse often associated with building work or garden refuse;

"specified offence" means an offence against a clause specified in Column 1 of Schedule 1 of this By-law;

"stormwater branch" means that portion of a stormwater system owned and maintained by Council and connecting a stormwater installation to a stormwater main;

"stormwater installation" means an installation owned and maintained by the property owner comprising of discharge pipes, drains, fixtures, appliances and associated components used to convey stormwater from a property to a stormwater branch or other approved disposal system;

"stormwater main" means any pipe or open channel owned or managed by the Council which is used or designated for the purpose of conveying stormwater from properties in the area;

"stormwater system" means the stormwater installations, stormwater mains and stormwater branches that together make up a system for the disposal of stormwater;

"street dining" means the consumption of food and or beverages by customers seated in an area of the road external to the business providing and selling the food or beverages;

"street rubbish bins" means rubbish bins installed by Council on the footpath or nature strip;

"terms" includes conditions, whether imposed pursuant to this By-law, a permit issued under this By-law, or by virtue of a provision of any Act;

"vehicle" means a vehicle as defined in section 3(1) of the *Vehicle and Traffic Act 1999*;

"voucher machine" is a device installed by or for Council that, on the insertion of a coin or coins of the name or value shown on the device or on a notice in the vicinity of the machine, issues a document or documents –

(a) bearing, with or without other words, words indicating that the holder is entitled to park a vehicle in a place specified on the voucher and the name of the corporation for which the document or documents is or are issued; and

(b) bearing an imprint indicating the date and time of issue;

"water course" means a natural channel into or through which water flows, whether permanently or intermittently;

PART 2 – ROADS

DIVISION 1 – USE OF ROADS

Occupation of Road

4 —(1) Unless authorised by a permit to do so, a person must not for any purpose hold or conduct an event on, place any obstruction on or enclose or occupy a road or part of a road.

Penalty: Fine not exceeding 5 penalty units

(2) A person may apply to the Council at any time under Part 5 of this By-law for a permit to occupy a portion of a road.

(3) A permit authorising occupation of the road may include occupation by landscaping or vegetating a nature strip if the person is the owner of land that is contiguous with the nature strip.

Roadside sales

5 —Unless authorised by a permit to do so, a person must not park a vehicle or leave any other article on a road for the purpose of advertising it for sale.

Penalty: Fine not exceeding 5 penalty units

Placing of objects or mixing substances on the road

6 —(1) Unless authorised by a permit to do so, a person must not use any road for placing or mixing any concrete, lime concrete, asphaltic concrete, cement, cement mortar, lime mortar, tar, soil, sand, stone, firewood, or other material.

Penalty: Fine not exceeding 5 penalty units

(2) Unless authorised by a permit to do so, a person must not place any object on any road for the purposes of preventing or inhibiting parking.

Penalty: Fine not exceeding 5 penalty units

(3) The Council may grant a permit for any of the purposes listed in subclause (1) or subclause (2), subject to any conditions which the Council may consider appropriate.

(4) An authorised officer may give a notice or direction to a person who has contravened this clause requiring that person to clean up or remove any material.

(5) If a person who has received a notice or direction under sub-clause (4) fails to comply with the notice or direction within a reasonable time, or any

time provided in the notice or direction, the Council may clean up or remove the material and recover the cost of doing so as a debt payable to it from the person who has contravened this clause.

Dismantling or repair of vehicles

7 —Unless authorised by a permit to do so, a person must not dismantle, paint or repair any vehicle on a road, unless it is necessary in order to enable the vehicle to be removed from the road.

Penalty: Fine not exceeding 5 penalty units

Parking on footpaths and nature strips

8 —(1) Unless authorised by a permit to do so, a person must not park a vehicle or trailer wholly or partly on a footpath, kerb, gutter or nature strip.

Penalty: Fine not exceeding 3 penalty units

(2) Notwithstanding sub-clause (1), a person is permitted to stop on a nature strip if the person is the owner or occupier of a property that is contiguous with the nature strip and the vehicle when stopped does not unreasonably obstruct other road users.

(3) An authorised officer may give a notice or direction to a person who has contravened this clause requiring that person to remove the vehicle or trailer from the footpath, kerb, gutter or nature strip.

(4) If a person who has received a notice or direction under sub-clause (3) fails to comply with the notice or direction within a reasonable time, or any time provided in the notice or direction, the Council may remove the vehicle and recover the cost of doing so as a debt payable to it from the person who has contravened this clause.

Parking of skip bins, caravans and trailers on roads

9 —(1) Unless authorised by a permit to do so, person must not place a skip bin on a road.

Penalty: Fine not exceeding 5 penalty units

(2) Approval may be given for a skip bin to be placed on the road temporarily if the skip bin is provided with flashing lights and adequate reflectorised tape is applied to the bin.

(3) Unless authorised by a permit to do so, a person must not park a caravan or trailer on a road.

Penalty: Fine not exceeding 3 penalty units

- (4) An authorised officer may give a notice or direction to a person who has contravened this clause requiring that person to remove the skip bin or caravan or trailer from the road.
- (5) If a person who has received a notice or direction under sub-clause (3) fails to comply with the notice or direction within a reasonable time, or any time provided in the notice or direction, the Council may remove the skip bin or caravan or trailer and recover the cost of doing so as a debt payable to it from the person who has contravened this clause.

DIVISION 2 – DAMAGE TO ROADS

Dropping materials on roads

10—Unless authorised by a permit to do so, a person must not deposit or drop any material or allow any material to flow, fall, be dropped or in any other way be deposited on any road.

Penalty: Fine not exceeding 5 penalty units

Wheels of vehicles to be cleaned

11—A person must not drive any vehicle or permit any vehicle to be driven into, over or on any road unless the wheels of that vehicle are first cleaned of any material adhering to those wheels.

Penalty: Fine not exceeding 3 penalty units

Damaging or opening of road surface

12—(1) Unless authorised by a permit to do so, a person must not open up or damage the surface of any road.

Penalty: Fine not exceeding 5 penalty units

(2) A person who intends to open up, or does open up, the road surface to lay underground services under the road must comply with the reasonable directions of the General Manager or an authorised officer.

(3) If a person who has opened up the road surface fails to repair the road to the reasonable satisfaction of the Council, the Council may repair the road and recover the cost of the repairs from the person as a debt to it.

Removal of vegetation

13—Unless authorised by a permit to do so, a person must not wilfully destroy, cut, pluck, remove or injure any tree, shrub, flower or other vegetation growing on a road.

Penalty: Fine not exceeding 5 penalty units

DIVISION 3 – CROSSING OF FOOTPATHS, GUTTERS AND KERBS

Crossings

14 — (1) A person must not construct or lay down a crossing without a permit.

Penalty: Fine not exceeding 5 penalty units

(2) The General Manager may give notice to the owner of any land which is contiguous to a road requiring that person to remove or repair a crossing.

(3) If the General Manager gives notice under this clause requiring a crossing to be removed, the footpath, kerb, gutter, nature strip and road must be repaired in a proper and workmanlike manner by the person to whom the notice was given.

Penalty: Fine not exceeding 5 penalty units

Driving vehicle over footpaths, kerbs and gutters

15 — (1) A person must not cause or allow to be caused any damage to a footpath, kerb, gutter or nature strip.

Penalty: Fine not exceeding 5 penalty units

(2) Unless the owner of the land is authorised by a permit to do so, a person must not drive a vehicle or allow a vehicle to be driven over a footpath, kerb, gutter or nature strip of any road to or from any land other than over a designated crossing.

Penalty: Fine not exceeding 5 penalty units

(3) The General Manager may give notice to a person who has contravened this clause requiring that person to repair any damage occasioned to a road as a result of the contravention.

(4) The Council may recover the costs incurred in repairing any damage occasioned as a result of a breach of this clause from the person committing the breach as a debt due to it.

DIVISION 4 – SIGNS

Signs on roads and footpaths

16 — (1) Unless authorised by a permit to do so, a person must not place, erect, construct or display or cause to be placed, erected, constructed or displayed a sign on a road.

Penalty: Fine not exceeding 5 penalty units

(2) A person who places a sign on a road must comply with the terms and conditions of any permit, and with any directions of the General Manager or an authorised officer.

(3) In considering an application for a permit under sub-clause (1), the Council will consider:

(a) the dimensions and construction of the sign;

(b) whether the sign is to be placed on the area of the footpath which is contiguous with the boundary of the land owned or occupied by the person seeking to place the sign;

(c) whether more than one sign is appropriate where the land owned or occupied by the person seeking to place the sign is a corner site;

(d) whether the sign is located as close as practicable to the boundary of the land owned or occupied by the person seeking to place the sign, or whether some other location is more appropriate;

(e) whether the sign is to be removed during hours of darkness or when any business operating on the land is not open to the public;

(f) whether the sign is secured to the satisfaction of the Council.

DIVISION 5 – STREET DINING

Permit for street dining

17 — (1) The owner or manager of a business may apply to the Council for a permit for the purpose of street dining within the road.

(2) The Council may grant a permit for the purpose of providing a street dining service to a person on such terms and conditions as it thinks fit.

(3) A permit may only authorise street dining on an area of the road immediately outside the land to which the permit relates.

(4) The Council may cancel a permit immediately if a permit holder breaches Clause 19(3) of this By-law.

Street dining without a permit

18—(1) Unless authorised by a permit to do so, a person must not cause or permit any furniture to be placed on a road for the purpose of encouraging or permitting street dining.

Penalty: Fine not exceeding 5 penalty units

(2) An authorised officer may remove furniture that is placed on a road in contravention to sub-clause (1) and store it in a safe location until any penalty or fine that may be payable under this Division has been paid to the Council.

(3) An authorised officer intending to remove any furniture pursuant to this clause must give at least two (2) days written notice of the intention to remove the furniture.

(4) Any costs incurred by the Council due to the removal and/or storage of furniture pursuant to sub-clause (2) are recoverable from the person who caused or permitted the furniture to be placed on the road as a debt due to the Council.

Conditions for street dining

19—(1) The permit holder must:

(a) ensure that the street dining area and the area immediately adjacent to it is clean, tidy and in a sanitary condition at all times;

(b) regularly empty waste bins;

(c) wash the area that is subject to the permit every day on which the street dining area is used;

(d) as soon as a table is vacated, clean and wash away any liquid, food, debris, broken glass, cigarette butts or waste from the area.

Penalty: Fine not exceeding 3 penalty units

(2) A permit holder must not use existing street rubbish bins for the disposal of table waste.

Penalty: Fine not exceeding 3 penalty units

(3) An applicant for a permit for street dining must have public liability insurance and product liability insurance that covers the area designated for street dining before the applicant is issued with a permit. The insurance cover is to be for the minimum sum of \$10 million and be in a form acceptable to Council.

- (4) A permit holder must produce a Certificate of Currency of the insurance referred to in sub-clause (3) if requested by an authorised officer.
- (5) The Council may terminate a permit immediately if a permit holder has refused to allow an authorised officer to view a relevant certificate of insurance or if the insurance cover lapses during the term of the permit.

PART 3 – PARKING

Entry and exit of parking areas

20—A person driving a vehicle must not enter or leave a parking area except by an access point designated by a Council sign.

Penalty: Fine not exceeding 3 penalty units

Driving of vehicles in a parking area

21—A person must not drive a vehicle in a parking area at more than 20 kilometres per hour or at an unsafe speed.

Penalty: Fine not exceeding 5 penalty units

Parking of vehicles

22—A person must park a vehicle wholly within one parking space and in a manner which does not obstruct the entry or exit of a vehicle to another parking space.

Penalty: Fine not exceeding 3 penalty units

Payment of parking fee

23—A person must not park a vehicle in a parking area without payment of the fee required by the conditions of entry to that parking area, which conditions are indicated by signs displayed in the parking area.

Penalty: Fine not exceeding 3 penalty units

Parking vouchers

24— A person must not park a vehicle in a parking area controlled by a voucher machine unless that person has clearly displayed on the driver's side of the vehicle's dashboard an unexpired voucher.

Penalty: Fine not exceeding 3 penalty units

Parking longer than the maximum period

25—A person must not allow a vehicle to remain parked in a parking area for a longer period than is allowed by the conditions of entry to that parking area, which conditions are indicated by signs displayed in the parking area.

Penalty: Fine not exceeding 3 penalty units

Parking longer than the maximum period

25—A person must not allow a vehicle to remain parked in a parking area for a longer period than is allowed by the conditions of entry to that parking area, which conditions are indicated by signs displayed in the parking area.

Penalty: Fine not exceeding 3 penalty units

Reserved spaces

26—(1) The General Manager may create reserved parking areas and spaces on land owned by or under the control of Council.

(2) A person must not park or leave a vehicle in a parking space or parking area which is designated “Reserved” unless authorised to do so.

Penalty: Fine not exceeding 3 penalty units

Damage to Council property

27 — (1) A person must not remove or damage Council property within any parking area.

Penalty: Fine not exceeding 10 penalty units

(2) A person must not mark, write on or in any other way deface Council property within any parking area.

Penalty: Fine not exceeding 5 penalty units

Unauthorised removal of infringement notice

28—A person other than the registered owner or person in charge of the vehicle must not remove or cause to be removed any infringement notice affixed to that vehicle.

Penalty: Fine not exceeding 5 penalty units

Washing, dismantling or repair of vehicles

29—A person must not dismantle, paint, wash or repair any vehicle in a parking area without the consent of the General Manager, unless it is necessary to enable the vehicle to be removed from the parking area.

Penalty: Fine not exceeding 5 penalty units

Use of skates and cycles

30—A person is not to ride a machine propelled by human power, which includes a skateboard, bicycle, scooter, in-line skates and roller skates, in a parking area during hours indicated by signs in that parking area.

Penalty: Fine not exceeding 2 penalty units

Obstruction

31 —A person must not cause any obstruction to vehicular or pedestrian traffic in a parking area.

Penalty: Fine not exceeding 5 penalty units

Offensive and prohibited conduct

32 —(1) An authorised officer may remove a person from land owned by, or under the control of Council whom they reasonably believe is offending against this By-law

(2) A person who does not obey the directions of an authorised officer is guilty of an offence.

Penalty: Fine not exceeding 5 penalty units

Use of parking area for other purposes

33 —(1) The Council may grant a permit for a parking area to be used for any purpose and may impose conditions on its use.

PART 4 – STORMWATER MANAGEMENT

DIVISION 1 – PROTECTION OF HYDRAULIC SYSTEMS

Opening of ground

34 —(1) A person must not open any ground so that a stormwater main or stormwater branch is exposed unless the person has applied to the Council for a permit at least 2 working days prior to the commencement of work and has received a permit to carry out the work.

Penalty: Fine not exceeding 10 penalty units

(2) Unless authorised by a permit to do so, a person must not open the surface of any road so that a stormwater main or stormwater branch is exposed.

Penalty: Fine not exceeding 10 penalty units

Interfering with pipes

35 —Unless authorised by a permit to do so, a person must not alter or interfere with a stormwater main or stormwater branch.

Penalty: Fine not exceeding 10 penalty units

Structures over Council's services

36—(1) Unless authorised by a permit to do so, a person must not construct any structure, fence, or carry out other works that alters or interferes with a stormwater main.

Penalty: Fine not exceeding 10 penalty units

(2) The Council may direct any person contravening this clause to remove the structure, fence, or other works.

(3) If a person who has received a direction under sub-clause (2) fails to comply with the direction within a reasonable time, or any time provided in the direction, the Council may remove the structure or fence or carry out diversion works and recover the cost of doing so as a debt payable to it from the person who has contravened this clause.

Defective work or maintenance

37—(1) On receipt of a notice in writing from the General Manager, the owner or occupier of any premises is to replace, clean out or repair any leakage, blockage, or breakage in any stormwater installation or part thereof which in the opinion of the General Manager is, or has become, bad or defective.

(2) An owner or occupier must comply with the notice within the time specified in the notice.

Penalty: Fine not exceeding 5 penalty units

(3) The Council may undertake the work required in a notice issued under sub-clause (1) if the owner or occupier fails to comply with the notice within the time specified in the notice.

(4) The Council may recover its expenses in undertaking work under sub-clause (3) from the person who fails to comply with a notice under sub-clause (1) as a debt due to it in addition to any penalty imposed under sub-clause (2).

Altering surface

38—Unless authorised by a permit to do so, the owner or occupier of any land on which any stormwater system is constructed must not alter the ground level in the immediate vicinity of any Council service or main by the addition or removal of fill, top soil or other materials.

Penalty: Fine not exceeding 5 penalty units

DIVISION 2 – STORMWATER AND LAND DRAINAGE PROVISIONS

Connection to Council's stormwater system

39 — Unless authorised by a permit to do so, a person is not to connect any drain or pipe to make any entry into, remove part of, or otherwise interfere with a stormwater system including any drain, pipe, fitting, or fixture connected to the system.

Penalty: Fine not exceeding 5 penalty units

Property connected to a shared house connection

40 — The owner of any property to which the stormwater installation is connected by a shared installation, must within 30 days of service of a notice from the General Manager, or such other time as the General Manager may approve, disconnect from the shared installation and connect to the Council's stormwater branch as indicated in the notice.

Penalty: Fine not exceeding 5 penalty units

Provision of a stormwater branch

41 — (1) Where a stormwater branch is permitted in accordance with statutory requirements a single separate branch is permitted from the stormwater main to inside the title boundary of a property upon payment of the fee or estimate as determined by Council.

(2) Unless authorised by a permit to do so, more than one separate branch per property is not permitted.

Discharge of appropriate stormwater

42 — A person who is the occupier of any land which is connected to a stormwater main of any kind must discharge into the stormwater main all matter which, in accordance with the *Drains Act 1954* and the *Plumbing Regulations 2004*, is appropriate to be discharged into the stormwater system.

Penalty: Fine not exceeding 5 penalty units

Drainage nuisance abatement

- 43**—(1) If, in the opinion of the General Manger, water from constructed ponds, empoundments, paved or unpaved land surfaces is being concentrated other than within a natural watercourse or otherwise causing a nuisance, the Council may serve a notice on the owner or occupier, requiring that provision be made for the satisfactory drainage of the concentrated water to an approved disposal point within the time specified in the notice.
- (2) A person who fails to comply with a notice issued under sub-clause (1) commits an offence.
Penalty: Fine not exceeding 5 penalty units
- (3) The Council may undertake the work required in a notice issued under sub-clause (1) if the owner or occupier fails to comply with the notice within the time specified in the notice.
- (4) The Council may recover its expenses in undertaking work under sub-clause (3) from the person who fails to comply with a notice under sub-clause (1) as a debt due to it in addition to any penalty imposed under sub-clause (2).

Erosion and sediment control

- 44**—(1) If, in the opinion of the General Manager, natural stormwater runoff has been contaminated with concentrations of sediments or suspended solids or other materials that exceed the statutory limitations, the Council may serve a notice on the owner or occupier, requiring a reduction in the concentrations of sediments or suspended solids or other materials to a level that complies with statutory limitations within the time specified.
- (2) A person who fails to comply with a notice issued under sub-clause (1) commits an offence.
Penalty: Fine not exceeding 10 penalty units
- (3) The Council may undertake the work required in a notice issued under sub-clause (1) if the owner or occupier fails to comply with the notice within the time specified in the notice.
- (4) The Council may recover its expenses in undertaking work under sub-clause (3) from the person who fails to comply with a notice under sub-clause (1) as a debt due to it in addition to any penalty imposed under sub-clause (2).

Works in watercourses

45—Unless authorised by a permit to do so, a person must not alter the bed, banks, or flood plains of a watercourse.

Penalty: Fine not exceeding 20 penalty units

PART 5 – PERMITS

Applications

46—Any application for a permit pursuant to this By-law should, where applicable, 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
- (d) such other information as the Council may reasonably require.

Factors to be considered when granting a permit

47—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 commissioned police officer;
- (j) any other relevant matters.

Conditions of permit or approval

48—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

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

Penalty: Fine not exceeding 5 penalty units

Permits generally

50 — 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 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 when it is due for renewal.

Cancellation and suspension of permits

- 51 — (1) The Council may cancel 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 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 General Manager.

Production of the permit

52 — (1) 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

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

PART 6 – ENFORCEMENT

Supply of name and address

54 — (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.

Abuse or obstruction of an authorised officer

55 — 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

56 — (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 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 (1)(b) is guilty of an offence.
- Penalty: Fine not exceeding 5 penalty units.

Removed articles

57 — (1) If an article is not claimed by the owner or person on behalf of the owner within 48 hours following its removal under clause 56, 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

- 58** — (1) The owner of any article is liable to pay:
- (a) any fees, costs and charges specified in a notice under clause 57;

- (b) any further fees 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 are paid.

Disposal of unclaimed articles

- 59** — (1) The Council may dispose of an article if:
- (a) the article is not claimed within 14 days of notice being under clause 57;
 - (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 a manner as the General Manager determines if:
 - (i) the General Manager is of the opinion 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

- 60** — (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 59, dispose of an article required under subclause (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.

Notices and directions generally

- 61 — (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 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 authorised officer 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 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

- 62 — (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 7 - INFRINGEMENT NOTICES

Infringement Notices

63—(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

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

Offences

65—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

66—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 of contravention is recoverable by the Council as a debt payable by the person so failing to comply or contravening.

SCHEDULE 1

INFRINGEMENT NOTICE OFFENCES

| Column 1 CLAUSE | Column 2 OFFENCE GENERAL DESCRIPTION OF OFFENCE | Column 3 PENALTY Penalty Units |
|--------------------|---|--|
| 4(1) | Occupation of road | 1 |
| 5 | Roadside sales | 1 |
| 6(1) | Placing of objects on road | 1 |
| 6(2) | Placing objects on road to inhibit parking | 1 |
| 7 | Dismantling and repairing vehicles on road | 1 |
| 8(1) | Parking on footpaths and nature strips | 1 |
| 9(1) | Parking of skip bin on road | 1 |
| 9(3) | Parking of caravan or trailer on road | 1 |
| 10 | Dropping materials on road | 1 |
| 11 | Wheels of vehicles to be cleaned | 1 |
| 12(1) | Damaging or opening of road surface | 1 |
| 13 | Removal of vegetation | 1 |
| 14(1) | Unauthorised construction of crossing | 1 |
| 14(3) | Repair following removal of crossing | 1 |
| 15(1) | Damage to footpaths, kerbs and gutters | 1 |
| 15(2) | Designated crossings to be used | 1 |
| 16(1) | Signs on roads or footpaths | 1 |
| 18(1) | Street dining without a permit | 1 |
| 19(1) | Permit holder not keeping street dining area clean | 1 |
| 19(2) | Permit holder using street rubbish bins | 1 |
| 20 | Enter or leave parking area by designated access | 1 |
| 21 | Speeding in a parking area | 1 |
| 22 | Parking of vehicle within parking space | 1 |
| 23 | Payment of parking fee | 1 |
| 24 | Display of parking voucher | 1 |
| 25 | Parking longer than the maximum period | 1 |
| 26(2) | Parking in a reserved parking space | 1 |
| 27(1) | Damaging Council property in a parking area | 1 |

Roads, Parking and Stormwater By-Law

| | | |
|-------|---|---|
| 27(2) | Defacing Council property | 1 |
| 28 | Unauthorised removal of infringement notice | 1 |
| 29 | Washing, dismantling or repair of vehicle in parking area | 1 |
| 30 | Use of skates and cycles during prohibited times | 1 |
| 31 | Obstructing vehicles and foot traffic in parking area | 1 |
| 32(2) | Obeying the directions of an authorised officer | 1 |
| 34(1) | Opening of ground to expose stormwater main | 2 |
| 34(2) | Opening of road to expose stormwater main | 2 |
| 35 | Interfering with pipes | 2 |
| 36(1) | Structure erected over stormwater mains | 2 |
| 37(2) | Defective work or maintenance | 1 |
| 38 | Altering surface depth above stormwater main | 1 |
| 39 | Connection to Council's stormwater system | 1 |
| 40 | Disconnection of shared house installation | 1 |
| 42 | Discharge of appropriate waste | 1 |
| 43(2) | Drainage nuisance abatement | 1 |
| 44(2) | Erosion and sediment control | 1 |
| 45 | Works in water courses | 2 |
| 49 | Compliance with terms and conditions of permit | 1 |
| 52 | Production of permit | 1 |
| 54(2) | Fail to supply name and address | 2 |
| 55 | Abusing or obstructing an authorised officer | 2 |
| 56(2) | Fail to comply with direction to leave land | 1 |
| 62(1) | Non-compliance with notice or direction | 2 |

Certified as being in accordance with the law by:

TKL Solicitor

Dated this *3rd* day of *August*, 2011 at Hobart

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

General Manager

Dated this *4th* day of *August*, 2011 at Hobart

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

[Signature] Mayor.

[Signature], General Manager.

