

## KINGBOROUGH COUNCIL

**BRUNY ISLAND CAT BY-LAW**

BY-LAW NO. 1 OF 2018

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

A BY-LAW TO REGULATE AND CONTROL MATTERS RELATING TO THE OWNERSHIP AND MANAGEMENT OF DOMESTIC AND STRAY CATS WITHIN THAT PART OF THE COUNCIL'S AREA KNOWN AS BRUNY ISLAND.

**PART 1 – PRELIMINARY****Short Title**

1 This By-law may be cited as the *Bruny Island Cat By-Law 2018*.

**Commencement of By-law**

2 This By-law commences on the      day of      2019

**Interpretation**

3 In this By-law:

**A cat is at large if –**

- (a) The cat is in a public place and the cat is not secured and restrained; or
- (b) The cat is in or on premises without the consent of the occupier.

**Authorised officer means –**

- (a) a person appointed by the Council or the General Manager as an authorised officer for the purposes of this By-law; or
- (b) a police officer; or
- (c) a person authorised under the *Cat Management Act 2009*.

**Cat** has the same meaning as in the *Cat Management Act 2009*.

**Council** means the Kingborough Council established by section 18 of the *Local Government Act 1993*.

**Desex** has the same meaning as in the *Cat Management Act 2009*.

**Feral Cat** has the same meaning as in the *Cat Management Act 2009*.

**General Manager** means the General Manager of Council appointed by the Council under the *Local Government Act 1993* and includes any acting General Manager.

**Infringement Notice** means a notice referred to in Part 7 of this By-law.

**Microchip** has the same meaning as in *Cat Management Act 2009*.

**Microchip Implanter** has the same meaning as in *Cat Management Act 2009*.

**Motor Vehicle** has the same meaning as in the *Vehicle and Traffic Act 1999*.

**Occupier, in relation to premises**, includes a person who has, or is entitled to, possession or control of the premises.

**Owner, in relation to a cat**, means -

- (a) in the case of a cat that is registered, the person in whose name the cat is registered; or
- (b) in the case of an unregistered cat, the owner of the cat within the meaning of the *Cat Management Act 2009*.

**Permit** means a permit to keep on premises more than 2 cats.

**Premises** includes land or any part of any premises or land.

**Public Health** has the same meaning as in the *Public Health Act 1997*.

**Public notice** means a notice published in a daily newspaper in common circulation in the Kingborough municipal area.

**Public place** means -

- (a) a public place as defined in the *Police Offences Act 1935*; and
- (b) a road; and
- (c) a road-related area;

**Registered cat** means a cat registered under this By-law.

**Registered Breeder** has the same meaning as in the *Cat Management Act 2009*.

**Road** means -

- (a) an area that is developed for, or has as one of its main uses, the driving or riding of motor vehicles and is open to, or used by, the public; and
- (b) a part of the kerb; and
- (c) an unsealed part of a sealed road.

**Road-related area** means -

- (a) an area that divides a road; or
- (b) a footpath or nature strip adjacent to a road; or
- (c) a footpath or track that -
  - (i) is not a road; and
  - (ii) is designed for use by cyclists or pedestrian.

**Specified Offence** means an offence against a By-law specified in column 1 of Schedule 1 of this By-law.

**Stray cat** has the same meaning as in the *Cat Management Act 2009*.

**Veterinary Surgeon** has the same meaning as in the *Cat Management Act 2009*.

#### **Application**

- 4** (1) This By-law applies to all of that part of the municipal area of the Council known as Bruny Island.
- (2) This By-law does not apply to an employee or agent of the Council or a contractor to the Council or an authorised person under the *Cat Management Act 2009*, where such person is carrying out respectively on Bruny Island, their functions or activities in the course of their duties, for and or on behalf of the Council.

### **PART 2 - MICROCHIPPING AND DESEXING OF CATS**

#### **Microchipping of cats**

- 5** (1) The owner of a cat that is more than 6 months of age must ensure that the cat is implanted with a microchip by a microchip implanter.

Penalty: Fine not exceeding 5 penalty units.

- (2) Clause 5 (1) does not apply to a cat in respect of which a veterinary surgeon has issued a certificate stating that the implantation of a microchip in the cat may adversely affect the health and welfare of the cat.
- (3) The owner of a microchipped cat must provide to Council, in writing, the microchip identification number of the cat, within 1 month of –
- (a) the cat being microchipped; or
  - (b) this By-law applying to the cat if it was implanted with a microchip before the commencement of this By-law.

Penalty: Fine not exceeding 5 penalty units.

#### **Desexing of cats**

- 6** (1) The owner of a cat that is more than 6 months of age must ensure that the cat is desexed by a veterinary surgeon.

Penalty: Fine not exceeding 5 penalty units.

- (2) Clause 6 (1) does not apply to –
- (a) a cat in respect of which a veterinary surgeon has issued a certificate stating that to desex the cat may adversely affect the health and welfare of the cat; or
  - (b) a cat owned, for the purpose of breeding, by a registered breeder; or

- (c) a prescribed cat, within the meaning of the *Cat Management Act 2009*.
- (3) The owner of a desexed cat must provide to Council proof that the cat is desexed, within 1 month of –
  - (a) the cat being desexed; or
  - (b) this By-law applying to the cat if it was desexed before the commencement of this By-law.

Penalty: Fine not exceeding 5 penalty units.

### PART 3 – PERMITS

#### Keeping several cats

- 7 (1) A person, without a permit, must not keep or allow to be kept, for any period of time, on any premises more than 2 cats over the age of 6 months.

Penalty: Fine not exceeding 5 penalty units.

- (2) Clause 7(1) does not apply to any cat in excess of the number of cats specified by clause 7(1) if –
  - (a) the cat is owned by a person who does not usually reside at the premises; and
  - (b) the cat is being kept at the premises for a limited, or temporary period that is agreed upon, by both the owner of the cat and the person with responsibility for the premises, before the cat is left at the premises; and
  - (c) no consideration has been or is to be paid, in respect of the cat staying at the premises, to the person keeping cats on the premises.
- (3) In Clause 7–  
**consideration** includes monetary or non-monetary consideration;  
**owner** in relation to a cat, means the person who apparently has control, as agreed upon, of the cat at the relevant time.

#### Application for permits

- 8 (1) A person may apply to the General Manager for a permit.
- (2) An application for a permit is to be –
    - (a) in the form approved by the General Manager; and
    - (b) accompanied by the appropriate fee.
  - (3) If there is a right to object under Clause 9 or if a General Manager so requires, an applicant, by public notice, must notify –
    - (a) the intention to apply for a permit; and
    - (b) the address and details of the premises and the number of cats to which the application relates.

#### Objections to permit

- 9 (1) Any person residing or owning land within 200 metres of the boundary of the premises to which a permit relates, may object to the General Manager against the granting of the permit, within 14 days after a notice is published under Clause 8 (3).
- (2) An objection is to –
- (a) be in writing; and
  - (b) set out the reasons for the objection.

#### **Consideration of application**

- 10 (1) A General Manager is not to consider an application for a permit until 28 days after a notice is published under Clause 8.
- (2) A General Manager is to take into account any objections received.

#### **Refusing application**

- 11 (1) A General Manager may refuse to grant an application for a permit if of the opinion that –
- (a) the premises to which the permit relates are unfit for the purpose for which they are to be used; or
  - (b) it is in the public interest that the permit not be issued.
- (2) A General Manager is to refuse to grant an application for a permit if not satisfied that the requirements of Clause 12 (1) are likely to be met.

#### **Granting application**

- 12 (1) A General Manager may grant an application for a permit if satisfied that –
- (a) adequate provisions for the health, welfare and adequate control of all cats on the premises are provided or are likely to be provided; and
  - (b) nuisance to any other persons is unlikely to occur; and
  - (c) requirements under laws relating to public health and environmental protection are likely to be satisfied.
- (2) A General Manager is to issue a permit specifying –
- (a) the maximum number of cats that may be kept on the premises; and
  - (b) any conditions as the General Manager may determine; and
  - (c) the expiry date of the permit.
- (3) If a condition of the permit relates to the breed or kind of cat to be kept under the permit, a person must not keep or permit to be kept any cat over the age of 6 months of a breed or kind that is not specified in the permit.

Penalty: Fine not exceeding 5 penalty units.

- (4) A person must not keep more than the maximum number of cats specified in the permit.

Penalty: Fine not exceeding 5 penalty units.

### **Period of permit**

- 13 Unless it is earlier cancelled, a permit expires on the date specified in the permit.

### **Renewal of permit**

- 14 (1) A permit is renewable on payment of the appropriate fee.
- (2) A General Manager may refuse to renew a permit if of the opinion that –
- (a) the provisions of this By-Law or any other relevant Act are not being complied with; or
  - (b) the situation or condition of the premises is creating a nuisance; or
  - (c) it is in the public interest that the permit not be renewed.

### **Cancellation of permit**

- 15 (1) A General Manager may cancel a permit if satisfied that –
- (a) the provisions of this By-Law or any other relevant Act are not being complied with; or
  - (b) any condition of the permit is not being complied with; or
  - (c) the situation or condition of the premises is creating a nuisance; or
  - (d) it is in the public interest that the permit be cancelled.
- (2) Before cancelling a permit, the General Manager is to –
- (a) give to the holder of the permit one month's notice in writing to show cause in writing, why the permit should not be cancelled; and
  - (b) give consideration to any representations which the holder may make in that respect.
- (3) The cancellation of a permit is to be effected by the service of a notice on the holder of the permit, notifying that the permit expires at the end of a period, not less than one month, specified in the notice, unless the normal expiry is first reached.

### **Appeals in respect of permit**

- 16 (1) The applicant or the holder of a permit may apply to the Magistrates Court (Administrative Appeals Division) within 14 days after being notified of a refusal, cancellation or decision for a review of –
- (a) the refusal of a General Manager to grant an application for a permit; or
  - (b) the refusal of a General Manager to renew a permit; or
  - (c) the cancellation of a permit; or
  - (d) the decision of the General Manager to cancel the permit.
- (2) A council is to comply with any directions given by the Magistrates Court (Administrative Appeals Division).

## **PART 4 - REGISTRATION**

### **Registering cats**

- 17 (1) The owner of a cat must register the cat with Council.

Penalty: Fine not exceeding 5 penalty units.

- (2) A person must not conceal, or dispose of, a cat to evade registration of the cat.

Penalty: Fine not exceeding 5 penalty units.

### **Application for registration**

- 18 (1) The owner of a cat required to be registered is to apply for registration to the General Manager of the Council.
- (2) An application for registration is to –
- (a) be in a form approved by the General Manager; and
  - (b) be accompanied by the appropriate registration fee; and
  - (c) include the microchip number of the cat.
- (3) The General Manager may issue an exemption to an individual, a group or a part of Council area known as Bruny Island, concerning the fee relevant to Clause 18 (2)(b).

### **Notification of Registration**

- 19 On the registration of a cat the General Manager may issue notification in writing to the registered owner that the cat has been registered by the Council.

### **Cancellation of registration**

- 20 (1) The owner of a registered cat must notify the General Manager of the Council in writing within 14 days of the cat's death or loss.
- (2) The General Manager, if satisfied of the truth of the notification, is to cancel the registration of the cat.

### **Change of owner**

- 21 (1) A person who becomes the owner of a cat that is already registered, within 14 days after becoming the owner, must notify the General Manager of the Council in writing of the transfer of ownership.

Penalty: Fine not exceeding 5 penalty unit.

- (2) If a transfer of ownership of a registered cat occurs, the former owner of the cat, within 14 days after that change, must notify the General Manager of the Council in writing of the transfer of ownership.

Penalty: Fine not exceeding 5 penalty unit.

### **Change in address**

- 22** The owner of a cat is to notify the General Manager of the Council, in writing within 14 days of beginning to usually keep the cat at an address other than that to which it was registered, in that part of the municipal area of the Council known as Bruny Island.

### **Register**

**23 The General Manager may keep a register in respect of registered cats.**

- (2) The register may state –
- (a) the name, age, sex and reproductive capacity of the cat; and
  - (b) the breed of the cat, if identifiable; and
  - (c) any identifiable feature of the cat; and
  - (d) the address in that part of the municipal area of the Council known as Bruny Island at which the owner usually keeps the cat; and
  - (e) the owner's name and address; and
  - (f) the microchip number of the cat; and
  - (g) any other information the General Manager considers relevant.
- (3) The register and its details may be recorded and retained in electronic form.
- (4) A General Manager may amend or cancel any item in the register in order to maintain the register.

## **PART 5 – NUISANCES**

### **Removal of faeces**

- 24** A person in charge of a cat must immediately remove and dispose of any faeces left by the cat in a public place or in a place not owned, or leased, by the person.

Penalty: Fine not exceeding 5 penalty units.

### **Cats creating nuisance**

- 25** (1) The owner or person in charge of a cat must not permit the cat to be, become or create a nuisance.

Penalty: Fine not exceeding 10 penalty units.

- (2) A cat is a nuisance if –
- (a) it behaves in a manner that is injurious or dangerous to the health of any person or animal; or
  - (b) it attacks, bites, menaces or harasses any person or animal; or
  - (c) it creates a noise that persistently occurs or continues to such an extent that it unreasonably interferes with the peace, comfort or convenience of any person in any premises or public place; or
  - (d) it or any product used in the keeping, control or management of the cat:
    - (i) creates an odour or smell that persistently occurs or continues to such an extent that it unreasonably interferes with the peace, comfort or convenience of any person in any premises or public place; or



- (ii) harbours or promotes any vermin; or
- (iii) is injurious or dangerous to the health of any person or animal.

### **Complaints relating to nuisance**

- 26** (1) A person may make a complaint to the General Manager in respect of a cat that is a nuisance.
- (2) A complaint is to –
- (a) be in a form approved by the General Manager; and
  - (b) be accompanied by any appropriate fee; and
  - (c) state the nature of the nuisance.

### **Investigation of nuisance complaint**

- 27** (1) On receipt of a complaint, the General Manager may investigate the subject matter of the complaint.
- (2) If the General Manager considers that the complaint has substance, the General Manager –
- (a) may institute proceedings for an offence under Clause 25; and
  - (b) is to refund the fee that accompanied the complaint to the complainant.

### **Orders relating to nuisance**

- 28** In determining proceedings relating to an offence under Clause 25, a court may make any of the following orders:
- (a) an order that the owner or person in charge of the cat to which the proceedings relate, have the cat destroyed;
  - (b) an order that the cat be removed from specified premises;
  - (c) any other order to abate the nuisance.

### **Abatement notices**

- 29** (1) If a General Manager is satisfied that a cat is creating a nuisance, the General Manager may serve an abatement notice on the owner or person apparently in charge of the cat.
- (2) An abatement notice is to state –
- (a) the nature of the nuisance; and
  - (b) any action to be taken that the General Manager considers to be necessary to abate the nuisance; and
  - (c) the period within which such action is to be taken.
- (3) A person served with an abatement notice must comply with the notice, unless the person lodges an appeal under Clause 29(5).

Penalty: Fine not exceeding 20 penalty units.

- (4) For the purpose of ascertaining whether a nuisance exists, the General Manager may –
- (a) enter and remain on land; and

- (b) do anything reasonably necessary for that purpose.
- (5) A person served with an abatement notice may appeal to the Magistrates Court (Administrative Appeals Division) within 14 days after service of the notice on any one or more of the following grounds:
- (a) that a nuisance does not exist;
  - (b) that an action required by the abatement notice is unreasonable;
  - (c) that the period stated in the abatement notice is unreasonable.
- (6) The Magistrates Court (Administrative Appeals Division) may –
- (a) order that the person is to comply with the abatement notice; or
  - (b) modify the abatement notice and order that the person and the Council are to comply with the modified notice; or
  - (c) order that the Council withdraw the abatement notice.

### **Effective control of cats**

**30** The owner or person in charge of a cat must ensure that the cat is not at large.

Penalty: Fine not exceeding 10 penalty units.

### **Prohibition on the feeding of stray or feral cats**

**31** A person must not feed or encourage the presence of a stray or feral cat, unless the General Manager has issued an exemption to this Clause; or, the person is undertaking trapping practices in accordance with the *Cat Management Act 2009*.

Penalty: Fine not exceeding 10 penalty units.

## **PART 6 – ENFORCEMENT**

### **Powers of an Authorised Officer**

- 32** (1) An Authorised Officer:
- (a) without a warrant, may enter onto land, search and inspect any building, shed or other premises, other than premises or a part of premises being used as a residence, if he or she reasonably believes that an offence under this By-law has been, or is being, committed or to assess any application for a permit; and
  - (b) may set traps in or on premises lawfully entered; and
  - (c) may cause a cat to be desexed; and
  - (d) may transfer a cat to a cat management facility; and
  - (e) may examine and scan a cat to determine if it has a microchip and, if so, contact the owner; and
  - (f) may cause a cat to be microchipped; and
  - (g) may examine, copy or take extracts from any documents as reasonably required in connection with the administration or enforcement of this By-law; and
  - (h) may take photographs, films and audio, video or other recordings as reasonably required in connection with the administration or enforcement of

this By-law; and

- (i) may undertake any action, which the Authorised Officer reasonably believes is necessary, in order to investigate or collect evidence that an offence is being, or has been, committed under this By-law.

### **Entry into residence**

- 33** (1) An Authorised Officer may apply to a justice for a warrant to enter a residential premise to exercise any of his or her powers under this By-law.
- (2) A justice may issue a warrant authorising an Authorised Officer, or any other person named in the warrant, to enter a residential premises and such a warrant may authorise that the residential premises be entered by force if:
- (a) the residential premises is not occupied; or
  - (b) entry into the residential premises has been refused or is likely to be refused.
- (3) The warrant may specify whether entry is authorised to be made at any time or only during certain hours.

### **Impersonating Authorised Officer**

- 34** A person who is not an Authorised Officer must not hold himself or herself out to be an Authorised Officer.

Penalty: Fine not exceeding 20 penalty units.

### **Hindering Authorised Officer**

- 35** A person must not hinder, obstruct or threaten an Authorised Officer in the performance or exercise of a function or power under this By-law.

Penalty: Fine not exceeding 20 penalty units.

### **Requirement to give name and address**

- 36** (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 Clause 36 (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 Clause 36 (1).

## **PART 7 – NOTICES AND RECOVERY OF DEBTS AND EXPENSES**

### **Notices and directions generally**

- 37** (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 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, actions or 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**

- 38** (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 20 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.

#### **Infringement Notices**

- 39** (1) 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.
- (2) Payment of the monetary penalty set out in an infringement notice must be made to the Council.
- (3) 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.
- (4) 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.
- (5) The *Monetary Penalties Enforcement Act 2005* applies to an infringement notice issued under this By-law.

#### **Debt Due**

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

#### **Recovery of Expenses**

- 41** In addition to any penalty imposed in relation to any failure by a person to comply with any of the provisions of this By-Law, any expenses incurred by the Council as a consequence of that contravention are recoverable by Council as a debt payable by that person.

#### **Offences**

- 42** 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**

- 43** 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.

#### **Orders**

- 44** In imposing any penalty under this By-law a court may make any order it considers appropriate.

## SCHEDULE 1 INFRINGEMENT NOTICE OFFENCES

Column 1 BY-LAW	Column 2 OFFENCE GENERAL DESCRIPTION OF OFFENCE	Column 3 PENALTY (Penalty Units)
By-law 5(1)	Failing to implant cat with microchip	2
By-law 5(3)	Failing to provide microchip number	1
By-law 6(1)	Failing to desex cat	2
By-law 6(3)	Proof that cat is desexed	0.5
By-law 6(4)	Identifying a cat as desexed if not desexed	1
By-law 7(1)	Keeping too many cats	2
By-law 12(3)	Fail to comply with permit	2
By-law 12(4)	Keeping more cats than permitted	2
By-law 17(1)	Failing to register a cat	1
By-law 17(2)	Concealing or disposing of cat to avoid registration	1
By-law 21(1)	Failure to notify Council of transfer	1
By-law 21(2)	Failure of owner to notify Council of transfer	1
By-law 24	Removal of faeces	1
By-law 25(1)	Cat creating nuisance	2
By-law 29(3)	Failure to comply with abatement notice	4
By-law 30	Cat at large	2
By-law 31	Feeding of stray or feral cats	2
By-law 34	Impersonating an authorised officer	1
By-law 35	Hindering authorised officer	1
By-law 36(2)	Failure to give name and address	1
By-law 38(1)	Failure to comply with notice or direction	4

Certified as being in accordance with the law by :

DAVID MARTIN REES, Legal Practitioner

*D.M.R.*

Dated this *24<sup>th</sup>* day of *July* 2019 at Hobart

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

GARY ARNOLD, General Manager

*G. Arnold*

Dated this *29<sup>th</sup>* day of *July* 2019 at Hobart

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



*P. Munn* ..... Mayor / Councillor

*G. Arnold* ..... General Manager