

KINGBOROUGH COUNCIL

**HEALTH AND ENVIRONMENTAL
SERVICES BY-LAW**

BY-LAW NO. 2 OF 2021

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HEALTH AND ENVIRONMENTAL SERVICES BY-LAW

BY-LAW NO. 2 OF 2021

This By-Law of the Kingborough Council is made under section 145 of the *Local Government Act 1993* for the purpose of regulating matters of health and environmental services in the Kingborough municipal area.

PART 1 – PRELIMINARY

1 Short title

- (1) This By-law may be cited as the *Health and Environmental Services By-law 2021*.

2 Application

- (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 in or on any Council land or waste facility in the course of their duties for and on behalf of the Council.

3 Interpretation

- (1) In this By-law:

“Act” means the *Local Government Act 1993*;

“animal” means an animal as defined in the *Animal Welfare Act 1993*;

“approved container” in relation to the disposal of sharps, means any approved container which is in compliance with AS 4031-1992 and is impervious, rigid, durable, tamper resistant, clearly labeled and which is able to be securely fastened;

“article” means any, vehicle item or thing that can be removed pursuant to this By-law;

“authorised officer” means an employee of the Council authorised by the Council or General Manager for the purposes of this By-law;

“beehive” means a modular framed housing for a honey bee colony, which normally contains either a nucleus colony or a standard size colony;

“builder” has the same meaning as the *Building Act 2016*;

“building work” has the same meaning as the *Building Act 2016*;

“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, veranda, lean-to, carport 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 2016*;

“Council” means the Kingborough Council;

“domestic waste” means component of the waste stream arising from households;

“effective control” means where an animal:

- (a) is in close proximity to the person;
- (b) is in sight of the person; and
- (c) the person is able to demonstrate to the satisfaction of an authorised person that the animal immediately responds to the persons commands or actions.

“environmental harm” means as defined by the *Environmental Management and Pollution Control Act 1994*;

“Fee unit” means the sum as prescribed under the provisions of the *Fee Unit Act 1997*;

“General Manager” means the General Manager appointed by the Council pursuant to section 61 of the Act;

“incinerator” includes any fireplace, structure or container outside a building, which:

- (a) is used for the purpose of disposal of waste by combustion; or
- (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*;

but does not include an outdoor solid-fuel-burning cooking appliance or outdoor solid-fuel-burning heater as defined by the *Environmental Management and Pollution Control (Smoke) Regulations 2019*;

“kerbside collection service” means the service provided by the Council for the collection of one or more of the following:

- (a) domestic waste;
- (b) recyclable;
- (c) green waste; and
- (d) any other waste as notified by the Council, upon such terms and conditions as determined by the Council.

“kept” and **“keep”** includes the provision of food or shelter on a temporary or permanent basis;

“livestock” means any animal (including any variants/miniatures of any animal) which can be farmed, whether kept for farming or domestic purposes, and includes:

- (a) domestic stock as defined by the *Nature Conservation Act 2002*;
- (b) a stock animal as defined in the *Biosecurity Act 2019*,

but does not include poultry as defined by this By-law.

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

“nuisance” means as defined by section 199 of the Act;

“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, but does not include an outdoor solid-fuel-burning cooking appliance or outdoor solid-fuel-burning heater as defined by the *Environmental Management and Pollution Control (Smoke) Regulations 2019*;

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

“permit” means a permit granted under Part 8 of this By-law;

“person” means an individual, corporation or other legal entity (other than the Crown);

“penalty unit” means the amount of money set under the provisions of the *Penalty Units and Other Penalties Act 1987*;

“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;

“recyclables” means any material able to be recovered, processed and used as a raw material for the manufacture of a useful new product through a commercial process;

“residential zone” means the General Residential Zone, Inner Residential Zone, Low Density Residential Zone, and Village Zone defined in a planning scheme applicable to the municipal area;

“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” means as defined by section 3(1) of the *Environmental Management and Pollution Control Act 1994*;

“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.

“wheelie bin” means a mobile bin as approved and supplied by the Council for the collection of one of the following:

- (a) domestic waste;
- (b) recyclables;
- (c) green waste; and
- (d) any other waste as notified by the Council,

PART 2 – DISPOSAL OF WASTE

4 Times for use of waste facility

- (1) 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 5 penalty units.

5 Directions for deposit of refuse

- (1) In this Part:

“authorised officer” includes an employee of the person 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 waste 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 10 penalty units.

6 Prohibitions in a waste facility

- (1) 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 at the waste facility without the consent of an authorised officer;
- (c) deposit any material capable of becoming airborne without first securing it from being scattered by the wind;
- (d) deposit waste in the green waste area, white goods area or at any other location in the waste management centre not designated for waste disposal; or
- (e) deposit any thing that is controlled waste as defined by the *Environmental Management and Pollution Control Act 1994*.

Penalty: Fine not exceeding 5 penalty units.

7 Refusal to accept refuse at a disposal site

- (1) 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*.

8 Prohibition from entering a waste facility

- (1) The General Manager may by notice prohibit a person who they reasonably believe is offending or has offended against this By-law from entering on or using a waste facility for such period of time as the General Manager determines.

- (2) A person who has been issued with a notice pursuant to sub-clause (1) must not enter upon or use that waste facility during the period of time specified in the notice.

Penalty: Fine not exceeding 10 penalty units.

- (3) The General Manager may at any time withdraw a notice issued under sub-clause (1).

PART 3 – HOUSEHOLD REFUSE & RECYCLING

9 Kerbside waste collection

- (1) In 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 recyclable for the purpose of the kerbside collection service.
- (4) The General Manager may determine by notice the management and control of the storage, collection, transport and disposal of waste collected by the kerbside collection service within the municipal area.
- (5) Every tenement within a designated kerbside collection service area will, upon request, be provided with a wheelie bin.
- (6) Wheelie 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 wheelie bin.
- (8) The Council or its agent or contractors will only collect a wheelie bin with the lid closed that has been 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 wheelie bin for collection by Council's kerbside collection service.

Penalty: Fine not exceeding 2 penalty units.

10 General provisions

- (1) A person within the designated area entitled to receive the kerbside collection service must:
- (a) store all wheelie bins wholly within their property boundary 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 all wheelie bins in good repair and in a clean and sanitary condition;
 - (c) clean and disinfect the wheelie bins if required to do so by the General Manager or an authorised officer;
 - (d) keep the lid of the wheelie bins closed except when waste is being placed in them;
 - (e) only leave a wheelie bin for collection on a day and in a manner and location approved by the General Manager at least once per fortnight, or empty the wheelie 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 wheelie bin do not exceed 50 kilograms;

- (g) not place in any wheelie bin which has been approved by the Council for the collection of recyclables any waste except recyclables;
- (h) not place in any wheelie bin which has been approved by the Council for the collection of green waste any waste except green waste; and
- (i) remove a wheelie bin from the kerbside within 24 hours of it being emptied by the kerbside collection service.

Penalty: Fine not exceeding 2 penalty units.

11 Dangerous substances

- (1) A person must not place in any wheelie bin any thing or substance that:
 - (a) is hot, or is likely to become 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 noxious or corrosive;
 - (e) contains sharps;
 - (f) is in any other way hazardous or dangerous; or
 - (g) is controlled waste as defined by the *Environmental Management and Pollution Control Act 1994*.

Penalty: Fine not exceeding 10 penalty units.

PART 4 – CONTROL OF ANIMALS AND POULTRY

12 Keeping of livestock

- (1) A person must not allow any livestock to be kept on a property:

- (a) having an area of less than 2,000 m²; or
- (b) within or partially within the residential zone.

Penalty: Fine not exceeding 5 penalty units.

13 Keeping of poultry

- (1) A person must not allow any structure for the keeping of poultry to be within two (2) metres of a property boundary or within five (5) metres of a dwelling on an adjoining property.

Penalty: Fine not exceeding 5 penalty units.

- (2) A person must not keep more than six (6) birds which fall within the definition of poultry on a property:

- (a) having an area of less than 2,000 square metres; or
- (b) within or partly within a residential zone.

Penalty: Fine not exceeding 5 penalty units.

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

Penalty: Fine not exceeding 5 penalty units.

- (4) If a person keeps a rooster on a property in accordance with the requirements of this By-law, the rooster must be kept and housed in such a manner to ensure it does not create a nuisance.

Penalty: Fine not exceeding 5 penalty units.

14 Maintenance of premises used by animals or poultry

- (1) The occupier of any property where an animal, including livestock, or poultry is kept must:

- (a) maintain in a clean and sanitary state any structures, buildings, enclosures, or areas to which the animal or poultry has access to;
- (b) not allow the animal or poultry to cause any nuisance, including through smell, noise, or the attraction of rodents or flies;
- (c) take all necessary steps to abate any nuisance that may arise as a result of keeping of the animal or poultry.

Penalty: Fine not exceeding 5 penalty units.

15 Control of animals

- (1) The occupier of a property must ensure that an animal is contained within the boundaries of the property upon which the animal is usually kept unless that animal is under effective control.

Penalty: Fine not exceeding 5 penalty units.

- (2) An authorised officer may seize, detain and impound an animal where the authorised officer believes an offence against this By-law has been committed.

- (3) If an animal is seized and its owner is identifiable, the authorised officer is to notify in writing the owner of the animal that:
 - (a) the animal has been seized and detained; and
 - (b) the owner may reclaim the animal.
- (4) If, after five (5) working days after the notice has been given to the owner, the owner does not reclaim the animal, the General Manager may sell, destroy or otherwise dispose of the animal.
- (5) If an animal is seized and its owner is not identifiable, the General Manager, not less than 3 working days after its seizure, may sell, destroy or otherwise dispose of the animal.
- (6) The Council may recover from the owner of the animal the costs of any action taken under this clause and any costs incurred by the Council in moving, maintaining, selling, destroying or disposing of the animal as a debt due to it.
- (7) Clause 15 of this By-law does not apply to:
 - (a) domestic cats or domestic dogs; or
 - (b) a situation where livestock are on a public road and are under the supervisions of a competent person.

16 Maximum number of beehives

- (1) Unless authorised by a permit to do so, a person may keep a maximum number of beehives specified in column 2 on land of the size specified in column 1:

Column 1	Column 2
Land Size	Maximum number of beehives
Less than 600m ²	0
600m ² to 1,000m ²	2
Per 400m ² of land in excess of 1,000m ²	1 additional hive

- (2) A person must not keep more than the maximum number of beehives specified in sub-clause (1) without a permit to do so.

Penalty: Fine not exceeding 5 penalty units.

17 Keeping of beehives

- (1) A person must not keep beehives within three (3) metres of a property boundary.

Penalty: Fine not exceeding 5 penalty units.

PART 5 – BUILDING SITE SANITATION & WASTE MANAGEMENT

18 General duty of the builder

- (1) 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.

19 Number of toilets provided

- (1) The builder is to provide one (1) toilet for every ten (10) people or part thereof on the building site.

Penalty: Fine not exceeding 5 penalty units.

20 Location of toilets and urinals

- (1) 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.

21 Toilet design and construction

- (1) A 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 General Manager or authorised officer, the 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 toilet.

Penalty: Fine not exceeding 5 penalty units.

22 Emptying and cleanliness of toilets

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

Penalty: Fine not exceeding 5 penalty units.

23 Containment of waste

- (1) A builder must ensure that all waste generated by building work on a building site is:
- (a) suitably contained or enclosed within a waste storage receptacle;
 - (b) kept on the building site where the waste was generated until disposal;
 - (c) not unsightly or cause a nuisance as a result of accumulated waste; and
 - (d) promptly retrieved if blown from the building site.

Penalty: Fine not exceeding 5 penalty units.

PART 6 – CONTROL OF INCINERATORS, OPEN AIR BURNING AND WOOD HEATERS

24 Incinerators

- (1) A person must not light an incinerator or allow an incinerator to be lit or remain alight on any premises.

Penalty: Fine not exceeding 5 penalty units.

25 Open air fires

- (1) A person must not light an open air fire or allow an 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 only burn unpainted, untreated and uncontaminated wood, pellet fuel, a briquette, paper, coal, charcoal or peat in an open air fire.

Penalty: Fine not exceeding 5 penalty units.

26 Solid fuel burning cooking appliances & heaters

- (1) A person may only burn unpainted, untreated and uncontaminated wood, pellet fuel, a briquette, paper, coal, charcoal or peat in an outdoor solid-fuel-burning cooking appliance or outdoor solid-fuel-burning heater where the fire is for cooking food, heating liquids or warming human beings.

Penalty: Fine not exceeding 5 penalty units.

27 Position of open air fires

- (1) A person must not position an open air fire:

(a) within five (5) metres from any boundary of a property;

(b) within 30 metres from any dwelling on an adjoining property; and

(c) underneath or near any overhanging foliage or other combustible material.

Penalty: Fine not exceeding 5 penalty units

28 Burning not to be a nuisance or dangerous

- (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.

Penalty: Fine not exceeding 10 penalty units.

- (2) A person who is burning any matter, 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 directed to do so by an authorised officer.

Penalty: Fine not exceeding 10 penalty units.

- (3) An authorised officer may extinguish the fire if a person fails to comply with a direction given in accordance with sub-clause (2) within a reasonable time.

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

29 Access to water supply

- (1) A person must not light an open-air fire or allow an 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 10 penalty units

PART 7 – CARAVANS

30 Structures treated as exempt caravans

- (1) 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) occupied for thirty (30) days or less in a calendar year;
 - (f) the subject of a permit or licence granted or issued under any other By-law of the Council.

31 Use of land for caravan

- (1) Unless authorised by a permit to do so, a person who is the owner or occupier of any land must not use or allow the land to be used to set up a caravan or caravans, for a period not exceeding thirty (30) days in a calendar year, which is to be used for human habitation or occupation.

Penalty: Fine not exceeding 5 penalty units.

- (2) For the purpose of reckoning time in sub-clause (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 thirty (30) days in a calendar year.

32 Occupation of a caravan

- (1) A person must not occupy a caravan, for a period not exceeding thirty (30) days in a calendar year, unless the owner or occupier of the land on which the caravan is set up is the holder of a valid permit pursuant to this By-law or a permit issued pursuant to the *Land Use Planning and Approvals Act 1993*.

Penalty: Fine not exceeding 5 penalty unit and in the case of a continuing offence, a further daily penalty of 0.5 penalty unit.

33 Commercial occupation of a caravan

- (1) 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 approved as a caravan park.

Penalty: Fine not exceeding 10 penalty units.

PART 8 – PERMITS

34 Granting permits

- (1) A permit may be granted for any purpose under this By-law by:
 - (a) the General Manager in writing; or
 - (b) any electronic method authorised by the General Manager, including via the Council's website or any application operated by or on behalf of the Council.

35 Applications

- (1) Any application for a permit pursuant to this By-law must:
 - (a) be made in writing and in accordance with any form approved by the General Manager;
 - (b) be accompanied by the relevant prescribed fee per application, if any, specified in Schedule 2 to this By-law; and
 - (c) where applicable, must be accompanied by the following:
 - i. a statement in writing of the type and nature of the activity proposed to be undertaken by the applicant and the period of time within which it is proposed to be carried out;
 - ii. a scaled drawing showing the location and extent of the proposed occupation or activity;
 - iii. a safety management plan or a description of any necessary safety measures that are appropriate for the proposed activity;
 - iv. evidence of current public liability insurance or other relevant insurance; and
 - v. such other information as the General Manager may reasonably require.

36 Factors to be considered when granting a permit

- (1) In deciding whether or not to grant a permit pursuant to this Part the General Manager 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 potential for and extent of any environmental harm;
 - (f) the movement of traffic in the area;
 - (g) the manner of any proposed sign or advertising;
 - (h) the nature, size, shape, extent and location of any proposed building or structure;
 - (i) the availability of suitable parking for motor vehicles in the area;
 - (j) representations made by a police officer; and
 - (k) any other relevant matters.

37 Factors to be considered in respect of a caravan permit

- (1) In deciding whether or not to grant a permit under this By-law for the occupation of a caravan, the General Manager 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 waste water 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.

38 Conditions of a permit

- (1) A permit granted under this By-law must be in writing and may be granted on such terms and conditions as the General Manager considers appropriate. Those conditions may include:
 - (a) a restriction on the type of activity;
 - (b) a restriction on the period in which the activity may be carried out;
 - (c) the precautions to be observed while the activity is being carried out;
 - (d) the requirement for supervision or control of the activity;
 - (e) the record to be kept or notification to be given in relation to any activity carried out pursuant to the permit;
 - (f) the permit is not transferable or assignable, and may not be relied upon, by another person without the written approval of the General Manager;
 - (g) the requirement to obtain and hold public liability insurance or other relevant insurance;
 - (h) the payment of a bond to cover any damage to Council property or any cleaning required, or the provision of an indemnity to Council for any other loss or damage; and
 - (i) the acceptance of responsibility for any damage to or loss of Council property as a result of the activity.

- (2) The holder of a permit granted pursuant to this By-law must comply with the terms and conditions of the permit.

Penalty: Fine not exceeding 10 penalty units.

39 Bond and deposit

- (1) The General Manager may, as a condition of a permit, require a person to pay a bond or provide a bank guarantee on such terms as the General Manager may determine to provide security against any reasonable costs which the Council may incur as a result of a failure of a person to comply with the obligations or requirements of a permit.
- (2) The General Manager may determine that if a permit holder defaults on carrying out any obligations or requirements of a permit, all or part of the bond or bank guarantee provided in accordance with sub-clause (1) may be retained by the Council to meet the costs incurred by the Council to carry out those obligations or requirements.

- (3) Monies deposited with the Council in accordance with this clause or the balance of the monies is to be forwarded to the person following final inspection and approval by the General Manager of the obligations or requirements of the Permit.
- (4) The Council may recover in a court of competent jurisdiction from the permit holder any expenses incurred by it in the carrying out of the obligations or requirements of a permit, less the amount of the bond paid by the permit holder for that purpose, if any, as a debt due to it.

40 Permits generally

- (1) Every permit issued pursuant to this By-law:
 - (a) must be in writing and may be in the form of a letter;
 - (b) must bear the date on which it was issued;
 - (c) remains in force for the period for which it was issued, unless it is cancelled, suspended or surrendered;
 - (d) must be carried by the permit holder at all times while undertaking the activity approved under the permit; and
 - (e) must be surrendered to the Council if it is cancelled or suspended or when it is due for renewal.

41 Production of a permit

- (1) A permit holder is to produce the permit immediately when requested to do so by a police officer or an authorised officer, and the holder of the permit must answer all questions which are reasonably necessary to establish that the person holds a permit in good faith.

Penalty: Fine not exceeding 5 penalty units.

42 Variation of permit conditions

- (1) The conditions of any permit may be varied if the General Manager considers it is appropriate to do so.
- (2) If the conditions of any permit are varied pursuant to sub-clause (1), the General Manager must serve a notice in writing on the permit holder stating:
 - (a) the conditions of the permit that are varied; and
 - (b) the reason or reasons for the variation of the permit conditions.
- (3) The conditions of a permit will be varied from the date of service of the notice of the variation.

43 Cancellation and suspension of permits

- (1) The General Manager may cancel or suspend a permit if satisfied that the permit holder:
 - (a) has breached a By-law of the Council;
 - (b) failed to comply with any condition of a permit;
 - (c) is convicted of any offence involving dishonesty; or
 - (d) is convicted of any offence involving a breach of public order.

- (2) If a permit is cancelled or suspended pursuant to sub-clause (1), the General Manager must serve a notice in writing on the permit holder stating:
 - (a) the permit is cancelled, or the permit is suspended including the length of the suspension; and
 - (b) the reason or reasons for the cancellation or suspension.
- (3) Cancellation or suspension of any permit is effective from the date of service of the notice on the permit holder or the date specified in the notice, whichever is the latter.
- (4) The General Manager may cancel or suspend a permit if this is required due to the exercise or intended exercise of any local government function, power, right or duty by the Council.
- (5) Notwithstanding, sub-clauses (2) and (3), the General Manager 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.

44 Notice

- (1) For the purposes of clauses 42(2) and 43(2) of this By-law, a notice may be served in any of the following ways:
 - (a) on the holder of the permit personally;
 - (b) by ordinary post to the last known address of the permit holder; or
 - (c) by notice being given in the public notice section of a newspaper circulating in the Kingborough municipal area.
- (2) The date of service of a notice will be:
 - (a) if the holder of the permit was served by ordinary post, 5 business days from the date the notice was posted; or
 - (b) if the notice was given in a newspaper, the date of the publication of that newspaper.

45 Assignment of permit

- (1) A permit must not be assigned and is not transferable to any person except with the written consent of the General Manager.

46 Competing applications

- (1) If there are competing applications for a permit pursuant to this By-law, the General Manager may determine which application for a permit is to be granted, if any.
- (2) The General Manager may determine that a prior or later application for a permit is to be granted in preference to any other application.

PART 9 – ENFORCEMENT

47 Offences

- (1) 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 that offence.

48 Supply of name and address

- (1) An authorised officer may require a person to give their 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 their 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).

49 Abuse or obstruction of an authorised officer

- (1) A person must not obstruct, hinder, resist or use abusive language to an authorised officer while the authorised officer is acting in the course of their duties pursuant to this By-law.

Penalty: Fine not exceeding 10 penalty units.

50 Enforcement and removal of articles

- (1) An authorised officer may:
 - (a) refuse to admit a person to a waste facility whom the authorised officer reasonably believes is offending or has committed an offence against this By-law;
 - (b) direct any person to leave the waste facility whom the authorised officer reasonably believes is offending against this By-law;
 - (c) remove any thing which is on a waste facility without the approval of the Council;
 - (d) remove any person from a waste facility whom the authorised officer reasonably believes is offending or has committed an offence 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 10 penalty units.

51 Removed articles

- (1) An article which has been removed from a waste facility pursuant to this By-law must be kept in a safe place until it has been claimed by the owner or a person on behalf of the owner or disposed of pursuant to this By-law.
- (2) If an article which has been removed from a waste facility pursuant to this By-law is not claimed by the owner or person on behalf of the owner within 48 hours following its removal, an authorised officer is to give notice to the owner of the removal of the article.

- (3) A notice under sub-clause (2) 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 or charges payable in respect of the removal, maintenance and storage of the article; and
 - (f) that if not claimed within 14 days that the article may be disposed of by the General Manager.
- (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 (3) in a newspaper circulating in the municipal area.
- (5) If the owner of the article cannot be ascertained or found, no advertising is published in accordance with sub-clause (4), and the article is not claimed by the owner or by a person on behalf of the owner within 28 days after it has been removed, the article may be disposed of in accordance with clause 53(2).

52 Fees, costs and charges

- (1) The owner of any article removed pursuant to this By-law is liable to pay:
 - (a) any fees, costs and charges specified in a notice issued pursuant to clause 51(2);
 - (b) any further fees, costs and charges incurred in the storage and further maintenance of the article once removed; and
 - (c) any fees, costs or charges incurred in the disposal of the article pursuant to clause 53.
- (2) Any unpaid fees, costs or 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 or charges are paid.

53 Disposal of unclaimed articles

- (1) The Council may dispose of an article if:
 - (a) the article is not claimed within 14 days of the service of a notice given under clause 51(2); or
 - (b) any fees, costs or charges specified in a notice under clause 51(2) that have not been paid within 14 days of the service of that notice.
- (2) An article may be disposed of under clause 51(5) or 53(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 is identified, then the proceeds obtained from the disposal or sale of the article must be paid to the owner, less any fees, costs or charges incurred by the Council in the removal, storage and disposal of the article.

54 Article required for prosecution

- (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 53, 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.

55 Assistance of police officers

- (1) A police officer is authorised to:
 - (a) assist an authorised officer to carry out an action under this By-law;
 - (b) remove any person from a waste facility whom the police officer reasonably believes has committed or who is committing an offence under this By-law;
 - (c) remove any article which is on a waste facility without a permit or the approval of the Council; and
 - (d) arrest any person who is on a waste facility whom the police officer reasonably believes has committed or who is committing an offence under this By-law.

PART 10 – NOTICES AND DIRECTIONS

56 Notices and directions generally

- (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) Unless otherwise required by this By-law, 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:
 - (a) in or of such specified materials;
 - (b) carried out within a specified period of time;
 - (c) carried out in such a manner as the General Manager or an authorised officer directs; or
 - (d) be done only by a person with the 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.

57 Non-compliance with notice or direction

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

Penalty: Fine not exceeding 10 penalty units.
- (2) The Council may undertake the 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.
- (3) The Council may recover in a court of competent jurisdiction, its expenses in undertaking work under the notice issued or direction given pursuant to this By-law as a debt payable to it from the person who fails to comply with the notice or direction in addition to any penalty imposed under sub-clause (1) and this By-law.

PART 11 – MISCELLANEOUS

58 Referral to Council

- (1) No provision of this By-law is to be construed as preventing the General Manager from referring any application for a permit to the Council.

59 Expenses incurred

- (1) The Council may rectify a breach of this By-law, including any damage to Council property, without ordering the offending person to undertake the rectification works.
- (2) In addition to a penalty imposed in relation to a failure to comply with or a contravention of this By-law, an expense or damages incurred by the Council as a result of the breach of this By-law, is recoverable by the Council as a debt payable by the person committing that breach.

60 Debt due

- (1) All monies payable to the Council under this By-law are a debt due to the Council and recoverable at law.

PART 12 - INFRINGEMENT NOTICES

61 Infringement notices

- (1) In this clause –
 "specified offence" means an offence against a clause specified in Column 1 of Schedule 1.
- (2) An authorised officer may issue an infringement notice to a person in respect of a specified offence and the monetary penalty payable under the infringement notice for that offence is the applicable sum set out adjacent to the offence in Column 3 of Schedule 1 to this By-Law.
- (3) An authorised officer may:
 - (a) issue an infringement notice to a person who the authorised officer has reason to believe is guilty of a specified offence; and
 - (b) issue one infringement notice in respect of more than one specified offence.
- (4) The *Monetary Penalties Enforcement Act 2005* applies to an infringement notice issued under this By-law.
- (5) In addition to any other method of service, an infringement notice alleging that a vehicle has been used in relation to a specified offence may be served by affixing it to that vehicle.
- (6) A person who is served with an infringement notice must, within 28 days of the date of service, do one or more of the following:
 - (a) pay the monetary penalty in full to the General Manager;
 - (b) apply to the General Manager for withdrawal of the infringement notice;
 - (c) apply to the General Manager for a variation of payment conditions; or
 - (d) lodge with the General Manager a notice of election to have the offence or offences set out in the infringement notice heard and determined by a court.
- (7) If a person who has been served with an infringement notice fails to take one or more of the actions required by sub-clause (6) within the prescribed time, the infringement may be referred to the Director, Monetary Penalties Enforcement Service.

SCHEDULE 1 – INFRINGEMENT NOTICE OFFENCES

Column 1	Column 2	Column 3
Clause	General Description of Offence	Penalty Units
4(1)	Deposit matter at waste facility outside time	1
5(3)	Disobey direction of authorised officer or direction sign	2
6(1)	Prohibitions in the disposal area	1
8(2)	Prohibition from entering waste facility	2
9(9)	Remove articles from mobile recycling bin	1
10(1)	Improper use of mobile garbage and recycling bins	1
11(1)	Placement of dangerous substances in mobile bins	2
12(1)	Keeping of livestock	1
13(1)	Keeping of poultry too close to boundary or house	1
13(2)	Keeping of more than 6 poultry	1
13(3)	Keeping of rooster in residential zone	1
13(4)	Fail to house rooster in proper manner	1
14(1)	Maintenance of premises used by animals or poultry	1
15(1)	Control of animals	1
16(2)	Maximum number of beehives	1
17(1)	Keeping of beehives	1
18(1)	Fail to provide sanitary facility on building site	1
19(1)	Fail to provide sufficient sanitary facilities	1
20(1)	Fail to obey direction of authorised officer	1
21(1)	Fail to provide sanitary facility to appropriate standard	1
21(2)	Fail to comply with direction of authorised officer	1
22(1)	Fail to empty sanitary facility	1
22(2)	Fail to keep sanitary facility clean	1
23(1)	Containment of waste	1
24(1)	Light an incinerator	1
25(1)	Open air fires	1
25(2)	Burning materials	1
26(1)	Solid fuel burning appliances and heaters	1
27(1)	Site open air fire too close to dwelling or boundary	1
28(1)	Burn matter dangerous to health or nuisance	2
28(2)	Fail to extinguish fire	2
29(1)	Light an open air fire without water supply or supervision	2
31(1)	Set up caravan for occupation for more than 30 days	1
32(1)	Occupy caravan without a permit	1
33(1)	Receive fee for occupation of caravan	2
38(2)	Fail to comply with conditions of permit	2
41(1)	Fail to produce permit	1

Column 1	Column 2	Column 3
Clause	General Description of Offence	Penalty Units
48(2)	Fail to supply name and address	1
49(1)	Abuse or obstruction of authorised officer	2
50(2)	Fail to comply with direction to leave waste facility	2
57(1)	Fail to comply with notice or direction	2

SCHEDULE 2 – PRESCRIBED FEES

Column 1	Column 2	Column 3
Clause	Fee Name	Fee Units
16(1)	Permit - Exceeding number of beehives	25
31(1)	Permit - Human habitation of caravan more than thirty (30) calendar days.	25

Certified as being in accordance with the law by:



Solicitor

Dated 19.8.2021

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



General Manager

Dated 19.8.21

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



Mayor / Councillor

Dated 19/8/21



General Manager

Dated 19.8.21