

KINGBOROUGH COUNCIL

MARINE FACILITIES BY-LAW

BY-LAW NO. 1 OF 2021

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KINGBOROUGH COUNCIL

MARINE FACILITIES BY-LAW

BY-LAW NO. 1 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 conduct on marine facilities in the Kingborough municipal area.

PART 1 – PRELIMINARY

1 Short title

- (1) This By-law may be cited as the *Marine Facilities By-Law 2021*.

2 Application

- (1) This By-law applies to the municipal area of the 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 marine facility in the course of their duties for and on behalf of the Council.
- (3) This By-law does not apply to any marine facility which is the subject of a lease from the Council to a person under Division 1 of Part 12 of the *Local Government Act 1993*.

3 Interpretation

- (1) In this By-law:

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

“article” means any vehicle, item or thing, including a vessel, that can be removed pursuant to this By-law and includes a vessel removed under clause 5 of this By-law;

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

“commercial use permit” means a permit granted under Part 4 of this By-law;

“Council” means the Kingborough Council;

“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;

“land” means all land within the municipal area and includes a marine facility;

“marine facility” includes any facility, structure or equipment owned by or under the management and control of the Council that is designed for, or used for or in relation to, the launching and mooring of vessels and any associated landing stage, slipway, boat launching ramp, jetty, wharf or breakwater and any curtilage to that facility, structure or equipment and includes any road;

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

"owner" includes:

- (a) in the case of a vehicle:
 - (i) a joint owner or part owner; or
 - (ii) a person who has the use of the vehicle under a hiring or a hire purchase agreement; or
 - (iii) a person in whose name as owner the vehicle is registered under the *Vehicle and Traffic Act 1999* or any corresponding enactment of a State or Territory of the Commonwealth; or
 - (iv) a person who is in charge of the vehicle at the time at which there is alleged to have been a contravention of this By-law involving the vehicle; and
- (b) in the case of a vessel:
 - (v) a joint owner or part owner; or
 - (vi) a person who has the use of the vessel under a hiring or a hire purchase agreement; or
 - (vii) a person who is in charge of the vessel at the time at which there is alleged to have been a contravention of this By-law involving the vessel;

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

"permit" means a permit granted under Part 3, including a commercial permit granted under Part 4, of this By-law;

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

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

"road" means a constructed surface suitable for the use of vehicles and an area set aside by the Council as a parking place for vehicles that is directly associated with and forms part of the marine facility;

"user agreement" means an agreement entered into for the hire, lease or use of any marine facility under clause 36(5) of this By-law;

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

"vessel" includes a boat, ship, craft, hovercraft, aircraft or platform, that is capable of use in or on water, whether floating or partly submersible, however propelled or moved, and any trailer used to transport it.

PART 2 – USE OF MARINE FACILITIES

Division 1 - Unimpeded Public Access

4 Obstruction of a marine facility

- (1) A person must not moor or leave a vessel at a marine facility:
 - (a) in a manner that obstructs another vessel coming alongside, using or leaving the marine facility; or
 - (b) in a manner which constitutes a nuisance as defined in section 199 of the Act; or
 - (c) for a period in excess of any time limit specified on a Council-authorized sign; or
 - (d) other than for so long only as is required to set down or take up passengers or goods without waiting, unless conditions of a commercial use permit allow.

Penalty: Fine not exceeding 5 penalty units and in the case of a continuing offence, a further daily penalty of 1 penalty unit.
- (2) A vessel that is the subject of a commercial use permit will be given priority in mooring at any marine facility over vessels that are not the subject of a commercial use permit.
- (3) Mooring arrangements for vessels referred to in sub-clause (2) that are the subject of a commercial use permit may be displayed on a sign or notice located at or alongside the marine facility.

5 Removal of vessel

- (1) An authorised officer may, after giving notice as provided in clause 6, move or cause to be moved a vessel that is moored to or using a marine facility if the authorised officer is of the opinion that the vessel is moored to or using the marine facility in contravention of clause 4.
- (2) Notwithstanding clause 5(1), where a vessel constitutes a nuisance as defined in section 199 of the Act, notice need not be given before removing the vessel if the General Manager is of the opinion that urgent action is required.
- (3) A vessel moved under this clause may be otherwise stored or moved to a place of safe anchorage.
- (4) The Council may recover from the owner of the vessel the costs of any action taken under this clause and any costs incurred by the Council in moving and maintaining the vessel in the place of storage or safe anchorage as a debt due to it.

6 Notice before removal

- (1) At least three (3) days prior to moving a vessel under clause 5(1), an authorised officer must give notice to the vessel's owner stating:
 - (a) that the vessel will be moved;
 - (b) the reason for it being moved;
 - (c) the place to which it will be moved; and
 - (d) that the costs associated with the vessel being moved are payable by the owner.

- (2) Where a vessel is moved under clause 5(2) the authorised officer must, as soon as practicable after moving the vessel, notify the owner of the place to which the vessel has been moved.

7 Obstruction of access onto or on a marine facility

- (1) A person must not obstruct the passage of persons, vehicles, or goods on or off a marine facility.

Penalty: Fine not exceeding 5 penalty units.

8 Vehicles on a marine facility

- (1) Unless authorised by a permit to do so, a person must not park or leave any vehicle on a marine facility, or in any way obstruct a marine facility, other than to launch a vessel, to load or off-load materials or passengers, or for other similar purposes of short duration.

Penalty: Fine not exceeding 5 penalty units.

9 Cargo and other material on a marine facility

- (1) Unless authorised by a permit to do so, a person must not place or store cargo or other material on, or in such a way as to obstruct the use of, a marine facility unless and until a vessel is alongside to receive this cargo or other material.

Penalty: Fine not exceeding 5 penalty units.

- (2) A person must not unload cargo or other material onto, or in such a way as to obstruct, a marine facility from a vessel until a vehicle is there to receive it.

Penalty: Fine not exceeding 5 penalty units.

10 Repairing and maintaining vessels

- (1) Unless authorised by a permit to do so, a person must not carry out repairs or maintenance to a vessel while that vessel is on or adjacent to any marine facility.

Penalty: Fine not exceeding 5 penalty units.

- (2) Sub-clause (1) does not apply to repairs of an emergency nature that are necessary to allow the vessel to immediately depart from a marine facility.

11 Peaceable use of the marine facility

- (1) A person must not do any act or thing which unreasonably interferes, or is likely to interfere with, the peaceable use by the public of a marine facility.

Penalty: Fine not exceeding 5 penalty units.

12 Fishing and swimming

- (1) A person must not swim or fish from or near any marine facility in such a manner as to obstruct or impede vessels or vehicular or pedestrian traffic on or adjacent to a marine facility.

Penalty: Fine not exceeding 5 penalty units.

Division 2 - Damage to a Marine Facility

13 Damage to marine facility

- (1) A person must not do any act or thing which causes, or is likely to cause, any damage or disfigurement to a marine facility.
Penalty: Fine not exceeding 10 penalty units.
- (2) An authorised officer may give a notice or direction to a person who has contravened sub-clause (1) requiring that person to undertake such works to repair any damage or disfigurement to a marine facility as the authorised officer considers necessary.

14 Prohibition of certain vessels

- (1) A person must not use a vessel or vehicle at a marine facility that by reason of the size, design or type of trade or service in which it is engaged or otherwise, constitutes a nuisance as defined in section 199 of the Act.
Penalty: Fine not exceeding 10 penalty units.

15 Unauthorised alteration of marine facility

- (1) Unless authorised by a permit to do so, a person must not add to or alter any structure, building or part of a marine facility.
Penalty: Fine not exceeding 10 penalty units.
- (2) Unless authorised by a permit to do so, a person must not install a crane, fuel dispensing equipment, water lines, gas lines, electric power outlets or any other service facility on a marine facility.
Penalty: Fine not exceeding 5 penalty units.
- (3) An authorised officer may give a notice or direction to a person who has contravened sub-clause (1) or (2) requiring that person to undertake such works as the authorised officer considers necessary to remove or repair anything added, altered, or installed in contravention of this clause.

16 Signs and advertising material

- (1) Unless authorised by a permit to do so, a person must not erect, exhibit, or display a notice, sign, bill, poster or advertisement on any marine facility.
Penalty: Fine not exceeding 5 penalty units.

Division 3 - General and Miscellaneous Provisions

17 Closure of marine facility

- (1) A marine facility or any part thereof may be closed if the General Manager considers it to be necessary for public safety or convenience or for the protection of the marine facility.

18 Entry onto marine facility when closed

- (1) Unless authorised by a permit to do so, a person must not enter onto or use a marine facility or any part of any marine facility that is closed.
Penalty: Fine not exceeding 5 penalty units.

19 Sale of goods, chattels or property

- (1) Unless authorised by a permit to do so, a person must not set up a stall, or sell or offer for sale any goods, chattels, property or anything on any marine facility.

Penalty: Fine not exceeding 5 penalty units.

20 Leasing

- (1) Unless authorised by a permit to do so, a person must not let or hire any goods, vessels or any other property or thing on a marine facility.

Penalty: Fine not exceeding 5 penalty units.

21 Commercial use

- (1) Unless authorised by a commercial use permit to do so, a person must not use a marine facility for a commercial use or as a base from which to conduct a commercial business.

Penalty: Fine not exceeding 10 penalty units.

22 Refuelling at a marine facility

- (1) Unless authorised by a permit to do so, a person must not refuel a vessel at a marine facility.

Penalty: Fine not exceeding 10 penalty units.

- (2) An application for a permit to refuel a vessel at a marine facility must be accompanied by a safety management plan that addresses all areas of potential risk associated with the activity, and any risk to other public users of the marine facility and the potential to cause environmental harm.

- (3) In assessing a permit to refuel a vessel at a marine facility the General Manager may consider whether the proposed use of the marine facility may cause environmental harm.

PART 3 – PERMITS GENERALLY

23 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.

24 Applications for a permit

- (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.

25 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;
 - (k) any other relevant matters.

26 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 the 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; and
 - (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; or
 - (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: A fine not exceeding 5 penalty units.

27 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.

28 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 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.

29 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.

30 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 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.

31 Cancellation and suspension of permits

- (1) The General Manager may cancel or suspend a permit if satisfied that a permit holder:
 - (a) has breached a By-law of the Council;
 - (b) failed to comply with a 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.

32 Notice

- (1) For the purposes of clauses 30(2) and 31(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.

33 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.

34 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 4 – COMMERCIAL USE PERMITS

35 Applications

- (1) A person may apply to the General Manager for a commercial use permit.
- (2) In addition to the matters set out in clause 24, an application for a commercial use permit may be accompanied by the following:
 - (a) the name and registration number of the vessel to which a commercial use permit is to apply;
 - (b) a safety management plan that addresses all areas of potential risk, particularly refuelling practices, the potential to cause environmental harm and any risk to other public users of the marine facility;
 - (c) payment of the fee or charge imposed for an application under this By-law as set out in Schedule 2; and
 - (d) such other information as the General Manager requires.

36 Grant and conditions of permit

- (1) The General Manager may grant or refuse to grant a commercial use permit for which an application has been made under clause 35.
- (2) In addition to those matters set out in clause 25, in assessing any application for a commercial use permit, the General Manager may consider:
 - (a) whether the capacity of the existing marine facility and any associated land-based infrastructure is sufficient to cater for the proposed use;
 - (b) whether public access to and public use of the marine facility would be provided in a safe manner and to a reasonable and acceptable level;
 - (c) whether a preference should be given to existing users, with particular consideration of their record of satisfactory performance;
 - (d) whether the proposed use of the marine facility would cause environmental harm.
- (3) In addition to those conditions set out at sub-clause (2), the General Manager may grant a commercial use permit subject to such other conditions as considered appropriate.
- (4) A permit holder of a commercial use permit must comply with the terms and conditions of that commercial use permit.

Penalty: A fine not exceeding 10 penalty units.
- (5) The General Manager may require a person to sign a user agreement as a condition of granting a permit under this clause and, upon signing, the provisions and requirements of such user agreement shall be incorporated with and form part of the terms and conditions of the permit.
- (6) The General Manager may impose such terms and conditions in a user agreement as considered appropriate.

PART 5 – ENFORCEMENT

37 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.

38 Prohibition from entering a marine 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 specified marine 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 marine 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).

39 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.

40 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.

41 Enforcement and removal of articles

- (1) An authorised officer may:
 - (a) refuse to admit a person to a marine facility whom the authorised officer reasonably believes is offending or has committed an offence against this By-law;
 - (b) direct any person to leave a marine facility whom the authorised officer reasonably believes is offending or has committed an offence against this By-law;
 - (c) remove any thing which is on a marine facility without a permit or with the approval of the Council;
 - (d) remove any person from a marine 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 5 penalty units.

42 Removed articles

- (1) An article which has been removed from a marine 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 marine facility pursuant to this By-Law is not claimed by the owner or a 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 of it;
 - (b) the place from which 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;
 - (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 44(2).

43 Fees, costs and charges

- (1) The owner of an 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 42(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 44.
- (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.

44 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 42(2); or
 - (b) any fees, costs or charges specified in a notice under clause 42(2) that have not been paid within 14 days of the service of that notice.

- (2) An article may be disposed of under clause 42(5) or 44(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 has a 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 or disposal of the article.

45 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, in accordance with clause 44, 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.

46 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 marine 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 marine facility without a permit or the approval of the Council; and
 - (d) arrest any person who is on a marine facility whom the police officer reasonably believes has committed or who is committing an offence under this By-law.

PART 6 – NOTICES AND DIRECTIONS

47 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 the 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 specific period of time;
 - (c) carried out in such a manner as the General Manager or 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 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.

48 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 7 – MISCELLANEOUS

49 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.

50 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.

51 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 8 – INFRINGEMENT NOTICES

52 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)	Obstruction of a marine facility	1
7(1)	Obstruction of access onto a marine facility	1
8(1)	Vehicles on a marine facility	1
9(1)	Cargo and other material on a marine facility	1
9(2)	Obstruction by cargo and other material	1
10(1)	Repairing and maintaining vessels	1
11(1)	Peaceable use of a marine facility	1
12(1)	Swim/Fish in a manner that obstructs others	1
13(1)	Damage of a marine facility	2
14(1)	Prohibition of certain vessels that are likely to cause damage	2
15(1)	Unauthorised alteration of marine facility	2
15(2)	Installation of unauthorised equipment to a marine facility	1
16(1)	Erection of signs and advertising material	1
18(1)	Entry onto marine facility when closed	1
19(1)	Sale of goods on a marine facility	1
20(1)	Hiring of goods or vessels from a marine facility	1
21(1)	Regular commercial use of a marine facility	2
22(1)	Refuelling at a marine facility	2
26(2)	Compliance with terms and conditions of permit	1
29(1)	Permit holder to produce copy of permit	1
36(4)	Compliance with terms and conditions of commercial use permit	2
38(2)	Prohibited person must not enter upon marine facility	2
39(2)	Person must supply name and address to authorised officer	1
40(1)	Abuse or obstruct an authorised officer	2
41(2)	Removal of articles	1
48(1)	Non-compliance with notice or direction	2

SCHEDULE 2 – PRESCRIBED FEES

Column 1	Column 2	Column 3
Clause	Fee Name	Fee (Units)
8(1)	Vehicles on a Marine Facility	25
9(1)	Placement or storage of cargo or material	25
10(1)	Repairing or maintaining vessel	25
15(1)	Alteration of marine facility	25
15(2)	Installation of equipment	25
16(1)	Erection of sign	25
18(1)	Entry to closed marine facility	25
19(1)	Sale of goods, chattels or property	15 / daily use permit or 610
20(1)	Leasing	610
21(1)	Commercial use permit	610
22(1)	Refuelling at marine facility	50

Certified as being in accordance with the law by:


.....

Solicitor

Dated 19.08.2021

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

