

KINGBOROUGH COUNCIL

**PARKS, RECREATION AND NATURAL
AREAS BY-LAW**

BY-LAW NO. 3 OF 2021

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KINGBOROUGH COUNCIL

PARKS, RECREATION AND NATURAL AREAS BY-LAW

BY-LAW No. 3 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 Council land and recreational facilities in the Kingborough municipal area.

PART 1 – PRELIMINARY

1 Short title

- (1) This By-law may be cited as the *Parks 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 recreational facility in the course of their duties for and on behalf of the Council.
- (3) This By-law does not apply to any Council land or recreational 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*;

“**animal**” has the same meaning as in the *Animal Welfare Act 1993*;

“**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 the General Manager for the purposes of this By-law;

“**camp**” means to:

- (a) erect a tent or similar portable structure; or
- (b) sleep in the open or in any form of shelter or vehicle between 10:00pm and 6:00am;

“**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*;

"children's playground" means any area under the management or control of the Council in which children's play equipment is installed and extends for a distance of 10 metres in all directions from the play equipment, or to the fence surrounding the play equipment, whichever is the greater.

"Council" means the Kingborough Council;

"Council land" means:

- (a) all public land as defined by section 177A(1) of the Act and as recorded on the municipal map maintained on behalf of Council;
 - (b) any other land owned by Council; and
 - (c) any land in which Council has an interest including by way of a lease or licence;
- and includes:
- (d) any road, footpath, nature strip or parking area within any of those areas; and
 - (e) any structure or building erected on those areas;
 - (f) a natural area;
 - (g) a park;

but does not include a highway;

"declared weed" has the same meaning as a declared weed under the *Weed Management Act 1999*;

"electoral sign" means a sign erected for the purpose of advertising that a person is standing as a candidate in an Australian Government, State Government or Local Government election;

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

"event" means:

- (a) any activity commercial in nature;
- (b) any party, reception or private gathering in excess of fifty (50) people;

but does not include a meeting or organised sports.

"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;

"hall" means a building owned or controlled and managed by the Council and designated by the Council as a hall together with any toilets, change rooms, kiosk, surrounding grounds, or other area associated with the hall;

"highway" means:

- (a) any highway, local highway or country highway as defined under the *Local Government (Highways) Act 1982*;
- (b) any part of a State Highway or subsidiary road within the meaning of the *Roads and Jetties Act 1935* for which the Council is responsible for maintaining and reconstruction of as a local authority pursuant to section 11 of that Act;
- (c) any highway or road which is wholly or partly maintained or maintainable by Council and shown on the map maintained by Council pursuant to section 208 of the Act;

- (d) and includes a highway reservation, footpath or walkway, kerb and guttering, nature strip, pavement and earth surface drain;

"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 horses;

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

"meeting" means an assembly of people and includes a parade, performance, rally, public speaking, preaching, march or demonstration or other event which causes people to assemble;

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

"natural area" means any natural bushland area, riparian zone or coastal zone under the control of the Council whether a public reserve or acquired for other purposes which the public have a right to enter;

"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:

(i) a joint owner or part owner; or

(ii) a person who has the use of the vessel under a hiring or a hire purchase agreement; or

(iii) 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;

"park" includes gardens, beaches, cycleways and any children's playground or park under the management or control of the Council;

"party" means a social gathering, as of invited guests for conversation, refreshments or entertainment;

"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 4 of this By-law;

"permit holder" means a person to whom a permit is granted under Part 4 of this By-law;

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

“products of wildlife” means:

- (a) the dead bodies, and parts of the dead bodies of wildlife;
- (b) any material or thing obtained from the bodies or dead bodies of wildlife;
- (c) any eggs of wildlife; and
- (d) any nests of wildlife.

“reception” means a function or occasion when persons are formally received;

“recreation area” means a recreation ground and areas appurtenant to that ground and any change rooms, club rooms, club house, buildings, grandstands and other structures associated with the use of that recreation ground;

“recreation ground” means the playing area of a sports field, court or similar facility and the area between the boundary of the sports field, court or similar facility to a fence or barrier surrounding the sports field, court or similar facility or, if there is no fence or barrier, a distance of 5 metres from the boundary;

“recreational facility” means a sports centre, hall, recreation area, recreation ground and includes part of that facility;

“road” includes a road or part of a road with a constructed surface suitable for the use of vehicles and an area set aside by the Council for parking vehicles;

“sharps” means 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, and scalpel blades used in medical, dental veterinary and nursing applications;

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

“sports centre” means a building owned or controlled and managed by the Council as a sports centre and any sports courts, sports facilities, toilets, change rooms, kiosk or other area associated with the sports centre;

“stall” includes any table, wagon, trailer, wheelbarrow or transportable structure used by any person to sell and distribute goods and/or services to the public, solicit donations and/or sell raffle or lottery tickets;

“toilet” means a toilet owned or controlled and managed by the Council for use by the public;

“user agreement” means an agreement entered into for the hire or use of any Council land or recreational facility pursuant to this By-law;

“vehicle” means a vehicle as defined by the *Vehicle and Traffic Act 1999*;

“watercraft” means a vessel or craft capable of being used as a means of conveyance or movement across, through on or in water, whether propelled by sail, motor, oars or otherwise;

“wildlife” has the same meaning as the *Nature Conservation Act 2002*.

PART 2 - MANAGEMENT OF COUNCIL LAND AND RECREATIONAL FACILITIES

Division 1 - Notices

4 Use of Council land and recreational facilities

- (1) The General Manager may by notice make rules for and regulate the management, control and use of any Council land or recreational facility.
- (2) A notice under sub-clause (1) may be placed on a sign on or at the Council land or recreational facility in respect of which the notice applies.
- (3) A person on or in any Council land or recreational facility must obey the terms and conditions of any notice given under sub-clause (1).

Penalty: Fine not exceeding 5 penalty units.

Division 2 - Hiring of Council Land and Recreational Facilities

5 Hire of Council land and recreational facilities

- (1) A person, may, by permit, hire any Council land or recreational facility.
- (2) The Council may require a person, to sign a user agreement prior to hiring any Council land or recreational facility in place of granting a permit.
- (3) The Council may impose such terms and conditions in a permit or user agreement as the Council determines.
- (4) The Council may under this clause confer upon a permit holder or hirer, the right to:
 - (a) make charges for admission to the Council land or recreational facility or to any grandstand, pavilion, building or enclosure on Council land or recreation facility to which the permit or user agreement applies; and
 - (b) exclude any person from the land or recreational facility to which the permit or user agreement applies who does not pay such charge.

6 Closure of Council land or a recreational facility

- (1) The General Manager may close any Council land or recreational facility to members of the public for such periods as the General Manager may determine.
- (2) A person must not, without a permit, user agreement or other written consent from the General Manager, enter or remain on or in any Council land or recreational facility if it is closed to the public.

Penalty: Fine not exceeding 5 penalty units.

PART 3 – GENERAL OFFENCES

Division 1 - Use

7 Admission charges

- (1) Unless authorised by a permit or user agreement to do so, a person must not charge admission or collect money for admission from any person in, or who is about to enter, any Council land or recreational facility.

Penalty: Fine not exceeding 10 penalty units.

8 Entry into Council land or a recreational facility

- (1) A person must not enter any Council land or recreational facility during the period in which it is hired to any other person unless authorised to do so by the hirer.

Penalty: Fine not exceeding 10 penalty units.

- (2) A person must not remain in or on any Council land or recreational facility where an entry fee is payable unless they have paid the correct fee.

Penalty: Fine not exceeding 10 penalty units.

Division 2 - Protection of Natural Areas and Property

9 Protection of vegetation

- (1) Unless authorised by a permit to do so, a person must not, by any act, wherever performed, cut, pluck, destroy or injury any tree, shrub, flower or other vegetation growing in or on any Council land, or recreational facility.

Penalty: Fine not exceeding 5 penalty units.

- (2) Unless authorised by a permit to do so, a person must not remove any wood or timber from any Council land or recreational facility.

Penalty: Fine not exceeding 5 penalty units.

- (3) This clause does not apply to an electricity entity under the *Electricity Supply Industry Act* 1995, where permission is presumed by section 52(5) of that act or a person acting in accordance with Council endorsed policy or guidelines.

10 Planting or tending vegetation

- (1) A person must not on Council land, or recreational facility, plant any vegetation without a permit.

Penalty: a fine not exceeding 10 penalty units.

- (2) The provisions of sub-clause (1) do not apply to any employee, contractor or authorised volunteer of or engaged by the Council to plant vegetation on that Council land who plants vegetation of the nature they are engaged by the Council to plant or a person planting within Council land in accordance with Council endorsed policy or guidelines.

- (3) For the purposes of this clause, "plant" includes:

- (a) any method of placing vegetation in or on the ground in a way that is likely to allow or induce the vegetation to survive or grow; and
- (b) propagating, husbanding, watering or otherwise tending to vegetation.

11 Declared weeds

- (1) Unless authorised by a permit to do so, a person must not bring into, or leave, or be in possession of any declared weed in or on any Council land or recreational facility.
Penalty: Fine not exceeding 5 penalty units.

12 Protection of material

- (1) Unless authorised by a permit to do so, a person must not dig, cut or remove any material on or from any Council land or recreational facility.
Penalty: Fine not exceeding 5 penalty units.
- (2) Unless authorised by a permit to do so, a person must not deposit, or place any material onto any Council land or recreational facility.
Penalty: Fine not exceeding 5 penalty units.

13 Protection of wildlife

- (1) Unless authorised by a permit to do so, a person must not take any wildlife or products of wildlife from any Council land or recreational facility.
Penalty: Fine not exceeding 10 penalty units.
- (2) Unless authorised by a permit to do so, a person must not lay or set any trap or deposit any substance likely to injure or harm any wildlife on or in any Council land or recreational facility.
Penalty: Fine not exceeding 10 penalty units.
- (3) Unless authorised by a permit to do so, a person must not interfere with the nest, breeding place or habitation of any wildlife on or in any Council land or recreational facility.
Penalty: Fine not exceeding 10 penalty units.
- (4) Unless authorised by a permit to do so, a person must not intentionally disturb any wildlife on or in any Council land or recreational facility.
Penalty: Fine not exceeding 10 penalty units.

14 General Offences

- (1) Unless authorised by a permit to do so, a person must not make or mark out a track or route on or in any Council land or recreational facility.
Penalty: Fine not exceeding 5 penalty units.
- (2) Unless authorised by a permit to do so, a person must not erect a cairn or memorial on or in any Council land or recreational facility.
Penalty: Fine not exceeding 5 penalty units.

15 Fires

- (1) Unless authorised by a permit to do so, a person must not light, allow to be lit or maintain any fire in or on any Council land or recreational facility.
Penalty: Fine not exceeding 10 penalty units.

16 Defacement to Council land or recreational facility

- (1) Unless authorised by a permit to do so, a person must not mark, write on, paint or in any way deface any Council property, Council land or recreational facility.

Penalty: Fine not exceeding 10 penalty units.

17 Damage to relics

- (1) A person must not remove, damage, deface or disturb any brick, glass, coin, masonry, ceramics, or any other object of cultural, architectural, historical or scientific interest in or on any Council land or recreational facility.

Penalty: Fine not exceeding 20 penalty units.

18 Buildings and structures, plaques and obstructions

- (1) Unless authorised by a permit to do so, a person must not place, leave, build, erect, or set up any building, structure, plaque, or an obstruction of any kind in or on any Council land or recreational facility.

Penalty: Fine not exceeding 5 penalty units.

19 Storage of watercraft

- (1) Unless authorised by a permit to do so, a person must not store, leave or abandon a watercraft on any Council land or recreational facility.

Penalty: Fine not exceeding 5 penalty units.

20 Children's playgrounds

- (1) A person must not do any of the following in a children's playground:

- (a) fail to comply with directions of an authorised officer; or
- (b) misuse any children's playground equipment.

Penalty: Fine not exceeding 5 penalty units.

21 Creation of an entrance to Council land or a recreational facility

- (1) Unless authorised by a permit to do so, a person who owns or occupies land adjoining any Council land or recreational facility must not create an entrance to that Council land or recreational facility.

Penalty: Fine not exceeding 5 penalty units.

- (2) The General Manager may by notice require a person who owns or occupies land adjoining any Council land or recreational facility to close any entrance that accesses the Council land or recreational facility.

- (3) A person who receives notice to close an entrance from their land to a public reserve must close the entrance within 14 days of receiving the notice.

- (4) The Council may execute any necessary work to close an entrance if:

- (a) the person whose land it leads to is directed to close the entrance and fails to do so; or
- (b) the entrance is not closed in the manner notified by the General Manager.

- (5) If the Council closes an entrance, the person from whose land it leads must pay the Council for all of the costs that the Council incurs in doing the work with those costs being recoverable in a court of competent jurisdiction as a debt due to it.

Division 3 - Animals, Vehicles, Bicycles, Skateboards

22 Use of vehicle and horses

- (1) Unless authorised by a permit or user agreement to do so, a person must not drive any vehicle, or ride or lead any horse in or on any Council land or recreational facility except on a road or track which the Council has authorised to be used for vehicles or horses.

Penalty: Fine not exceeding 5 penalty units.

23 Parking in Council land or recreational facility

- (1) Unless authorised by a permit to do so, a person must not park or leave any vehicle in or on any Council land or recreational facility except within an area set aside by the Council as a parking area.

Penalty: Fine not exceeding 5 penalty units.

24 Washing, dismantling and repair of vehicle

- (1) Unless authorised by a permit to do so, a person must not in or on any Council land or recreational facility dismantle, paint, wash or repair a vehicle unless it is necessary to enable the vehicle to be moved from the Council land or recreational facility.

Penalty: Fine not exceeding 5 penalty units.

25 Safety gear

- (1) The Council may display signs in or near a specifically designed facility setting out appropriate safety gear that is to be worn by persons using a skateboard, in-line skates or scooter in or on that facility.

- (2) A person must comply with a direction displayed in a sign under sub-clause (1).

Penalty: Fine not exceeding 2 penalty units.

- (3) A person riding a bicycle in or on any Council land or recreational facility must wear an approved bicycle helmet as required by and defined in the *Road Rules 2019*.

Penalty: Fine not exceeding 2 penalty units.

26 Animals in Council land or recreational facility

- (1) Unless authorised by a permit to do so, a person must not permit or allow any horse or livestock to be in, graze or stray onto or into any Council land or recreational facility.

Penalty: Fine not exceeding 5 penalty units.

Division 4 - Public Order

27 Peaceable use of Council land or recreational facility

- (1) A person in or on any Council land or recreational facility must not do any act or thing which interferes, or is likely to interfere, with the reasonable peaceable use by the public of that Council land or recreational facility.

Penalty: Fine not exceeding 5 penalty units.

28 Signs and handbills

- (1) Unless authorised by a permit to do so, a person must not erect, exhibit, or display a notice, sign, or electoral sign on or in any Council land or recreational facility.

Penalty: Fine not exceeding 5 penalty units.

- (2) Unless authorised by a permit to do so, a person must not adhere, display, give out, distribute, scatter or throw down a sign, handbill, sticker, notice, placard, advertisement, book, paper or pamphlet on or in any Council land or recreational facility.

Penalty: Fine not exceeding 5 penalty units.

29 Conduct of certain activities

- (1) Unless authorised to do so by a permit or user agreement, a person must not conduct any amusement or entertainment for financial reward in or on any Council land or recreational facility.

Penalty: Fine not exceeding 5 penalty units.

- (2) Unless authorised to do so by a permit or user agreement, a person must not organise or participate in a meeting, or similar activity on or in Council land or recreational facility.

Penalty: Fine not exceeding 5 penalty units.

- (3) Unless authorised to do so by a permit or user agreement, a person must not conduct, arrange, or participate in an event in or on any Council land or recreational facility.

Penalty: Fine not exceeding 5 penalty units.

- (4) Unless authorised to do so by a permit or user agreement, a person must not take up a collection of money in or on any Council land or recreational facility.

Penalty: Fine not exceeding 5 penalty units.

- (5) Sub-clause (4) does not apply to a person acting on behalf of an organisation if that person or organisation is approved for soliciting under the *Collections for Charities Act 2001*.

30 Organised Sports

- (1) Unless authorised to do so by a permit or user agreement, a person must not organise, administer or operate any organised sport, contest, training or game or organised recreational activity on or in any Council land or recreational facility.

Penalty: Fine not exceeding 5 penalty units.

- (2) A person must not enter onto a recreation ground while an organised sport, contest, training or game or organised recreational activity is in progress without permission from the organiser of the sport, contest, training or game or organised recreational activity, the permit holder or hirer of that recreation ground, the Council, or an authorised officer.

Penalty: Fine not exceeding 15 penalty units.

- (3) A person must not play or practice golf or allow any person to play or practice golf in or on any Council land or recreational facility except where the Council land or recreational facility has been designated by the Council for that purpose.

Penalty: Fine not exceeding 5 penalty units.

31 Loitering

- (1) A person must not loiter in a change room or toilet in or on any Council land or recreational facility.

Penalty: Fine not exceeding 10 penalty units.

32 Sale of intoxicating liquor

- (1) Unless authorised by a permit or user agreement to do so, a person must not sell liquor to any person in or on any Council land or recreational facility.

Penalty: Fine not exceeding 10 penalty units.

33 Sale of goods, chattels or property

- (1) Unless authorised to do so by a permit or user agreement, a person must not set up a stall, sell or offer for sale any goods, chattels or property in or on any Council land or recreational facility.

Penalty: Fine not exceeding 5 penalty units.

34 Leasing

- (1) Unless authorised to do so by a permit or user agreement, a person must not let or hire any goods, chattels or property in or on any Council land or recreational facility.

Penalty: Fine not exceeding 5 penalty units.

Division 5 - Health

35 Camping

- (1) Unless authorised by a permit to do so, a person must not camp or set up any caravan in or on any Council land or recreational facility except in an area designated for that purpose and if any applicable fee is paid.

Penalty: Fine not exceeding 10 penalty units.

36 Pollution of Council land or a recreational facility

- (1) A person must not urinate or defecate on or in any Council land or recreational facility except in a place provided for that purpose.

Penalty: Fine not exceeding 10 penalty units.

37 Deposit or discharge noxious matter

- (1) A person must not deposit the dead body or part of the dead body of an animal on or in any Council land or recreational facility.

Penalty: Fine not exceeding 20 penalty units.

- (2) A person must not deposit, discharge or leave any faecal matter, offal, filth or other noxious or polluting matter or thing, on or in any Council land or recreational facility.

Penalty: Fine not exceeding 20 penalty units.

38 Syringes and sharps

- (1) A person must not place, leave or drop any used or unused syringe or sharps in or on any Council land or recreational facility unless in facilities provided for that purpose.

Penalty: Fine not exceeding 20 penalty units.

Division 6 - General and Miscellaneous Provisions

39 Power to stop vehicles

- (1) An authorised officer may require the driver of a vehicle in or on any Council land or recreational facility to stop the vehicle if the authorised officer believes on reasonable grounds that the driver or an occupant of the vehicle has committed an offence under this By-law.
- (2) The driver of a vehicle must stop the vehicle when required by an authorised officer to do so under sub-clause (1).

Penalty: Fine not exceeding 5 penalty units.

PART 4 – PERMITS

40 Granting permits

- (1) A permit may be granted for any purpose under this By-law by:
 - (a) the General Manager; 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.

41 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;
 - (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.

42 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 and any other relevant matter:
 - (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.

43 Conditions of permit or approval

- (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;
 - (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: A fine not exceeding 5 penalty units.

44 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.

45 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;
- (e) must be surrendered to the Council if it is cancelled or suspended or when it is due for renewal.

46 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.

47 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.

48 Cancellation of permits and user agreements

- (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 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 or hirer by any means including notice by radio or television in emergency situations or in a situation considered appropriate by the General Manager.

49 Notice

- (1) For the purposes of clauses 47(2) and 48(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.

50 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.

51 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 5-ENFORCEMENT

52 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.

53 Prohibition from entering Council land or recreational 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 any Council land or recreational 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 that Council land or recreational facility for 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).

54 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).

55 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.

56 Enforcement and removal of articles

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

57 Removed articles

- (1) An article which has been removed from any Council land or recreational 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 any Council land or recreational 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 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; 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 59(2).

58 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 57(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 59.
- (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.

59 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 57(2);

- (b) any fees, costs or charges specified in a notice under clause 57(2) that have not been paid within 14 days of the service of that notice.
- (2) An article may be disposed of under clause 57(5) or 59(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 or disposal of the article.

60 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 59, 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.

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

PART 6 – NOTICES AND DIRECTIONS

62 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, where applicable, 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 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.

63 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

64 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.

65 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.

66 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

67 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 Clause	Column 2 General Description of Offence	Column 3 Penalty Units
4(3)	Fail to obey terms and conditions of notice	1
6(2)	Enter or remain on or in Council land/recreational facility closed to the public	1
7(1)	Charge admission to Council land/recreational facility	2
8(1)	Enter hired Council land/recreational facility unauthorised	2
8(2)	Remain on Council land/recreational facility without paying correct fee	2
9(1)	Damage vegetation on Council land/recreational facility	1
9(2)	Remove wood from Council land/recreational facility	1
10(1)	Planting of vegetation on Council land/recreational facility	2
11(1)	Possession of declared weed on Council land/recreational facility	1
12(1)	Remove materials from Council land/recreational facility	1
12(2)	Deposit materials on Council land/recreational facility	1
13(1)	Take wildlife or wildlife products from Council land/recreational facility	2
13(2)	Lay/set trap or lay poison on Council land/recreational facility	2
13(3)	Interfere with breeding/habitation of wildlife on Council land or recreational facility	2
13(4)	Intentionally disturb wildlife on Council land/recreational facility	2
14(1)	Make or mark route/track on Council land/recreational facility	1
14(2)	Erect cairn/memorial on Council land/recreational facility	1
15(1)	Light or maintain a fire on Council land/recreational facility	2
16(1)	Defacement of Council land / recreational facility	2
17(1)	Damage / removal / deface relics on Council land / recreational facility	4
18(1)	Place/leave/build a structure or obstruction on Council land/recreational facility	1
19(1)	Store, leave or abandon watercraft on Council land / recreational facility	1
20(1)	Fail to comply with direction or misuse children's play equipment in children's playground	1
21(1)	Creation of entrance to Council land/recreational facility	1
22(1)	Use of vehicles or riding horses on Council land/recreational facility	1
23(1)	Park outside designated parking area in Council land/recreational facility	1
24(1)	Wash/dismantle/repair vehicle in or on Council land/recreational facility	1
25(2)	Fail to wear safety gear as directed in or on Council land or recreational facility	1

Column 1	Column 2	Column 3
Clause	General Description of Offence	Penalty Units
25(3)	Fail to wear helmet when riding bicycle in or on Council land or recreational facility	1
26(1)	Permit horse or livestock in Council land/recreational facility	1
27(1)	Unreasonably interfere with peaceable enjoyment of Council land or recreational facility	1
28(1)	Erect or display signage on Council land or recreational facility	1
28(2)	Distribute notices and pamphlets in or on Council land or recreational facility	1
29(1)	Conduct entertainment for financial reward in or on Council land or recreational facility	1
29(2)	Organise/participate in meeting in or on Council land or recreational facility	1
29(3)	Conduct, arrange or participate in an event	1
29(4)	Take up collection of money in or on Council land or recreational facility	1
30(1)	Participating in sport in or on Council land or recreational facility	1
30(2)	Enter onto recreation ground whilst sport being played	3
30(3)	Playing or practising golf outside designated area in or on Council land or recreational facility	1
31(1)	Loiter in change room or toilet in or on Council land or recreational facility	2
32(1)	Sale of liquor in or on Council land or recreational facility	2
33(1)	Sale of goods in or on Council land or recreational facility	1
34(1)	Let or hire goods in or on Council land or recreational facility	1
35(1)	Camping/set up caravan in or on Council land or recreational facility	2
36(1)	Urine or defecate outside place provided in or on Council land or recreational facility	2
37(1)	Deposit carcass in or on Council land or recreational facility	4
37(2)	Deposit faecal or similar matter in or on Council land or recreational facility	4
38(1)	Place/leave/drop syringes/sharps outside facility provided in or on Council land or recreational facility	4
39(2)	Fail to stop vehicle when directed in or on Council land or recreational facility	1
43(2)	Compliance with terms and conditions of a permit	1
46(1)	Fail to produce permit if requested	1
53(2)	Enter land in breach of ban	2
54(2)	Fail to supply name and address	1
55(1)	Abuse or obstruction of an authorised officer	2
56(2)	Fail to comply with direction to leave Council land or recreational facility	1

Column 1	Column 2	Column 3
Clause	General Description of Offence	Penalty Units
63(1)	Non-compliance with notice or direction	2

SCHEDULE 2 – PRESCRIBED FEES

Column 1	Column 2	Column 3
Clause	Fee Name	Fee Units
6(2)	Enter closed Council land/recreational facility permit	25
7(1)	Charge admission permit	25
9(1)	Destroy/take vegetation permit	25
9(2)	Remove wood or timber permit	25
10(1)	Plant vegetation permit	25
11(1)	Possession of declared weed permit	25
12(1)	Material removal permit	25
12(2)	Deposit material permit	25
13(1)	Take wildlife or wildlife products permit	25
13(2)	Lay/set trap or lay poison permit	25
13(3)	Interfere with breeding/habitation of wildlife permit	25
13(4)	Disturbance of wildlife permit	25
14(1)	Make or mark route/track permit	25
14(2)	Erect cairn/memorial permit	25
15(1)	Light/maintain fire permit	25
16(1)	Write/mark etc/ permit	25
18(1)	Structure/plaques/obstruction permit	25
19(1)	Store watercraft permit	25
21(1)	Creation of entrance permit	25
22(1)	Use of vehicles/horses permit	25
23(1)	Parking on or in Council land/recreational facility permit	25
24(1)	Vehicle repair etc. permit	25
26(1)	Horse/livestock permit	25
28(1)	Signs/handbills permit	25
28(2)	Distribute notices/pamphlets permit	25
29(1)	Amusement or entertainment permit	25
29(2)	Meeting permit	25
29(3)	Event permit	25
29(4)	Collection of money permit	25
30(1)	Organised sport permit	25
32(1)	Sale of liquor permit	25
33(1)	Sale of goods permit	25
34(1)	Let or hire goods permit	25
35(1)	Camping permit	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

