

KINGBOROUGH COUNCIL

ROADS AND PARKING BY-LAW

BY-LAW NO. 4 OF 2021

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KINGBOROUGH COUNCIL

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BY-LAW NO. 4 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 roads and parking areas in the Kingborough municipal area.

PART 1 – PRELIMINARY

1 Short title

- (1) This By-law may be cited as the *Roads and Parking 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 on the road or highway 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*;

“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;

“Council” means the Kingborough Council;

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

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

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

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

“food truck” means any vehicle that is registered as a Mobile Food Premises within Tasmania under the *Food Act 2003*, that seeks to trade on a road or any Council land within the municipal area;

"footpath" means that part of the road reservation so constructed as to facilitate the movement of pedestrians;

"furniture" includes chairs, tables, portable barriers, panels, umbrellas, screens, awnings, planter boxes, heaters or portable lighting, plus other chattels used in the preparation or service or consumption of food and drink;

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

"Highways Act" means the *Local Government (Highways) Act 1982*;

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

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

"nature strip" means all that part of the road reservation not constructed for the movement of vehicles or pedestrians;

"occupy" includes:

- (a) the placement on a road, footpath or nature strip of any wares, goods, chattels, items, furniture, or structure to enable the service and/or sale of food or beverages;
- (b) the use of cranes, concrete pumps or any other special vehicle used for building work;
- (c) the fencing or division of any part of the road to exclude members of the public;
- (d) the placement of temporary traffic management infrastructure (including traffic signs, barriers, bollards and traffic cones) on a road; and
- (e) the placement of a skip bin.

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

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

"parking area" includes any area owned by the Council or under the delegated control of the Council and designated for the parking of vehicles and all buildings, equipment, signs, access ways, land, fences, chattels and structures used or connected in any way with the parking area, but does not include a road;

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

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

"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 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);

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

"real estate directional sign" means a temporary, moveable or freestanding sign for directing persons to a real estate event;

"real estate event" means a real estate auction or scheduled public open house inspection;

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

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

"road" means:

- (a) any highway, local highway or country highway as defined under the Highways Act;
- (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 *Local Government Act 1993*;
- (d) any other street, cul-de-sac, parking area or way in the municipal area which is wholly or partly maintained or maintainable by Council or under the control of the Council;
- (e) and includes a highway reservation, footpath or walkway, kerb and guttering, nature strip, pavement and earth surface drain;

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

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

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

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

"street trading" means the selling or exposing or offering for sale of any article or the supplying or offering to supply of any service on a road for gain or reward, and includes the consumption of food and or beverages by customers seated in an area of the road external to the business providing and selling the food or beverages;

"street trading area" means that part of a road which has been approved by the General Manager as being an area within which street trading may be carried out by the issue of a permit;

"substance" means any concrete, lime concrete, asphaltic concrete, cement, cement mortar, lime mortar, tar, soil, sand, stone, paint, firewood, or other material;

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

"voucher machine" is a device installed by or for Council that, on payment of an amount of money, issues a document or documents:

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

“works” includes, but is not limited to:

- (a) opening or breaking up the soil or pavement of a road as well as any change to the natural or existing condition of a road for any purpose;
- (b) making a drain leading to a road;
- (c) putting or placing a pipe or making a drain leading into a sewer or drain or other services of the Council in or under a road;
- (d) making an excavation, vault or cellar in or under a road;
- (e) installing under a road, pipelines, pipe systems or other infrastructure required for the transmission, distribution or supply of natural gas or other gaseous fuels;
or
- (f) erection of a hoarding or scaffolding for building or for any other purpose in or on a road.

PART 2 - ROADS

Division 1 – Work on Roads

4 Undertaking works on roads

- (1) A person must not undertake works on or under a road unless:
 - (a) they have been issued a permit to do so; or
 - (b) they are otherwise entitled to do so pursuant to any Tasmanian or Commonwealth legislation.

Penalty: A fine not exceeding 20 penalty units and in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.

- (2) The General Manager may give notice to a person who has contravened sub-clause (1) requiring that person to repair any damage caused to a road as a result of the contravention.
- (3) If a notice issued pursuant to sub-clause (2) is not complied with, the Council may carry out the works specified in the notice.
- (4) The Council may recover the costs incurred by carrying out the works in accordance with sub-clause (3) as a debt payable to it.

5 Application to carry out works within a road

- (1) A person must apply for a permit to carry out works within a road, including:
 - (a) the works specified in section 46(1) of the Highways Act; and
 - (b) the construction of a crossing.
- (2) An application for a permit to carry out works within a road must be accompanied by plans for those proposed works.

6 Compliance with permit to carry out works within a road

- (1) If a permit is granted to carry out works within a road, the works must be undertaken in accordance with the conditions of the permit.

Penalty: A fine not exceeding 5 penalty units.
- (2) The General Manager may give notice to a person who has contravened sub-clause (1) requiring that person to carry out further works within 28 days to remedy the breach of the condition of the permit.
- (3) If a notice issued pursuant to sub-clause (2) is not complied with, the Council may carry out the works specified in the notice.
- (4) The Council may recover the costs incurred by carrying out the works in accordance with sub-clause (3) as a debt payable to it.

Division 2 – Use of Roads

7 Occupation of road

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

Penalty: Fine not exceeding 5 penalty units.

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

8 Roadside sales

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

Penalty: Fine not exceeding 5 penalty units.

9 Materials and substances on the road

- (1) A person must not deposit, fall, drop or allow to flow, any material on a road without a permit.

Penalty: Fine not exceeding 5 penalty units.

- (2) Unless authorised by a permit to do so, a person must not use any road for placing or mixing any substance, or other material.

Penalty: Fine not exceeding 5 penalty units.

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

Penalty: Fine not exceeding 5 penalty units.

- (4) An authorised officer may give a notice or direction to:

- (a) any person who is contravening or has contravened sub-clause (1), (2) or (3);
- (b) any person who drives a vehicle from which any material has flowed, fallen, dropped or been deposited from on a road;
- (c) any person who is the owner or occupier of any land from which the material has come.

- (5) A notice or direction issued pursuant to sub-clause (4) may require or direct that person to remove that material from the road or to undertake such works to the land to limit or prevent that material from flowing or falling onto or being dropped or deposited on the road.

- (6) If a notice or direction issued pursuant to sub-clause (4) is not complied with, the Council may carry out the works specified in the notice or direction.

- (7) The Council may recover the cost of carrying out the works in accordance with sub-clause (6) as a debt payable to it from the person who has contravened this clause.

10 Dismantling or repair of vehicles

- (1) Unless authorised by a permit to do so, a person must not dismantle, paint, or repair any vehicle on a road.

Penalty: Fine not exceeding 5 penalty units.

11 Parking on footpaths and nature strips

- (1) Unless authorised by a permit to do so, a person must not park a vehicle, including a trailer, whether attached to a motor vehicle or not, wholly or partly on or over a footpath, kerb, gutter or nature strip.

Penalty: Fine not exceeding 3 penalty units.

- (2) Notwithstanding sub-clause (1), a person is permitted to park on a nature strip if the person is the owner or occupier of a property that is contiguous with the nature strip and the vehicle when stopped does not unreasonably obstruct other road users.
- (3) An authorised officer may give a notice or direction to a person who has contravened this clause requiring that person to remove the vehicle or trailer from the footpath, kerb, gutter or nature strip within a reasonable period of time.
- (4) If a person who has received a notice or direction under sub-clause (3) fails to comply with the notice or direction, the Council may remove the vehicle and recover the cost of doing so and its storage as a debt payable to it from the person who has contravened this clause.

12 Parking of caravans and trailers on roads

- (1) Unless authorised by a permit to do so, a person must not park a caravan or trailer that is not attached to a vehicle on a road.

Penalty: Fine not exceeding 3 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 remove the caravan or trailer from the road within a reasonable period of time.
- (3) If a person who has received a notice or direction under sub-clause (2) fails to comply with the notice or direction, the Council may remove the caravan or trailer and recover the cost of doing so, and its storage, as a debt payable to it from the person who contravened this clause.

13 Placement of objects on the road

- (1) Other than for the purpose of a scheduled waste, recycling or other collection by the Council or its agent, a person must not place rubbish, white goods, building materials or waste, skip bins, green waste, car wrecks, other disused items or shipping containers on a road without a permit.

Penalty: A fine not exceeding 5 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 remove any object from the road, or the Council may remove any object and recover the cost of doing so as a debt payable to it from the person who has contravened this clause.

Division 3 – Damage to Roads

14 Wheels of vehicles to be cleaned

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

Penalty: Fine not exceeding 3 penalty units.

15 Damage of a road

- (1) A person must not cause damage to a road.
Penalty: Fine not exceeding 5 penalty units.
- (2) The General Manager may give notice in writing to a person who has contravened sub-clause (1) requiring that the person repair any damage occasioned to a road as a result of the contravention.
- (3) If a notice issued pursuant to sub-clause (2) is not complied with, the Council may carry out the works specified in the notice.
- (4) The Council may recover the costs incurred by carrying out the works in accordance with sub-clause (3) as a debt due to it.

16 Removal of vegetation

- (1) Unless authorised by a permit to do so, a person must not destroy, cut, pluck, remove, deface or injure any tree, shrub, flower or other vegetation growing on a road.
Penalty: Fine not exceeding 5 penalty units
- (2) The provisions of sub-clause (1) do 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.

17 Removal of materials

- (1) A person must not remove or take materials from a road without a permit.
Penalty: A fine not exceeding 5 penalty units.
- (2) This clause does not apply to the removal of material which has been deposited or dropped on a road in breach of this By-law.

Division 4 – Crossing of Footpaths, Gutters and Kerbs

18 Crossings

- (1) A person must not construct or lay down a crossing without a permit.
Penalty: Fine not exceeding 5 penalty units.
- (2) The General Manager may give notice to the owner of any land which is contiguous to a road requiring that person to remove a crossing constructed without a permit or to repair a crossing.
- (3) If a notice issued pursuant to sub-clause (2) is not complied with, the Council may carry out the works specified in the notice.
- (4) The Council may recover the costs incurred in undertaking the works under this clause from the person committing the breach as a debt due to it.

19 Driving of vehicles over footpaths, kerbs and gutters

- (1) Unless authorised by a permit to do so, a person must not drive a vehicle or permit a vehicle to be driven over a footpath, kerb, gutter or nature strip of a road to or from any land or premises.
Penalty: Fine not exceeding 5 penalty units.

Division 5 – Signs

20 Signs on roads and footpaths

- (1) Unless authorised by a permit to do so, a person must not place, erect, construct or display or cause to be placed, erected, constructed or displayed a sign on a road.
Penalty: Fine not exceeding 5 penalty units.
- (2) In considering an application for a permit under this clause, the General Manager will consider:
 - (a) the dimensions and construction of the sign;
 - (b) whether the sign is to be placed on the area of the footpath which is contiguous with the boundary of the land owned or occupied by the person seeking to place the sign;
 - (c) whether more than one sign is appropriate where the land owned or occupied by the person seeking to place the sign is a corner site;
 - (d) whether the sign is located as close as practicable to the boundary of the land owned or occupied by the person seeking to place the sign, or whether some other location is more appropriate;
 - (e) whether the sign is to be removed during hours of darkness or when any business operating on the land is not open to the public; and
 - (f) whether the sign is secured to the satisfaction of the Council.
- (3) Sub-clause (1) does not apply to a real estate directional sign where it:
 - (a) is displayed for a maximum period of two (2) hours prior to the real estate event and is removed within two (2) hours of the real estate event concluding;
 - (b) is not placed on a footpath, cross over, roundabout, median strip or traffic island;
 - (c) is no larger than 0.5m²;
 - (d) by its location does not obstruct traffic signals or signs;
 - (e) does not interfere with pedestrian or vehicle movements or sight lines;
 - (f) is one (1) of a maximum of four (4) real estate directional signs for any one (1) real estate event, with only one (1) real estate directional sign being placed at any one (1) intersection;
 - (g) is not fixed or secured to any tree, light pole, power pole, or other infrastructure; and
 - (h) is not illuminated or made of reflective materials.

Division 6 – Street Trading

21 Street trading without a permit

- (1) Unless authorised by a permit to do so, a person must not engage in street trading on a road.
Penalty: Fine not exceeding 5 penalty units.

22 Permit for street trading

- (1) A person may apply to the Council for a permit for the purpose of street trading within the road.
- (2) The General Manager may grant a permit to conduct street trading to a person on such terms and conditions as the General Manager thinks fit.
- (3) A permit may only authorise street trading on an area of the road immediately outside the land to which the permit relates, unless the written consent of an adjacent landowner is provided to the General Manager.
- (4) The General Manager may cancel a permit immediately if a permit holder breaches clause 24(1) of this By-law.

23 Carrying out of street trading

- (1) In addition to any specific condition imposed by a street trading permit issued pursuant to this By-law, a permit holder of a street trading permit must:
 - (a) ensure that the street trading area and the area immediately adjacent to it is clean, tidy and in a sanitary condition at all times;
 - (b) regularly empty waste bins of the permit holder within the street trading area;
 - (c) wash and cleanse the street trading area every day on which the street trading area is used;
 - (d) immediately clean and wash away any liquid, food, debris, broken glass or waste from the street trading area;
 - (e) not use existing street rubbish bins for the disposal of waste generated from the street trading activity;
 - (f) immediately remove all materials that might cause a pedestrian to slip or trip and keep the area between the street trading area and any premises free from obstacles.

Penalty: Fine not exceeding 3 penalty units.

24 Insurance

- (1) A permit holder of a street trading permit is to take out and maintain at all times public and products liability insurance for the minimum sum of \$20 million, be in a form acceptable to the General Manager and covers the street trading area for the period of the permit.

Penalty: Fine not exceeding 5 penalty units.

- (2) A permit holder of a street trading permit must produce the insurance policy required under sub-clause (1) or the relevant Certificate of Currency within 48 hours if requested by an authorised officer to do so.

Penalty: Fine not exceeding 5 penalty units.

- (3) The General Manager may cancel a street trading permit immediately if:
 - (a) a permit holder has refused to allow an authorised officer to view a relevant insurance policy or certificate of currency; or
 - (b) if the insurance cover lapses or ceases to cover the street trading area during the term of the permit.

25 Food trucks

- (1) Unless authorised by a permit to do so a person must not trade or seek to trade on a road or Council land from a food truck.

Penalty: Fine not exceeding 5 penalty units.

- (2) Subclause (1) does not apply to a food truck trading in accordance with any other Council approved activity where the conditions of that activity allow.

PART 3 – PARKING

26 Entry and exit of parking areas

- (1) A person driving a vehicle must not enter or leave a parking area except by an access point designated by a Council sign.

Penalty: Fine not exceeding 5 penalty units.

27 Driving of vehicles in a parking area

- (1) A person must not drive a vehicle in a parking area at more than 20 kilometres per hour or at an unsafe speed.

Penalty: Fine not exceeding 5 penalty units

28 Parking of vehicles

- (1) A person must park a vehicle wholly within one parking space in a parking area and in a manner which does not obstruct the entry or exit of a vehicle to another parking space.

Penalty: Fine not exceeding 3 penalty units.

29 Payment of parking fee

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

Penalty: Fine not exceeding 3 penalty units.

30 Parking vouchers

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

Penalty: Fine not exceeding 3 penalty units.

31 Parking longer than the maximum period

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

Penalty: Fine not exceeding 3 penalty units.

32 Reserved spaces

- (1) The General Manager may create reserved parking areas and parking spaces within a parking area.
- (2) A person must not park a vehicle in a parking space or parking area which is designated "Reserved" unless authorised to do so.

Penalty: Fine not exceeding 3 penalty units.

33 Damage to Council property

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

Penalty: Fine not exceeding 5 penalty units.

34 Unauthorised removal of infringement notice

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

Penalty: Fine not exceeding 5 penalty units.

35 Washing, dismantling or repair of vehicles

- (1) A person must not dismantle, paint, wash or repair any vehicle in a parking area without the consent of the General Manager.

Penalty: Fine not exceeding 5 penalty units.

36 Use of skates and cycles

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

Penalty: Fine not exceeding 3 penalty units

37 Obstruction

- (1) A person must not cause any obstruction to vehicular or pedestrian traffic in a parking area.

Penalty: Fine not exceeding 5 penalty units

38 Use of parking area for other purposes

- (1) The General Manager may grant a permit for a parking area to be used for any purpose and may impose conditions on that permit.

PART 4 – PERMITS

39 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.

40 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.

41 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 commissioned police officer;
 - (k) any other relevant matters.

42 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: A fine not exceeding 5 penalty units.

43 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.

44 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 when it is due for renewal.

45 Production of a permit

- (1) A permit holder is to produce the Permit immediately when requested to do so by a police officer or 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.

46 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.

47 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 later.
- (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 Council may cancel or suspend a permit by any communication conveyed to the permit holder by any means including notice by radio or television in emergency situations or in a situation considered appropriate by the General Manager.

48 Notice

- (1) For the purposes of clauses 46(2) and 47(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.

49 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.

50 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

51 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.

52 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.

53 Abuse or obstruction of an authorised officer

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

Penalty: Fine not exceeding 10 penalty units.

54 Enforcement and removal of articles

- (1) An authorised officer may:
 - (a) direct any person to leave a road or parking area whom the authorised officer reasonably believes is offending or has committed an offence against this By-law;
 - (b) remove any thing which is on a road or parking area without a permit or the approval of the Council;
 - (c) remove any person from a road or parking area 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 54(1)(a) is guilty of an offence.

Penalty: Fine not exceeding 5 penalty units.

55 Removed articles

- (1) An article which has been removed from any road or parking area 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 road or parking area 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;
 - (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 57(2).

56 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 55(2);
 - (b) any further fees incurred in the storage and further maintenance of the article once removed;
 - (c) any fees, costs or charges incurred in the disposal of the article pursuant to clause 57.
- (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.

57 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 under clause 55(2);
 - (b) any fees, costs or charges specified in a notice under clause 55(2) that have not been paid within 14 days of the service of that notice.
- (2) An article may be disposed of under clause 55(5) or 57(1):
- (a) by tender or public auction following notification in a local newspaper circulating in the municipal area; or
 - (b) in a manner as the General Manager determines if:
 - (i) the General Manager is of the opinion that the article has a value that does not warrant the costs of a tender or a public auction; or
 - (ii) no tender is received, or no bid is made at a public auction.
- (3) If an article is disposed of under this clause, the General Manager must notify the owner of the article as soon as possible if the owner can be ascertained or found by reasonable enquiries.

- (4) If the owner of the article 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.

58 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 57, dispose of an article required under subclause (1) which is not claimed by the owner or in relation to which fees, costs or charges have not been paid within 30 days of the completion of court proceedings.

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

PART 6 – NOTICES AND DIRECTIONS

60 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 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.

61 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

62 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.

63 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.

64 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

65 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)	Undertake works on roads	4
6(1)	Works not undertaken in accordance with permit	1
7(1)	Conduct event/obstruct/enclose or occupy a road	1
8(1)	Article on road for sale	1
9(1)	Deposit material on road	1
9(2)	Place/mix material on road	1
9(3)	Inhibit parking on road	1
10(1)	Dismantling and repairing vehicles on road	1
11(1)	Parking on footpaths and nature strips	1
12(1)	Parking of caravan or trailer on road	.5
13(1)	Place object on road	1
14(1)	Wheels of vehicles to be cleaned	.5
15(1)	Cause damage to road	1
16(1)	Removal of vegetation	1
17(1)	Removal of materials	1
18(1)	Construct or lay down a crossing	1
19(1)	Drive vehicle or permit vehicle to be driven over footpath, kerb, gutter or nature strip	1
20(1)	Sign on road or footpath	1
21(1)	Street trading on a road	1
23(1)	Carrying out street trading	.5
24(1)	Permit holder insurance	1
24(2)	Production of insurance or Certificate of Currency	1
25(1)	Unauthorised trading of food truck	1
26(1)	Enter or leave parking area by designated access	1
27(1)	Speeding in parking area	1
28(1)	Parking of vehicle within parking space	.5
29(1)	Payment of parking fee	.5
30(1)	Display of parking voucher	.5
31(1)	Parking longer than the maximum period	.5
32(2)	Parking in a reserved parking space	.5
33(1)	Damaging Council property in a parking area	1

Column 1	Column 2	Column 3
Clause	General Description of Offence	Penalty Units
34(1)	Unauthorised removal of infringement notice	1
35(1)	Washing, dismantling or repair of vehicle in parking area	1
36(1)	Use of skates and cycles during prohibited times	.5
37(1)	Obstructing vehicles and foot traffic in parking area	1
42(2)	Fail to comply with permit condition	1
45(1)	Fail to produce permit	1
52(2)	Fail to provide name and address	1
53(1)	Abuse or obstruct an authorised officer	2
54(2)	Fail to comply with direction to leave land	1
61(1)	Non-compliance with notice or direction	2

SCHEDULE 2 – PRESCRIBED FEES

Column 1	Column 2	Column 3
Clause	Fee Name	Fee Units
5(1)	Works permit	210
7(1)	Occupation of road permit	210
8(1)	Roadside sales permit	25/m ²
9(1)	Deposit material on road permit	25
9(2)	Placing/mixing material on road permit	25
9(3)	Inhibiting parking permit	25
10(1)	Dismantling or repairing vehicle permit	25
11(1)	Parking on footpaths and nature strips permit	25
12(1)	Parking of caravans and trailers on road permit	25
13(1)	Object on road permit	50
16(1)	Removal of vegetation permit	25
17(1)	Removal of materials permit	25
18(1)	Crossing permit	160
19(1)	Driving over footpath, kerb, gutter etc. Permit	25
20(1)	Sign permit	25
21(1)	Street trading permit	25/m ²
25(1)	Food truck permit	723
38(1)	Use of parking area for other purpose permit	25

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

