

KINGBOROUGH COUNCIL

TREES ON PRIVATE PROPERTY

BY-LAW NO. 1 OF 2022

*Approved by Council on 18 July 2022
Minute No. C304/14-2022*

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KINGBOROUGH COUNCIL

TREES ON PRIVATE PROPERTY BY-LAW

BY-LAW NO. 1 OF 2022

This By-law of the Kingborough Council is made under section 145 of the *Local Government Act 1993* for the purpose of regulating removal of trees on private property in the Kingborough municipal area.

PART 1 – PRELIMINARY

1 Short title

- (1) This By-law may be cited as the *Trees on Private Property By-law 2022*.

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 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 General Manager for the purposes of this By-law;

“**Council**” means the Kingborough Council;

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

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

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

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

“**occupier**” includes any person having the care, control or management of any land or premises;

“**permit**” means a permit granted under Part 3 of this By-law;

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

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

PART 2 – TREES ON PRIVATE PROPERTY

4 Removal of trees on private property

(1) In this Part -

“high conservation value tree” means a tree that is of a species that is listed in the *Threatened Species Protection Act 1995* or the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* and/or which provide potential or significant habitat for threatened species listed in either of those acts and/or any tree as determined by the Council.

“negatively impact” means cut, wound, injure, or remove

“offset” means an action the Council requires a person to take that aims to compensate for an environmental impact that results in a loss of biodiversity caused by the person. An offset can include a financial contribution and other actions, such as active management, that demonstrates a conservation benefit for a particular natural value.

“person” means but is not limited to, an individual, corporation or other legal entity (other than the Crown);

“Potential habitat” means all habitat types within the potential range of a threatened flora or fauna species that are likely to support that species in the short and/or long term.

“priority species” means species that are not listed in the *Threatened Species Protection Act 1995* or the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* but are considered of conservation significance in the municipal area as determined by the Council.

“Significant habitat” means native vegetation determined as habitat within the known range of a threatened or vulnerable flora or fauna species that:

- (i) is known to be of high priority for the maintenance of breeding populations throughout the species' range; and/or
- (ii) if converted to non-native vegetation is considered to result in a long term negative impact on breeding populations of the species.

It may include areas that do not currently support breeding populations of the species but that need to be maintained to ensure the long-term future of the species.

(2) Unless authorised by a permit to do so, a person must not negatively impact any tree which:

- (a) has a trunk circumference of greater than 80cm at 1.4m or more above ground level; or
- (b) is nominated for and confirmed by Council as meeting the criteria for listing as a Significant Tree in accordance with a Significant Tree Policy; or
- (c) is subject to an agreement under Part 5 of the *Land Use Planning and Approvals Act 1993* or covenant on the title.

Penalty: Fine not exceeding 20 penalty units

(3) Sub-clause (2) does not apply to:

- (a) an exotic species (including non-Tasmanian natives) not nominated for and confirmed as meeting the criteria of listing as a Significant Tree in accordance with

- a Significant Tree Policy or subject to an agreement under Part 5 of the *Land Use Planning and Approvals Act 1993* or covenant on the title; or
- (b) pruning of a tree where the pruning is undertaken in accordance with Australian Standard Pruning Amenity Trees (AS 4373-2007); or
 - (c) a tree whose removal forms part of any use or development (or both) of land for which:
 - (i) a permit has been issued under the *Land Use Planning and Approvals Act 1993*; or
 - (ii) a permit under the *Land Use Planning and Approvals Act 1993* is required in order to secure compliance with any planning scheme applicable in the Municipal Area; or
 - (d) a tree whose removal is authorised by a certified Forest Practices Plan under the *Forest Practices Act 1985* unless nominated for and confirmed as meeting the criteria of listing as a Significant Tree in accordance with a Significant Tree Policy or subject to an agreement under Part 5 of the *Land Use Planning and Approvals Act 1993* or covenant on the title; or
 - (e) a tree whose removal is authorised by a permit under the *Water Management Act 1999* unless nominated for and confirmed as meeting the criteria of listing as a Significant Tree in accordance with a Significant Tree Policy or subject to an agreement under Part 5 of the *Land Use Planning and Approvals Act 1993* or covenant on the title.
- (4) Where a permit is granted under sub-clause (2) the Council may require an offset if the tree is a high conservation value tree or is a priority species.
- (5) The owner of land or person acting on their behalf on which a tree is located may apply in writing to the Council for a permit to negatively impact a tree(s).
- (6) In deciding whether or not to grant a permit, the Council may have regard to the following:
- (a) any relevant policy and/or guidelines of the Council; or
 - (b) any other relevant matter.

PART 3 – PERMITS

5 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.

6 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 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.

7 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 potential for and extent of any environmental harm;
 - (e) the movement of traffic in the area;
 - (f) the availability of suitable parking for motor vehicles in the area;
 - (g) representations made by a police officer; and
 - (h) any other relevant matters.

8 Conditions of a permit

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

Penalty: Fine not exceeding 10 penalty units.

9 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.

10 Permits generally

- (1) Every permit issued pursuant to this By-law:
 - (a) must be in writing and may be in the form of a letter;
 - (b) must bear the date on which it was issued;

- (c) remains in force for the period for which it was issued, unless it is cancelled, suspended or surrendered;
- (d) must be carried by the permit holder at all times while undertaking the activity approved under the permit; and
- (e) must be surrendered to the Council if it is cancelled or suspended or when it is due for renewal.

11 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.

Penalty: Fine not exceeding 5 penalty units.

12 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.

13 Cancellation and suspension of permits

- (1) The General Manager may cancel or suspend a permit if satisfied that the permit holder:
 - (a) has breached a By-law of the Council;
 - (b) failed to comply with any condition of a permit;
 - (c) is convicted of any offence involving dishonesty; or
 - (d) is convicted of any offence involving a breach of public order.
- (2) If a permit is cancelled or suspended pursuant to sub-clause (1), the General Manager must serve a notice in writing on the permit holder stating:
 - (a) the permit is cancelled, or the permit is suspended including the length of the suspension; and
 - (b) the reason or reasons for the cancellation or suspension.
- (3) Cancellation or suspension of any permit is effective from the date of service of the notice on the permit holder or the date specified in the notice, whichever is the latter.
- (4) The General Manager may cancel or suspend a permit if this is required due to the exercise or intended exercise of any local government function, power, right or duty by the Council.
- (5) Notwithstanding, sub-clauses (2) and (3), the General Manager may cancel or suspend a permit by any communication conveyed to the permit holder by any means including notice by radio or television in emergency situations or in a situation considered appropriate by the General Manager.

14 Notice

- (1) For the purposes of clauses 12(2) and 13(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.

15 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.

PART 4 – ENFORCEMENT

16 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.

17 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).

18 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.

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

PART 5 – NOTICES AND DIRECTIONS

20 Notices and directions generally

- (1) The General Manager or an authorised officer who reasonably believes a person has committed, is committing, or is about to commit, an offence against clause 4(2) can issue a notice or direction on that person.
- (2) A notice given under this By-law to remedy the effects of negatively impacting any tree 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*.
- (3) A direction to immediately cease negatively impacting any tree given under this By-law may be given verbally or in writing and may be in the form of a letter.
- (4) 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.
- (5) 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.
- (6) A notice or direction given under this By-law requiring a person to carry out or undertake action or work may direct that the action or work be:
 - (a) in or of such specified materials;
 - (b) carried out within a specified period of time;
 - (c) carried out in such a manner as the General Manager or an authorised officer directs; or
 - (d) be done only by a person with the appropriate qualification.
- (6) The Council may require the person carrying out the work to pay to the Council, or enter into a bond for payment to the Council of, an amount it thinks fit to provide security against costs which it may incur as a result of the execution of the work.

21 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 6 – MISCELLANEOUS

22 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.

23 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.

24 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 7 - INFRINGEMENT NOTICES

25 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(2)	Removal of trees on private property	4
8(2)	Fail to comply with conditions of a permit	2
11(1)	Fail to produce permit	1
17(2)	Fail or refuse to comply with a request to give name and/or address	1
18(1)	Obstruct, hinder, resist or use abusive language to an authorised officer	2
21(1)	Fail to comply with notice or direction	2

Certified as being in accordance with the law by:

.....

Solicitor

Dated

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

.....

General Manager

Dated

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

.....

Mayor / Councillor

Dated

.....

General Manager

Dated