

HOBART CITY COUNCIL

INFRASTRUCTURE BY-LAW

BY-LAW No. 1 of 2018

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HOBART CITY COUNCIL

INFRASTRUCTURE BY-LAW

BY-LAW No. 1 of 2018

PART 1 – PRELIMINARY

1. This by-law is made pursuant to section 145 of the Act for the purpose of regulating and controlling matters relating to highways and watercourses in the municipal area.
2. This by-law may be cited as the Infrastructure By-law.
3. The Highways By-law No. 3 of 2008 and the Hydraulic Services By-law No. 4 of 2008 are repealed.

4. This by-law applies to the Hobart municipal area.

5. In this by-law:

Act means the *Local Government Act 1993*;

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

building materials means concrete, lime concrete, asphaltic concrete, cement, cement mortar, lime mortar, tar, soil, sand, stone, firewood, steel or bricks;

Council means Hobart City Council;

crossover means any vehicle or pedestrian access within a highway (including, where applicable, the gutter, footpath, kerb, culvert or nature strip, and grated pits, drains or trenches that form part of the crossover)

which services a property, including any supporting structure;

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

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

highway means any highway or road shown on the map maintained by Council pursuant to section 208 of the Act;

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

LUPAA means the *Land Use Planning and Approvals Act 1993*;

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

occupy includes:

- (a) to use cranes, concrete pumps or any other special vehicle used for building work;
- (b) to fence or divide any part of a highway to exclude members of the public;
- (c) the placement of temporary traffic management infrastructure (including traffic signs, barriers, bollards and traffic cones) on a highway; and
- (d) the placement of an industrial waste container;

permit means:

- (a) a current permit or other written approval (including a booking confirmation provided by electronic means) granted pursuant to this by-law; or
- (b) any permit, licence or written approval granted pursuant to another by-law or legislation including a by-law or legislation which has been repealed;

providing that:

- (c) if the permit, licence or written approval was issued for a certain time

period, that time period has not expired; or

- (d) if the permit, licence or written approval was issued for a certain event, that event has not yet taken place;

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

riparian zone means the land on either side of a watercourse which is:

- (a) 10 metres from the top of the watercourse embankment; or
- (b) the area marked as "Maximum 1% Annual Exceedance Probability Flood Extent Limit" in the 2014 Hobart Rivulet Flood Map, the 2013 Sandy Bay Rivulet Flood Map or the 2017 New Town Rivulet Flood Map which have been prepared by the Council;

whichever is the greatest;

riparian works means:

- (a) carry out any earthworks;
- (b) removal any vegetation or topsoil; or
- (c) allow any livestock to graze and/or remain;

vehicle has the same meaning as in the *Road Rules 2009*;

watercourse means a river, rivulet, creek or other natural stream of water (whether modified or not) flowing in a defined channel, or between banks, notwithstanding that the flow may be intermittent or seasonal or the banks not clearly or sharply defined;

watercourse works means:

- (a) any activity which may alter the bed, banks or flood plains of a watercourse; or
- (b) the construction of any structure;

works in Part 2 of this by-law means any change to the natural or existing condition of a highway or the land which supports the highway, and includes:

- (a) the matters described in sections 30, 46 and 67 of the Highways Act;

- (b) any interference with the land below the highway, whether or not the surface of the highway is disturbed;
- (c) installing, removing or altering street furniture, lighting and similar features; and
- (d) any change to the location or condition of a footpath or nature strip.

PART 2 – HIGHWAYS

Division 1 – Prohibitions on a highway

Wheels of vehicles to be cleaned

6. A person must not drive any vehicle or permit any vehicle to be driven into, over or on any highway unless the wheels of that vehicle are first cleaned of any material adhering to those wheels prior to driving on a highway.

Penalty: 2 penalty units

Material on highways

7. A person must not deposit or drop any material or allow any material to flow, fall, be dropped or in any other way be deposited on any highway unless the person has first obtained a permit.

Penalty: 2 penalty units and 2 penalty units for every week the breach continues

Vehicle carrying material

8. A person must not drive a vehicle or permit a vehicle to be driven on a highway if the vehicle is carrying any material unless the vehicle is constructed and equipped so that the material will not drop onto the

highway.

Penalty: 2 penalty units

Placing of objects or mixing of substances on the highway

9. A person must not use any part of a highway (including the footpath or nature strip) for placing or mixing any building materials or other material except in accordance with a permit.

Penalty: 2 penalty units

Damage to a highway

10. A person must not damage a highway.

Penalty: 3 penalty units

11. If a person damages a highway, the General Manager may, at any time, require any works to be carried out (including to make safe or rectify the damage) within 28 days or as otherwise specified.
12. A person is required to comply with any direction issued by the General Manager pursuant to clause 11.

Penalty: 3 penalty units

Driving vehicle over footpaths, nature strips, kerbs or gutters

13. A person must not drive a vehicle or permit a vehicle to be driven over any footpath, nature strip, kerb or gutter of any highway to or from any site or premises unless the owner of the premises is the holder of a permit for this

purpose.

Penalty: 2 penalty units

Crossing footpaths, nature strips, kerbs or gutters without protection

14. A person must not cross any footpath, nature strip, kerb or gutter unless the footpath, nature strip, kerb or gutter has been protected in accordance with the conditions contained in the permit referred to in clause 13.

Penalty: 2 penalty units

Division 2 – Works within a highway

Permit required to carry out works within a highway

15. A person must not carry out any works in a highway unless:
- (a) they have been issued a permit to do so;
 - (b) they have been granted a permit pursuant to LUPAA which relates to those works; or
 - (c) they are entitled to do so pursuant to any Tasmanian or Commonwealth legislation.

Penalty: 3 penalty units

Application for permit to carry out works within a highway

16. A person must apply for a permit to carry out works within a highway, including:
- (a) the works specified in section 46(1) of the Highways Act; and
 - (b) the construction of a crossover.

An application for a permit to carry out works within a highway must be

accompanied by plans for the proposed works.

Works within a highway must comply with permit

17. If a permit is granted to carry out works within a highway, the works must be undertaken in accordance with the conditions of the permit.

Penalty: 5 penalty units

Directions by General Manager

18. If any works are carried out without a permit or contrary to clause 17, the General Manager may, at any time, require further works to be carried out to remedy that breach within 28 days or as otherwise specified.

19. A person is required to comply with any direction issued by the General Manager pursuant to clause 18.

Penalty: 3 penalty units

Division 3 – Method of works within a highway

Provision of documents regarding method of works within a highway

20. All works within a highway (whether pursuant to a permit issued under this by-law or other legislation) must be carried out in accordance with the documents addressing the matters listed below, which must be provided to the General Manager at least 14 days prior to the commencement of the works and which must be to the satisfaction of the General Manager:

- (a) health and safety;
- (b) traffic management; and
- (c) public liability insurance.

Penalty: 5 penalty units

Division 4 – Crossovers

Requirement to construct a crossover over a footpath or nature strip

21. The owner of any property which abuts any highway is to construct a crossover if directed to do so by the General Manager. The crossover is to be of such materials, dimensions and strength as the General Manager considers necessary to protect the gutter, footpath, kerb, culvert or nature strip from damage.

22. A person must comply with a direction under clause 21.

Penalty: 3 penalty units

Maintenance of crossovers

23. The owner of any property which accesses a highway via a crossover is to keep the crossover in good repair and maintain it to the satisfaction of the General Manager.

Direction to remove or repair a crossover

24. The General Manager may direct the owner of any premises that a crossover to that premises be removed or repaired.

25. A person must comply with a direction under clause 24.

Penalty: 3 penalty units

Division 5 – Miscellaneous

Power to remove vehicle

26. Where the Council intends to carry out any works pursuant to the Highways Act or to engage a contractor to carry out any such works, an authorised officer may remove or order the removal by towing of a vehicle parked on the closed area of highway where:

- (a) unless an emergency exists, notice has been given by the Council, either by publication in a local newspaper or by letter drop, of the proposed works;
- (b) appropriate “no parking” or other traffic signs erected pursuant to sections 49 and 59 of the *Traffic Act 1925* are placed on the highway for the purpose of identifying the part of the highway which is required in order for the works to be carried out;
- (c) the owner of the vehicle cannot be located; and
- (d) removal of the vehicle is necessary for Council to carry out the works.

Occupation of highways

27. A person must not occupy a highway unless they have been issued a permit to do so.

Penalty: 10 penalty units and 1 penalty unit for every day the breach continues.

PART 3 – WATERCOURSES

28. This Part does not apply to:

- (a) a watercourse which is part of a public stormwater system as defined in the *Urban Drainage Act 2013*;

- (b) any use or development which does not require a permit pursuant to LUPAA and the applicable planning scheme; or
- (c) any work (as defined in the *Building Act 2016*) which does not require a permit pursuant to that Act.

Watercourse works

29. A person must not carry out any watercourse works in a watercourse except in accordance with:
- (a) a permit granted pursuant to this by-law;
 - (b) a permit pursuant to LUPAA which relates to those watercourse works; or
 - (c) they are entitled to do so pursuant to any Tasmanian or Commonwealth legislation.

Penalty: 20 penalty units

Riparian works

30. A person must not carry out any riparian works within a riparian zone or on the bank of a watercourse except in accordance with:
- (a) a permit granted pursuant to this by-law;
 - (b) a permit pursuant to LUPAA which relates to those riparian works; or
 - (c) they are entitled to do so pursuant to any Tasmanian or Commonwealth legislation.

Penalty: 10 penalty units

Powers in relation to watercourses

31. The Council may, on land which is owned by it or under its control:
- (a) carry out any watercourse works or riparian works;

- (b) maintain, improve or divert a watercourse;
 - (c) widen, divert or improve any watercourse;
 - (d) cleanse the bed or channel of a watercourse;
 - (e) remove all obstructions from a watercourse;
 - (f) repair and maintain the banks or walls of a watercourse;
 - (g) construct any buildings, structures or works on, in or over any part of the watercourse;
 - (h) enter into an agreement with any person for the carrying out or construction of any building, structures or works; or
 - (i) grant any right or interest in or over that part of those watercourses or those buildings, structures or watercourse works or riparian works.
32. The Council may carry out the activities listed in clause 31 on land which is privately owned with the consent of the land owner or pursuant to the terms of any easement registered on the title to that land which allows Council to carry out those activities.

Directions by General Manager

33. The General Manager may direct the owner of a property which abuts a watercourse to remove any material which, in the General Manager's opinion, is unstable and poses a risk of collapse into the watercourse.
34. A person is required to comply with any direction issued by the General Manager pursuant to clause 33.

Penalty: 3 penalty units

PART 4 – PERMITS

Granting permits

35. 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 Council's website or an application operated by or on behalf of Council.
36. 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.

Applications

37. Any application for a permit pursuant to this by-law is to be:
- (a) in accordance with any form approved by the General Manager;
 - (b) accompanied by the fee specified by the General Manager, if any; and
 - (c) where applicable, must be accompanied by the following:
 - (i) a statement in writing of the type of activity proposed to be undertaken by the applicant and the period in which it is proposed to be carried out;
 - (ii) a scaled drawing showing the location and extent of the proposed activity;
 - (iii) approvals from relevant authorities;
 - (iv) evidence of current public liability insurance or other relevant insurance; and
 - (v) such other information that the General Manager may reasonably require.

38. In deciding whether or not to grant a permit pursuant to this by-law the General Manager may have regard to the following and any other relevant matters:
- (a) the type of activity proposed;
 - (b) the location of that activity;
 - (c) the impact of the proposed activity on public safety, the environment and amenity; and
 - (d) any comments made by any employee of the Council or by a police officer in relation to the application.

Permits

39. A permit granted under this by-law must be in writing and may be granted under 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 payment of a bond to cover any damage to Council property or any cleaning required, or the provision of an indemnity to Council for any other loss or damage; or
 - (g) the acceptance of responsibility for any damage to or loss of Council property as a result of the activity.
40. The holder of a permit granted pursuant to this by-law must comply with the terms and conditions of the permit.

Penalty (unless otherwise specified): 10 penalty units

Production of a permit

41. A permit holder is to produce the permit immediately when requested to do so by a police officer or an officer of the Council, 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.

Variation of permit conditions

42. The General Manager may vary the conditions of any permit if he or she considers it is appropriate to do so.
43. If the conditions of any permit are varied pursuant to clause 42, the General Manager must serve a notice in writing on the permit holder stating:
- (a) the conditions of the permit are varied; and
 - (b) the reason or reasons for the variation of the permit conditions.
44. The conditions of a permit will be varied from the date of service of the notice of the variation.

Cancellation of permits

45. The Council, the General Manager may cancel any permit if satisfied that:
- (a) a permit holder has breached any of Council's by-laws; or
 - (b) a permit holder has breached a term or condition of the permit.
46. If a permit is cancelled pursuant to clause 45, the General Manager must serve a notice in writing on the permit holder stating:
- (a) the permit is cancelled; and

(b) the reason or reasons for the cancellation.

47. Cancellation of any permit is effective from the date of service of the notice of the cancellation.

48. Nothing in this by-law is to be construed as preventing or prohibiting the Council from cancelling any permit if this is required due to the exercise or intended exercise of any local government functions, powers, rights or duties by the Council.

Notices

49. For the purposes of clauses 43 and 46, 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 Hobart City Council municipal area.

50. The date of service of a notice will be:

- (a) if the holder of the permit was served by ordinary post, 3 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.

PART 5 – RECOVERY OF COSTS

Expenses incurred

51. 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.

52. Any expense or damages incurred by the Council as a result of the breach of any of the by-laws, will be paid by the person committing the breach and is recoverable by the Council as a debt due to it.

PART 6 – INFRINGEMENT NOTICES

53. In this Part:

specified offence means an offence against the clause specified in Column 1 of the Schedule to this by-law.

54. 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 specified adjacent to the offence in of the Schedule to this by-law.

55. Different sums may be specified in an infringement notice according to the nature of the offence and whether payment is made within a specified time.

56. 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.

57. The *Monetary Penalties Enforcement Act 2005* applies to an infringement notice issued under this by-law.

58. 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.
59. 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.
60. If a person who has been served with an infringement notice fails to take one or more of the actions required by clause 59 within the prescribed time, the infringement may be referred to the Director, Monetary Penalties.

PART 7 – ENFORCEMENT

Hindering or resisting authorised officers

61. A person must not obstruct, hinder, abuse, or resist any authorised officer on any highway in the discharge of the authorised officer's duty.

Penalty: 3 penalty units

Directions by authorised officers

62. An authorised officer may give reasonable directions to any person in relation to their use or treatment of, or presence on or near any highway.
63. If an authorised officer believes that any of clauses 6, 7 or 8 has been breached, the authorised officer may, by notice in writing to:
- (a) any person who drives any such vehicle;
 - (b) any person who permits any vehicle to be driven; or
 - (c) any person who is the owner or occupier of any land on which the authorised officer believes a vehicle driven;
- direct that person to remove any material which came from the vehicle and onto the highway.
64. A person must not fail to comply with a reasonable direction from an authorised officer given under this by-law.

Penalty: 3 penalty units.

Removal from highways

65. Any authorised officer may:
- (a) remove any person from a highway whom the authorised officer reasonably believes has committed or who is committing an offence under this by-law; and
 - (b) remove any thing which is on a highway without the approval of the Council.

Assistance of police officers

66. A police officer is authorised to:
- (a) assist an authorised officer to carry out any action under clause 65;

- (b) remove any person from a highway whom the police officer reasonably believes has committed or who is committing an offence under this by-law;
- (c) remove anything which is on a highway without the approval of the Council; and
- (d) arrest any person who is on a highway whom the police officer reasonably believes has committed or who is committing an offence under this by-law.

Removal and sale of vehicles

67. If a vehicle is removed pursuant to clause 26, the authorised officer must
- (a) remove the vehicle to a place of safety and keep it there until the following has been paid to Council:
 - (i) any penalty required to be paid pursuant to this by-law; and
 - (ii) any fee required by Council to be paid for the removal and detention of a vehicle; and
 - (b) if the vehicle has not been collected pursuant to clause 67(a) for a period of 7 days, the vehicle may be sold or destroyed by Council or at its direction.
68. If a vehicle is sold pursuant to clause 67(b), Council may retain the following from the sale proceeds:
- (a) any amounts outstanding pursuant to clause 67(a);
 - (b) any expenses associated with the sale of the vehicle, including any auctioneer's fees.
69. If a vehicle is destroyed pursuant to clause 67(b) or if the sale proceeds are less than the total of the amounts specified in clause 68(a) and (b), the balance must be paid by the owner of the vehicle and are recoverable by

the Council as a debt due to it.

SCHEDULE
INFRINGEMENT NOTICE OFFENCES

1: CLAUSE	2: DESCRIPTION	3: PENALTY (penalty units)
PART 2 – HIGHWAYS		
6	Wheels of vehicles to be cleaned	0.5
7	Material on highways	0.5
8	Vehicle carrying material	0.5
9	Placing of objects or mixing of substances on the highway	0.5
10	Damage to a highway	0.75
12	Directions by General Manager	0.75
13	Driving vehicle over footpaths, nature strips, kerbs or gutters	0.5
14	Crossing footpaths, nature strips, kerbs or gutters without protection	0.5
15	Permit required to carry out works within a highway	0.75
17	Works within a highway must comply with permit	1.25
19	Directions by General Manager	0.75
20	Provision of documents regarding method of works within a highway	1.25
22	Requirements to construct a crossover over a footpath or nature strip	0.75

1: CLAUSE	2: DESCRIPTION	3: PENALTY (penalty units)
25	Directions by General Manager to remove or repair crossover	0.75
27	Occupation of highways	2.5
PART 3 - WATERCOURSES		
29	Watercourse works	5
30	Riparian works	2.5
34	Directions by General Manager	0.75
PART 4 – PERMITS		
40	Failure to comply with permit	2.5
PART 7 – ENFORCEMENT		
61	Hindering or resisting authorised officers	0.75
64	Directions by authorised officers	0.75

Certified that the provisions of this by-law are in accordance with the law by:


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K.M. Abey

Solicitor

Dated .. 10/7/18

At Hobart

Certified that this by-law is made in accordance with the *Local Government Act* 1993 by:


.....

N.D. HEATH

General Manager

Dated .. 10/7/18

At Hobart

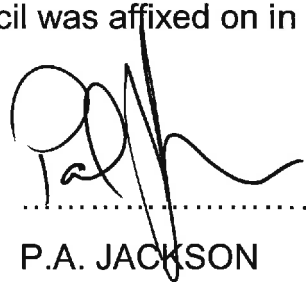
The common seal of the Hobart City Council was affixed on in the presence of


.....

H.J. SALISBURY

Deputy General Manager

Dated: .. 10/7/2018


.....

P.A. JACKSON

Manager Legal & Governance

Dated: .. 10/7/18

