

SORELL COUNCIL

LOCAL HIGHWAYS BY-LAW

BY-LAW No.2 OF 2015

BY-LAW MADE UNDER SECTION 145
OF THE *LOCAL GOVERNMENT ACT 1993*
FOR THE PURPOSE OF
REGULATING AND CONTROLLING CONDUCT ON HIGHWAYS IN
THE MUNICIPAL AREA OF THE SORELL COUNCIL.

PART 1

PRELIMINARY

Short Title

1. This By-law may be cited as the *Sorell Local Highways By-law 2015*.

Repeal

2. By-law No. 48 (2) published in the *Tasmanian Government Gazette* on 12 May 1993 at page 486 is repealed.

Application

3. This By-law applies to the Municipal Area.

Interpretation

4. In this By-law, the following terms have the following meanings:-

“Act” means the *Local Government Act 1993* (Tas);

“Authorised Officer” means an employee of the Council authorised by the General Manager for the purposes of this By-law and includes the Engineer and the General Manager;

“Council” means the Sorell Council (ABN 12 690 767 695);

“Engineer” means the Council’s Municipal Engineer as appointed by Council or the General Manager from time to time;

“Footpath” means that part of a highway reservation so constructed as to facilitate the movement of pedestrians;

“General Manager” means the person holding the position of general manager of the Council as appointed by the Council from time to time pursuant to section 61 of the Act;

“Highway” means a *local highway* as that term is defined in s.4(1) of the Highways Act;

“Highways Act” means the *Local Government (Highways) Act 1982* (Tas);

“Municipal Area” means the area of land under the control of the Sorell Council and defined in accordance with section 16 of the *Local Government Act 1993* (Tas);

“Nature Strip” means all of that part of a Highway not constructed for the movement of Vehicles or pedestrians;

“Penalty Unit” – means a sum prescribed under the provisions of the *Penalty and Other Penalties Act 1987*;

“Permit” means a statement in writing, with or without conditions, issued by an Authorised Officer which permits the carrying out of an activity regulated by this By-law, applications for which are made in accordance with Part 3 of this By-law;

“Permit Holder” means a person, incorporated body or other entity to which a Permit has been granted;

“Schedule” means the schedule to this By-law;

“Vehicle” includes any description of vehicle designed to move or to be moved on one or more wheels or revolving runners, and any truck, barrow, or similar vehicle, but does not include a vehicle constructed or adapted for propulsion on rails only; and

“Vehicle Crossing” includes any structure that is used to support the passage of Vehicles.

Interpretation

5. In this By-law, unless the contrary intention is expressed:
- (a) reference to a ‘clause’ or a ‘Part’ is a reference to a clause of or a Part of this By-law;
 - (b) references to legislation includes any such legislation as may amended or replaced from time to time; and
 - (c) references to a ‘person’ include reference to companies, associations (both incorporated and unincorporated) and any other like entities.

PART 2

CROSSINGS, KERB AND GUTTER, FOOTPATHS AND NATURE STRIPS

General Responsibility

6. The owner of land is responsible for the costs associated with the construction, repair, maintenance and renewal of any Vehicle Crossing servicing that land. All Vehicle Crossings are to be constructed, repaired, maintained or renewed in a manner, and to the standard required by the Engineer.

7. The owner of land is responsible for any damage occasioned to any:
 - (a) Footpath;
 - (b) Vehicle Crossing;
 - (c) Council infrastructure or services located within any Vehicle Crossing;
and
 - (d) Council infrastructure or services located within or above a Nature Strip,caused by any works carried out on the owner's land.

8. Where activities involving Vehicles are conducted on land with the consent or permission of the owner of that land, that land owner is responsible for any damage occasioned to any:
 - (a) Footpath;
 - (b) Vehicle Crossing;
 - (c) Council infrastructure or services located within any Vehicle Crossing;
and
 - (d) Council infrastructure or services located within or above a Nature Strip,caused by such Vehicles.

Permit required for Vehicle Crossing

9. A person must not construct or alter a Vehicle Crossing without first obtaining a Permit to do so.

PENALTY: a fine not exceeding five (5) penalty units

10. In addition to the requirements of Part 3 of this By-law, an application for a Permit to construct or alter a Vehicle Crossing must include the following information:
 - (a) the location or proposed location (as applicable) of the Vehicle Crossing in relation to title boundaries and adjacent Highways; and
 - (b) the type, dimensions and specifications proposed for the Vehicle Crossing.
11. Unless otherwise agreed by the Engineer, an application for a Permit to construct or alter a Vehicle Crossing must be made before, or contemporaneously with, the making of an application for a building permit under the *Building Act 2000* (Tas).

Crossing at unauthorised place

12. Unless authorised to do so by the Engineer, a person must not drive any Vehicle over or on any Footpath, Nature Strip, gutter or kerb.

PENALTY: a fine not exceeding five (5) penalty units

13. Where a Vehicle Crossing exists, unless authorised to do so by the Engineer, a person must not drive any Vehicle between a Highway and any privately owned land except by using such Vehicle Crossing.

PENALTY: a fine not exceeding five (5) penalty units

Deposit Material on Highway, Footpath or Nature Strip

14. (a) A person must not deposit any mud, gravel, soil or other like material on or in a Highway, whether as a result of the use of any Vehicle or not.

PENALTY: a fine not exceeding five (5) penalty units

- (b) Other than for the purpose of a scheduled refuse or recycling collection by Council or its Contractor (**'Scheduled Collection'**), a person must not place rubbish, white goods, building materials or waste, commercial garbage bins, green waste, car wrecks, shipping containers or other disused items on a Highway, Footpath or Nature Strip unless that person has a permit to do so.

PENALTY: a fine not exceeding five (5) penalty units

- (c) A person must not place on or in a Highway, Footpath or Nature Strip for collection by Council any green waste or hard waste for a period exceeding 7 days prior to the next Scheduled Collection.

PENALTY: a fine not exceeding five (5) penalty units

Damage to Flora

15. A person must not wilfully, intentionally or recklessly destroy, cut, pluck, trim, remove or injure any tree, shrub, flower or other vegetation growing on or in a Highway nor instruct nor direct any other person to do same.

PENALTY: a fine not exceeding five (5) penalty units

Directions

16. (a) An Authorised Officer may direct, either orally or in writing, any person acting in breach of clauses 12, 13, 14 and/or 15 of this By-law to;
- (i) cease the offensive activity; and
 - (ii) in the case of clause 14, remove the relevant material from the relevant Highway, Footpath or Nature Strip.

Failure to Comply

- (b) A person must not fail to comply with a direction given by an Authorised Officer pursuant to sub-clause 16(a).

PENALTY: a fine not exceeding five (5) penalty units

PART 3

PERMITS

Applications for Permits

17. All applications for Permits to conduct activities regulated by this By-law must be lodged with an Authorised Officer and be accompanied by the following information:
- (a) a statement in writing of the type and nature of the activity proposed to be undertaken by the applicant;
 - (b) a scaled drawing showing the location and extent of the proposed activity; and
 - (c) a safety management plan or a description of any necessary safety measures that are appropriate for the proposed activity.

Additional information

18. Upon receipt of an application for a Permit, an Authorised Officer may request such further or additional information as that Authorised Officer or

Council deems to be necessary in order to conduct a full and proper assessment of the application.

Matters taken into account

19. In deciding whether or not to grant a Permit, regard will be had to the following matters (as applicable):
- (a) the potential for damage to Council infrastructure or land;
 - (b) public nuisance, amenity and safety;
 - (c) public access in the area;
 - (d) the maintenance of peace and good order;
 - (e) the movement of traffic in an area;
 - (f) the nature, size, shape extent and location of any proposed road furniture;
 - (g) the availability of suitable parking for motor vehicles in the area;
 - (h) representations made by any police officer;
 - (i) disturbance of existing business or commercial activities; and
 - (j) any other matters that are relevant to the application.

Conditions of a Permit

20. A Permit issued under this By-law may be subject to such terms and conditions as an Authorised Officer or Council considers appropriate in all of the circumstances.

Compliance with terms and conditions

21. A Permit Holder must comply with the terms and conditions of their Permit.

PENALTY: a fine not exceeding ten (10) penalty units

Form of Permit

22. Every Permit issued under this By-law is to:
- (a) be in writing;
 - (b) bear the date on which it was granted;
 - (c) bear the name of the person or entity to which it is issued; and

- (d) include all terms and conditions imposed by an Authorised Officer or Council.

Duration of Permit

23. All Permits will, unless otherwise specified in the Permit:
- (a) commence on the date of issue; and
 - (b) expire automatically at the conclusion of a specified period, or earlier if cancelled or suspended pursuant to clause 24.

Cancellation and suspension of Permits

24. The General Manager may suspend or cancel any Permit in the event that any term or condition of the relevant Permit is not complied with. In the event that the General Manager suspends or cancels a Permit, the General Manager must notify the Permit holder of the cancellation or suspension and provide written reasons for taking such action.
25. The cancellation or suspension of a Permit takes effect from the date of receipt of notice (oral or written) of suspension or termination (respectively) by the Permit Holder.
26. When a Permit is suspended in accordance with clause 24:
- (a) the activity authorised by the Permit cannot be carried out during the period of suspension; and
 - (b) the period of suspension will end upon the General Manager being satisfied that the suspension is no longer required and notifying the Permit Holder (orally or in writing) of same.
27. The General Manager may cancel a suspended Permit at any time during the period of suspension. In the event that the General Manager cancels a suspended Permit, the General Manager must notify the Permit holder of the cancellation and provide written reasons for taking such action.

Assignment of Permits

28. A Permit must not be assigned, novated or in any other way transferred to any other person except with the written consent of an Authorised Officer or Council.

PART 4

SECURITY

Requirement for bonds and deposits

29. The Engineer may require any person seeking to conduct any works regulated by this By-law to:
- (a) deposit a monetary bond with the Council;
 - (b) supply Council with a bank guarantee; or
 - (c) enter into a written bond with Council.
- (here referred to as the “**Security**”)
30. The Engineer may require Security with respect to:
- (a) the cost of any works to be carried out pursuant to a Permit;
 - (b) to remedy any damage that may occur to any:
 - i. Footpath;
 - ii. Vehicle Crossing;
 - iii. Council infrastructure or services located within any Vehicle Crossing; and
 - iv. Council infrastructure or services located within or above a Nature Strip,as a result of any works regulated by this By-law; or
 - (c) securing against any reasonable costs which the Council may incur as a result of any works regulated by this By-law.
31. The requirement to provide Security may be included as a condition of any Permit.
32. Without limitation, the following terms and conditions apply to Security required under this Part 4:
- (a) the Council may require the amount of any Security to be increased if in the reasonable opinion of the Council, the Council considers the amount of Security to be inadequate;
 - (b) where Security is given in the form of a bank guarantee, such guarantee must:
 - i. be expressed as being payable unconditionally on demand by Council without the permission of the grantor or any other person; and
 - ii. be provided by a bank approved by the Council or an Authorised Officer; and

- iii. the Security must be capable of being drawn against or utilised by the Council for such amounts the Council requires with respect to:
 - A. the reimbursement to the Council of any cost, expense, liability, damage or loss incurred by the Council arising out of or in relation to any failure or refusal by a person to whom this By-law applies to carry out, perform and fulfil any of that person's obligations under this By-law or a Permit to the satisfaction of the Council or an Authorised Officer or in accordance with the requirements of a Permit; and/or
 - B. payment to the Council of any amount due and owing to the Council that arises out of any condition of a Permit.

Release of Bonds and Deposits

- 33. Security (or the balance of same) will be released following final inspection and approval by the Engineer of the works to which the Security relates.

PART 5

MISCELLANEOUS

Commission of offence

34. Any person who contravenes or fails to comply with any provision of this By-law is guilty of an offence and liable on conviction to the penalty set out in the relevant part of this By-law.

Powers of Authorised Officers

35. For the purposes of this By-law, an Authorised Officer is authorised to:
- (a) remove any person from land owned by, or under the control of the Council whom they reasonably believe is offending against this By-law; and
 - (b) remove any thing which is on land owned by, or under the control of the Council without the approval of the Council.

Powers of Police Officers

36. For the purposes of this By-law, police officers are authorised to:
- (a) assist an Authorised Officer to carry out an action specified in clause 35;
 - (b) remove any person from land owned by, or under the control of the Council whom they reasonably believe is offending against this By-law;
 - (c) remove anything which is on land owned by, or under the control of the Council without the approval of the Council; and
 - (d) 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 this By-law.

Supply of name and address

37. If an Authorised Officer reasonably believes that a person is offending or has offended against a provision of this By-law, the Authorised Officer may request that the relevant person give the Authorised Officer the person's name and address. A person must not:
- (a) fail to comply with a request made by an Authorised Officer pursuant to this clause 37; or
 - (b) knowingly provide false information to an Authorised Officer in response to a request made pursuant to this clause 37.

PENALTY: a fine not exceeding five (5) penalty units

PART 6

RECTIFICATION NOTICE & COSTS RECOVERY

Rectification notices

38. An Authorised Officer may give notice to any person who has done anything in contravention of this By-law which is capable of being rectified by any work or thing, requiring that person to do the work or thing that the authorised officer considers is reasonably required to rectify the consequences of that contravention.
39. A notice given under clause 38:
- (a) is to be in writing, signed by an Authorised Officer;
 - (b) is to be given to the person who contravened this By-law;
 - (c) is to identify the relevant contravention of this By-law;
 - (d) is to state the work or thing to be done that is required to rectify the contravention;
 - (e) is to state the time by which the work or thing is to be completed;
 - (f) may state the time by which the work or thing is to be commenced or any timetable for the commencement or completion of any part of the work or thing to be done; and
 - (g) may require that the work or thing be done only by a person who has appropriate qualifications that are so required.

A person must not fail to comply with a notice given under clause 38:

PENALTY: a fine not exceeding ten (10) penalty units

40. The Council may perform, or arrange for the performance of, any work or other matter required by a notice given under clause 38 if such notice is not complied with within any timeframe stipulated in the notice, and where no timeframe is stipulated upon the expiration of a reasonable period of time.

Recovery of Council's expenses

41. All expenses reasonably incurred by the Council as a consequence of any failure to comply with, or any contravention of, this By-law are recoverable by the Council as a debt payable by the person whose act or omission constituted failure or contravention.
42. A debt accrued pursuant to clause 41 is recoverable by Council in a court of competent jurisdiction in addition to any penalty imposed in relation to a failure to comply with, or any contravention of, this By-law.

Removed articles

43. Council may retain any article removed from land by Council pursuant to a power contained in this By-law until such time as all fees, costs and charges pertaining to the removal, maintenance and storage of the article have been paid in full.

Dealing with removed articles

44. If a removed article is not claimed by the owner (or a person acting on the owner's behalf) within forty eight (48) hours following its removal pursuant to this By-law, the General Manger is to give notice in writing to the owner (if ascertainable) of the article containing the following particulars:
- (a) a description of the article;
 - (b) the location from which the article was removed;
 - (c) the date of removal;
 - (d) the location from which the article can be claimed;
 - (e) the fees, costs and charges payable in respect of the removal, maintenance and storage of the article; and
 - (f) that if the article is not claimed within fourteen (14) days of the issue of the notice that the article may be disposed of by Council.
45. If the owner of a removed article cannot be ascertained or found after making reasonable enquiries, and the General Manager is of the opinion that the value of the article is such that it warrants the costs of advertising, the General Manager is to publish on at least one (1) occasion a notice containing the particulars specified in clause 44 in a local newspaper circulating within the Municipal Area.

Disposal of unclaimed articles

46. Council may dispose of any removed article if:
- (a) the article is not claimed within fourteen (14) days of the issue of the notice referred to in clause 45; or
 - (b) the fees, costs and charges payable in respect of the removal and storage of the article have not been paid within fourteen (14) days of the issue of the notice referred to in clause 45; or
 - (c) where the owner is not ascertainable and has not come forward in response to the public advertisement, fourteen (14) have elapsed from the date of the publication of the public advertisement in accordance with clause 45.
47. A removed article may be disposed of under clause 46:

- (a) by tender or public auction following notification in a local newspaper circulating within the Municipal Area; or
 - (b) in such manner as the General Manager sees fit if:
 - (i) no tender is received or no bids are made at a public auction; or
 - (ii) the General Manager is of the opinion (reasonably held) that the article is of such low value that it does not warrant the costs of a tender or public auction.
48. If a removed article is disposed of under clause 46, the General Manager must notify the owner of the article as soon as practicable if the owner can be ascertained or found after making reasonable enquiries. If the owner of the article so requests, then the proceeds obtained from the disposal of the article must be paid to the owner, less any fees that are due to Council, advertising costs, and any other costs incurred by the Council in the removal, storage, maintenance and disposal of the article.

PART 7

INFRINGEMENT NOTICES

49. In this Part 7, the term “**Specified Offence**” means an offence against the clause of this By-law specified in Column 1 of the Schedule.
50. An Authorised Officer may:
 - (a) issue an infringement notice to any person that the Authorised Officer has reason to believe is guilty of a Specified Offence;
 - (b) issue one (1) infringement notice in respect of more than one, but not more than four (4), Specified Offences; and
 - (c) impose a monetary penalty for the Specified Offence in respect of which the infringement notice is issued.
51. The penalties specified in Column 3 of the Schedule opposite each Specified Offence are the penalties payable under an infringement notice issued in respect of Specified Offences.
52. Payment of an infringement notice issued must be made to the General Manager within twenty eight (28) days of the issue of the infringement notice to avoid the infringement notice being referred to the Director, Monetary Penalties Enforcement Service.
53. 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 duly served by securely affixing the infringement notice to that Vehicle.
54. The *Monetary Penalties Enforcement Act 2005* (Tas) applies to all infringement notices issued pursuant to this By-law.
55. All monies payable to the Council under this By-law are a debt due to the Council and recoverable at law in a court of competent jurisdiction.

SCHEDULE

INFRINGEMENT NOTICE OFFENCES

Column 1	Column 2	Column 3
CLAUSE	GENERAL DESCRIPTION OF OFFENCE	PENALTY UNITS
9	Constructing Vehicle Crossing without Permit	1.5
12	Crossing at unauthorised place	1.5
13	Requirement to use Vehicle Crossing	1.5
14(a) 14(b) 14(c)	Depositing material on Highways	0.5
15	Damage to flora within Highways	0.5
16(b)	Failure to comply with direction	0.5
21	Failure to comply with Permit	0.5
37	Failure to give name/providing false information	0.5
39	Failure to comply with rectification notice	0.5

Certified as being in accordance with the law by:

John Kirkwood, Abetz Curtis, Australian Legal Practitioner

Dated this 18th day of December, 2015 at Hobart in Tasmania.

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

.....
General Manager

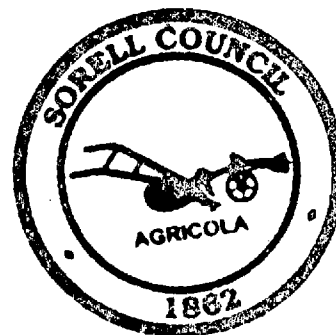
Dated this 22nd day of *DECEMBER*, 2015 at Hobart in Tasmania

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

.....) Mayor.

.....) Deputy Mayor.

.....) General Manager



Confirmed by me this _____ day of _____, 2015 at Hobart.

The Honourable Peter Gutwein
Minister for Local Government