

# LAUNCESTON CITY COUNCIL

## FACILITIES AND HIGHWAYS BY-LAW NO. 1 of 2020

A by-law made under section 145 of the *Local Government Act 1993 (Tas)* to control, regulate and protect facilities and local highways throughout the municipal area of the Launceston City Council.

### PART 1 – PRELIMINARY

#### 1 Short Title

This by-law may be cited as the Facilities and Highways By-Law Number 1/2020.

#### 2 Application

This by-law applies to all Facilities and Local Highways in the municipal area of the Launceston City Council.

#### 3 Interpretation

- (1) This by-law is not intended to interfere with the cultural activities of the Tasmanian Aboriginal community, nor with the cultural activities of any other peoples.
- (2) In this by-law, unless the contrary intention appears:

"Abandoned" means:

- (a) in relation to objects or material, any objects or materials that appear to an Authorised Officer to have been discarded by the owner and that, in the opinion of the Authorised Officer, have a negligible market value apart from scrap value;
- (b) in relation to a Vehicle, any Vehicle which:
  - (i) has been left parked or stationary at any Facility for a period in excess of 48 hours;
  - (ii) is unreasonably obstructing the public use of a Facility; or
  - (iii) is parked or used in breach of this by-law;

"Aquatic Centre" includes Launceston Aquatic, the Lilydale District Swimming Pool, the Basin Swimming Pool, and any other swimming related facility or building controlled or managed by the Council;

"Authorised Officer" means an employee of the Council authorised in writing by the Council for the purposes of this by-law;

"CCTV" means any visual surveillance and recording technology system with the capability to monitor environments and activities;

"Chief Executive Officer" means the General Manager as appointed by Council pursuant to section 61 of the *Local Government Act 1993* (Tas);

"Closed Area" means any closed Facility or part of a Facility that has been closed under clause 17;

"Commercial Activity" means any activity which relates to the provision of goods and services and includes:

- (a) the promotion of an undertaking that provides goods and services;
- (b) distributing or arranging to distribute or affixing to any Council property any type of advertisement, book, card, notice, pamphlet, print, paper, sign billboard or placard for any purpose;
- (c) organised instructing or coaching at an Aquatic Centre;
- (d) the placement of a skip bin;
- (e) the placement of security fencing, hoarding, shipping containers, site office or site amenities associated with the use of development of the adjacent land;

whether the person is remunerated or not;

"Council" means the Launceston City Council;

"Crossing" means a vehicular crossing or pedestrian path over a table-drain, gutter, or footpath at or opposite the entrance to land adjoining the highway that is intended primarily for ingress or egress from that land.

"Damage" includes:

- (a) to destroy, tamper with, remove, mark, write on, deface or in any other way injure;
- (b) collect or remove any wood or timber;
- (c) open or keep open an entrance to a Public Reserve; and
- (d) place or dump objects or materials;

without the permission of an Authorised Officer;

"Facility" means a Public Reserve, Aquatic Centre, or York Park Stadium;

"Fee Unit" means the sum as prescribed under the provisions of the *Fee Unit Act 1997*;

"Local Highway" has the same meaning as under the *Local Government (Highways) Act 1982* (Tas) and includes a Mall as defined by this by-law;

"Mall" means the areas listed in Schedule 2;

"Nuisance" means:

- (a) causing Damage to a tree, shrub or otherwise;
- (b) climbing on to a roof or fence in a Facility;
- (c) lighting a fire other than in a fireplace provided by the Council for public use;

where the Council or an Authorised Officer has not given written approval for that activity to occur in a Facility.

"Parking Area" means an area at a Facility allocated by the Council for parking of Vehicles;

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

"Permit" means:

- (a) a current permit or other written approval granted pursuant to this by-law; or
- (b) any permit, licence or written approval granted pursuant to another by-law, including a by-law which has been repealed, providing that:
  - (i) if the permit, licence or written approval was issued for a certain time period, that time period has not expired; or
  - (ii) if the permit, licence or written approval was issued for a certain event, that event has not yet taken place;

"Public Reserve" means a reserve, rockery, area of bushland, planted embankment, nature strip, median strip, plantation, sports ground, park, flood levee or garden usually open to the public and under the control and management of the Council;

"Polluting Substance" means in any Aquatic Centre:

- (a) blood;
- (b) faeces;
- (c) detergents;

- (d) food and beverages; or
- (e) urine;
- (f) vomit;
- (g) any other substance deemed to be a polluting substance by an Authorised Officer;

"Skip Bin" means any container that has a capacity in excess of 240 litres that is designed primarily for the collection and removal of waste or recyclable materials.

"Vehicle" means a vehicle as defined in section 3(1) of the *Traffic Act 1925* (Tas);

"University of Tasmania Stadium" means the area within the boundaries as marked on the map in Schedule 3.

## **PART 2 - USE OF FACILITIES**

### **4 Driving of Vehicles**

- (1) Subject to subclause (2) a person must not drive a Vehicle in a Facility.

Penalty: a fine not exceeding 5 penalty units.

- (2) A person does not commit an offence contrary to subclause (1) if a bicycle, trail bike, tricycle, skateboard, skates or other Vehicle is used:

- (a) by an emergency service;
- (b) on a road, parking space, path or track provided for such Vehicles within a Facility, unless signs or notice boards indicate that such use is not allowed; or
- (c) with the written permission of an Authorised Officer.

- (3) Subject to subclause (4) a person must not drive a Vehicle in a Mall.

Penalty: a fine not exceeding 5 penalty units.

- (4) A person does not commit an offence contrary to subclause (3) if a bicycle, trail bike, tricycle, skateboard, skates or other Vehicle is used:

- (a) by an emergency service;
- (b) in accordance with any sign or notice board allowing such use; or
- (c) with the written permission of an Authorised Officer.

## **5 Unsafe Driving in a Facility Activity**

- (1) Except for emergency Vehicles, a person permitted to drive a Vehicle in a Facility must:
- (a) enter or leave by an access point identified by signage, or as otherwise directed by an Authorised Officer;
  - (b) not cause the Vehicle to enter or remain in a Parking Area closed pursuant to clause 17;
  - (c) drive at a safe speed not in excess of five kilometres per hour unless otherwise authorised by an Authorised Officer; and
  - (d) not abandon a Vehicle.

Penalty: a fine not exceeding 5 penalty units.

## **6 Unauthorised Commercial Activity**

- (1) A person must not engage in Commercial Activity in a Facility or on a Local Highway without a Permit or other authorisation granted by the Council.

Penalty: a fine not exceeding 10 penalty units.

## **7 Unauthorised objects to facilitate Commercial Activity**

- (1) A person must not cause or permit the installation of any furniture, building, booth or other structure that will facilitate Commercial Activity in a Facility or on a Local Highway except under the conditions of a Permit or as otherwise authorised.

Penalty: a fine not exceeding 10 penalty units and for a continuing offence, a further daily fine not exceeding 1 penalty unit.

## **8 Public speaking, concerts and similar activities**

- (1) In a Facility or on a Local Highway, a person must not conduct, arrange, or participate in:
- (a) subject to clause 8(2), a function, party, reception, assembly, concert or informal social gathering;
  - (b) an organised sport, contest, or game;
  - (c) public speaking, including preaching; or
  - (d) busking, selling raffle tickets or taking up collection of money;

without a Permit.

Penalty: a fine not exceeding 5 penalty units.

- (2) Subject to clause 20, for the purpose of clause 8(1) a person may conduct, arrange or participate in an informal social gathering in a Public Reserve without written permission from an Authorised Officer if the gathering does not:
- (a) involve more than 50 people participating at any time;
  - (b) obstruct, or interfere with the passive, incidental use and enjoyment of the Public Reserve by other members of the public;
  - (c) use an area which is notified as, or indicated by signs and barriers to be, a reserved or Closed Area; and
  - (d) involve the other activities referred to in clause 8(1)(1)(b)(1)(c)(1)(d).

## **9 Dogs and other animals**

- (1) A person must not possess or have under his or her control an animal in a Facility, except:
- (a) a dog in a Public Reserve being exercised in conformity with the *Dog Control Act 2000* (Tas);
  - (b) a horse being ridden in a Public Reserve area where Council notices or signs state that such use is allowed;
  - (c) a guide dog as defined by the *Guide Dogs and Hearing Dogs Act 1967* (Tas) or an assistance animal as defined in the *Disability Discrimination Act 1992* (Cth); or
  - (d) with the written permission of an Authorised Officer.

Penalty: a fine not exceeding 5 penalty units.

## **10 Nuisance**

- (1) A person must not create or cause a Nuisance in a Facility.

Penalty: a fine not exceeding 5 penalty units.

## **11 Misuse of change room and public toilet**

- (1) A person must not in a Facility or Local Highway, if that person is over the age of ten years, enter a change room or public toilet reserved for the use of people of the opposite sex, except to help a child under that person's care, or someone who is injured, elderly or disabled.

Penalty: a fine not exceeding 10 penalty units.

## **12 Ground Invasion**

- (1) A person must not enter onto the playing arena of York Park Stadium except:
- (a) while participating in an organised activity where the Council approved event organisers have invited the person to enter the playing area;
  - (b) as part of that person's employment with Council; or
  - (c) with the written permission of an Authorised Officer.

Penalty: a fine not exceeding 20 penalty units.

## **13 Polluting Substance in an Aquatic Centre**

- (1) A person must not put any Polluting Substance in a pool of an Aquatic Centre.

Penalty: a fine not exceeding 5 penalty units.

## **14 Infection or a contagious disease in an Aquatic Centre**

- (1) A person who has an infection or a contagious disease or skin complaint must not enter a pool or waterslide in an Aquatic Centre.

Penalty: a fine not exceeding 5 penalty units.

## **15 Objects on a Local Highway or Facility**

- (1) A person must not deposit or allow to be deposited on a Local Highway or Facility any:
- (a) soil, gravel or other material;
  - (b) structure; or
  - (c) other object,

in a manner that an Authorised Officer determines may interfere with the amenity, comfort, convenience, or safety of the public.

Penalty: a fine not exceeding 5 penalty units.

## **PART 3 - POWERS OF AUTHORISED OFFICERS AND ENFORCEMENT**

### **16 Occupying Facility or Local Highway without a Permit**

- (1) A person must not occupy any part of a Facility or Local Highway unless the person is occupying the Local Highway in accordance with Permit or other authorisation granted by the Council for the relevant land.

Penalty: a fine not exceeding 5 penalty units.

### **17 Closure of Facility**

- (1) An Authorised Officer may from time to time, and for such temporary period as he or she determines, close all or any part of a Facility, to members of the public.

### **18 Entering or remaining in a closed Facility**

- (1) A person must not enter, or remain in, any Closed Area, without the written permission of an Authorised Officer.

Penalty: a fine not exceeding 5 penalty units.

### **19 Making Good**

- (1) An Authorised Officer may take any reasonable measure to restore a Facility or Parking Area to its original condition after a breach of this by-law including:

- (a) remove any structure, sign, notice or other object;
- (b) require a person to undertake works to rectify any Council property which has been subject to Damage due to that person's acts or omissions; and
- (c) if the Authorised Officer is an employee of the Council, remove any Abandoned object or materials, or Abandoned Vehicle and:
  - (i) take it to a safe place and keep it there until the penalty, removal and storage charges have been paid; and
  - (ii) if the object or material, or Vehicle has not been collected for a period of 28 days, or if the owner of the Vehicle cannot be located after a period of 28 days, the object or material, or Vehicle may be disposed of in any manner the Council sees fit.

- (2) Where in the opinion of the Authorised Officer it appears likely that an Abandoned object may have been stolen the Authorised Officer must seek to contact Tasmania Police and seek further directions prior to disposal.

- (3) The Council may use the proceeds of disposal to pay any outstanding penalty, or removal or storage costs, but if the proceeds of disposal exceed the amount of the expenses, the Council must hold those balance proceeds for a period of six months from the date of disposal and, if not claimed by the owner during that period, then dispose of the balance as the Council sees fit.



- (4) In addition to a penalty imposed or remedy granted against a person in relation to a failure to comply with this by-law, any expense incurred by Council in consequence of that failure or contravention, including the costs of rectification work, is recoverable by Council as a debt payable by the person in contravention.

## **20 Refusal of admission and removal**

- (1) If a person engages in conduct which is reasonably believed by the Authorised Officer to be in breach of this by-law, or a Nuisance, an Authorised Officer may either:
- (a) refuse to admit a person to a Facility;
  - (b) require a person to leave a Facility for a specified length of time;
  - (c) issue a prohibition notice banning a person from entering a Facility for the period of the ban; or
  - (d) if the Authorised Officer is an employee of the Council, remove any person from a Facility.
- (2) A person who has been banned from using a Facility for a period of time must not enter that Facility during that period.

Penalty: a fine not exceeding 5 penalty units.

- (3) A police officer may arrest without warrant a person who:
- (a) he or she believes on reasonable grounds to have committed an offence against this by-law; and
  - (b) is on land owned by, or under control of the Council.
- (4) The Council may prosecute a person for breach of this by-law if the person does not leave a Facility after having been requested to do so.

## **21 Closed Circuit Television**

- (1) A person who enters a Facility or Local Highway may have their image recorded and disclosed for investigatory and management purposes.

## **22 Assistance of police officers**

- (1) A Police Officer is authorised to:
- (a) assist an Authorised Officer to carry out an action under clause 20(1)(d) of this by-law;

- (b) remove any person from a Facility whom the police officer reasonably believes has committed or is committing an offence under this by-law; and
- (c) arrest any person who is in a Facility whom the police officer reasonably believes has committed or is committing an offence under this by-law.

## **PART 4 - PERMITS**

### **23 Permits**

- (1) Subject to Part 12 Division 1 of the *Local Government Act 1993* (Tas), the Chief Executive Officer may, grant, cancel or vary a Permit to temporarily occupy part of all of a Facility or Local Highway, on any terms and conditions that they may see fit to impose.
- (2) A permit cannot be issued under this by-law for any permit, licence, use, activity, hiring or occupation of a Facility or Local Highway for which there is already a fee set by Council pursuant to s 205 of the *Local Government Act 1993* (Tas).
- (3) An application for a Permit for Commercial Activity for the supply of food in a Facility or on a Local Highway cannot be refused solely on the grounds that the activity will compete with existing businesses.

### **24 Applications**

- (1) Any application for a Permit pursuant to this by-law is to be:
  - (a) in accordance with any form approved by the Chief Executive Officer;
  - (b) accompanied by relevant prescribed fee per application, if any, set out in Schedule 4 to this by-law; 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 Chief Executive Officer may reasonably require.

- (2) In deciding whether or not to grant a Permit pursuant to this by-law, the Chief Executive Officer 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.
- (3) If an application for a Permit is refused, reasons are to be provided.

## **25 Variation of Permit conditions**

- (1) The Chief Executive Officer may vary the conditions of any Permit if they consider it is appropriate to do so.
- (2) If the conditions of any Permit are varied pursuant to clause 25(1), the Chief Executive Officer 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.
- (3) The conditions of a Permit will be varied from the date of service of the notice of the variation.

## **26 Cancellation of Permits**

- (1) The Council or the Chief Executive Officer 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.
- (2) If a Permit is cancelled pursuant to clause 26(1), the Chief Executive Officer 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.
- (3) Cancellation of any Permit is effective from the date of service of the notice of the cancellation.

- (4) Nothing in this by-law is to be construed as preventing or prohibiting the Council from cancelling any Permit if required due to the exercise or intended exercise of any local government function, power, right or duty.

## **27 Notices**

- (1) For the purposes of clauses 25(3) and 26(3), 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 Launceston City Council municipal area.
- (2) The date of service of a notice will be:
- (a) if the holder of the Permit was served by ordinary post, five 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; or
  - (c) if the holder of a Permit was served by email, the day after the email was sent.

## **PART 5 – INFRINGEMENT NOTICES**

### **28 Infringement notices and fines**

- (1) An Authorised Officer may:
- (a) issue an infringement notice to a person that the Authorised Officer has reason to believe is guilty of a specified offence;
  - (b) issue one infringement notice in respect of more than one specified offence;
  - (c) impose a monetary penalty for the specified offence in respect of which the infringement notice is issued.
- (2) Infringement notices may be issued in respect of the offences specified in Column 1 of Schedule 1 to this by-law and the penalty specified in Column 3 opposite the offence is the penalty payable under an infringement notice issued in respect of that offence, unless otherwise specified.

- (3) In order to avoid the infringement notice being referred to the Director Monetary Penalties Enforcement Service for enforcement action, the person issued with an infringement notice must either:
  - (a) pay the total amount of the monetary penalty stated on the infringement notice to; or
  - (b) lodge a notice of election to have the offence heard by a Court with the Chief Executive Officer at the Town Hall, St John St Launceston within 28 days of the date of service of the notice.
- (4) An infringement notice alleging that a Vehicle has been used in relation to a prescribed offence may be served by affixing it to that Vehicle.
- (5) The *Monetary Penalties Enforcement Act 2005* (Tas) applies to an infringement notice issued under this by-law.

## Schedule 1 Infringement Notice Offences

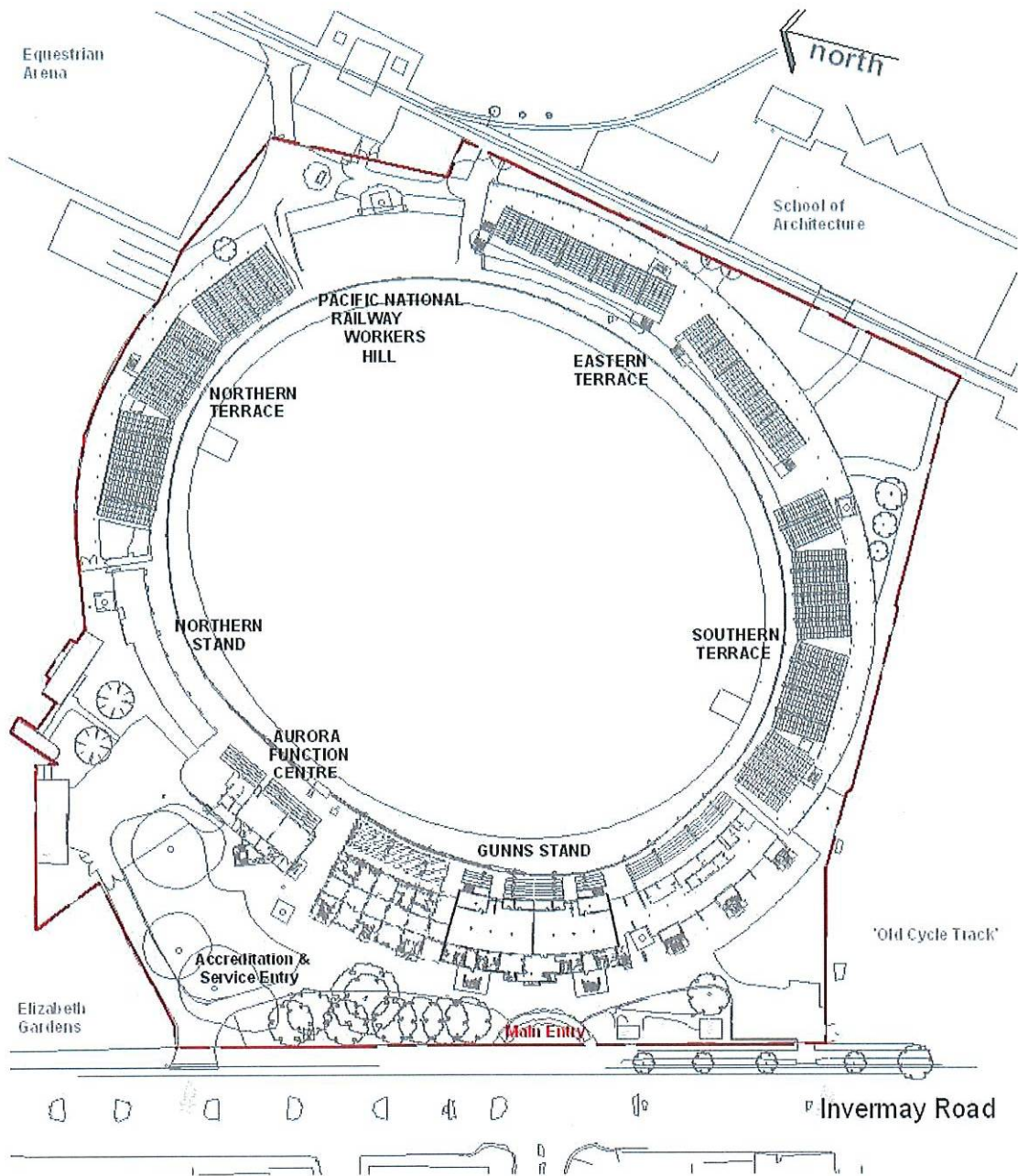
<b>1: Clause</b>	<b>2: General Description of Offence</b>	<b>3: Penalty (Penalty Units)</b>
4(1)	Driving a Vehicle in a Facility	1
4(3)	Driving a Vehicle in a Mall	1
5(1)	Unsafe Driving in a Facility	1
6(1)	Unauthorised Commercial Activity	2
7(1)	Unauthorised objects to facilitate Commercial Activity	2
8(1)	Engaging in unauthorised activity	1
9(1)	Unauthorised animals	1
10(1)	Nuisance	1
11(1)	Entering change rooms	2
12(1)	Ground Invasion	4
13(1)	Introduction of Polluting Substances into an Aquatic Centre	1
14(1)	Use of Pool with Infectious Disease	1
15(1)	Objects on a Local Highway or Facility	1
16(1)	Occupying a Local Highway or Facility without a Permit	1
18(1)	Entering or remaining in closed Facility	1
20(2)	Re-entering Facility	1

## **Schedule 2 - Malls in which the By-Law applies**

- |   |                      |   |
|---|----------------------|---|
| 1 | Brisbane Street Mall | Between Charles and St John Streets.  |
| 2 | The Quadrant Mall    | The Quadrant between Brisbane Street and St John Street.  |
| 3 | Civic Square         | Cameron Street between Charles Street and St John Street.   |
| 4 | The Avenue           | The area from the shop front to the kerb edge of the widened footpath in Brisbane Street between St John Street and George Streets. |
| 5 | Charles Street       | The area from the shop front to the kerb edge of the widened footpath in Charles Street between Paterson and York Streets.          |
| 6 | St John Street       | The area from the shop front to the kerb edge of the widened footpath in St John Street between Paterson and York Streets.          |

### Schedule 3

## University of Tasmania Stadium





**Schedule 4**  
**Prescribed Fees**

<b>Number</b>	<b>Fee Name</b>	<b>Fee (Fee Units)</b>

The Common Seal of the Launceston City Council has been placed on this document pursuant to a resolution of Council on the xxx day of xxx 2020 in the presence of us:

.....  
Albert Van Zetten  
MAYOR

Certified as being made in accordance with *Local Government Act 1993 (Tas)*.

.....  
Michael Stretton  
CHIEF EXECUTIVE OFFICER  
being the General Manager as appointed by Council  
pursuant to section 61 of the  
*Local Government Act 1993 (Tas)*

Certified as being in accordance with the law.

.....  
XXXXXXXXXX  
LEGAL PRACTITIONER