



# **HEALTH AND ENVIRONMENTAL SERVICES BY-LAW**

## **REGULATORY IMPACT STATEMENT**

By-law No. 2 of 2021

A By-law to regulate and control activities and matters relating to the health and environmental services in the Kingborough community.

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## 1 Purpose and process of Regulatory Impact Statement

When a Council seeks to make a new or significant By-law amendment, the *Local Government Act 1993* (the Act), requires that a Regulatory Impact Statement (RIS) be prepared.

The preparation of an RIS requires Council to analyse the most efficient and effective options available to address a particular issue. The RIS is also required to identify whether the benefits provided by the new By-law outweigh the costs of any restrictions on competition or the potential adverse impacts on business. This requires an assessment of direct and indirect social, economic and environmental impacts of the proposed By-law and the alternatives considered.

The Act, under Section 156A, requires that, once the RIS has been prepared, Council must submit it to the Director of Local Government, Department of Premier and Cabinet for assessment. If the Director is satisfied that the RIS meets the statutory requirements, they will issue a certificate to that effect and Council may then commence the public consultation process.

Pursuant to Section 158 of the Act, copies of the By-law and the RIS are available by contacting Council by any of the following means:

Telephone: 6211 8200  
Fax: 6211 8211  
E-mail: [kc@kingborough.tas.gov.au](mailto:kc@kingborough.tas.gov.au)  
Website: [www.kingborough.tas.gov.au](http://www.kingborough.tas.gov.au)  
In person: Kingborough Civic Centre  
Mail: 15 Channel Highway  
KINGSTON TAS 7050  
Office hours: 8.30am to 5.00pm

Copies of the documents are available upon request or may be viewed at the Council's office.

## 2 By-law objectives

The Health and Environmental Services By-law is designed to act as a mechanism for ensuring that Council can provide protection for the community in matters relating to public and environmental health.

Under Section 156A(2)(a) of the Act Councils are specifically required to outline the objectives of the By-law and the means of achieving those objectives.

The following table summarises the various issues being addressed by the By-law, what the By-law will do to address these issues (the objectives) and how the By-law will achieve these objectives.

Issue	Objective	Means to achieve Objective
Use of Council's waste disposal facilities.	To ensure that materials delivered to Council's waste disposal facilities are disposed of correctly.	The By-law includes provisions ensuring that persons must dispose of waste correctly by setting of operational times, the ability to prohibit the disposal of certain articles and protection

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Issue	Objective	Means to achieve Objective
		of the disposal facilities by prohibiting fires.
Disposal of household refuse and/or recyclable materials.	To ensure that Council's kerbside household waste and recycling services operate in an effective manner and residents do not create a nuisance through improper usage of mobile garbage and recycling bins.	The By-law includes provisions for the placement of bins at the kerbside and the materials that may be placed in the respective wheelie bins.
Control of animals and poultry.	To ensure that animals and poultry are not kept whereby they create a nuisance and that the animals and poultry are housed correctly.	<p>The By-law requires livestock only be kept on properties that have an area greater than 2000 square metres, and not within residential zones.</p> <p>Also, the number of poultry kept is restricted within the residential zone and poultry must be a minimum distance from neighbouring properties.</p> <p>The By-law requires animals (other than cats and dogs) must not be allowed to stray onto neighbouring properties.</p> <p>The By-law prohibits the keeping of roosters in residential zones and requires the keeper of animals and poultry to ensure that they are housed in a clean and sanitary environment.</p> <p>The By-law also limits the number of beehives that can be kept on a property with respect to the size of the lot.</p>
Sanitation and waste management on building sites.	To ensure that building sites have acceptable sanitary facilities and waste management practices.	<p>The By-law requires that one toilet must be provided for every 10 people on the building site, the toilet must have appropriate sanitary facilities and must be maintained in a clean and sanitary condition.</p> <p>The By-law also requires that waste on building sites is properly contained to prevent waste blowing off the site.</p>

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Issue	Objective	Means to achieve Objective
Control of the use of incinerators and open air burning.	To ensure that only suitable materials are burnt, protecting the health of the community and to ensure that open air fires are not lit in inappropriate places that may pose a safety risk to the community or cause nuisance from smoke emissions.	<p>The By-law prohibits the use of incinerators.</p> <p>The By-law prohibits open air burning on small parcels of land (less than 2000m<sup>2</sup>) and in residential zoned areas. The provisions of the By-law are aligned with the <i>Environmental Management and Pollution Control (Smoke) Regulations 2019</i> to ensure that the use of appropriate cooking and heating appliances is not impeded.</p> <p>Open air fires must be clear of adjoining properties and away from overhanging vegetation.</p> <p>Only uncontaminated wood, etc. is to be burned in an open-air fire, cooking appliance or heater.</p>
Control of habitation of caravans outside caravan parks.	<p>To ensure that where caravans are being occupied for extended periods that there is no impact on local amenity, public health or the environment.</p> <p>Where occupancy is permitted there are minimum standards of sanitation.</p>	<p>The By-law provides for the issuing of permits for occupation of caravans provided that minimum standards of sanitation are met and that there are minimal impacts on local amenity.</p> <p>Caravans are not to be occupied for more than 30 days without a permit.</p>
Issuing of permits.	Provide a minimum standard for the lodgement of a permit application and set out factors to be taken into consideration in the assessment of an application.	<p>The By-law allows permits to be issued for keeping of more beehives than the maximum prescribed limit, and for occupation of a caravan for more than 30 days.</p> <p>The By-law provides that applications consist of sufficient detail to enable adequate assessment.</p> <p>The By-law sets out the factors to be taken into account by the General Manager when assessing an application.</p>
Enforcement of the By-law.	To provide for the enforcement of the By-law	The By-law sets out that an infringement notice may be

Issue	Objective	Means to achieve Objective
	and setting of penalties for breaches of By-law provisions.	issued for breaches of specified offences in the By-law.  A person is also required to supply their name and address to an authorised officer.

### 3 Background

The By-law has been prepared for the purposes of ensuring that there are additional powers relating to the protection of public and environmental health that are not addressed in existing legislation.

In addition to current State legislation, Kingborough Council currently controls public and environmental health matters via the existing *Health and Environmental Services By-law No. 3 of 2011*. This existing By-law expires in August 2021 and a new By-law is required prior to the expiration of the current By-law to ensure continuity of proper management of public and environmental matters.

The new By-law contains several amendments which have come about through consultation with stakeholders and feedback from the community over the last ten years during the operation of the current By-law. The amendments reflect areas where Council has identified opportunity for improvement or to create more consistency with other Tasmanian Councils in order to provide better outcomes for the community and the environment.

For example, the By-law would provide Council with an ability to control circumstances such as:

- Preventing the disposal of hazardous wastes at Council's waste transfer station and in Council's kerbside waste collection service.
- Minimising nuisance from livestock and roosters by ensuring they are not kept in residential areas.
- Ensuring that building sites have adequate waste storage facilities so that waste materials do not blow into natural areas or adjoining properties.
- Ensuring smoke from open air fires does not cause nuisance in residential areas.
- Ensuring that the occupation of caravans outside caravan parks does not impact on local amenity or cause public health risks.

As mentioned earlier, the existing By-law is due to expire therefore, there will be many potential problems that are not able to be regulated. It is essential that sufficient controls are in place to ensure the public's general safety and well-being. Without the By-law there is limited existing State legislation that effectively enables the regulation and control of activities relating to public and environmental health.

#### 4 Potential restriction on competition

The By-law creates minimal restrictions on competition of business. Whilst there are no restrictions on market entry (eg. licencing or registration requirements), competitive conduct, product/service innovation or administrative discretion, the By-law does create potential impacts on business through restrictions on waste management, animal management, occupation of caravans outside of caravan parks and building site sanitation and waste management. These potential impacts are assessed in section 5.

#### 5 Assessment of costs/benefits RE: restriction on competition and conduct of business

The various issues that are addressed within the By-law will involve the following costs and benefits in relation to potential restrictions on competition and conduct of business.

Issue	Costs	Benefits
Limitation of times for disposal at waste facilities.	The limitation does not place any restriction on competition as waste facilities are operated under an environmental licence.	The restriction of hours reduces the operational costs for Council, which has a direct benefit to business through lower waste disposal fees.
Use of mobile household waste & recycling bins.	The limitations on the size of household refuse and recycling bins means that some businesses need to utilise private contractors (eg. skip bin contracts).	The regulation of usage of mobile bins reduces the cost of collection thus providing a service at a lower annual cost to business.
Control of livestock, poultry and other animals.	The limitations on keeping of livestock and other animals has no direct cost to business.	There are no direct benefits as a result of the limitations.
Limitation on number of beehives that can be kept on a property.	The By-law may limit the number of hives that a commercial honey producer can keep on a property. However the By-law provisions have been drafted in line with advice from the Tasmanian Beekeepers Association to ensure that there would be no impediment on beekeeping on large rural properties.	The By-law provisions will ensure that the business is suitably scaled to fit within the local neighbourhood and will ensure that bees from the beehives do not cause a nuisance to neighbouring properties, protecting the brand of the business.
Building site sanitation.	The requirement to provide sanitation facilities on building sites may result in some additional costs to the contractors.	The provision of building site sanitation provides a benefit to business through the hire of mobile toilet facilities to building contractors.
Building site waste management.	The requirement to provide waste disposal containers on site may result in additional costs for builders.	The provision of building site waste containers provides a benefit through the hire of waste containers and/or waste management contractors.
Control of incinerators and open air burning.	Restrictions on incinerators, open air burning and types of materials allowed to be burnt	Not applicable.

Issue	Costs	Benefits
	does not increase business costs.	
Use of caravans outside caravan parks.	The restriction of use of caravans outside caravan parks may have a small cost through the potential reduction in tourism numbers.	The limitation on use of caravans outside caravan parks has a direct benefit to business by ensuring that only commercial facilities are used.

The above costs and benefits have not been quantified as it is difficult to determine the exact nature of the potential impacts on the conduct of business. Nevertheless, an analysis of the abovementioned costs and benefits indicates that the benefits outweigh the costs associated with any potential impact on the conduct of business.

## 6 Assessment of economic, environmental or social impacts

The following table assesses the economic, environmental and social impacts of the By-law.

		Direct Impacts	Indirect Impacts
<b>Economic</b>	<b>Benefits</b>	<ul style="list-style-type: none"> <li>• Provision of waste collection and disposal services reduces cost of collection of dumped wastes.</li> <li>• Building site waste management requirements reduce costs of litter collection.</li> </ul>	<ul style="list-style-type: none"> <li>• Improved regulatory controls allow for more efficient enforcement by Council.</li> </ul>
	<b>Costs</b>	<ul style="list-style-type: none"> <li>• Urban residents may see increased green waste disposal costs due to the need to dispose of green waste at approved waste facilities.</li> <li>• Caravan controls may impact on tourism numbers due to insufficient space in caravan parks.</li> </ul>	<ul style="list-style-type: none"> <li>• Increased enforcement costs for Council in following up more complaints and responding to higher community expectations.</li> </ul>
<b>Environmental</b>	<b>Benefits</b>	<ul style="list-style-type: none"> <li>• A reduction in rubbish dumping and potentially polluting activities through provision of waste collection and disposal services.</li> <li>• Enhanced controls to promote responsible waste disposal.</li> </ul>	<ul style="list-style-type: none"> <li>• Encourages improvement of local amenity.</li> </ul>

		<b>Direct Impacts</b>	<b>Indirect Impacts</b>
		<ul style="list-style-type: none"> <li>• Reduction in litter through improved building site waste management.</li> <li>• Human effluent disposed appropriately through regulation of occupation of caravans and requirements for toilets on building sites.</li> <li>• Increased protection of environment through restriction of open air burning and incinerators.</li> </ul>	
	<b>Costs</b>	Nil	Nil
<b>Social</b>	<b>Benefits</b>	<ul style="list-style-type: none"> <li>• A reduction in risks to public health and safety through control of animals, open air burning and incinerators.</li> <li>• Reduces the potential for conflict between neighbouring residents because of nuisance complaints.</li> <li>• Reduces the risk of lower amenity of areas through influx of caravans being used for occupation.</li> </ul>	<ul style="list-style-type: none"> <li>• Discourages inappropriate behaviour from occurring in the first place.</li> <li>• Improved waste management controls result in cleaner public/private spaces.</li> </ul>
	<b>Costs</b>	Nil	Nil

## 7 Discussion of alternatives

Rather than preparing a new Health and Environmental Services By-law there are other alternatives.

Council could do nothing, although this is not considered a viable option as Council has an obligation to ensure that appropriate health and environmental controls are provided in support of State legislation. Council has a responsibility to provide for suitable controls that ensure acceptable community safety and amenity standards are maintained – and to then also ensure that those controls are enforced. If no regulatory controls are in place, then individuals will determine their own standards, and this will in turn lead to an immediate or progressive reduction in both public and environmental health standards.

Another alternative is to rely on other available or relevant statutory provisions or regulations. Examples of opportunities in this regard include enforcement of environmental nuisance provisions (*Environmental Management and Pollution Control Act 1993*), anti-social behaviour being referred to the Police, or issuing of abatement notices (under the *Local Government Act 1993*). Abatement Notices are issued in circumstances when a person is required to abate a nuisance – such as carrying out the necessary work to remove the nuisance.

The above regulatory alternatives do not adequately address the particular uses and activities that need to be controlled. There are also benefits in defining the actual activities (within the By-law) that are to be controlled, rather than relying upon very general provisions within other legislation. Having defined provisions set out in a By-law makes it much clearer to users as to what is expected and so reduces arguments and conflicts. It provides the clarity needed for effective enforcement.

Other legislation also does not provide for a permit system to enter into hire or user agreements. Without such a permit system Council would either rely upon informal agreements or not permit exclusive use of recreational facilities.

## **8 Assessment of public costs and benefits**

The overall intended consequence of preparing a new Health and Environmental Services By-law is to minimise nuisance and risks to both public and environmental health.

Any lowering of community standards (without a By-law) will increase costs to the community both through Council's rates and charges as well as through increases to State Government costs and charges due to likely increased damage to the environment and other adverse public health impacts.

Regulation is the most feasible option to achieve the By-law's objectives and the By-law has been carefully prepared to ensure that it imposes the least regulatory burden on the community as possible. Whilst the implementation of any regulatory control results in a direct cost, this is offset by the potential costs on the community that would be required to manage uncontrolled activities adversely impacting on the environment and broader community standards.

Where fees are imposed for matters such as cost recovery or to establish price signals etc. these will be expressed in fee units which are directly linked to the State Government's fee unit's system. The approach provides for annual increases in fees to keep up with inflation and other factors, over the life of the By-law.

Where permits may be granted, applications will be assessed against criteria such as; the potential for damage, amenity, access, environmental harm, movement of traffic, advertising, size, parking, and any other matter the General Manager considers relevant. This reassures that the permit process is fair and consistent.

## **9 Proposed public consultation process**

Since 2011, Council has functioned with the current *Health and Environmental Services By-law 2011*. Over this period Council has reviewed feedback from stakeholder groups including the general public. This feedback has informed the development of the new By-law.

The proposed future public consultation is to occur following certification by the Director of Local Government, in accordance with Section 156A(6) of the *Local Government Act 1993*. This public consultation will entail:

- Copies of the By-law will be sent to relevant State Government Departments for their review - including the Environment Protection Authority (Department of Primary Industries, Parks, Water and the Environment), Department of Police and Emergency Management, Department of Justice and Department of Health;
- Advertisements will be placed in the Mercury newspaper advising of Council's intention and seeking public comment;

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- An article will be published in a local Kingborough newspaper — such as the Kingborough Chronicle;
- Council will display the proposal on its website, social media and at the Council offices at Kingston and Alonnah (Bruny Island);
- Any person may make a submission to Council regarding the proposed new By-law; and
- Council will consider each submission as part of the consultation process.