



MARINE FACILITIES BY-LAW

REGULATORY IMPACT STATEMENT

By-law No.1 of 2021

A By-law to regulate and control activities associated with marine facilities under Kingborough Council management.

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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*, 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 *Local Government Act 1993*, 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 *Local Government Act 1993*, 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
Website: 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 Marine Facilities By-law is designed to act as a mechanism for ensuring that the use of marine facilities meets appropriate public access, safety and amenity standards.

Under Section 156A(2)(a) of the *Local Government Act 1993* 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.

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Issue	Objective	Means to achieve objective
Unimpeded public access to a marine facility	To ensure that the general public is not unduly impeded from accessing and using marine facilities.	The By-law includes provisions for dealing with how vessels are to moor alongside jetties or use boat ramps, how land based vehicles are not to obstruct the marine facilities and how various other activities are to not impede access.
Damage to a marine facility	To ensure that marine facilities are not unduly damaged.	The By-law includes provisions for dealing with the actual damaging of marine facilities, the need to prohibit certain vessels, and the erection of signs and advertising material.
Use of a marine facility	To ensure that the public use and access to marine facilities is not being adversely impacted.	The By-law includes provisions for dealing with such activities as the closure of marine facilities, sale of goods or refueling.
The ability to use a marine facility for a commercial use	To ensure that there is a system in place to control any commercial activities that may be conducted from marine facilities.	The By-law includes provisions that require a prior permit to be granted for any such commercial activity.
Providing a head of power to control activities on marine facilities	To ensure that there is an adequate enforcement system in place in order to encourage compliance and the safe use of marine facilities.	The By-law includes provisions for infringement notices, the removal of articles, the banning of individuals, and the issuing of notices.

3 Background

The By-law has been prepared for the purposes of ensuring that the use of marine facilities meet appropriate public access, safety and amenity standards.

Since 29 March 2011 Kingborough Council has managed marine facilities via the Marine Facilities By-law No.1 of 2011. This By-law expired on 29 March 2021. The 2011 By-law has been successful in its intent, appropriate for the general public and commercial users.

Kingborough Council is responsible for the management and maintenance of a number of marine facilities across the municipal area. These include public jetties, boat ramps or pontoons located at Taroona, Kingston Beach, Tinderbox, Howden, Margate, Snug, Kettering, Woodbridge, Middleton, Gordon, and Bruny Island (numerous). These are all public facilities that are primarily managed for the unimpeded use of the general public in order to gain access to the local waterways.

It is important that these public facilities are managed in a manner that ensures public access can be provided in a relatively safe and unimpeded manner. This is not possible if there is no regulatory safeguard and the Marine Facilities By-law has been prepared to serve this purpose.

In a general sense, the By-law would provide Council with an ability to control such circumstances as:

- Vessels being moored alongside marine facilities and obstructing other vessels from using the facility;
- Vessels, trailers or vehicles being parked or left on a marine facility and so obstructing other users;
- Vessels being maintained or repaired while on or adjacent to a marine facility;
- Cargo or property being left on jetties for excessive periods of time;
- The refuelling of vessels from marine facilities;
- The rectification of damage and unauthorized alterations to a marine facility;
- Swimming and fishing in the vicinity of marine facilities;
- The use of marine facilities for commercial use subject to permit conditions;
- Providing Council with the power to remove a vessel, vehicle or material from a marine facility; and
- Defining enforcement procedures and providing Council with the power to issue infringement notices for any offences defined within the by-law.

As mentioned earlier, the existing By-law has expired 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 on such Council managed marine facilities.

The Marine Facilities By-law will address a gap in the regulatory regime that is required to better control inappropriate behaviour or activities on marine facilities.

4 Potential restriction on competition

The By-law accepts that these public marine facilities should be primarily reserved for the use of the general public and any commercial activities managed via a permit process. The By-law provides for controlled commercial use of marine facilities, via a commercial use permit, and so these actions could have an impact on competition. Such commercial activities are assessed against certain factors before approval, including public amenity and public access to the facility. It is intended to only allow commercial use where the public is not overly impeded from accessing the marine facility.

The By-law provides guidance in how a permit might be allocated for commercial use of a marine facility. The following criteria would be referred to in assessing any such application:

- Whether the capacity of the existing marine facility and associated land-based infrastructure is sufficient to accept the proposed use;
- Whether public access and use of the marine facility is still being provided in a safe, reasonable and acceptable level;

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- Whether a preference is given to existing commercial users, subject to their record of satisfactory performance; and
- Whether the proposed use of the marine facility would cause environmental harm.

Council's General Manager is to determine the merits of any permit application against these criteria.

It is not reasonable to expect that the commercial use of the facilities can occur without constraints. In some cases choices will need to be made that restrict or prevent commercial access. Under such circumstances, this will impose restrictions on competition as some operators may be granted access to the marine facility while others are not. The By-law also addresses competing applications.

Permits will also include conditions that restrict competitive conduct - such as the hours of operation, the number of vessels, advertising or specifying which part of the facility is able to be accessed. Any such conditions that are imposed would be based upon the abovementioned criteria and aim to meet the primary objectives of the By-law.

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 or any impact on the conduct of business:

Issue	Cost	Benefits
Unimpeded public access to a marine facility	Protecting public access will restrict or limit commercial use opportunities.	The facilities are primarily for public use and so this must have priority over commercial use. The fact that a facility is known to be publicly accessible increases its popularity and generates other indirect benefits.
Damage to a marine facility	Restrictions are imposed on advertising or adding to or altering of structures that might facilitate a commercial use of the marine facility. Certain vessels are also prohibited if they constitute a nuisance.	Measures need to be in place to deter the potential damage of these public facilities to optimize their public use and availability and to reduce repair costs.
Inappropriate use of a marine facility	Restrictions are imposed on such activities as the sale of goods or the leasing of articles, plus other commercial uses.	The orderly use of these public facilities is important for both their safe public use and their controlled commercial use.
The ability to use a marine facility for a commercial purpose	A permit system which regulates commercial uses against assessment criteria may result in some potential uses being constrained or refused.	The permit system for commercial uses will ensure that a safe and pleasant experience is able to be enjoyed by both customers and the general public.

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Issue	Cost	Benefits
	Existing commercial users may be preferred to new operators if there is insufficient infrastructure capacity.	
Providing a head of power to control activities on marine facilities	An enforcement system will prevent potential unauthorized commercial activities from occurring. There will be enforcement costs on both business and Council.	An enforcement system enables the control of unsafe or anti-social activities from occurring. It provides the necessary certainty and assurance.

The By-law sets the amount of 610 fee units per commercial use permits but it is difficult to determine the exact nature of the potential impacts. Most marine structures are not used for a regular commercial purpose and, where they are, the situation will be unique to the particular business enterprise. The potential costs and benefits cannot be generalised in any quantified form.

Nevertheless, an analysis of the abovementioned costs and benefits indicates that the benefits outweigh the costs associated with restrictions on competition. There will be restrictions on the commercial use of the marine facilities, but these restrictions will result in the protection of public access and safety, together with orderly and efficient use of the facilities for commercial purposes. Any potential restriction to competition can be justified in the public interest.

Where there is a demand that exceeds the capacity of the marine facility, there is the potential for conflict and unsafe practices. The By-law provides the necessary provisions to optimise the commercial opportunities without allowing for an uncontrolled or chaotic situation to develop.

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
Economic	Benefits	<ul style="list-style-type: none"> • Provides for commercial use in an orderly manner. • Revenue obtained from commercial fees increases the attraction to use the marine facilities and to spend more time on the water. 	<ul style="list-style-type: none"> • Facilitates appropriate tourism activity. • Commercial fees will be used to upgrade the infrastructure associated with marine facilities.
	Costs	<ul style="list-style-type: none"> • May limit some commercial users if a permit is not granted. 	<ul style="list-style-type: none"> • Increased enforcement costs for Council in following up complaints and responding to higher community expectations.
Environmental	Benefits	<ul style="list-style-type: none"> • Assessment of environmental harm within the application and 	<ul style="list-style-type: none"> • Regulates use in the environment.

		Direct Impacts	Indirect Impacts
		permit process.	<ul style="list-style-type: none"> • Encourages improvement of local amenity and site conditions. • General reduction of nuisances.
	Costs	<ul style="list-style-type: none"> • Nil 	<ul style="list-style-type: none"> • Nil
Social	Benefits	<ul style="list-style-type: none"> • Reduces conflict between boat users. • Provides an enhanced recreational experience for users. 	<ul style="list-style-type: none"> • Discourages inappropriate behavior from occurring in the first place. • Improved amenity for nearby residents.
	Costs	<ul style="list-style-type: none"> • Nil 	<ul style="list-style-type: none"> • A general feeling within the community of there being an over-regulation of recreational activities.

7 Discussion of alternatives

Rather than preparing a new Marine Facilities By-law there are other alternatives.

Council could do nothing. This is not really considered a viable option as Council does have an obligation to ensure that public infrastructure, such as marine facilities, is used in a safe manner. Council has a responsibility to provide for suitable controls that ensure acceptable community access, 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 the access, safety and amenity conditions associated with these marine structures. Such an approach would create considerable uncertainty and ambiguity.

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

These types of other regulatory alternatives do not adequately address the particular uses and activities that may need to be controlled in the vicinity of marine structures. 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. This more precise definition makes it much clearer to everyone 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 control commercial activities. Without such a permit system Council would either rely upon informal agreements or consider leasing the structure to a commercial operator on the basis that it is also available for public use. Both of these alternative options are inadequate, and Council would prefer to have better control of any unsafe or unauthorised use.

8 Assessment of public costs and benefits

The general public and commercial users will benefit from the By-law as it provides the necessary regulatory safeguards to ensure that people are able to access public marine facilities in a relatively safe and unimpeded manner.

The overall intended consequence of preparing the By-law is to minimise risk. The By-law is to protect the built assets and to provide for improved public safety. It provides a means whereby Council can control inappropriate behaviour and protect public amenity and enjoyment.

There also are clear financial benefits to Council (and the broader community) in having an appropriate regulatory regime in place that protects the condition of public assets. In a few instances, the proposed By-law will also secure income from commercial operators and these funds can be directed towards the management of the marine facilities themselves.

The marine facilities are maintained by utilising public funds and there are clear public benefits in ensuring that these facilities are not being damaged by inappropriate activities. Maintenance and replacement costs are minimised if such activities are regulated. Without such regulation, there is an increased likelihood of damage taking place.

The By-law is needed to address issues and problems that occur at public jetties and boat ramps managed by Council including the commercial use of such marine facilities, via a conditioned permit system.

There are significant community costs incurred when there is conflict due to access to the marine facilities being obstructed. In some cases (and at sometimes) the marine facilities are very heavily used. Unreasonable behaviour or activities needs to be regulated.

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.

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 Governments 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 a marine services By-law. Over this period of time Council has received feedback from particular stakeholder groups including the general public. This feedback has informed the development of an improved draft 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 Marine and Safety Tasmania, Crown Land Services (Department of

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Primary Industries, Parks, Water and Environment), Department of Police and Emergency Management, Department of Justice;

- Advertisements will be placed in the Mercury newspaper advising of Council's intention and seeking public comment;
- 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.