



**PARKS, RECREATION AND
NATURAL AREAS BY-LAW**

REGULATORY IMPACT STATEMENT

By-law No. 3 of 2021

A By-law to regulate and control activities associated with Council land and recreational 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 Parks, Recreation and Natural Areas By-law is designed to act as a mechanism for ensuring that the use of recreational 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.

Issue	Objective	Means to achieve Objective
Hire and usage of Council land and recreational facilities.	To permit individuals, clubs and organisations to have exclusive use of facilities.	The By-law includes provisions for the issuing of a permit to hire facilities upon such terms and conditions as the General Manager may determine and that a security bond may be required.

Issue	Objective	Means to achieve Objective
Protection of Council land and recreational facilities.	To ensure that parks, recreation, natural areas and Council land is not unduly damaged either via inappropriate use or actions undertaken.	The By-law includes provisions for dealing with the actual damaging of parks, recreation and natural areas including the protection of vegetation and materials, protection of wildlife, prohibition of lighting fires and controlling certain use within these locations via a permit and conditioning process.
The considerate use of Council land and recreational facilities.	To ensure that parks, recreation, natural areas and Council land are used in a considerate manner and public safety is not endangered.	The By-law includes provisions to deal with misuse, inappropriate use or controlling use via permit or the inclusion of safety equipment etc.
Unimpeded public access to Council land and recreational facilities.	To ensure that the general public is not unduly impeded from accessing and using parks, recreation, natural areas and Council land.	The By-law includes provision to control certain activities via a permit and conditioning process which allows the peaceful and equitable use of land and how various other activities e.g. organised sports, are controlled in order to not unduly impede access.
The protection of public health when using Council land and recreational facilities.	To ensure that parks, recreation, natural areas and Council land are used in such a manner as not to create a public health nuisance.	The By-law includes provisions to restrict camping to approved areas, the polluting and depositing of noxious matter and syringes and sharps.

3 Background

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

Kingborough Council currently controls Council land and recreation facilities by way of the existing *Parks, Recreation and Natural Areas By-law 2 of 2011*. This existing By-law expires on 4th August 2021. The By-law is therefore being reviewed and it is proposed that it be replaced by this revised Parks, Recreation and Natural Areas By-law.

During the past 10 years the By-law has been successful in its intent with limited significant impacts via the introduction of new legislation. Most of the existing By-law provisions have been maintained in the revised by-law.

It is important that Council land, recreation facilities and associated facilities are managed in a manner that ensures public access can be provided in a safe and unimpeded manner. This is not possible if no regulatory safeguard exists and the revised Parks, Recreation and Natural Areas 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:

- Regulating the usage of Council land and recreational facilities.
- Enter into user agreements with individuals, clubs and organisations.
- Close Council land and recreational facilities as deemed necessary.
- The ability to charge admission fees.
- Protection of vegetation, materials, and wildlife.
- Lighting of fires.
- Protection of relics and structures.
- Proper usage of children's play equipment.
- Interference of sporting events.
- Signs and handbills.
- Camping in unauthorised areas.
- Sale of goods on Council land.

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 on Council managed land.

In preparing this By-law regard has been given to:

- The suitability of existing By-law provisions within similar By-laws administered by other Tasmanian Councils;
- The provisions within existing relevant legislation and the need to ensure that the new By-law does not duplicate or conflict with those statutory provisions; and
- Industry and community comment provided over the life of the current By-law.

The Parks, Recreation and Natural Areas By-law will address a gap in the regulatory regime that is required to better control Council land and recreational facilities.

4 Potential restriction on competition

The By-law assumes that Council land, recreational facilities and their facilities should be primarily reserved for the use of the public. The By-law does, however, provide for the Council to enter into user agreements with individuals, clubs and organisations. Commercial activities are only to occur if the public is not overly impeded from accessing the facilities, however on authorisation via permit, an admission charge can occur.

The By-law provides guidance in how a permit might be allocated. The following requirements will apply:

- That an application be in writing.
- A statement of intended activity be provided.
- A drawing of the location and extent of occupation sought.
- A plan addressing safety.
- Evidence of public liability insurance.

The Council's General Manager is to determine the merits of a permit application and may grant or refuse the application.

Where there are competing applications, the determination will be made by the General Manager. Permits may also include conditions that restrict competitive conduct - such as the hours of operation, advertising or specifying which part of the land 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	Costs	Benefits
Unimpeded public access to Council land or recreational facilities.	Access to Council land or recreational facilities does not create a cost to business.	The facilities are primarily for public use and so this has priority over commercial use. The fact that a facility is known to be publicly accessible increases its popularity and generates other indirect benefits including expenditure at local businesses.
Inappropriate use of Council land or recreational facilities.	Does not result in a cost to business.	The orderly use of these public facilities is important for both their safe public use and their controlled commercial use. This provides an image that can maintain or increase public usage providing potential commercial benefits to business.
The ability to use Council land or recreational facilities for a commercial purpose	A permit system will allow some commercial use that may result in some potential uses being in competition to business.	The limited commercial usage of Council land and recreation areas has the potential to attract visitors to the area that may increase customer numbers of local business.
Providing a head of power to control activities on Council land or	Enforcement of the By-law will not result in a direct cost to business.	An enforcement system will prevent potential unauthorised commercial activities from

recreational facilities.		occurring, restricting the opportunity for unlawful business activity/competition.
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The above costs and benefits have not been quantified as it is difficult to determine the exact nature of the potential impacts. Most Council land or recreational facilities are not used for a regular commercial purpose and, where they are, the situation will be unique to the particular business enterprise.

Nevertheless, an analysis of the abovementioned costs and benefits indicates that the By-law will be a benefit to business. There will be restrictions on the commercial use of Council land or recreational facilities to ensure that it limits the potential for cost to business as well as providing protection of public access and safety, together with a more orderly and efficient use of the facilities for commercial purposes.

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"> • Provide an opportunity for sporting clubs and organisations to charge admission fees. 	<ul style="list-style-type: none"> • Encouragement of increased physical activity potentially reducing community health care costs. • Potential for increased public expenditure on recreational goods.
	Costs	<ul style="list-style-type: none"> • Nil. 	<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"> • Increased protection of environment. • Assessment of permit activities against the potential for and extent of any environmental harm. 	<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 users. • Provides an enhanced recreational experience for users. • Increases the attraction to use the recreational facilities and to spend more time undertaking recreational activities. 	<ul style="list-style-type: none"> • Discourages inappropriate behaviour from occurring in the first place. • Improved amenity for nearby residents. • Reduces costs to community from unlawful property damage.

		<ul style="list-style-type: none"> • Ensure Council land and recreational facilities are not unduly damaged. 	
	Costs	<ul style="list-style-type: none"> • Nil 	<ul style="list-style-type: none"> • A potential feeling within the community of there being an over-regulation of council land and recreational facilities.

7 Discussion of alternatives

Rather than preparing a new Parks, Recreation and Natural Areas 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 Council land and recreational facilities are used in a safe manner. Council has a responsibility to provide suitable controls that ensure acceptable community access, safety and amenity standards are maintained – and to then ensure that those controls are enforced.

If no regulatory controls are in place, then individuals will determine their own standards, this would in turn lead to an immediate or progressive reduction in the access, safety and amenity associated with Council land and recreational facilities. 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 abate a nuisance – such as carrying out the necessary work to remove the nuisance.

The above regulatory alternatives do not adequately address the uses and activities that need to be controlled. There also are 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 users as to what is expected and so reduces arguments and conflicts. It provides the clarity needed for effective enforcement.

8 Assessment of public costs and benefits

The overall intended consequence of preparing a new Parks, Recreation and Natural Areas By-law is to minimise risk to infrastructure, the natural environmental and individuals and endeavour to provide peaceful use of Council land and recreational facilities.

Endeavouring to ensure appropriate usage of Council facilities and minimising the risk of damage to the environment and facilities provides financial benefits to the community through the reduction of the cost associated with repairs.

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 Parks, Recreation and Natural Areas By-law. Over this period Council has received feedback from particular stakeholder groups including the 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 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.