



ROADS AND PARKING BY-LAW
REGULATORY IMPACT STATEMENT

By-law No.4 of 2021

A By-law to regulate and control activities associated with roads and parking 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 Roads and Parking By-law is designed to act as a mechanism for ensuring that the use of Council roads and parking areas 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
Unauthorized works on a public road.	To ensure that the road surface is not unduly damaged and that all works on roads are undertaken and reinstated to Council's standards.	The By-law includes provisions for undertaking works on a road and includes provisions for obtaining a permit to allow works to take place, with conditions that must be followed for such activities.

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Issue	Objective	Means to achieve Objective
Access along a public road being obstructed and the possible creation of a public safety hazard.	To ensure that the general public is not unduly impeded from travelling safely along a public road.	The By-law includes provisions for dealing with occupation of a road which includes but is not limited to events, obstruction and parking on roads. The By-law includes provisions for obtaining permits to condition such activities to ensure that public, amenity and safety is not impeded.
The road surface being inappropriately used or damaged which creates a potential public safety hazard requiring repair at costs.	To ensure that the road surface infrastructure is used correctly, either via excluding activities or conditioning activities, and that it is not unduly damaged or if so, repaired to a required standard.	The By-law includes provisions for managing the depositing, falling, dropping etc. of materials on a road. It also allows an authorised officer to give direction to render or prevent actions resulting in depositing of material etc. The By-law also has a permit process to conditions activities relating to materials and substances on roads.
The footpath, nature strip, kerb and gutter within the road reserve being damaged in a manner that effects amenity, impedes access and requires costs to repair.	To ensure that the footpath, nature strip and kerb and gutter within the road reserve are maintained in a serviceable condition.	The By-law includes provisions for dealing with the removal of roadside vegetation, the construction of unauthorised crossings and the general damaging of the footpath and kerb.
Unauthorized signage that obstructs vehicle site lines, footpaths, access and amenity.	To ensure that there is a system and guidelines in place to control commercial activities that may be conducted on a road, including the installation of real estate directional signage.	The By-law includes a provision that prevents the erection of signage without a permit – excluding real estate directional signage – and includes requirements for all such signage.
Public access and use being restricted by street trading, including street dining and food trucks within the road reserve.	To ensure that there is an adequate permit system in place to regulate equitable street trading activities and prevent street trading from effecting amenity or occurring in inappropriate or unsafe locations.	The By-law includes controls for managing street trading, including street dining and food trucks via a permit process and liability insurance. The permit process allows for discretionary and mandatory conditions to be imposed and controls the location that activities can take place.
Driving and parking vehicles within parking areas in a manner that is potentially dangerous or inconveniences other	To ensure that vehicles being driven and parked within parking areas are doing so in an orderly manner to avoid confusion	The By-law includes provisions for dealing with entry and exit of vehicles in a parking area, unsafe speeds, parking within designated parking spaces, the

Issue	Objective	Means to achieve Objective
users.	and conflict.	payment of parking fees (where appropriate), time restrictions and the use of “reserved” parking spaces.
Damaging Council property within parking areas and the need to control inappropriate behaviour.	To ensure that public parking areas are being used for their intended purpose.	The By-law includes provisions for dealing with damaging Council property, the removal of infringement notices, washing or repairing vehicles within parking areas, restrictions on cycling and skating, obstructing vehicles or pedestrians.

3 Background

The By-law has been prepared for the purposes of regulating conduct and activities on roads and within parking areas in the Kingborough municipal area. The By-law will provide Council with an ability to control such circumstances as described by the issues listed in the preceding table.

Council's existing By-law that deals with such matters is the *Roads, Parking and Stormwater By-law* (By-law 4 of 2011). This existing By-law expires on 4 August 2021. The By-law is therefore being reviewed and it is proposed that it be replaced by this new Roads and Parking By-law.

During the last 10 years, the most significant impacts on the existing By-laws have been:

- The implementation of the *Urban Drainage Act 2013* which provides controls over urban stormwater infrastructure and management; and
- A growing need to further control street trading activities within the road reserve, with a proliferation of food truck enquiries and enquiries from local businesses to undertake activities on footpaths (such as at Kingston Beach).

Most of the existing By-law provisions have been maintained in the revised By-law. However, to avoid duplication with the *Urban Drainage Act 2013* the stormwater section of the existing By-law has been removed.

It is important that the public (road and parking) infrastructure is managed in a manner that ensures it can be used for the maximum public benefit. Inappropriate activities need to be controlled and/or prevented. This is not possible if there is no regulatory safeguard and the prepared Roads and Parking By-law serves this purpose.

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 most relevant legislation is:

- *Local Government (Highways) Act 1982*
- *Vehicle and Traffic Act 1999*
- *Traffic (Road Rules) Regulations 1999*
- *Urban Drainage Act 2013*

4 Potential restriction on competition

The proposed By-law does provide for, and then controls, some opportunities for commercial activities. Such situations should only occur when it can be established that there is an acceptable impact on the public amenity. As a result the public road reserve and parking areas have very limited opportunities for private commercial activities. Possible commercial uses include:

- Street trading including street dining, food trucks, and other forms of vending or displays outside commercial premises;
- Events or markets that require the part closure of a road or parking area; and
- Advertising signs, such as a temporary signboard, within the road reserve.

It is reasonable to expect that these opportunities will be quite limited as the public infrastructure controlled by this By-law is almost entirely required for unrestricted public use. The By-law also provides some guidance on how a permit might be conditioned for a regular commercial use of the road in question – specifically for street trading and signage. The 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 access to these public facilities can occur without constraints. In some cases choices will need to be made that restrict or prevent commercial access, due to available space in the road reserve for example. Under such circumstances, this will impose restrictions on competition as some operators may be granted access to use the road reserve while others are not.

Potentially the permits that are issued under the auspices of this By-law will also include conditions that restrict competitive conduct – such as the hours of operation and specifying which part of the road is able to be used. Any such conditions that are imposed would be based upon the criteria within the By-law and will seek to minimise any adverse impact on general public access and amenity.

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
The By-law ensures that access along a road should not be obstructed.	Protecting public access will restrict or limit commercial use opportunities.	The road is primarily for public use and so this must have precedence over commercial use. The fact that the road is

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		fundamental to our daily lives including for transport and safety, reiterates that unimpeded public accessibility is priority.
Damage to the road.	Restrictions are imposed on use and works associate to a road which may be related to commercial or other use.	The restrictions placed on such activities are necessary to minimise potential public safety hazards and repair costs.
Inappropriate use of roads.	Restrictions are imposed on such activities as vegetation removal, street trading and signage.	Controlled use of roads is important for both their safe public use, access, and their conditioned commercial use.
The ability to use a road 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 public.
Control of parking areas.	Restrictions are imposed on the use of parking areas.	The restrictions imposed on parking areas is to ensure the safe and equitable use of the areas.
Providing a head of power to control activities on roads and parking areas.	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 inappropriate activities from occurring. It provides the necessary certainty and assurance.

The proposed By-law does give prescribed fees, but the above costs and benefits have not been quantified as it is difficult to determine the exact nature of the potential impacts. Most roads and parking areas 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 this public infrastructure, but these restrictions will result in the protection of public access and safety, together with a more orderly and efficient use of the facilities for the occasional commercial purpose. Any potential restriction to competition can be justified in the public interest.

6 Assessment of economic, environmental or social impacts

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

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		Direct Impacts	Indirect Impacts
Economic	Benefits	<ul style="list-style-type: none"> • Provides for works and commercial use within the road reserve in an orderly manner. • Business can generate additional income through the appropriate use of adjoining public land. 	<ul style="list-style-type: none"> • Facilitates appropriate activities whilst maintaining access and standards. • Council can obtain fees which may be used to upgrade the related infrastructure.
	Costs	<ul style="list-style-type: none"> • May restrict/limit some works or 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"> • Controls the manner of works and commercial activities by way of permit and associated conditions which includes an assessment against the potential for and extent of environmental harm. 	<ul style="list-style-type: none"> • Ensures that discretionary activities are sustainable and do not cause a nuisance.
	Costs	<ul style="list-style-type: none"> • Additional measures may need to be taken to ensure that works or commercial activity is undertaken in an environmentally appropriate manner. 	<ul style="list-style-type: none"> • Potential for extended time to complete works and increased Council compliance activity.
Social	Benefits	<ul style="list-style-type: none"> • Ensures appropriate accessibility to roads and parking areas to all. • Reduced potential for adverse visual impact and improved safety re. signage, occupation of roads, mud on roads etc. • Increased community interaction and benefit via strategic use of land e.g. street trading. • The ability to address equitable use of parking areas. 	<ul style="list-style-type: none"> • Provides land use opportunities, via permit, to use roads and car parks for community/social activities.
	Costs	<ul style="list-style-type: none"> • Nil 	<ul style="list-style-type: none"> • Possible community feeling of overregulation.

7 Discussion of alternatives

Rather than preparing a new Roads and Parking By-law, there are other alternatives.

Council could do nothing. This is not considered a viable option as Council does have an obligation to ensure that public infrastructure 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 this infrastructure. 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.

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 public roads. 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.

The 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 space to a commercial operator on the basis that it is also available for public use. Both alternative options are inadequate, and Council would prefer to have tighter control on unsafe or unauthorised use.

8 Assessment of public costs and benefits

The Kingborough community will benefit from the introduction of this By-law. This is because it will provide the necessary regulatory safeguards to ensure that people are able to access public roads and parking areas in a relatively safe and unimpeded manner.

The overall intended consequence of preparing a new Roads and Parking By-law is to minimise risk. The By-law protects the built assets and provides improved public safety. It provides a means whereby Council can control inappropriate activity 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 (street trading) and possibly provide for future parking fees. These funds can be directed towards the upgrade or maintenance of the infrastructure itself.

The roads and parking infrastructure is 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, then there is an increased likelihood of damage taking place or inappropriate use occurring.

Such a By-law is also needed to address the various issues described in this RIS. Existing By-law provisions need to be perpetuated and revised to protect public amenity and public

safety. In addition, any commercial use requires a permit system that cannot be challenged.

There are significant community costs incurred when there is conflict due to road or parking area obstruction. Unreasonable behaviour or activities need to be regulated. Regulation is the most feasible option to achieve the By-law's objectives and the By-law has been carefully prepared in order 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. This 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 Roads, Parking and Stormwater By-law. Over this period 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 Department of State Growth, 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.