



# **TREES ON PRIVATE PROPERTY BY-LAW**

## **REGULATORY IMPACT STATEMENT**

By-law No. 1 of 2022

A By-law to regulate removal of trees on private property in the Kingborough municipal area.

*Approved by Council on 18 July 2022  
Minute No. C304/14-2022*

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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 Trees on Private Property By-law (the By-law) is designed to act as a mechanism for ensuring that Council can reduce the negative impact on the environment concerning the removal of trees on private land, outside of the provisions of the planning scheme of the day, including the requirement of offset.

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.

<b>Issue</b>	<b>Objective</b>	<b>Means to achieve Objective</b>
Control of removal of trees on private land.	Reduce the negative impact on the environment and improve biodiversity outcomes.	Unless allowed by a permit, the By-law requires that a person must not negatively impact a tree which:

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	<p>To ensure that removal of trees on private land, outside of the provisions of the planning scheme of the day, is justified, and if appropriate, an offset applied.</p>	<ul style="list-style-type: none"> <li>• Has a trunk circumference of greater than 80cm at 1.4m or more above ground level;</li> <li>• Is nominated for and confirmed by Council as meeting the criteria for listing as a Significant Tree in accordance with a Significant Tree Policy; or</li> <li>• Is subject to an agreement under Part 5 of the <i>Land Use Planning and Approvals Act 1993</i> or covenant on the title.</li> </ul>
<p>Exemptions to allow the negative impacting of trees on private land.</p>	<p>To allow the removal of trees on private land.</p> <p>To allow for pruning.</p> <p>To not conflict with a planning scheme of the day or other jurisdiction.</p>	<p>The By-law exempts the following trees from control:</p> <ul style="list-style-type: none"> <li>• An exotic species (including non-Tasmanian natives) not nominated for and confirmed as meeting the criteria of listing as a Significant Tree in accordance with a Significant Tree Policy or subject to an agreement under Part 5 of the <i>Land Use Planning and Approvals Act 1993</i> or covenant on the title;</li> <li>• Pruning of a tree where the pruning is undertaken in accordance with Australian Standard Pruning Amenity Trees (AS 4373-2007);</li> <li>• A tree whose removal forms part of any use or development (or both) of land for which a permit has been issued under the <i>Land Use Planning and Approvals Act 1993</i> or a permit under the <i>Land Use Planning and Approvals Act 1993</i> is required in order to secure compliance with any planning scheme applicable in the Municipal Area;</li> <li>• A tree whose removal is authorised by a certified Forest Practices Plan under the <i>Forest Practices Act 1985</i> unless nominated for and confirmed as meeting</li> </ul>

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Issue	Objective	Means to achieve Objective
		<p>the criteria of listing as a Significant Tree in accordance with a Significant Tree Policy or subject to an agreement under Part 5 of the <i>Land Use Planning and Approvals Act 1993</i> or covenant on the title.</p> <ul style="list-style-type: none"> <li>• A tree whose removal is authorised by a permit under the <i>Water Management Act 1999</i> unless nominated for and confirmed as meeting the criteria of listing as a Significant Tree in accordance with a Significant Tree Policy or subject to an agreement under Part 5 of the <i>Land Use Planning and Approvals Act 1993</i> or covenant on the title.</li> </ul>
Council may require offset for the removal of a tree.	To mitigate and compensate for the loss of biodiversity.	Where a permit for the removal of a tree is granted, the Council may require an offset if the tree is a high conservation value tree or is a priority species, in accordance with a biodiversity offset policy.
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 the removal of a tree subject to the By-law.</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 and setting of penalties for breaches of By-law provisions.	<p>The By-law sets out that an infringement notice may be issued for breaches of specified offences in the By-law.</p> <p>A person is also required to supply their name and address to an authorised officer.</p>

### **3 Background**

The By-law has been prepared for the purposes of ensuring that there are additional controls relating to the removal of trees on private property that are not addressed in existing legislation or the planning scheme of the day.

In addition to current State legislation and the planning scheme, Kingborough Councils' previous *Health and Environmental Services By-law No. 3 of 2011* (the previous By-law) controlled removal of trees on private property. The previous By-law expired in August 2021 and a new By-law is required to ensure continuity of proper management of trees on private property.

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 previous By-law. The amendments reflect areas where Council has identified opportunity for improvement or to create more consistency with other jurisdictions 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 unjustified removal of trees on private land.
- Ensuring a permit process is in place to assess the removal of trees on private land.
- Allowing for an offset where the removal of a high conservation value tree or a priority species has been permitted, in accordance with a biodiversity offset policy.
- Ensuring exemptions exist negating the requirement to obtain a permit where appropriate.

As mentioned earlier, the previous 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 unjustified removal of trees on private land. Without the By-law there is limited existing State legislation that effectively enables the regulation and control of activities relating to the unjustified removal of trees on private land.

### **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 the removal of trees on private property and the requirement to obtain a permit to do so. 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
Limitations on the removal of trees on private property.	<p>The limitation on the removal of trees on private property has associated costs to business via the requirement to have access to, and comply with, Australian Standards specifically concerning pruning activities.</p> <p>There are time limitations associated to the permit assessment process, but this is assessed as a low restriction to business.</p>	<p>While there are associated costs to business, the reduction of negative impacts on the environment and improved biodiversity outcomes outweighs the financial impact.</p> <p>The regulation of removal of trees on private property will enhance professional operator's services by protecting their brand or business.</p>
Offsets associated to removal of high conservation value or priority species trees.	Offsets are set within an endorsed biodiversity offset policy.	Mitigates and compensates for the loss of biodiversity values.
Applications for a permit.	The By-law may require applications for a permit to be accompanied by documentation which may require some additional costs.	The By-law provision will ensure that consideration will be given when granting a permit reducing risk and nuisance.

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>• Provides conveyance for biodiversity offset associated to high conservation value or priority species trees.</li> <li>• Interception of stormwater.</li> <li>• Enhanced natural shade and wind breaks.</li> </ul>	<ul style="list-style-type: none"> <li>• Improved regulatory controls allow for more efficient enforcement by Council.</li> <li>• Mitigation and compensation for the loss of biodiversity values.</li> <li>• Overland flow is used by tree root systems and broken up as rain hits tree canopies. This reduces velocity of flows which can lead to erosion and scour. Trees create</li> </ul>

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		<b>Direct Impacts</b>	<b>Indirect Impacts</b>
			<p>conditions that aid water infiltration into the soil.</p> <ul style="list-style-type: none"> <li>Reduces heating and cooling costs and the degrading impacts of solar radiation on assets.</li> </ul>
	<b>Costs</b>	<ul style="list-style-type: none"> <li>An offset may apply for the removal of high conservation value or priority species trees. As the offset is restrained it is only relevant to the harm occurred.</li> <li>Reduction in the maintenance of stormwater infrastructure.</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 the unjustified removal of trees on private property.</li> <li>Enhanced controls to promote responsible removal of trees on private land.</li> <li>Provides a means to utilise biodiversity offsets.</li> <li>Reduction of carbon dioxide from the atmosphere.</li> </ul>	<ul style="list-style-type: none"> <li>Encourages improvement of local amenity.</li> <li>Reduces the unjustified impact on biodiversity and achieves a net gain in the extent and quality of biodiversity.</li> <li>Reduce the impacts of climate change.</li> <li>Habitat and food for wildlife.</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 controlling removal of trees on private property.</li> <li>Reduces the potential for conflict between neighbouring residents because of nuisance complaints.</li> <li>Reduces the risk of lower amenity via the unjustified removal of trees on private property.</li> </ul>	<ul style="list-style-type: none"> <li>Discourages inappropriate behaviour from occurring in the first place.</li> <li>Result in higher natural amenity.</li> <li>Improved mental health outcomes.</li> </ul>
	<b>Costs</b>	Nil	<ul style="list-style-type: none"> <li>A potential feeling within the community of there being over-regulation.</li> </ul>



## **7 Discussion of alternatives**

Rather than preparing the 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 controls for the unjustified removal of trees on private property 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 standards.

Council could also undertake proactive education within the community and seek voluntary compliance. It is noted that education programmes of this nature have historically been unsuccessful and ineffective due to the financial benefit of tree removal.

Another alternative is to rely on other available or relevant statutory provisions or regulations. Examples of opportunities in this regard include relying on the provision of the planning scheme of the day, part 5 agreements, covenants on titles 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 activity that needs 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 and reasonable compensation regarding offset.

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

The overall intended consequence of preparing the By-law is to reduce the negative impact on the environment and control the unjustified removal of trees on private land.

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 social 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; biodiversity loss, risk to person or property, the potential for damage, amenity, access, environmental harm, movement of traffic, and any other matter the General Manager considers relevant. This reassures that the permit process is fair and consistent.

## **9 Proposed public consultation process**

Up until August 2021, Council has functioned with the previous By-law. 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 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;
- 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.