

Trees on Private Property By-Law Q & A

- **What is a By-law?**

By-laws are a set of rules that assist Councils to control and manage functions and responsibility within the municipal area.

By-laws are able to be made by Councils under the *Local Government Act 1993* (The Act) and must relate to functions and powers under the Act or any other Act.

They only apply to the municipal area of the Council that has made the By-law and they automatically expire 10 years after the date on which they take effect, unless it is stated that it will expire sooner.

- **Why has the Trees on Private Property By-law been created?**

For 20 years, Kingborough Council has regulated tree removal on private property through the Health and Environmental Services By-law. This By-law has now expired and a new one has been drafted.

Kingborough Council is committed to preserving the value that trees bring to our communities whether on tree-lined streets, parks or on private land. Kingborough is also particularly important for some threatened birds who use trees as habitat to shelter, nest and feed.

Kingborough is the only municipality in Tasmania where endangered forty-spotted pardalotes are found on private land. In addition, the presence of core foraging and breeding habitat for the swift parrot makes Kingborough extremely important to the survival of this critically endangered species.

The planning scheme generally regulates native tree removal for subdivisions and other developments. However, in situations where a planning permit is not required for tree removal, the By-law provides a process for assessing tree removal and ensuring it is reasonable and necessary. When appropriate, the By-law will also allow for the loss of important values to be compensated with a biodiversity offset.

- **What trees are protected through the By-law?**

The proposed By-law prohibits people from negatively impacting (cutting, wounding, injuring or removing) any tree which:

- Is native to Tasmania and which has a trunk circumference of greater than 80cm at 1.4m or more above ground level; or
- Is confirmed by Council as meeting the criteria for listing as a 'significant tree' in accordance with Kingborough's Significant Tree Policy; or
- Is subject to an agreement under Part 5 of the *Land Use Planning and Approvals Act 1993* or a covenant on the property title.

- **Why are biodiversity offsets included in the By-law?**

Biodiversity offsets provide compensation for the impact on the loss of biodiversity of tree removal.

Offsets will be applied when approval is given to remove a tree with high conservation value or a priority species. This includes large, mature trees that provide hollows for wildlife and a number of eucalypts that are used by threatened wildlife for feeding and/or nesting.

An offset can include a financial contribution and/or other actions, such as tree replanting or active management, that demonstrate a conservation benefit of a similar value to that which will be lost through the tree removal.

Where a financial contribution is required, the money is paid to the Kingborough Environmental Fund.

The Kingborough Environmental Fund, managed by Kingborough Council, addresses the loss of biodiversity from development and tree removal through investment in local environmental projects that conserve similar vegetation types and habitat as have been lost. This includes new reserves on private land, revegetation, bushland restoration and research.

- **Will I have to apply if I want to cut down any tree on my property?**

Unless you have a planning permit for the tree removal, you will require a permit from Council to remove a Tasmanian native tree that has a trunk circumference greater than 80cm round when measured 1.4 meters above ground level or a tree that is confirmed by Council as meeting the criteria for listing as a Significant Tree.

You will also require a permit from Council to remove a tree which is protected under a covenant on the property title or under a Part 5 Agreement. Most exotic (non-native) trees and declared and environmental weeds will not be covered by the proposed By-law.

- **What will the application process involve?**

If you would like to remove a tree on your property that is not exempt under the By-Law and does not require a planning permit, you will need to complete an online application form. As a minimum, this will require a simple site plan, measurements of the tree's circumference and a photo of the tree.

If you are not the property owner and you are renting, you will need the owner's consent to remove or undertake works on a tree that is captured by the By-law. The proposed works will be assessed by Council and you will receive a permit if the work is approved.

Further information about the health and risk of the tree or other reasons for tree removal will sometimes be required. The application process will be free, and permits are valid for 12 months.

- **Will I have to apply to Council if I want to cut down any tree for safety reasons?**

Yes, if the tree meets the criteria outlined above you will need approval even if there is a perceived safety issue.

If you are proposing to remove a tree(s) due to safety concerns or risk of damage, you may be asked to provide a supporting report from a suitably qualified arborist which confirms the tree poses an unacceptable risk. This allows Council to ensure that the risk has been professionally assessed.

Where there is an imminent safety risk from the tree Council will prioritise the assessment of the tree and provide prompt advice.

- **Will I be able to remove a tree for bushfire prevention?**

If you are proposing to remove trees relating to potential bushfire risk you will need to complete an application form to seek a permit to remove the trees, unless the tree removal requires a planning permit, or the tree removal meets planning scheme exemption criteria.

- **What does negatively impact mean?**

Negatively impact means to cut, wound, injure, or remove. This includes lopping and non-compliant pruning.

Trees captured by the By-law can be pruned in accordance with Australian Standards without requiring a permit. Council will provide information sheet on this if the By-law is enacted.

- **Will I need a permit to prune a tree covered by the By-law?**

Selective pruning of trees for maintenance will generally not require a permit. Council will provide information sheets on this if the By-law is enacted.

Significant lopping or topping a tree that could result in long term damage will require a permit.

- **What is a high conservation value tree or a priority species?**

A high conservation value tree is a tree that is of a species that is listed in the *Threatened Species Protection Act 1995* or the *Environment Protection and Biodiversity Conservation Act 1999* and/or which provides potential habitat for threatened species listed in either of those acts.

For example, the endangered Forty-spotted Pardalote is exclusively dependent on white gums for food (*Eucalyptus viminalis*). Therefore, any white gums >80cm in circumference and within or nearby forty-spotted pardalote habitat are of high conservation value.

A priority species is a species that is not listed in the *Threatened Species Protection Act 1995* or the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) but is considered of conservation significance in the municipal area as determined by the Council.

The only tree that currently meets this criteria is Candlebark (*Eucalyptus rubida*) which has been found to occur in very restricted pockets of Kingborough.

A table summarising currently known high conservation value trees and priority species in Kingborough is provided on the next page (Table 1).

Table 1

HIGH CONSERVATION VALUE TREES			
Species	Common Name	Characteristics	Rationale
Eucalyptus globulus	Blue gum	Circumference >125cm	Swift parrot foraging habitat
Eucalyptus ovata	Black gum	Circumference >125cm	Swift parrot foraging habitat
Eucalyptus viminalis	White gum	Circumference >80cm and within or in proximity to forty-spotted pardalote habitat	Forty-spotted pardalote habitat
Native trees with known or potential nesting hollows	Various	Hollows present, and/or, circumference >220cm	Habitat for hollow dependent threatened species
A species that is listed in the <i>Threatened Species Protection Act 1995</i> or the <i>Environment Protection and Biodiversity Conservation Act 1999 (C'th)</i>	Various	N/A	Listed threatened species
PRIORITY SPECIES			
Eucalyptus rubida	Candlebark	Circumference >25cm	Meets agreed criteria for endangered based on its limited range and poor reservation status

- **The *Threatened Species Protection Act 1995* and/or the *Environment Protection and Biodiversity Conservation Act 1999* list the species of trees - why do we need to add species outside the two acts?**

These Acts relate to species important at the Statewide scale. The inclusion of a small number of rare species outside these acts ensures species which are important at the municipal scale are only removed where there is adequate justification.

- **Will landowners know if they have a high conservation value tree or priority species tree on their property?**

Landowners may not initially know if they have a high conservation value tree or priority species on their property.

If the By-law is enacted, there will be a requirement to apply for the removal of a Tasmanian native tree, and landowners will be informed during the application process if the tree is high conservation or a priority species.

- **Will there be fines issued for unauthorised tree removal?**

Yes, fines may be issued under the By-law for unauthorised tree removal or damage. Council may also investigate and prosecute more serious vegetation clearing offences.

- **What is the difference between the Significant Tree policy and By-law?**

Council has developed a list of trees in our community that are particularly significant with input from the public through a nomination process.

The Significant Tree List recognises those trees that have the highest aesthetic, cultural and heritage values.

The *Trees on Private Property By-law* and planning scheme will provide a coordinated process for assessing applications to remove, or impact on, Significant Trees.

- **Why did Council remove regulation for trees from the Health and Environmental Services By-law in 2021 and is now making a separate By-law?**

In 2021 during a review of Kingborough Council's current four by-laws, Council was advised to remove the clause associated with the regulation of trees on private property.

During the public consultation it became clear that the Kingborough community had strong concerns about the removal of the tree provisions, with 184 submissions received raising concerns about the loss of the regulation.

Consequently, Council committed to further investigation as to whether a separate tree by-law for Kingborough could be developed.

After seeking advice from senior legal counsel, Council confirmed that a by-law to regulate the removal of trees on private property could be developed and was lawful.

Council is now seeking community input into the re-introduction of a by-law which requires a permit for native tree removal on private land, where a planning permit does not otherwise regulate this tree removal.