



REGULATORY IMPACT STATEMENT

Environmental Health By-law

2023

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BACKGROUND

The By-law has been developed to replace the existing *Environmental By-law 2013* which lapses on 12 December 2023.

The *Environmental Health By-law 2013* regulates refuse disposal, keeping of animals, caravans, and onsite wastewater management. Previously, Council had a similar 2004 version of the by-law. During the 1990's individual by-laws for caravans and sewage treatment systems existed.

The proposed 2023 By-law has been amended to address; particular deficiencies with the existing by-law, delete provisions that are otherwise regulated by other statutes, and improve the management of environmental health activities, including keeping of livestock, bees and roosters within and near residential and low density residential zones.

The purpose of this by-law is to provide appropriate regulation of caravans, waste management, animal keeping, and backyard burning so acceptable levels of health, amenity and environmental quality are maintained in the Sorell Municipal Area.

The by-law will apply to the whole of the Sorell Municipal area but will affect residents, ratepayers and visitors differently. All properties with a kerbside waste collection service must comply with the waste management provisions of the by-law. The provisions relating to caravans are only applicable to those residents or ratepayers that occupy caravans or store them on vacant land. Backyard burning controls applies to residents that burn anything in the open environment. Restrictions on animal keeping are limited to impacts on residential areas and does not aim to regulate commercial animal keeping in rural areas.

Stakeholder consultation:

- Southern Tasmanian Urban Bee Keepers Association
- Department of Natural Resources
- Southern Tasmanian Bantam Club

Feedback from stakeholders:

- Does the By-Law only refer to the noise that roosters make? Some breeds of ducks make just as much noise as roosters.
- If a permit is required to keep a rooster will a breeder be required to acquire a permit for each rooster if he or she is keeping more than one bird/breed? Most breeders and club members keep several breeds.
- Does the permit requirement apply to rural properties as well as those zoned residential or rural/residential?
- If this By-Law comes in to effect it has the potential to cause problems for the Sorell School who are very keen poultry breeders and showers.
- Acknowledged that a permit is required for keeping more than 2 hives on a residential property.

Response to Stakeholder comments:

- Roosters included because Council mostly receives noise complaints about roosters rather than ducks.
- Only one permit would be required per property for keeping a specific type of animal, not for each individual animal.
- The need to obtain a permit to keep a roosters does not apply to rural areas. However, the 100m distance that roosters must be kept from neighbouring residential properties does. This is required because some rural zoned land adjoins residential land.
- Sorell School wouldn't require a permit as the enclosures are more 100m from neighbouring houses.

1. REASONS WHY THE BY-LAW IS REQUIRED

In relation to the specific areas that the by-law regulates the following information outlines the reasons why the by-law is needed.

Waste Management

Council provides a range of different kerbside refuse and recycling collection services, the by-law specifies appropriate presentation, constituents and storage of materials to be collected. Residents sometimes overload wheelie bins and place non-recyclable materials in recycling bins contaminating the recyclables.

The proposed controls will reduce safety hazards for residents and waste collection staff and reduce pollution and contamination of recycling. Recycling collection centres are also located within the municipal area, these are very popular with residents but there are ongoing issues with non-recyclable materials being dumped at recycling centres.

Existing state legislation that regulates Waste Management such as the *Environmental Management & Pollution Control Act 1994* and associated *Waste Management Regulations 2020* do not contain the specific detail that is required to operate and manage kerbside waste collection services.

Council is considering introducing Food and Organics kerbside collection, the by-law now includes requirements for organics collection services which were not included in the 2013 by-law.

Control of Animals

Regular complaints are received about animals (other than dogs which are regulated under the *Dog Control Act 2000*) causing a nuisance to neighbours. The most common complaints are roosters crowing, odours from chickens kept in residential areas and odours for an accumulation of waste food and faecal materials from domestic animals.

The existing by-law enables an authorised officers to issue notices or directions on what measures are necessary to prevent an animal creating a nuisance.

Prescribe minimum setback distances for bee keeping from boundaries and neighbouring residences are required (which reflect the *Southern Tasmanian Urban Bee Keeping Code-of-Practice*) to protect public safety. Limitations apply to residential land and do not impact on rural businesses.

Noise complaints from crowing roosters are continuing to increase and are becoming more difficult to resolve. Prescribing minimum distances that roosters are kept from neighbouring residential properties will reduce noise impacts. The additional power for authorised officers to issue a notice is required to specify what action is required to resolve the nuisance.

Poultry breeders, pet livestock or bee keepers may apply for permits if they wish to keep additional birds or keep them closer to residential premises. Application will be assessed on a case-by-case basis and conditions may be applied.

Where roosters or other animals are causing a nuisance an authorised officer may issue a notice to:

- keep animal in cages, pens or structures;
- undertake measures to prevent animals creating a nuisance; or
- if the above measures prove to be ineffective in abating the nuisance, re-locate or remove the animal from the premises or property.

Relocation or removal of an animal from a property will only apply when it is not reasonable or practical to undertake measures to prevent the animal creating a nuisance or measures taken have not proven to be effective.

The *Local Government Act 1993* provides controls for impounding animals, Part 12, Division 5 and the statutory nuisance provisions in Division 6 of this part are applicable but do not have sufficient detail to deal with all animal keeping issues.

Caravans

Over 35 years ago Council began charging a caravan tax under the *Local Government Act 1962* for caravans occupied more than 21 days per year. Council has continued regulating caravans since then using a by-law as the head of power.

Caravans are not buildings but are typically used as holiday accommodation or as a temporary residence. However, in some cases caravans or motor homes are used as a person's principle place of residence. The by-laws controlling caravans have been used to ensure that appropriate facilities are provided within the caravan, or on the property, so that a nuisance is not created to neighbouring properties from inappropriate disposal of wastewater.

In some situations when caravans fall into a state of disrepair the by-law can be used to address situations where the van becomes an 'eye sore'.

'Tiny homes' are becoming increasingly popular, these are typically on wheels and are not buildings for the purposes of the *Building Act 2016*. 'Tiny homes' are considered to be caravans and will require licensing.

Controlling Burning

The *Environmental Management and Pollution Control (Smoke) Regulations 2019* control the type of waste that may or may not be burnt and the size of the property that burning may occur on. The regulations also recognise that a Council may have a by-law that regulates backyard burning.

The Regulations provide clarity on what type of burning is prohibited and allow for easier enforcement rather than relying on proving that a fire is creating a nuisance. Council has issued a number of infringement notices for offences under the regulations but problems sometimes arise when a fire is left burning unattended and no one is there to extinguish it. Sometimes a person refuses to put out the fire and action is required to extinguish the fire to reduce the nuisance to surrounding residents.

Additional controls are included to prohibit burning of open fires within 50m of neighbouring residential properties. The Smoke Regulations focus on the size of the property and not the distance the fire is from neighbouring residences. Including a minimum distance that a fire is from a neighbour, will reduce the likelihood of a nuisance being created.

2. OBJECTIVES

The objectives of the By-law are:

1. To establish controls on the use of waste management facilities and kerbside waste and recycling collection services.
2. Establish standards for the keeping of animals to minimise nuisances and safety risks to neighbours and members of the public.
3. Set minimum standards with respect to health, safety and amenity for caravans and mobile homes kept on properties throughout the municipal area.
4. Provide controls on where 'backyard burning' can occur and provide powers for authorised officers to extinguish fires that are creating a nuisance to neighbours.

3. HOW WILL THE OBJECTIVES BE ACHIEVED?

Objective 1 – Waste Management

- Outline where and when refuse, organics and recycling can be left at a waste management centre.
- Prohibit lighting of fires at waste management centres.
- Specify the type of waste that can be accepted at a waste management centre.
- Determine the types of materials that may or may not be collected in kerbside waste and recycling collection services.
- List the responsibilities of residents using the kerbside collection services with respect to the storage and use of the mobile garbage and recycling bins.
- Enable directions to be issued on mobile bin collections requirements.

Objective 2 – Control of Animals

- Structures, buildings and premises must be kept clean to prevent offensive odours.
- Require that animals do not make unreasonable amounts of noise and create a nuisance.
- Allow authorised officers to issue notices to require the owner or occupier to take action to prevent a nuisance being created. This may involve keeping animals in cages, pens or enclosures.
- Place restrictions on the location and types of animals and bees that can be kept in residential areas to reduce the likelihood of a nuisance being created.
- Provide authorised officers with the power to issue permits for animal keeping and impose conditions.

Objective 3 – Caravans

- Require that caravans within the municipal area are licenced, other than caravans:
 - Stored at a residence
 - At a caravan park or overnight recreational vehicle parking area.
 - Caravans for travelling showpersons or works crews.
- Conditions may be placed on a licence with respect to health and amenity issues such as – water supply, providing sanitary and washing facilities and refuse disposal.
- Allow exemptions from permits for family members or guests occupying caravans at a person’s home for short durations (up to 14 days).
- Allow for licences to be cancelled if conditions are not complied with.
- In deciding whether or not to grant a licence for a caravan, the By-Law requires that the General Manager may have regard to the following:
 - whether the use of the caravan will adversely affect or is likely to adversely affect the amenity of the neighbourhood in which the caravan is to be set up;
 - whether the caravan has sufficient or satisfactory facilities for the supply of water or disposal of waste water available to the occupants;

- whether the occupation of the caravan is likely to cause a health hazard;
 - any relevant policy of the Council;
 - any other relevant matter.
- Council has not previously refused a licence on amenity grounds, the provisions is only intended where an application is received for a van to be located on a property where it is completely ‘out of character’ with the area.

Objective 4 – Fires

- Allow an authorised officer to direct a person to extinguish a fire that is being burnt contrary to the *Environmental Management & Pollution Control Act 1993 on private land*, on Council land or a public road.
- If a person refuses to put out the fire an authorised officer may use water, soil and materials on the property to extinguish the fire.
- The authorised officer may request the fire brigade to extinguish the fire at the owner’s expense.
- Prescribe minimum distances open burning may occur from neighbouring residences.
- This part does not apply to fire hazard reduction burning, a wood heater inside a building or a fire pit used for heating or warmth, a wood fired pizza oven or barbeque used for cooking food.

4. RESTRICTIONS ON COMPETITION

The provisions relating to waste management, caravans, animals and burning do not restrict competition or the conduct of business. Waste management controls apply to appropriate use of existing waste services such as what is put into wheelie bins or how to use the recycling centres. It does not relate to the awarding of contracts for waste collection services.

The *Environmental Management & Pollution Control Act 1994* and the associated *Environmental Management & Pollution Control (Smoke) Regulations 2019* currently regulate the burning of waste, the impact on business has therefore already been considered. The by-law only provides additional powers for authorised officers to deal with complaints such as issuing directions to extinguish a fire.

Open burning restrictions will primarily apply to residential properties not rural areas or business, unless the burning occurs near residential properties. Exemptions apply for fire hazard reduction or fire management of rural, agricultural, rural living or environmental management zoned land. Permissible homebased businesses in residential areas are not likely to be affected as these businesses typically are professional offices that do not burn waste.

Rural based businesses are not prohibited from burning, the only limitation is to ensure that the fire is more 50m from an adjoining residence, this is not likely to be problematic as rural properties are generally very large.

Caravan regulation applies to domestic use of caravans and not the operation of caravan parks or other commercial businesses; therefore it has no direct impact on business. It does not typically prevent a caravan being located on private land but requires that appropriate facilities for waste disposal and washing are provided.

The by-law does not establish sites for caravan parks or overnight self-contained motorhome parking areas that compete with caravan park businesses.

Animal keeping also relates to the domestic keeping of animals, as commercial businesses such as poultry farms are regulated under the *Land Use Planning & Approvals Act 1993* and the *Tasmanian Planning Scheme - Sorell*. Commercial poultry farms, piggeries and dairies are typically located substantial distances from residences and are prohibited in residential land use zones.

5. ASSESSMENTS OF COSTS VERSUS BENEFITS

Issue	Costs	Benefits
Restrictions on animal or bee keeping	<ul style="list-style-type: none"> Relates to domestic keeping of animals or bees, some additional costs may be imposed to ensure enclosures are suitable to reduce nuisance to neighbours. License fees for animal keeping in residential areas 	<ul style="list-style-type: none"> Better protection residential amenity by setting standards to reduce the likelihood of residents being subjected to offensive odour, noise, flies and vermin. The cost of permits is likely to be minimal and will off-set the costs of assessment and issue a license.
Use of mobile garbage, organics and recycling bins	<ul style="list-style-type: none"> Size limitations on bins mean that some businesses may need to use a private contractor. 	<ul style="list-style-type: none"> Regulation of bin usage reduces the collection costs by not charging for services or capacity that is not required, thus lowering the annual cost to business.
Use of caravans and motor homes outside designated caravan parks	<ul style="list-style-type: none"> The by-law exempts caravans or motorhomes from being licenced if they are parked in designated public areas. By allowing caravans to park in these areas rather 	<ul style="list-style-type: none"> If the by-law didn't exist caravans could be parked anywhere in the municipal area and would not be regulated at all. Removing regulation of caravans would likely result in an increase in health/amenity complaints

	<p>than having to use caravan parks it may have a financial impact on privately operated caravan parks.</p>	<p>from caravans situated on private land.</p>
<p>Restrictions on open burning</p>	<ul style="list-style-type: none"> • The by-law does not further regulate what can be burnt it only limits how close a fire can be to a residence. It may lead to higher cost for removal of greenwaste from properties as burning is very cheap. • Fire hazard reduction burning is exempt, so no additional cost for this activity is expected. 	<ul style="list-style-type: none"> • Will benefit neighbouring residents by improved air quality. This will be particularly appreciated by those people with respiratory illness that are affected by smoke. • A reduction in nuisance and odour complaints. • Having specific prohibited distances make compliance easier for Council staff and for members of the public.

6. ASSESSMENT OF DIRECT OR INDIRECT ECONOMIC, ENVIRONMENTAL OR SOCIAL IMPACTS

		Direct	Indirect
Economic	Benefits	<p>Waste management</p> <ul style="list-style-type: none"> • Reduced costs of waste clean-up at waste management centres. • Better services for residents. • Savings for clean-up of litter. • Savings on waste disposal fees at land fill when organics are directed to composting. 	
	Costs	<p>Caravans</p> <ul style="list-style-type: none"> • Caravan licence fees around \$340 per year. Which is less than half the cost that dwellings pay in Council rates. <p>Animal keeping</p> <ul style="list-style-type: none"> • permit fees will apply, not yet determined but likely to be minimal <\$100 per year. 	

		Direct	Indirect
Environmental	Benefits	<p>Animals</p> <ul style="list-style-type: none"> • Reduced pollution from burning of waste and noise from animals. <p>Fires</p> <ul style="list-style-type: none"> • Better air and water quality. • Improved health outcomes for residents impacted on from waste burning. <p>Waste Management</p> <ul style="list-style-type: none"> • Reduced litter entering the environment if more waste is recycled. • Reduced litter from kerbside collection of waste collection services operate correctly. • Reduced greenhouse gas emissions from landfill when organics in domestic garbage are diverted to composting. 	<ul style="list-style-type: none"> • Less odour and noise complaints. • Improve residential amenity. • Less odour complaints. • Improve residential amenity.
	Costs	<p>Waste Management</p> <ul style="list-style-type: none"> • High cost associated with clean-up of waste dumped at recycling centres. • Cost of cleaning up solid and liquid wastes in public areas. 	<ul style="list-style-type: none"> • Increased rates for waste management services resulting from increased operational costs.

		Direct	Indirect
Social	Benefits	<p>Fires & Animals</p> <p>Improved amenity from:</p> <ul style="list-style-type: none"> • reduced noise and odour from animals • Less smoke pollution. <p>Caravans</p> <ul style="list-style-type: none"> • Improved visual amenity when caravans are well maintained and have adequate facilities. • Supports initiatives to address house shortages by authorising habitation of caravans and mobile dwellings while building a dwelling. 	<ul style="list-style-type: none"> • Enables people to undertake social and/or recreational activities associated with domestic animal keeping in residential areas, providing nuisance impacts are managed. • Caters for those members of the community that may not be able to access affordable housing. • Caters for a market niche for those people who wish to occupy a caravan for holidays rather than to buying a house.
	Costs	<ul style="list-style-type: none"> • Introducing permit fees for some animal keeping will have a small impact on recreational animal keeping. Permit fees are likely to be minimal, less than \$100PA. • 	<ul style="list-style-type: none"> • Does limit recreational animal keeping in residential areas. Commercial animal keeping is typically only permissible in rural areas.

7. SIMILAR LOCAL GOVERNMENT BY-LAWS

Below is a list of all Council By-laws in Tasmania that regulate similar activities to the proposed Sorell Council Environmental Health By-law:

Break O'Day Council

- *Caravans* - expires 13 April 2023

Brighton Council

- *Environmental Health* - expires 23 August 2027

Burnie City Council

- *Waste Collection and Waste Management* - expires 31 May 2027

Central Coast Council

- *Animal Control* - expires 1 November 2028

Central Highlands Council

- *Caravans* - expires 30 July 2024

Clarence City Council

- *Services and Refuse* - expires 9 April 2024

Hobart City Council

- *Environmental Health* - expires 18 July 2028
- *Waste Management* - expires 18 July 2028

Kingborough Council

- *Health and Environmental Services*- expires 25 August 2031

Tasman Council

- *Regulatory Services* - expires 15 August 2028

8. DISCUSSION OF ALTERNATIVES

This By-law intends to replace an existing by-law which has been in place since 2013. The current by-law will lapse in December 2023. Other alternatives have been considered to replacing the by-law, these options are discussed below.

The first option would be to do nothing and rely on the existing provisions of the Local Government Act 1993 statutory nuisances, which are very general and provide no specific guidance on appropriate measures to prevent animals creating a nuisance. The *Environmental Management & Pollution Control Act 1993* provisions on 'environmental nuisance' are also applicable for animals causing a nuisance but as for 'statutory nuisances' they are not specific. It also is reactive to a complaint rather than establishing a 'set of rules' that aim to prevent a nuisance being created in the first place.

The *Building Act 2016* cannot be used to control health and amenity issues associated with caravans as the Act applies to buildings not vehicles.

In relation to waste management services the *Environmental Management Pollution Control (Waste Management) Regulations 2020* provide controls on waste disposal and the *Litter Act 2007* regulates waste dumping. However, they do not provide the level of detail that is required to regulate kerbside waste and recycling collection services.

The *Environmental Management & Pollution Control Act 1994* and *Environmental Management & Pollution Control (Smoke) Regulations 2019* both contain provisions for dealing with 'environmental nuisances' from fires. The by-law allows authorised officers the power to extinguish fires if it is being burnt contrary to the regulations. The by-law is more specific than the general powers of authorised officers under the Act.

Environmental Management & Pollution Control (Smoke) Regulations 2019 do not include specific separation distances that burning can take place from a neighbouring residence. Including a minimum distance provides more clarity for enforcement officers and residents. However, it may be more confusing for some residents as they will have multiple pieces of legislation to consider. Council currently has a fact sheet on backyard burning which is given to residents to explain local requirements, this should help to avoid confusion.

9. ASSESSMENT OF PUBLIC BENEFIT

The public benefit test assesses whether the benefits outweigh the costs and determine whether a by-law is the most effective option for achieving the objectives.

Residents, visitors and businesses in the Sorell Municipal area will benefit from the implementation of this by-law, as the by-law will help protect public health and residential amenity by applying controls on caravans, backyard burning, keeping of animals and waste management so that these activities do not create a nuisance or safety risk to the public.

Without these controls it is highly likely that there would be an increase in amenity and nuisance complaints, littering and pollution. The by-law provides a head of power to prevent issues arising and tools to resolve problems.

The benefit from preventing public health and environmental nuisances far outweighs the compliance costs, which in the case of caravans amounts to an annual charge of \$340 per year.

Regulation is considered the only feasible option to achieve the by-law's objectives and the by-law has been carefully constructed to ensure it imposes the least regulatory burden on the community as possible.

10. PUBLIC CONSULTATION

Following certification of the Regulatory Impact Statement (RIS) further public consultation will occur:

1. Council will publish notice that it intends to make a new Environmental Health By-law:
 - a) In the Mercury Newspaper.
 - b) By displaying the notice on the notice board at the municipal offices from the day when the newspaper advertisement is first published until the end of the submission period which is specified in the notice.
 - c) On its Website.
 - d) On its Facebook page.

The notice will state the following:

2. The purposes and general effect of the By-law:
 - (a) That a copy of the By-law and of the Regulatory Impact Statement may be inspected at the Council Chambers until the specified day or downloaded from www.sorell.tas.gov.au.
 - (b) That a copy of the By-law and Regulatory Impact Statement may be obtained from the municipal offices until the specified day.
 - (c) That submissions in respect of the By-law may be made in writing, addressed to and lodged with the General Manager, stating the grounds of the submission and the facts relied upon to support those grounds.
 - (d) That a submission must be lodged before the specified day.
3. The specified day will be no earlier than 21 days after the publication of the notice in the Mercury Newspaper.
4. The General Manager will make copies of the proposed By-law and the Regulatory Impact Statement will be available on the website for inspection and/or purchase by the public until the day specified in the notice.
5. Council will consider all submissions made concerning the By-law and, if it decides to make any amendments as a result of any of these submissions; it will do so by absolute

majority. Council does not need to give further public notice unless an amendment substantially changes the purpose or effect of the proposed by-law.

6. Council will then pass, by an absolute majority, a resolution to formally make the by-law.
7. The By-law will then be submitted to a legal practitioner for certification, and signed by the General Manager.
8. Council will then cause the By-law to be gazetted within 21 days of being made.
9. Council will also submit the By-law to the Subordinate Legislation Committee within 7 working days of gazettal, and to both Houses of Parliament within 10 sitting days of gazettal.
10. Finally, Council will send to the Director of Local Government a signed, sealed and certified original, together with a statement of purpose and effect and the outcome of public consultation.

Key stakeholders consulted:

- Southern Tasmanian Urban Beekeepers Association.
- Southern Tasmanian Bantam Club
- Department of Natural Resources - Policy
- Tasmanian Parks and Wildlife Service
- Tasmanian Fire Service

11. COMMENTS ON THE BY-LAW

Submissions about the by-law and Regulatory Impact Statement may be made in writing, addressed to and lodged with the General Manager, stating the reasons for the submission and the facts relied upon to support those reasons.

The submission must be received before the day specified in the advertisement which is no earlier than 21 days after the publication of the advert in the Mercury newspaper.

Council will consider all submissions that have been made to it concerning the By-law and the Regulatory Impact Statement and if it decides to amend the By-law as a result of any of these submissions it will do so by absolute majority. The Council does not need to give further public notice unless an amendment substantially changes the purpose or effect of the proposed by-law.

If you make a submission you will be notified of Council's decision in writing.

If you have any questions about the By-law please contact Council's Manager of Health and Compliance, Greg Robertson on ☎ (03) 62690041 or email greg.robertson@sorell.tas.gov.au. Copies of the By-law are available on our website www.sorell.tas.gov.au or from the Municipal Offices.