



*"A Natural Escape"*

## **Tasman Council**

### **Regulatory Impact Statement**

#### ***Regulatory Services Bylaw***

**Bylaw No. 1/2016**

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## **BACKGROUND**

The Bylaw has been developed as Council does not currently have a Bylaw that relates to the use of public places or environmental health matters. The proposed Regulatory Services Bylaw regulates the use of public places, refuse disposal, keeping of animals, caravans, and will improve the management of environmental health activities.

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

The Bylaw will apply to the whole of the Tasman Municipal area but will affect residents, ratepayers and visitors differently. The provisions relating to caravans are only applicable to those residents or ratepayers who occupy caravans or store them on vacant land.

The public places component relates to residents, ratepayers and visitors to the municipal area. Backyard burning controls apply to residents who burn anything in the open environment.

### **1. REASONS WHY THE BYLAW IS REQUIRED**

With regard to the specific areas that the Bylaw regulates, the following information outlines the reasons why the Bylaw is needed.

#### ***Waste Management***

Council engages a waste management contractor to manage a waste transfer station on behalf of Council. The Bylaw specifies items that cannot be deposited at the waste transfer station. The proposed controls will reduce safety hazards for residents and waste management contractors and reduce pollution and contamination.

Existing state legislation that regulates Waste Management such as the *Environmental Management & Pollution Control Act 1994* and associated *Waste Management Regulations 2010* do not contain the specific detail that is required to operate a waste transfer station.

#### ***Regulation of Public Reserves***

Regular complaints are received about the misuse of public reserves. The most common complaints are self-contained campervans and caravans parking in foreshore reserves, resulting in litter and faecal materials being deposited in the area. In addition, numerous

complaints have been received regarding people lighting fires, driving vehicles and creating accesses onto foreshore reserves as well as people removing vegetation from public reserves.

The lack of a Bylaw limits the ability for Authorised Officers to issue notices or directions on what measures are necessary to prevent people and vehicles causing a nuisance.

### ***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 from an accumulation of waste food and faecal materials from domestic animals.

The lack of a Bylaw limits the ability for Authorised Officers to issue notices or directions on what measures are necessary to prevent an animal creating a nuisance. In situations where ongoing problems exist, specific direction to abate a nuisance such as locating poultry in an enclosure may resolve the problem without the need for infringement notices to be issued.

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***

Approximately 10 years ago Council began charging a caravan licence fee in accordance with the Local Government Act 1993 for caravans occupied for more than 30 days per year and has continued regulating caravans since through a Council policy.

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 previous Policy controlling caravans has been used to ensure that appropriate facilities are provided within the caravan 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 or are modified by way of certain extensions, the Bylaw can be used to address situations where the van becomes unsightly.

## ***Controlling Burning***

The *Distributed Atmospheric Emissions Regulations 1997* 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 Bylaw that regulates backyard burning.

The Regulations provided 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 and risk to surrounding residents.

## **2. OBJECTIVES OF THE BYLAW**

**The objectives of the Bylaw are:**

1. To establish controls on the use of waste management facilities and disposal of waste.
2. To establish controls on the use of public reserves with regard to the carrying out of a business and social and environmental impacts that occur from misuse or incompatible use.
3. Establish standards for the keeping of animals to minimise nuisances (to neighbours).
4. Set minimum standards with respect to health, safety and amenity for caravans and mobile homes (kept on properties throughout the municipal area).
5. Provide controls that allow 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 and recycling can be left at a waste transfer station.
- Prohibit lighting of fires at a waste transfer station.
- Specify the type of waste that can be accepted at a waste transfer station.

### ***Objective 2 – Public Reserves***

- Outline where and when self-contained campervans and caravans may park.
- Prohibit the creation of accesses onto public reserves.
- Conditions may be placed on a permit for the hire of a public reserve.

- Specify activities on a public reserve that are prohibited or those that can be carried out subject to the issue of a Permit.
- Allow Authorised Officers to issue notices for misuse of public reserves.

### ***Objective 3 – 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.

### ***Objective 4 – Caravans***

- Require that caravans within the municipal area are licenced, other than caravans that are:
  - Stored at a residence and not used for residential purposes at that residence;
  - At a caravan park or overnight recreational vehicle parking area;
  - Caravans used 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 for licences to be cancelled if conditions are not complied with.
- The General Manager may refuse to issue a licence for a caravan if the caravan would adversely affect the amenity of the neighbourhood or if inadequate sanitary or washing facilities are provided.

### ***Objective 5 – 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 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.
- This part does not apply to fire hazard reduction burning.

#### 4 RESTRICTIONS ON COMPETITION

The provisions that relate to waste management, caravans, animals and burning do not restrict competition or the conduct of business. Waste management controls relate to appropriate use of existing waste services and how to use the waste transfer station. 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 (Distributed Atmospheric Emissions) Regulations 2007* currently regulate the burning of waste, the impact on business has therefore already been considered. The Bylaw only provides additional powers for Authorised Officers to deal with complaints by issuing directions to extinguish a fire.

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 Bylaw 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 *Tasman Interim Planning Scheme 2015*.

The provisions that relate to the carrying out of a business on public reserves are not considered to restrict competition or the conduct of business as these areas are intended for the enjoyment and recreation of the public without hindrance of nuisance or commercial exploitation. There is also commercially zoned privately owned land parcels that are more appropriately utilised for business activities.

## 5. ASSESSMENT OF COSTS VERSUS BENEFITS

Issue	Costs	Benefits
Use of caravans and motor homes outside designated caravan parks on public reserves.	<ul style="list-style-type: none"> <li>The Bylaw does not require caravans or motorhomes to be issued a permit if they are parked in designated public areas for no more than one (1) night. By allowing caravans to park in these areas rather than utilising existing licensed caravan parks may have a financial impact on privately operated caravan parks.</li> </ul>	<ul style="list-style-type: none"> <li>If the Bylaw didn't exist caravans could park anywhere in the municipal area without time restrictions and would not be regulated at all which would have a greater financial impact on privately owned caravan parks.</li> </ul>
Carrying out a business.	<ul style="list-style-type: none"> <li>Should a permit not be issued then a restriction on competition may occur.</li> </ul>	<ul style="list-style-type: none"> <li>The establishment of public reserves is not fundamentally geared to cater for the operation of businesses. Therefore, the intended use of public reserves for passive and active recreation appropriately takes precedence.</li> </ul>

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

		Direct	Indirect
Economic	Benefits	Carrying out a Business <ul style="list-style-type: none"> <li>Increased financial viability of existing commercially zoned privately owned land.</li> </ul> Activities <ul style="list-style-type: none"> <li>Reduced Council expenditure on damaged equipment and land.</li> </ul>	<ul style="list-style-type: none"> <li>More sustainable use of commercially zoned precincts in municipal area.</li> </ul>

	Costs	<p>Carrying out a business</p> <ul style="list-style-type: none"> <li>Increased potential for restriction of business activities.</li> </ul>	
Environmental	Benefits	<p>Fires &amp; Animals</p> <ul style="list-style-type: none"> <li>Reduced pollution from burning of waste and noise from animals.</li> <li>Better air and water quality.</li> <li>Improved health outcomes for residents impacted from waste burning.</li> </ul> <p>Camping</p> <ul style="list-style-type: none"> <li>Reduced incidence and impact of deposition of human waste and litter.</li> <li>Reduced impacts of vehicles in sensitive areas.</li> <li>Reduced pollution from fires.</li> </ul> <p>Wood/Timber</p> <ul style="list-style-type: none"> <li>Reduced impact on sensitive ecosystems and landscape qualities of public reserves.</li> </ul> <p>Vehicles</p> <ul style="list-style-type: none"> <li>Reduced impact on sensitive ecosystems and landscape qualities of public reserves.</li> </ul>	<ul style="list-style-type: none"> <li>Fewer odour / noise complaints.</li> <li>Fewer public amenity complaints.</li> <li>Fewer incompatible use complaints.</li> <li>Better air and water quality.</li> <li>Fewer public amenity complaints.</li> <li>Fewer public amenity complaints.</li> </ul>
	Costs	<p>Waste Management</p> <ul style="list-style-type: none"> <li>High cost associated with clean-up of solid and liquid waste dumped at waste transfer station.</li> </ul>	<ul style="list-style-type: none"> <li>Increased rates for waste management services resulting from increased operational costs.</li> </ul>

		<b>Direct</b>	<b>Indirect</b>
Social	Benefits	<p><b>Fires &amp; Animals</b></p> <ul style="list-style-type: none"> <li>• Reduced noise and odour from animals.</li> <li>• Less smoke pollution.</li> </ul> <p><b>Caravans</b></p> <ul style="list-style-type: none"> <li>• Improved visual amenity when caravans are well maintained and have adequate facilities on private property.</li> </ul> <p><b>Camping</b></p> <ul style="list-style-type: none"> <li>• Improved visual amenity of public places.</li> </ul> <p><b>Carrying Out A Business</b></p> <ul style="list-style-type: none"> <li>• Protects public space available for enjoyment without hindrance or nuisance or commercial exploitation.</li> </ul> <p><b>Activities</b></p> <ul style="list-style-type: none"> <li>• Protection of public amenity and safety for users.</li> </ul> <p><b>Vehicles</b></p> <ul style="list-style-type: none"> <li>• Protection of public amenity and safety for users.</li> </ul>	<ul style="list-style-type: none"> <li>• Fewer odour / noise complaints.</li> </ul> <ul style="list-style-type: none"> <li>• Allowing people to reside in caravans caters for those members of the community that may not be able to afford a dwelling.</li> <li>• Caters for a market niche for those people who wish to occupy a caravan for holidays rather than buying a house.</li> </ul> <ul style="list-style-type: none"> <li>• Fewer odour / noise complaints.</li> </ul> <ul style="list-style-type: none"> <li>• Fewer odour / noise complaints.</li> </ul>

## **7. SIMILAR LOCAL GOVERNMENT BYLAWS**

Below is a list of all Council Bylaws in Tasmania that regulate similar activities to the proposed Tasman Council Regulatory Services Bylaw:

- *Brighton Council – Environmental Health 2004*
- *Burnie City Council - Refuse Collection and Waste Management 2007*
- *Clarence City Council – Refuse Storage Collection and Disposal 2003*
- *Derwent Valley Council – Waste Management 2004*
- *Glamorgan Spring Bay Council – Environmental Health Bylaw 2008*
- *Glenorchy City Council – Environmental & Health Services 2011*
- *Hobart City Council – Health & Environmental Services 2008*
- *Huon Valley Council – Caravans 2005*
- *Kingborough Council – Health & Environmental Services 2011*
- *Latrobe Council – Waste Management 2006*

## **8. DISCUSSION OF ALTERNATIVES**

The proposed Regulatory Services Bylaw will regulate refuse disposal, keeping of animals, caravans, and will improve the management of Council reserves.

The purpose of this Bylaw is to provide appropriate regulation of caravans, waste management, animal keeping, backyard burning and activities carried out on public reserves so acceptable levels of health, amenity and environmental quality are maintained in the Tasman Municipal Area. Other alternatives have been considered to creating the Bylaw, 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.

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 2010* provide controls on waste disposal and the *Litter Act 2007* regulates waste dumping.

The *Environmental Management & Pollution Control Act 1994* and *Environmental Management & Pollution Control (Distributed Atmospheric Emission) Regulations 2007* both

contain provisions for dealing with 'environmental nuisances' from fires. The Bylaw allows Authorised Officers the power to extinguish fires if they are being burnt contrary to the regulations. The Bylaw is more specific than the general powers of Authorised Officers under the Act.

## **9. ASSESSMENT OF PUBLIC BENEFIT**

The public benefit test assesses whether the benefits outweigh the costs and determines whether a Bylaw is the most effective option for achieving the objectives.

Residents, visitors and businesses in the Tasman Municipal area will benefit from the implementation of this Bylaw, as the Bylaw 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 to the public. Further, that the appropriate control of activities on public reserves can be established that afford a reasonable protection of access, amenity and safety to the public.

Without these controls it is highly likely that there would be an increase in nuisance complaints from residents nearby to these properties and from those utilising Council's public reserves. The Bylaw provides a head of power that prevents these types of nuisances arising and when they occur provides the tools to resolve issues.

Regulation is considered the only feasible option to achieve the Bylaw's objectives and the Bylaw 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 Regulatory Services Bylaw:
  - 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 Bylaw:
  - i. That a copy of the Bylaw and of the Regulatory Impact Statement may be inspected at the Council Chambers until the specified day or downloaded from [www.tasman.tas.gov.au](http://www.tasman.tas.gov.au).
  - ii. That a copy of the Bylaw and Regulatory Impact Statement may be obtained from the municipal offices until the specified day.
  - iii. That submissions in respect of the Bylaw 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.
  - iv. 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 Bylaw 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 Bylaw 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 Bylaw.
6. Council will then pass, by an absolute majority, a resolution to formally make the Bylaw.
7. The Bylaw will then be submitted to a legal practitioner for certification, and signed by the General Manager.
8. Council will then cause the Bylaw to be gazetted within 21 days of being made.
9. Council will also submit the Bylaw 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 to be consulted:**

- Property owners that currently have caravan licences.
- Residents of Tasman Municipal area.

- Relevant Government Agencies.
- Animal owners.

## **11. COMMENTS ON THE BYLAW**

Submissions about the Bylaw 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 Bylaw and the Regulatory Impact Statement and if it decides to amend the Bylaw 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 Bylaw.

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