

## Comments / Submission from Clarence City Council

# Road Management Legislation Review – Discussion Paper (DSG, September 2023)

Pg	Discussion Paper Prompts	Clarence City Council Response
5	<p>Do you agree with the draft principles? If not, why?</p> <p>Draft principles:</p> <ol style="list-style-type: none"> <li>1. <b>Is more efficient</b> – streamlined processes, reduced bureaucracy, and optimised resource allocation, resulting in more cost-effective and time-efficient framework.</li> <li>2. <b>Promotes better outcomes</b> – improvements to the framework should ensure it is moder, fit for purpose, and consistent with contemporary road management practices. They should focus on improving road-user satisfaction and safety by focusing on outcomes.</li> <li>3. <b>Is easier to understand</b> – a focus on clarity and simplicity by reducing convoluted processes and complex language.</li> </ol>	<p>Clarence City Council agree with the three draft principles.</p> <ul style="list-style-type: none"> <li>• It is important that roles and responsibilities are clearly set out and documented as part of the Roads Management Legislation Review (RMLR).</li> <li>• It will also be important that as part of the RMLR there is a regulatory impact statement prepared and used in future consultation on these changes.</li> <li>• Clarence City Council is concerned about potential cost shifting from State to local government and the resultant financial burden on our community if there is no appropriate compensation considered.</li> <li>• Also, there is concern regarding shifting of responsibility that could result in the need for increased resourcing and capability within council’s workforce to manage these reallocated obligations – especially with a workforce already stretched to deliver on council’s existing requirements.</li> </ul>
7	<p>Do you support moving to a single consolidated road management act? If not, why and what option would you prefer?</p>	<p>Clarence City Council support a single consolidated Act, with clear definition of which roads are managed by which authority and transfer of responsibilities is by agreement. There are many synergies between the R&amp;J Act and the LGH Act and it would make sense to align these in one Act if possible (noting the complexity of achieving this).</p>
8	<p><b>Statutory Framework - Regulations removing detail</b></p>	<p>Clarence City Council agree there are benefits to moving detail from the Acts to regulations and to improve the legislation in meeting contemporary expectations. However, as a key stakeholder in road management, local government should have the opportunity to provide meaningful input to any regulations, more than just communication on changes. There needs to be a rigorous process for amendment of regulations and the impacts well understood and communicated.</p>

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8	<b>Statutory Framework -Other Categories of Road (private or quasi-public roads)</b>	Clarence City Council agree the Act should be drafted (if possible) to consider other road owners that could chose to adopt the new RML in the management of their roads.
9	<b>Common law highways (“right of user roads”)</b>	Clarity in how this works is supported by the Clarence City Council, noting that common law highways are not found often and are now rarely used.
9	<b>Proclaimed roads</b> Do you agree that the proclamation process should be simplified? What would be a better process> Consider: <ul style="list-style-type: none"> <li>- Who should be the responsible authority?</li> <li>- How to make location and boundaries clear and legally certain</li> <li>- How the creation of a road is documented and searchable</li> </ul>	Clarence City Council understand the process for road proclamation is a State government responsibility (and should remain a State responsibility) but agree a simplified process would be beneficial. However, any changes in the process for proclamation need to retain fairness and transparency in the process.  Mapping of declared roads could be useful but can only be a digital representation of the boundaries as determined by a Registered Land Surveyor.
10	<b>Subdivisions</b> How could the way subdivisions are dealt with in the framework be improved? Consider how changes might: <ul style="list-style-type: none"> <li>- reduce financial impost for councils</li> <li>- incentivise better design</li> <li>- maintain or improve the supply of land</li> </ul>	Clarence City Council does not consider the supply of land to be a road management issue. Currently the RML requires standards to be established by the relevant authority and council’s have relied on the Tasmanian Standard Drawings and Local By-laws to set the consistent design requirements across the State.
12	<b>Defining the road manager</b> Would the Victorian model work in Tasmania? Do you have any concerns with how it operates?	Clarence City Council supports the simplification and clarification of the definition of road manager.  There are complexities under the current legislation when State government is the road owner but the maintenance responsibility for some aspects is delegated to other authorities (like footpaths in urban areas being managed by local council). Currently issues happen when this is not clearly defined (i.e. who’s responsible for the retaining wall or who’s mowing which median or verge).

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		Ideally the new legislation will include clear definition and documentation of this delegation (ideally with some spatial / mapping – included in RIMS / Council GIS / The List).
12	<b>Permanently closing a road</b>	<p>Clarence City Council agrees the RMLR should consider the process for permanent closure of a roads but also better define what is meant by closing a road. In particular, the definition of traffic or road user would assist (i.e. traffic does include people walking, cycling, scooting and not just motorised vehicles).</p> <p>Two examples: is making a road one way closing a road to vehicular traffic in one direction? Would the creation of a pedestrian or bus mall be considered a road closure since the space is still being used by some road users?</p>
	<b>Construction of Unmade Streets</b>	Clarence City Council has a number of private roads and unmade roads that may require upgrading in future. It is beneficial to the community for retained powers within the RML for the road owner to enter into a frontager scheme (as per Part V of LGH) to seek a contribution for adjacent properties towards the making of an unmade street.
13	<p><b>Management and Maintenance – Ambiguity</b></p> <p>Can you think of an example of a time when:</p> <ul style="list-style-type: none"> <li>- it was unclear or ambiguous which authority (local government or the State government) was responsible for a road management function?</li> <li>- It was clear who was responsible for a road management function, but it seemed inefficient or not sensible?</li> </ul> <p>Examples of road management functions include maintaining a footpath, culvert, drainage, road surface or retaining wall.</p> <p>Do you think a single statute would help resolve ambiguity?</p>	<p>Clarence City Council supports the development of RML that clarifies and defines the roles and responsibilities for road management and maintenance functions.</p> <p>Examples include:</p> <ul style="list-style-type: none"> <li>- Arbitrary distances from a highway centreline where vegetation maintenance is split between the State and local government, where there would be efficiencies if the work was completed by one entity (not two).</li> <li>- Drainage maintenance along the Tasman Highway, where the highway was built along the alignment of the Kangaroo Bay Rivulet and many private properties continue to drain to what was the rivulet. Lack of maintenance of the highway drains has contributed to flooding in areas of Warrane and Mornington.</li> <li>- Flooding issues on private property resulting from under-capacity and/or poorly maintained stormwater infrastructure servicing the East Derwent Highway in Lindisfarne and Rose Bay.</li> </ul>

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		<ul style="list-style-type: none"> <li>- Ambiguity (or disagreement) regarding the responsibility for linemarking, signage, bus stops, traffic signals, etc.</li> </ul> <p>There is also a lack of fairness in the formal process of designing and handing over new road assets, especially from State government to local government. The clear documentation of responsibilities including all asset management documentation around ongoing operating costs and remaining asset life, etc. Establishing a clear date and time of handover is also lacking in the current process.</p>
14	<p><b>Management and Maintenance –Bridges on Local Roads</b></p> <p>The Tasmanian Government is interested in hearing views on how a new framework should deal with bridges on local roads. Any changes to the current approach should be fair, efficient and ensure safe outcomes.</p>	<p>The management and maintenance of bridges on local roads needs to be clearly defined and perhaps having a “coordinating road authority” might help with this. It will continue to be important for both local government and State government to recognise each other as key stakeholders when doing works that might impact a bridge.</p>
15	<p><b>Management and Maintenance - Statutory Duties – Liability</b></p> <p>Should there be an explicit statutory duty for road managers to inspect, maintain and repair?</p> <p>If so, should there also be a framework for establishing the standard to which a road manager will maintain a road, taking into consideration its strategic importance?</p>	<p>Any proposed changes in this area need to be carefully considered. Currently Tasmania, has the benefit that the relevant Acts are not prescriptive in relation to the requirements for inspection, maintenance and repair of roads, therefore while council has a proactive regime for the inspection and maintenance of roads, council is able to act within the reasonable scope of their funding and officer resourcing and in accordance with the requirements of the Civil Liability Act. To change this and impose a statutory duty on councils could have significant impact on all Councils, their civil liabilities, budgets and their ability to be able to maintain these reports across the vast network of roads within any given municipality.</p> <p>Clarence City Council agree with the inclusion of better definitions in the legislation to assist with interpretation.</p>
16	<p><b>Statutory Duties -Service authorities</b></p> <p>How could the model for service authorities working in road corridors be improved?</p>	<p>Clarence City Council support changes that would improve the way road managers and service authorities work together. Clarence is supportive of the Victorian model which includes a reference panel. As a minimum council service authorities should be required to seek consent from the road owner / manager prior to undertaking work within a road.</p>

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	<p><i>Consider the need to balance the competing needs of road managers and service authorities, and for the efficient installation and maintenance of all infrastructure in the corridor.</i></p>	<p>It is noted that the discussion paper highlights “<i>complicated or burdensome regulations for utilities can significantly increase the cost and time for them to deliver services</i>”. From a road manager perspective it is difficult to understand why service providers have a higher need to bypass regulation. This streamlining has often resulted in transfer of costs to the road owner – either in poor reinstatement, poor location of infrastructure, sterilisation of space within the road corridor or taking the “<i>path of least resistance</i>” due to cost but making works more costly for the next person (which is often the road owner).</p> <p>It is recognised there is no central management for planning works in roads and there may be some value in considering this as part of the spatial systems and mapping area of the review.</p> <p>Defining a service authority or utility model would also be useful. For example, many of the current issues with public transport infrastructure would be made clearer if public transport (and associated infrastructure such as bus stops, bus routes, etc) is considered as a utility delivered by a service authority.</p> <p>There may also need to be some clarity around whether stormwater is considered a utility (which would make council both the service authority and the road owner).</p>
17	<p><b>Footpaths and other infrastructure</b></p> <p>What is the best way to fairly apportion responsibility between road authorities for State roads running through urban areas?</p> <p>Are there any examples where the current framework has had poor outcomes?</p>	<p>Clarence City Council consider good definition and clear allocation of roles and responsibilities in relation to footpaths and other infrastructure is critical to the success of any new or revised legislation.</p> <p>Examples where the current framework has resulted in poor outcomes include:</p> <ul style="list-style-type: none"> <li>- On Rokeby Road between Oceana Drive and Glebe Hill Road, cycling infrastructure was created as part of the Rokeby Road upgrade and the new shared path duplicated an existing council pathway. Council is now responsible for maintaining two parallel paths. As part of this same upgrade project there was no clear definition of who maintains which areas of the grass verges.</li> <li>- No formal handover of assets or maintenance responsibilities when new local roads are constructed (for example, Cranston Parade as part of the Tasman Highway Airport Interchange Upgrade or Dumbarton Drive /</li> </ul>

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		<p>Debomfords Lane as part of the East Derwent Highway Duplication at Geilston Bay). Similarly, advice to council when new highways reach final completion and maintenance responsibilities switch from the construction contractor to council.</p> <ul style="list-style-type: none"> <li>- South Arm Road upgrade by DSG some years ago. DSG upgraded certain width of sealed road and requested Clarence City Council upgrade the remaining width. Council had no budget allocation for road upgrade and so only the DSG width was completed. However, generally a poor outcome for the overall road.</li> </ul>
17	<b>Ownership of Retaining Walls</b>	<p>Queries and disputes around retaining walls (is it public or private, is it state or local etc) is an issue that needs to be clarified within the RMLR. Legislation needs a clear definition of retaining walls, their ownership and the maintenance responsibilities.</p>
18	<b>Statutory Duties – Drainage</b>	<p>Clarence City Council agree with the statement in the review document around clarifying responsibility for drainage and related assets.</p> <p>As discussed above, there is the split requirement to drain a road versus providing reticulate stormwater connections for private developments (which generally rely on the road drainage – with upgraded capacity to cater for the higher demands).</p> <p>There needs to be a continued provision for road owners / managers to drain onto lower lying land. However, this needs to be made clearer than the current provisions provided for under the LGH Act.</p>
18	<b>Driveways</b>	<p>Clarence City Council consider this area could also benefit from clearer definition.</p> <p>Local by-laws often define the allocation of responsibilities for various components of a driveway (i.e. the footpath, the kerb &amp; channel etc, the driveway through the naturestrip etc) between the property owner and the road owner. It would be beneficial to standardise this across all jurisdictions.</p>

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		<p>Providing for a head of power to require a property owner be responsible for the removal of redundant driveways. This is often conditioned as part of a planning permit but there is no clear head of power to support these requirements.</p>
19	<p><b>Temporary road closures</b></p> <p>How could the temporary road closure process be optimised to balance flexibility for road authorities with other needs? Consider:</p> <ul style="list-style-type: none"> <li>• The needs of property owners and tenants</li> <li>• Access for emergency services</li> <li>• Operation of the public transport network</li> <li>• Differing community needs</li> <li>• Methods for communicating closures</li> </ul>	<p>There are a number of prescriptive requirements around road closures that make the process cumbersome, confusing and expensive.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>- road closures for an event or works on an adjacent property under Section 19 of the LGH Act requires consultation with the Commissioner of Police.</li> <li>- road closures for a market under Section 20 of the LGH Act requires consultation with the Commissioner of Police and the Transport Commission.</li> <li>- road closures for road works under Section 25 of the LGH Act requires reference to instructions of the Transport Commission).</li> <li>- road closures for other events (such as parades and marches) are issued by Tasmania Police under the Vehicle and Traffic Act but require a letter of support from the road manager before issuing a permit.</li> </ul> <p>Road closures are currently effected by an order published in a local newspaper. This is becoming more difficult and more costly and with the decreasing circulation of newspapers and the increase in reliance on social media and on-line information, a more contemporary means of notification of road closures should be considered by the RMLR.</p> <p>The RMLR should shift the notification of temporary road closures from a prescriptive requirement to a requirement of providing appropriate notification to impacted stakeholders (e.g. road closures published on council's website, the use of variable message boards, letters issued to impacted properties, notice circulated to interested parties (such as public transport providers and emergency services, etc).</p>
20	<p><b>Statutory Duties – Trees, hedges, and other obstructions</b></p>	<p>Making the RML clear around overhanging vegetation, clearance etc will be important especially with the growing desire to increase canopy cover in cities</p>

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		<p>(both on public land like roads as well as on private property), usually in response to urban heat island and urban forest strategies.</p> <p>It would also be good to see consistent definitions between the RML, the Tasmanian Planning Scheme and the State Planning Provisions around plantation forestry, native vegetation, etc.</p>
21	Ancillary areas	<p>Clarence City Council agrees that ancillary areas should be considered in the RMLR.</p> <p>The definition of ancillary areas may have implications under the <i>Land Use Planning and Approvals Act</i> (LUPA). For example, use classes such as tourist operation, transport depot and distribution and utilities may still need Section 52 approval under LUPA.</p>
21	Land use planning	<p>Clarence City Council supports the RMLR considering its interaction with LUPA. In particular, ensuring the RMLR is not contrary to the objectives of LUPA, particularly when certain works in the road are considered exempt or are not considered to be development under LUPA.</p>
	Dispute resolution	<p>Clarence City Council understands the Victorian model includes a process for dispute resolution and would support this being included in the Tasmanian RMLR.</p>
	Items currently covered by By-Laws	<p>Commonalities in council by-laws could be pulled into the new / revised Act rather than councils individually covering holes in legislation in their By-Laws.</p>
23	<b>Related Issues – Traffic Control including signs and line marking</b>	<p>Similar to the considerations around footpaths and other infrastructure (above) Clarence City Council consider good definition and clear allocation of roles and responsibilities in relation to traffic control devices such as signs, linemarking and traffic signals is critical to the success of any new or revised legislation.</p> <p>The RMLR should consider incorporating the Transport Commission Directions into the review (either as legislation or forming the basis of regulations) so as to provide clarity, especially for anyone applying the legislation outside local government (i.e. consultants, contractors, etc).</p> <p>The RMLR needs to consider how to manage “high risk / silver bullet” traffic management devices (such as zebra crossings, stop signs, etc). The use of these treatments should be applied consistently across the state to ensure their ongoing</p>



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		<p>effectiveness and may be better pulled back under the Transport Commissioner for approval like speed limits, traffic signals etc. Misuse of these traffic management treatments can lead to poor compliance and risk of injury/death/cost to road users.</p> <p>Clearly defining the responsibility for signage and linemarking is important. Due to ambiguity around the responsible authority, there has been decades of under-investment in linemarking maintenance on local roads. The linemarking is in very poor condition and significant funding will be required to bring this up to an acceptable standard.</p> <p>Definition of traffic signals (and the roles and responsibilities) needs to be strengthened. Who is responsible for the poles and lanterns, the operating system, the signage and the linemarking? Although this may be a traffic management matter, defining who is responsible for decisions around signal operations and the prioritisation of different transport modes depending on the place (for example a CBD location may prioritise pedestrians where a highway location might prioritise traffic throughput). There is a need for signal operating plans to be agreed for all traffic signal sites on local roads.</p>
23	<p><b>Related Issues – Public transport infrastructure</b></p> <ul style="list-style-type: none"> <li>• What examples of models are there in other states for delivery and maintenance of bus stops that may work in Tasmania?</li> <li>• What are councils' key concerns in relation to taking responsibility for the upgrade and maintenance of bus stops on local roads and ownership of the asset?</li> </ul>	<p>Clarence City Council understands that under current legislation local government is not a public transport provider for the purpose of the Disability Discrimination Act. Councils do not make decisions around public transport routes, service frequency or bus stop locations and are not responsible for the provision and maintenance of bus stop infrastructure (including shelters and signage).</p> <p>One option may be to consider a public transport service like any other service authority that provides a service within a road corridor not owned or managed by the service authority. For example, a power distribution network within a road corridor includes regular substation infrastructure but the road owner is not responsible for providing those substations or upgrading them to meet relevant standards. In a similar way, bus stops are required to support the public transport network and those bus stops should be the responsibility of the public transport provider.</p>

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		<p>Clarence City Council has the highest number of bus stops of any municipality in Tasmania. There will be a very significant cost implication if the upgrade and maintenance of bus stops on local roads (including ownership of the asset) is to become a local government responsibility, particularly given the lack of maintenance and upgrade by the public transport provider over more than 20 years. There are a number of locations within the existing public transport network where bus stops are not physically able to be upgraded to fully comply with the requirements of the DDA due to topography. Decisions on bus routes would presumably remain with the public transport provider and councils could invest in bus stop infrastructure that could be made redundant if a bus route is modified or bus stops are removed from a service.</p> <p>In response to the All Weather All Access Bus Stop Grant program being offered by the Department of State Growth, the Clarence City Council is continuing to work with other Greater Hobart Councils to develop a discussion paper on this topic.</p>
24	<p><b>Related Issues – Cost recovery</b></p> <p>Would a licensing model be an appropriate mechanism for cost recovery from road users with special requirements? Is there an alternative model that might work better?</p>	<p>A cost recovery mechanism is appropriate to consider as part of the RMLR. However, it would be useful for the RMLR to consider how cost recovery and licensing would interact with the <i>Heavy Vehicle National Law</i> (HVNL) administered by the National Heavy Vehicle Regulator (NHVR). Clarence City Council would suggest avoiding the duplication of the existing permit and licencing arrangements established through the NHVR.</p>
25	<p><b>Related Issues – Spatial Systems</b></p>	<p>Clarence City Council support the RMLR to consider opportunities to include spatial systems within the framework. A shared spatial system would be helpful as a “single source of truth” around ownership and maintenance responsibilities, especially if it includes details of “delegations” and is updated in response to road handover (e.g. from a developer to the council, from a contractor to the State government, from one road owner to another road owner, etc).</p> <p>The RMLR needs to consider how spatial data will be managed with the emerging technology around digital twins, building information modelling (BIM), augmented reality (AR) and virtual reality (VR) and the changing the way we work and manage data and spatial information. The legislation needs to be robust enough to allow for</p>

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		changes to how we'll work into the future once these technologies are more widely adopted.
25	<b>Related Issues – Special and Emerging Transport Modes.</b> Future Proofing: Electric vehicle charging and other emerging issues	Clarence City Council agrees the RMLR should consider emerging technologies.