



Road Management Legislation Review

Discussion Paper – Council Submission

Due: 6 November 2023

Devonport City Council appreciates the opportunity to be involved and provide feedback on the discussion paper. This submission works through the key discussion sections contained within the paper.

Consolidation of all the Acts into one Act

Council supports the idea of combining all current legislation into a single Act to address Tasmanian road management, consistent with the Victorian framework. This makes sense and would improve the clarity of Council roles, responsibilities and delegations, which are currently spread across two Acts.

Regulations and removing detail

If both the R&J Act and LGH Act were combined into a single Act, it would make sense to move some of the detail to a set of Regulations. Council supports this and agrees. Review work is also underway on the Municipal Standards and Development Guidelines, which could be better defined within the Act similar to Codes of Practice within the Victorian Act?

There are a set of Victorian Regulations in place to address exemptions, consents and fees, which would be beneficial to improving clarity and consistency across the State.

Governance and responsible authorities

Council supports this review under a proposed combined framework. There needs to be better definition on roles and responsibilities for road management, especially where there is a State Road extending through an urban area and what associated assets are supporting the function of the carriageway (such as traffic control facilities, retaining walls, etc..).

Other categories of road (private or quasi-public roads)

Council supports increasing the scope to include other categories of road. There are instances where ratepayers and property frontages have only access to Forestry, Parks & Wildlife or Hydro roads and providing the same responsibilities consistently to all public roads would be clearer and beneficial. There have been interpretations and disagreements over the years about responsibilities on these minor roads, especially where there are residential properties paying rates to Council, although the predominate road use is Forestry or P&W or Hydro. There needs to be more clarity around the criteria for determining the responsible road authority on these minor roads.

Common law highways ('right of user roads')

There are a number of highways that encroach over private land or other authority land, such as small parcels of Crown land not designated road reserve. These roads were constructed many decades ago and are recognized as public roadway with adjacent boundary fencing well established at reasonable offsets to allow sufficient functional width. There should be a mechanism within the new Act to rectify these legacy issues that for a range of reasons have ended up operating under the 'right of user roads' protection.

Council would support creating a sensible statutory process for transitioning common law highways to an appropriate statute-based instrument.

Proclaimed roads

Tasmania should follow other States (VIC and NSW) with this process. A well-designed simplified process with clear understanding of the responsible authority.

Subdivisions

Generally sections 10, 11 and 12 cover requirements for landowners and subdividers. If there is opportunity to simplify the requirements, without losing control of the process, and reduce the financial impost for Council it would be supported. The mechanism to issue infringements to entities or individuals acting on behalf of the Landowner could be improved? In many cases Council Officers are dealing with Construction Contractors, Consulting Engineers or Planning Consultants who are professionals with responsibilities for carrying out works on Public assets, although enforcement is all channeled to the Landowner.

Include requirements for construction to be in accordance with State Local Government Standards, Specifications and Guidelines.

There should be stronger requirements for urban environmentally sensitive development, these outcomes generally come at a considerable additional cost to developers and are often excluded to maximise profits. The public are increasingly wanting new developments to be more considerate of the environment with appealing amenity. With Climate Change impacts being realised, there should be some consideration to enforcing sustainable and environmentally beneficial developments.

Defining the road manager

The Victorian model appears to be clear and simple to apply. This format would be an improvement on the criteria contained in the R&J Act.

Ambiguity and appropriateness

A recent situation involved the signage located on a pedestrian refuge island on a State Road, whereby the R&J Act states that:

11. Maintenance of State highways, &c., in cities, &c.

(1) Subject to subsection (2), where in a city, town or village there is a footpath on one side or both of a State highway or subsidiary road –

(a) the Minister is required to maintain and reconstruct –

(i) the carriageways and the surface lying between them, in the case of 2 paved carriageways divided by a median strip;

This refers to the surface but not the sign. A member of the public was referred to DSG, to then be referred back to Council on the matter regarding the sign. The Victorian Act uses clearer language around road authority responsibilities.

Also, technically, Council's should not be undertaking roadwork on any State Road Carriageways without obtaining a Roadworks Permit, particularly in the cases where the roadwork will impact to some extent the carriageway. Defining this relationship between road authorities in these types of instances would be beneficial and avoid unnecessary application processes between authorities.

A single statute would provide a single source of direction for road authorities.

Transferring responsibility

The Victorian Act contains a section on arrangements under agreement for defining responsibility for provision of certain road management functions. The review should consider a similar section to address similar arrangements in Tasmania.

Implementation of spatial systems to clearly identify and track agreements would be beneficial across the State to provide transparency and consistency.

Bridges on local roads

The situation with bridge surfacing is similar to the urban sections of state roads where the running lanes are the responsibility of the state. Council supports the bridge owner being responsible for the surfacing, and that any new bridges are not transferred to Councils when a road is transferred.

Liability of road authorities and contractors

Road Authorities need to be able to demonstrate standard industry practices when exercising their duty of care for road management. Standards, Codes of Practice and Guidelines should inform typical applications employed by each Road Authority consistently across the State and Nationally.

Road Authorities should continue to not be held responsible/liable for any repair or maintenance that falls outside the standards for reasonable care and duty to the road users.

Statutory duties

Road Authorities need to be held to a consistent application through the new Act, with frequencies and standards adjusted based on road hierarchy.

The Victorian Act provides a consistent and clear responsibility for road authorities to inspect, maintain and repair public roads. Council would support a similar approach in Tasmania.

Service authorities and utilities

The road authority should not have a duty of care or responsibility for works undertaken by a Service Authority who is empowered under other services legislation. There should be greater powers for road authorities to have structured *permit to work* processes in place where the proposed work impacts the traffic management of the road or the road infrastructure assets (such as pavement, seal, kerb, footpath).

Service authorities should be addressed separately to public works in a road reservation or property developers and subdivisions.

Footpaths, retaining walls and other similar infrastructure

Council has experienced situations where a poor outcome resulted when a state road was resurfaced to the 7.4m rule and the parking lanes were not considered. A requirement for maintenance agreements on sections of state road through urban areas would be beneficial.

Drainage

Council would support making responsibility for drainage and related assets clearer and fairer.

Limited access roads

No known 'limited access roads' that would impact Council. Assuming this may be relevant to authorities such as TasPorts, Hydro, Parks & Wildlife, etc.?

Driveways

Powers to direct the removal of redundant crossings is supported. As the driveway is in a publicly accessible area (ie the road reserve), there should be some requirements to ensure driveways are maintained to an acceptable level. Enforcement powers should be reviewed and updated as needed.

Temporary road closures and permitting activities

A digital map-based solution to display road closures on any selected date would assist, along with alerts to the road owner when an application for closures was requested. Temporary/emergency road closures would benefit from this as Council has had occasions where all traffic was diverted along a load limited road.

The requirement to advertise in the newspaper should be reviewed and changed to be not mandatory, as other options including social media, VMS and driver messaging are likely obtaining a greater public reach.

Trees, hedges, and other obstructions

Sections 35, 41 and 42 within the R&J Act and section 38 and 39 of the LGH Act are sufficient controls, The review can consider modernizing the language and consolidating the sections to be consistent for all Road Authorities.

Unsure if the term “Indigenous timber” is still relevant in the case of road damage, potential for damage or risk of road safety. The only types of trees that should be protected are ones that are listed on the Heritage Tree Register or Significant Tree Register. All other trees, whether native, planted or part of a plantation, should all be included in controls contained within the new Act.

The obligation of occupiers in relation to vegetation needs to remain clear and fair in it’s application.

There should be a requirement on plantations within the Act based on minimum safe offsets from roadways to ensure safe distances:

- when harvesting a plantation
- for road maintenance activities
- for fire safety and control breaks
- risk of fallen trees and road user safety

Ancillary areas

Council would support the formal recognition of ancillary areas within the definition of roads within the act.

Land use planning

Council supports that the Road Management Framework review should consider Land Use Planning controls and opportunities for improvement with the creation or upgrade of roads.

Private roads and user-maintained highways

Council would support a requirement for road authorities to keep a register of all roads including user-maintained highways, with clear definitions of the various categories.

Traffic control including signs and line marking

Council supports the inclusion of the Transport Commission direction on installation and maintenance of traffic signs into the legislation. Some clarity is required around directional (guide) signs regarding the ownership and maintenance, as some signs on Council maintained roads at highway interchanges are the State Responsibility. Alternatively, this may be covered in a maintenance agreement.

The historical arrangement where the State makes a "contribution" to linemarking i.e. invites Councils to identify substandard linemarking, and then undertakes a portion of this work is somewhat arbitrary and gives poor results with some Councils only renewing linemarking when it is paid for by the State. This model needs to be reviewed as to who is the responsible authority.

Public transport infrastructure such as bus stops

Council's position on the provision and maintenance of bus stop infrastructure is that it is the network operator's responsibility. This approach is consistent with other service providers eg telecommunications - where infrastructure and upgrades are provided and maintained by the service provider.

The State Public Transport Department has ultimate responsibility for the service. Council already has many local services to provide to its communities, with Public Transport assets spanning across municipalities, the service and associated infrastructure should all be coordinated by the State Department.

Recovery of costs from particular users

Council supports a licensing model that would provide a mechanism for road managers to recover costs and protect assets.

Spatial systems

Council would support a spatial system (eg. the LIST Map) to define roads, boundaries and responsibility. The legislation needs to be progressive and allow for the full transformation to digital map-based systems, given the timeframe to adopt legislation, these systems will be even further advanced.

Special and emerging transport modes

There is an opportunity for Department of State Growth to take the lead on State Transport modes and consider how it could be incorporated into the new framework.