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Our Ref: Road Management Act Review

2 November 2023

Road Management Legislation Review  
Department of State Growth  
GPO Box 536  
Hobart Tas 7001  
[REDACTED]

Dear Sir / Madam,

**RE: ROAD MANAGEMENT LEGISLATION REVIEW – DISCUSSION PAPER 2023**

Thank you for providing the opportunity for Council to provide comment on the matters raised in the September 2023 discussion paper.

Council supports a holistic review and consolidation of Road Management legislation in Tasmania and would encourage this review to encompass all relevant legislation associated with road and network management including subservient legislation such as the *Local Government (Miscellaneous and Building Provisions) Act 1993*.

This is an opportunity to simplify, clarify and contemporise Road Management legislation to ensure all road managers and road users have clarity on roles, responsibilities, powers and functions related to the creation, care and management of road and road-related infrastructure.

In providing comments on the discussion paper (refer below) Council has kept its feedback at a relatively high level. Identifying matters that it believes relevant to the discussion, with the understanding that common issues across road managers will be further explored and considered in detail as draft legislation is developed.

Referring to the discussion paper format the following comments are provided.

**The Statutory Framework Generally**

Council supports the preparation of a single statute concerning road management functions. We note the potential for including other road categories managed by Forestry, Parks, Hydro, etc.) within the legislative framework.

In the past Council has experienced community frustration as to who maintains such roads, particularly where local highways connect to such roads. We believe it would be useful to provide greater certainty as to the management of such “other roads”.

**The Legal Status of Road**

Council would agree that “Common Law Highways” can be an aspect of road management that has uncertainty and is a matter of confusion within the community.

A simplified approach would be welcomed noting the suggestion of a transitional process to a statute-based instrument. In developing a transitional process, consideration needs to be given to the initial workload to effect this process across all Councils.

Potentially, a state-wide project approach, suitably resourced, may aid in progressing such a transition in a timely manner.

Similar comments relate to “Proclaimed Roads” concerning existing roads which may require transitioning.

### **Defining the Road Manager**

The approach applied under Victorian legislation seems reasonable.

### **Permanently Closing a Road**

From a current process perspective, the approach under the LGHA is reasonable in that there is a suitable opportunity for the community to make representations and there being clear tests against which Council is to demonstrate its rationale for a closure.

Currently, an appeal can be made to the Magistrates Court concerning a decision made by Council to close a road. We would suggest an alternate mechanism would be a specialist panel appointed under the TASCAT legislation.

Similarly, other sections of road legislation that refer to the Magistrates Court, may be more appropriate to refer to such a panel at TASCAT.

### **Management and Maintenance**

A common issue encountered by LG is who is responsible for the interface between a local highway and a State Highway.

In the past, local accommodations and arrangements were put in place to resolve such concerns. The use of maintenance contractors by the Department of State Growth has resulted in a more “contract” focused position i.e. if not in the specification we don’t do it, which is understandable.

An outcome of the legislative review should have greater clarity as to the delineation of roles and responsibilities at interfaces. A spatial approach e.g. maintenance maps, may aid in achieving this outcome.

As an example, drainage infrastructure can be a matter of significant debate between road authorities, particularly where a cross “State Highway Culvert” conveys local storm waters to a point of discharge and also collects State Highway drainage.

A specific concern to raise is related to the treatment of retaining walls which form part of the State Road formation, but due to the wording of Section 11 of the Roads and Jetties Act 1935, are considered to be an asset under the control of the local road authority (when the state highway passes through a town).

Council’s view is that such retaining walls are provided to support the state highway and are necessary for that road to fulfil its “State Highway” function, as such the retaining wall should be a state asset. Council would urge consideration of this suggestion in the legislative review.

### *Transferring Responsibility*

Two matters are raised:

- line marking, and
- declared bridges.

The funding allocated by the State Government towards line marking is relatively small when considered against the overall spending on local highways by local government. This annual allocation, when distributed across the 29 Councils, only partly meets the need.

Anecdotally at times, the coordination of the state government-funded line marking works is not timely, works programs are poorly communicated or conflicts with other projects in train can occur.

Line marking is a critical component of the road network and Councils should have programs in place to manage and remark their line marking stock. It is suggested that a preferred approach would be for any State Government funding for line marking to be rolled into other funding e.g. Grants Commission and Councils coordinate.

Regarding declared bridges, it is Council's view that such infrastructure should remain with the State Government, given the State originally determined such bridges to be of importance to the broader community when bridges were transferred to Councils many years ago.

### *Bridges on Local Roads*

Section 44 of the LGHA requires that Council obtain approval of the "Secretary" to impose a load limit. Councils, as specialist road managers, should have autonomy to impose a load limit, subject to appropriate technical demonstration of the need for such a load limit and consultation as may be necessary.

## **Statutory Duties, Liabilities and Indemnification**

### *Liability of Road Authorities and Contractors*

Our view is that the statutory protection should be retained. However, Councils should also be able to demonstrate that they have in place and are implementing appropriate service levels and inspection regimes informed by their asset management framework which are appropriate to their financial capacity and reflective of community needs and expectations.

We are sure there are concerns raised in all Councils regarding the activities of third parties undertaking works within a local highway and the potential risk to Council should an accident or incident occur.

It would be beneficial for some work to be carried out to understand the extent to which a Council's duty of care (as the manager of a local highway and as a place of work) extends to third parties engaged by others to work in the local highway without reference to or the knowledge of Council. This would be particularly relevant to matters involving WorkSafe Tasmania.

This is a separate matter to the protection of community infrastructure, dealt with later in the discussion paper.

### *Statutory Duties*

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As noted above, Council is supportive of an appropriate framework to guide road maintenance/management functions as a means to set a baseline practice and encourage good practice being implemented in that regard.

### **Service Authorities and Utilities**

Council is cognisant of the need for service authorities to undertake works within a local highway to deliver their necessary services and of the legislative frameworks the authorities work under. However, Council is also mindful of the need to ensure:

- road infrastructure is protected from damage and reinstatement of disturbed infrastructure is to an appropriate standard so that there are no longer-term cost impacts on our community due to early asset failure or additional repair works.
- road users are safe and persons working on the road are safe.
- rework and damage to new infrastructure due to poor coordination of activities is avoided.

Various approaches have been tried in the past to achieve a level of coordination and communication between Council and service authorities to mitigate such issues. The Victorian approach as described would appear to be a useful framework to aid in addressing our concerns.

#### *Policies and Standards*

A consistent approach across local government on policies, standards, practice notes and the like is supported.

LGAT is supporting an initiative with the IPWEA to provide a suite of documents to guide a consistent approach to asset provision and maintenance.

#### *Permissions to Carry Out Works Generally*

Permission processes should consider relevant matters noted in the section above (statutory duties, liabilities and indemnification and Service Authorities and Utilities).

### **Footpaths, Retaining Wall and Other Similar Structures**

Refer to the comments made above.

### **Drainage**

Refer to the comments made above.

### **Trees, Hedges and Other Obstructions**

Appropriate powers need to be provided to allow Councils to manage such matters. A view could be formed that Council, in having such powers, should be held to the same level of scrutiny and be required to act if a tree in a local highway impacts a neighbouring property.

At the moment Council would act on a case-by-case basis where concern arises, and in most cases, would act as a responsible neighbour. Council would caution against any legislative mechanism that sets an expectation of action due to the added cost and resourcing implications that would fall to Council.

It is also noted that the *Neighbourhood Disputes About Plants Act 2017* which provided a framework for dealing with such matters on private lands, excludes among other land, local highways from the requirement of the Act.

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### **Related Issues**

#### *Traffic Control Including Signs and Line Marking*

There are various notices, directions and sections of legislation that guide the use of traffic management devices. A single source of truth, whether an Act, regulation or guidelines linked to a regulation, would be supported to improve the capacity of Council to be aware of and meet their responsibilities.

Council's position concerning line marking is that it is a Council asset and a critical component of road infrastructure.

#### *Public Transport – Bus Stops*

We acknowledge the community's need for public transportation and note that Council's provision of a safe and functioning local road network supports that provision. The provision of public transport is a state government responsibility and the cost of service delivery (including on-road infrastructure) should be met by the service provider.

Requiring Councils to fund infrastructure works to support public transport infrastructure provision could be seen as a cost-shifting exercise and would impact the delivery of other services due to the financially constrained environment Councils operate within.

### **Spatial Systems**

The vast majority of Councils have some form of GIS and would map a range of assets held within their asset registers.

The *Local Government Act* requires a Council Map to be maintained and many Councils map this data within the GIS. Most Councils have agreements in place to share GIS information with the LIST and vice versa. Council would support the greater utilisation of spatial data in all facets of its operations.

Should you have any queries in regard to the matters raised please do not hesitate to contact Council on the number listed above.

Yours sincerely,



  
Manager Engineering Services