



CIRCULAR HEAD COUNCIL

Please quote our ref: N/A
Your ref: [REDACTED]

3 November 2023

[REDACTED]
Road Management Legislation Review
Department of State Growth
GPO Box 536
HOBART TAS 7001

Via email to: [REDACTED]

ROAD MANAGEMENT LEGISLATION REVIEW - RESPONSE

Dear [REDACTED],

I am writing to provide Council's response to your request for feedback on the Road Management Legislative Review (RMLR) – Discussion Paper – September 2023. Council supports a broad RMLR process and looks forward to a more contemporary, clear, and concise legislative framework to better manage the Tasmanian road network into the future.

Statutory framework

In order to provide an easy to interpret, concise and efficient legislative framework, with clear and consistent statutory provisions across the various road managers, Council supports the consideration of a single consolidated framework, a la the Victorian Road Management model. It is recognised that the existing framework, consisting of various separate pieces of legislation which are at various ages and use differing terminologies, is inefficient and confusing to interpret. Further, Council agrees that there would be merit in investigating the introduction of subordinate regulations. This may result in more legislative clarity, particularly if operational or non-statutory provisions were moved to the regulations, codes, or standards.

Legal status of roads

Council is very supportive of the consolidation and clarification of methods by which road ownership and legal status is defined. Council has historically experienced difficulty in determining / defending the legal status of Common Law Highways and believe that it is important that a statute-based mechanism is created to simplify this process.

In the taking over of roads by Local Government, as a part of subdivisions, it is noted that a review of the legislative provision currently contained in the *Local Government (Highways) Act* (LGHA) is proposed. While Council supports the simplification and clarification of this

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process, it is paramount that any new legislation provides a robust mechanism for Council to ensure that all infrastructure, proposed for Council take over, is built to a consistent and appropriate standard to ensure that an undue maintenance and depreciation burden is not placed on the community.

Defining the road manager

It is agreed that a clearer approach to defining the responsible road authority is needed. A system that references road type as a means to determine the responsible road authority seems like a reasonable approach to investigate, however Council suggests that the scope of road ownership clarification review should extend to include other road owners such as a Hydro, Parks & Wildlife and Forestry, for example.

Management and maintenance

In the case where Council is responsible for maintaining assets within State roads such as inside town boundaries under Section 11 *Roads & Jetties Act 1935*, it is suggested that ownership or responsibility of these assets should be tied to the service or function that an asset supports, rather than physical location. Currently, Council is responsible for the area outside of the carriageway. For example, drainage infrastructure that has been created for the purpose of effectively draining or protecting a carriageway, should be the responsibility of the carriageway manager. Likewise, a retaining wall that has been constructed to facilitate the construction of the carriageway, should be maintained by the carriageway manager. There is no doubt that review and clarification of the legislative framework that relates to this, would be beneficial.

Statutory duty

It is understood that currently Council's statutory responsibility to maintain roads to any particular standard is unclear. However, Council notes that across the various local areas within Tasmania, there exists a wide variance in the influencing factors which determine the appropriate road service level provided. These factors include, environmental and climatic conditions, traffic profile, resource availability, cost, community expectation / willingness to pay. Council currently defines its roads service levels through its Roads Infrastructure Service Level Document. The document is reviewed regularly to ensure that the service level provided meets statutory responsibility, risk management obligations and provides a fit for purpose service that can be maintained sustainably in a cost-effective manner. It is considered that any statutory responsibility in this regard should support Councils in the provision of individual road management systems, ensuring that Council exercise appropriate due diligence in defining the service levels for its roads, rather than generically defining specific service levels or standards.

Service authorities

Council regularly experiences conflict and confusion as to the responsibility for maintenance of the various utility assets situated within its road reserves. The division of responsibility between Council and service providers is not clear. Currently, the service provider has responsibility for the management and provision of utility assets, but often carries out work,

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with unclear or little ability for Council to manage or provide input into these works. Council, having a broad duty of care to ensure that its road corridor is fit for purpose and risks are managed appropriately, believe that clearer statutory provision is necessary to ensure that efficient and low risk outcomes are provided for the road users in this regard.

Driveways

The review should include considerations as to a framework which clarifies a Council head of power to decommission and remove driveways. Currently the legislative framework is unclear and as a result some Councils rely on by-laws to provide the ability for Council to manage these situations. It is also suggested that the new legislative document should clarify that it is the responsibility of the benefitting property owner for the upkeep and maintenance of driveways.

Temporary road closures

The closure of highways for temporary works and community events and the like is regularly carried out by Local Councils. Council currently relies on the provisions in the Vehicle and Traffic Act (VTA) to close roads and permit certain, otherwise not permitted, activities (such as street stalls and on street dining) to occur. Council notes that legislation should contain a clear framework to provide Council with the ability to efficiently close a road and believe that the power exercise under the VTA to this end, would be best contained in the new statutory framework.

Private roads and user-maintained highways

It is agreed that the distinction between highways maintained by the Council and public highways not maintained by Council is unclear. Further, the framework which applies to the taking over of roads by Council is confusing, and a concise framework should be developed to define this. The Victorian model, which appears to provide for a clear distinction between public roads maintainable by the Council and public highways not maintained by the council, through the keeping and management of a roads register, would seem to have merit. Further, duty of care for roads not maintained by Council should be clarified. Currently Council appears to have a broad duty under section 8 LGHA, retaining “care, control and management” of local highways that are not maintained by it. This seems contradictory, and confusing, given that Council does not maintain these roads.

Traffic control including signs and line marking

Over the years, the transport commissioner has issued a number of delegations to Councils, by way of letters, to transfer various traffic control responsibilities from State Government to Council. These delegations are hard to keep track of and efficiently access. The new statutory frameworks should supersede these delegations and provide clarification as the responsibility for these traffic control functions.

Council strongly believes that the responsibility for traffic signals and speed limits should remain with State Government as it is essential that these functions are applied consistently across Tasmania.



Currently, the Department of State Growth (DSG) carries out some line marking rejuvenation work on Council roads. There is an opportunity to clarify the mechanism by which this work is facilitated. The arrangement should be clear as to the responsibility for line marking rejuvenation, to avoid misalignment of work plans, which can result in neglected line marking or unnecessary rework.

Public transport infrastructure such as bus stops

As previously noted above, it is Council's position that the responsibility for the ownership and maintenance of assets, where not installed by Council and on roads maintained by Council, should be tied to the service or function that the asset provides. In the case of bus stop infrastructure such as shelters, the authority which facilitates the provision of the public transport service is not usually the Council and therefore it is not considered that Council would be the appropriate authority to maintain or own this infrastructure. It is agreed that it is currently unclear who is responsible for these types of assets and that clarification should be provided.

Recovery of costs from particular users

Council currently relies on the Tasmanian Planning Scheme provisions to provide for the recovery of costs associated with developments which cause an unusually elevated maintenance burden on the road network. Example of these developments include mines and wind farms. Council has considered applying the provisions contained in the LGHA which deal with the recovery of costs associated with damage to roads caused by extraordinary traffic. This provision is difficult to apply and relies heavily on the definition of extraordinary traffic. Council supports the inclusion of statutory mechanism to clarify and make more fair /equitable the process through which Council recovers these costs.

Road fouling and stock crossings

Council often struggles to manage enforcement, and cost recovery, associated with the deposition of foreign matter, such as mud and dung, on roads. The deposition matter onto the road often occurs as a result of agricultural activity such as harvest transportation and stock crossing. This results in increased risk for road users, contamination of waterways and accelerated seal/pavement deterioration. There is no clear provision in the LGHA to allow for Council enforcement and cost recovery in the case where the matter must be removed from the road. Council has considered using the abatement provisions contained in the LGA act for this purpose, however there are difficulties anticipated in the application. Legislative framework should exist to provide Councils with the ability to easily enforce and recover costs associated with the management of mud and effluent on roads.

Stock crossings are prevalent across the Circular Head Council road network and are often installed in an ad hoc manner, without control by Council. It would be beneficial for road legislation to contain provision for Council to efficiently permit the installation and management of stock crossings. Factors such as location and traffic safety, construction



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standards, impact to asset life/ maintenance and effluent control, should be controlled by the road authority.

Speed limits and wildlife protection

Council, through its participation in the Circular Head Roadkill Mitigation workgroup, recently considered the lowering of the regulatory speed limit on West Montagu Road and Woolnorth Road, to reduce the instances of roadkill in the area. Through this process, it was identified that there is currently no provision in legislation, standards, or guidelines, to allow for the protection of wildlife to be considered in the setting of speed limits. As a result, Council passed a resolution at its ordinary meeting in February 2023, to *“to lobby Tasmanian Government via its consultative Road Management Legislation review process, to include statutory provision in legislation pertaining to the setting of speed limits, and mechanisms in technical guidelines, including the Tasmanian Speed Zoning Guidelines, to account for the protection of endangered or threatened species”*. Council requests that this consideration forms part of the RMLR process.

Finally, Council would like to commend the Tasmanian Government for undertaking this RMLR process and we look forward the many positive outcomes that will result. If you have any questions in relation to the above, please contact me via email at

Yours sincerely

MANAGER – ENGINEERING & PROJECTS