



Regulatory Impact Statement

Sorell Council

Local Highways By-Law

September 2015

1. BACKGROUND TO PRELIMINARY REGULATORY IMPACT STATEMENT

Under Section 156A of the *Local Government Act 1993*, Council is required to prepare a Regulatory Impact Statement (RIS) when seeking to make a new By-law or significantly amending an existing By-law.

The preparation of an RIS involves Council undertaking an analysis of the following:

- the objectives of the By-law and the means by which the By-law is intended to achieve them;
- the nature of any restriction on competition;
- an assessment of the costs and benefits of any restriction on competition;
- an assessment of the costs and benefits of any impact on the conduct of business;
- any alternative options considered by Council;
- an assessment of the greatest net benefit or least net cost to the community; and
- an assessment of the direct and indirect economic, social and environmental impact of the By-law.

The RIS is to also provide details on the proposed public consultation process.

After the RIS is endorsed by Council, the RIS and the proposed By-law are submitted to the Director of Local Government for assessment. If the Director is satisfied that the RIS meets the statutory requirements, the Director will then issue a certificate and Council is then permitted to begin the public consultation process.

2. BACKGROUND TO BY-LAWS

The proposed Local Highways By-Law (No 2 of 2015) has been drafted for the purpose of replacing the previous Local Highways By-Law which expired in 2009.

The By-law was made to deal primarily with the maintenance, proposed works and penalties associated with infrastructure located within Council's Highway (road) reservations.

Under section 155 of the *Local Government Act 1993*, the previous By-law of 1999 expired in 2009. Council wishes to replace it with the proposed Local Highways By-Law No 2 of 2015.

The proposed By-law has been made to deal with the existing infrastructure within Council's highway reservations and Council has deleted all clauses from the previous By-Law associated with new development which is covered under Council's current Standard Drawings and Standard Requirements for the construction of subdivisions.

3. REASONS WHY THE BY-LAW IS REQUIRED

As the road authority for the municipality of Sorell, the Council is responsible for the care, control, management and maintenance of local highways. Council is therefore concerned with the standards required of any works or use undertaken in highways which may affect Council's infrastructure.

The reasons for the By-law are:

- Protect public safety by controlling the type and standard of works to avoid members of the public being injured by unsafe work practices
- Protection of Councils' and other authorities infrastructure from damage
- Ensuring that works that are undertaken on, or connecting to, Council infrastructure is completed to an acceptable standard
- Poor quality of work will not have the same serviceable life resulting in additional costs for Council to either replace or repair road infrastructure
- Prevent pollution by controlling sediment and other material discharging into stormwater
- Prevent damage to motor vehicles if accesses are not constructed or maintained to Council standards
- Works on the road reserve may create a traffic hazard and result in motor vehicle accidents
- Poorly constructed culverts blockages to stormwater drains or reduced flows causing localised flooding during storm effects
- Storage of materials on road reservations may create pollution or be a safety hazard

4. THE OBJECTIVES OF THE BY-LAW

The primary objectives of the proposed By-law are to:

- Protect Council's existing infrastructure within the highway reservation by making aware who is responsible to maintain such infrastructure;
- Clarify who is responsible to repair and/or maintain the infrastructure if damaged or altered;
- Protect public safety by ensuring that works undertaken on highways are completed in a safe manner.

How will the objectives be achieved?

The objectives of the proposed By-law are intended to be achieved by:

- Providing for infringement notices to be issued where an offence is committed under the By-Law;
- Prescribing standards by which crossings are to be constructed;
- Requiring safety management plans for the proposed works; and
- Providing authorised officers with the power to provide direction or give notices in relation to matters arising under the By-law.

5. NATURE OF ANY RESTRICTION OF COMPETITION (Section 156A(2)(b)) AND COSTS AND BENEFITS OF ANY RESTRICTION ON COMPETITION (Section 156A(2)(c)(i))

The proposed By-law covers issues of regulation and enforcement in relation to the use of local highways and associated assets. The proposed By-law does not result in any restriction on competition as the By-law only specifies that standards of work. It does not restrict who can undertake the work as long as they are appropriately qualified and experienced.

6. COST AND BENEFITS OF ANY IMPACT ON THE CONDUCT OF BUSINESS (Section 156A(2)(c)(ii))

Any possible impact from the proposed By-law would be a positive benefit. The requirement that developers/owners are to repair and maintain their own access reduces Council's costs and therefore rate payer's contributions. In meeting the requirements set out in the By-law, infrastructure within the highway reservation will be constructed in accordance with determined standards. This will lessen the probability of poorly constructed assets with highways, therefore being a positive benefit to the community.

7. DIRECT / INDIRECT ECONOMIC, SOCIAL & ENVIRONMENTAL IMPACT (Section 156A(2)(f))

Social

The proposed By-law will have a positive social impact as it will continue to regulate local highways standards resulting in certainty for the community. Some of the benefits are listed below:

- Reduce the likelihood of motor vehicle accidents associated with poor civil works;
- Reduce the likelihood of pedestrian trips, slips & falls;
- Better quality infrastructure for the community to use.

Economic

The proposed By-law will include enforcement costs for Council but these costs should be offset by the costs to individuals obtaining permits and penalties for non-compliance.

Economic benefits resulting from the By-law are:

- Reducing the likelihood of public liability claims associated with accidents caused by poor quality infrastructure works;
- Savings on insurance premiums and allow more resources for maintaining infrastructure;
- Avoids having to replace poor quality infrastructure due to a shorter serviceable life;
- Reduced administrative costs associated with enforcement of poor quality works.

Environmental

Environmental benefits result from applying standards which control both soil and water management on the worksite which reduce sediment discharging into stormwater and the spread of weeds.

Better supervision of works may also reduce the likelihood of damaging sewerage systems and preventing pollution from ensuing sewage spills.

8. GREATEST NET BENEFIT / LEAST COST ALTERNATIVE (Section 156A(2)(e))

The greatest net benefit to the Sorell municipality in the making of the proposed By-law is to ensure that the infrastructure within the local highways is constructed to the standard required by Council. Additionally, there is a benefit in Council being able to specify a standard so that residents and developers are aware of their rights and obligations.

It is more cost effective to install infrastructure to an acceptable standard initially than having to demolish and re-install. Similarly, having clear standards of work avoids the likelihood of costly disputes.

9. ALTERNATIVE OPTIONS CONSIDERED BY COUNCIL (Section 156A(2)(d))

Alternatives

- *Have no By-Law*

This has been the case for the last 6 years and is unsatisfactory as Council does not have the ability to adequately control the standards of works completed on local highways.

- *Local Government Highways Act 1982*

Section 10 details the obligations of land owners opening highways and requires the road to be kept in repair and the plans and specifications of works to be approved by Council, but this only applies to subdivision works.

- *Traffic Act 1925*

This only controls the driving of vehicles but not the standards of works on highways.

- *Vehicle & Traffic Act 1999*

Includes provisions for Street Stall permits but these relate to the sale of goods not undertaking works.

- *Roads & Jetties Act 1935*

Generally relates to State Highway not under Councils' control. However, section 43 does allow Council to regulate concentrated water being discharged into a roadside drain.

Section 48A is limited as it only provides power for Council to remove articles on a road reserve and recover the costs for the works.

Section 50B only requires a person to seek approval of Council before excavating in a street.

- *Land use Planning & Approval Act 1993*

Conditions can be placed in a planning permit which specify the standard of works required but this applies where a permit is required and many properties in residential zoned land don't require development approval. Further, some works on crossovers or in the road reserve don't relate to building works.

- *Building Act 2000*

The Building Act regulates building and plumbing work on the property only and not include the road reserve.

Conclusions

There are no other alternatives to the proposed By-law that have the same effect and benefit of a By-law. Without the By-law, Council would not be able to set out its standard requirements and control the use, development and maintenance of crossings, footpaths and nature strips within highways.

10. SIMILAR BY-LAWS

A number of other Councils also have similar By-laws which regulate activities on highways such as:

Burnie City Council - Highways

Clarence City Council – Local Highways Standard Requirements

Hobart City Council – Highways

Huon Valley Council – Roads (Local Highways)

Kingborough Council – Roads, Parking and Stormwater

Latrobe Council – Highways

11. PUBLIC CONSULTATION PROCESS (Section 156A(2)(g))

Council will have Direct Mail contact with the following State Government Agencies and identified stakeholders:

- Local Government Division, Department of Premier and Cabinet (*Local Government (Highways) Act 1982*)
- Department of State Growth (*Roads and Jetties Act 1935, Traffic Act 1925 and Vehicle and Traffic Act 1999*)
- Department of Police and Emergency Management (*Police Offences Act 1935*)
- Department of Primary Industries, Parks, Water and Environment (DPIPWE) (*Environmental Management and Pollution Control Act 1994*)

Following certification of the Regulatory Impact Statement (RIS) further public consultation will occur:

1. Council will publish the notice that it intends to make a new *Local Highways By-law*.

- 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 By-law:
 - i. That a copy of the By-law and of the Regulatory Impact Statement may be inspected at the Council Chambers until the specified day or downloaded from www.sorell.tas.gov.au.
 - ii. That a copy of the By-law and Regulatory Impact Statement may be obtained from the municipal offices until the specified day.
 - iii. Those submissions in respect of the By-law 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 By-law 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 By-law 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 By-law.
6. Council will then pass, by an absolute majority, a resolution to formally make the By-law.
7. The By-law will then be submitted to a legal practitioner for certification, and signed by the General Manager.
8. Council will then cause the By-law to be gazetted within 21 days of being made.
9. Council will also submit the By-law 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.

Comments on the By-law

Submissions about the By-law 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 By-law and the Regulatory Impact Statement and if it decides to amend the By-law 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 By-law.

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

If you have any questions about the By-law please contact Council's Manager Engineering & Regulatory Services on 📞 (03) 62690066 or email russell.fox@sorell.tas.gov.au.