

## **Facilities and Local Highways By-Law No. 1 of 2021 Regulatory Impact Statement**

### **1. Background**

On 9 July 2020, Council resolved, by an absolute majority, that it intends to make a new by-law, covering the use of facilities and local highways in the Launceston municipality. Once adopted, the by-law will be known as the Facilities and Local Highways By-Law No. 1 of 2021 ("the by-law").

The introduction of the by-law provides a framework for the regulation of activities on land and highways under Council's control and management. It refines and consolidates a number regulatory arrangements existing by reason of previous by-laws, such as the Malls By-Law No. 1 of 2010, the Reserves, Parks and Gardens By-Law No. 4 of 2009 and the York Park By-Law No. 6 of 2007.

### **2. Legislative compliance**

Section 156A(1) of the *Local Government Act 1993* (Tas) ("the Act") requires Council to prepare a regulatory impact statement (RIS) in respect of any by-law it intends to make.

Section 156A(2) requires that the RIS includes:

- (a) the objectives of the by-law and the means by which the by-law is intended to achieve them;*
- (b) the nature of any restriction on competition;*
- (c) an assessment of the costs and benefits of –*
  - (i) any restriction on competition; or*
  - (ii) any impact on the conduct of business;*
- (d) any alternative option considered by the council;*
- (e) an assessment of the greatest net benefit or least net cost to the community;*
- (f) an assessment of the direct and indirect economic, social and environmental impact of the by-law;*
- (g) details of the proposed public consultation process.*

This RIS addresses the matters described above at (a) to (g) in respect of the proposed by-law

### **3. Purpose and process of the RIS**

The preparation of the RIS is a rigorous process aimed at analysing the most efficient and effective options available to address a particular issue. An RIS is required to identify whether the benefits of a restriction on competition or an impact on business imposed by the by-law outweigh the costs. This requires an assessment of the direct and indirect social, economic and environmental impacts of the proposed by-law and alternatives considered.

Once the RIS has been prepared, Council must submit it to the Director of Local Government for assessment. If the Director is satisfied that the RIS meets the statutory

requirements, the Director will issue a certificate to that effect and Council can then commence the public consultation process.

### **3. Objectives of the by-law and their achievement**

*What is the issue to be addressed by the by-law?*

Council does not currently have an efficient or effective way to regulate the conduct of particular activities at facilities and highways under its management.

*What are the objectives of the by-law?*

The objectives of the by-law are to:

- control, regulate and protect facilities within our municipal area
- promote a safe environment for the public's use of the facilities and highways managed by Council.

Without the by-law there would be a net cost to the community arising from risks to health, anti-social behaviour, and loss of amenity on Council owned and managed facilities and local highways.

The number of by-law regulatory actions undertaken under previous, similar by-laws are small. The Council seeks to use such by-laws persuasively to discourage misdemeanours without undue recourse to infringements and prosecution, thereby achieving objectives of safe and comfortable facilities with minimal negative impacts on individuals.

*What will the by-law do to address these issues and how will it achieve its objectives?*

The by-law will promote a safe and user friendly environment for the public. It is intended that the controls detailed in the proposed by-law will provide a behavioural framework for all members of the public.

The principal means by which the by-law will achieve its objectives is to prohibit certain behaviour, such as:

- driving vehicles in facilities and malls except in certain circumstances - see clauses 4 and 5
- unauthorised commercial and related activities - see clause 6 and 7;
- unauthorised public speaking, concerts and similar activities - see clause 8; and,
- misuse of amenities and facilities - see clauses 9, 10, 11 and 12
- unauthorised occupation of a facility or highway - see clause 16.

The by-law provides a framework for the issuing of permits for various activities that would otherwise be unlawful by reason of aspects of the by-law. For example, permits may be issued pursuant to clause 23 which allow commercial activities to occur that would otherwise not be permitted under clause 6.

#### **4. Restriction on competition and impact on the conduct of business**

Council believes that the by-law does not place a material restriction on competition as it essentially deals with governance matters, such as the regulation of behaviour in facilities and public places.

The by-law introduces a permit system for the use or occupation of facilities and highways in circumstances where a fee has not been set by Council pursuant to section 205 of the Act. Similarly, the by-law does not displace long-term arrangements existing under commercial and community leases and licences.

The by-law permit system allows the Chief Executive Officer<sup>1</sup> to impose and vary the conditions of permits, however such conditions will only apply or be varied where they are lawful. For example, a permit condition cannot be imposed or varied that would restrict competition or have a significant impact on business unless such a condition or variation has been justified in the public interest: see section 150(1)(da) of the Act.

Examples of the conditions that may be set and or varied under a permit include:

- the permitted use or types of activities that may be undertaken (i.e. dance event, concert, promotional event, political campaign stand, raffle etc.)
- area or dimensions to which the permit relates;
- the hours and or days on which the activity may occur;
- a requirement that litter and waste is removed;
- requirements that relate to not blocking footpaths and doorways; and
- whether loudspeakers are allowed.

The restriction on unauthorised commercial activities under clauses 6 and 7, and the corresponding permit system in clause 23, may affect competition by restricting market entry.

If an affected permit holder or potential permit holder believes that a condition will restrict competition or place a significant impact on business, and that such a condition is not justified in the public interest, they can seek a review of the permit condition in accordance with Council's Customer Service Charter available at <https://www.launceston.tas.gov.au/files/assets/public/general-pdfs/05-pl-008-customer-service-charter.pdf> The Chief Executive Officer will undertake a review of the relevant condition and provide reasons as to whether the condition contravenes the above requirements. The Chief Executive Officer's decision on review can be appealed to the Ombudsman.

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<sup>1</sup> Chief Executive Officer is a term of reference for the General Manager as appointed by Council pursuant to section 61 of the *Local Government Act 1993* (Tas).

**5. Assessment of the costs versus the benefits of any restriction on competition or on the conduct of business**

The costs and benefits of restriction on market entry and competitive conduct (i.e. the requirement for a permit) are tabled below:

<b>Costs</b>	<b>Benefits</b>
May limit participation (effect on business and potential businesses)	The creation of safe, accessible and user friendly public places for all (effect on business, government, community)
Administrative costs (effect on business and government)	A consistent platform and framework for doing business on Council managed land and highways assists businesses by setting standards
Maintenance and enforcement costs (effect on business, government)	
May reduce availability of products in the market (effect on consumer)	

The costs identified in the table above relate to the costs of doing business, in the form of the need for businesses to obtain permits in particular circumstances, together with enforcement and administrative costs for Council in regulating relevant permits and locations. Such requirements and costs could result in less businesses entering or remaining in the market, with the result that the availability of products to the consumer may reduce.

On the other hand, the requirement for a permit will help to reduce inappropriate behaviour and or otherwise appropriate activities which could occur in an inappropriate location. This, in turn, provides for a safe and accessible user experience for consumers, businesses, government and the community more generally.

The main impact of the by-law is on minor, ad-hoc and occasional activities and uses of facilities and highways. However, the benefits flowing from a stable, regulated and safe environment more than offset the restrictions placed upon such activities.

The nature of restriction on competition relates to the requirement for a permit for a activities covered by the by-law. A person cannot undertake a commercial activity in a facility or local highway without a permit issued under the by-law or otherwise as authorised by Council.

Without the by-law there would be a net cost to the community arising from risks to health, anti-social behaviour, and loss of amenity on the Council land and facilities enjoyed by the public.

On the basis of the above and as required by section 156A(4) of the Act, it has been assessed that the by-law is likely to have some impact on business and competition. However, that impact is outweighed by the benefits flowing from safe, accessible and user friendly public places.

## **6. Alternative options considered by the Council**

Council may wish to rely on its common law powers as a corporate body and property owner, or on the current provisions of the *Police Offences Act 1935* (Tas).

However, these powers are not considered efficient or sufficient to deal with the myriad of behavioural issues that arise in facilities and local highways, where public nuisance and associated costs are likely. Referral to the courts may become increasingly necessary.

The offences covered by the by-law are relatively minor and restricted to Council facilities and local highways, in scenarios when a lighter approach is needed than that provided by criminal laws. The by-law and associated infringement notices allow for the regulation of behaviour without the immediate need to refer matters to the courts.

The by-law also deals with some gaps in the coverage of existing laws. The offences in the by-law are deliberately tailored to the specialised needs of Council facilities and local highways.

## **7. Assessment of the greatest net benefit or least net cost to the community**

The proposed by-law will benefit the community at minimal cost. The by-law has been designed to address the behavioural issues associated with the use of public places.

There will be minimal additional cost to Council and therefore to the community in providing management in line with by-law provisions. Council will continue to work with local police on behaviour management in public places and the by-law will facilitate increased enjoyment and safety for users.

This will create positive net economic, social and amenity benefits for the community.

## **8. Assessment of the direct and indirect economic, social and environmental impact of the by-law**

Permits for the activities regulated by the by-law are free at the present time. Permits under the by-law will not replace existing permit or licence mechanisms that already exist, such as those activities for which there is a fee set under section 205 of the Act.

The costs to industry and the public are generally related to the time that will be taken to issue and enforce various permits and behavioural standards under the by-law. This is largely a labour cost issue. The number of by-law permits issued in the city, and number of by-law regulatory actions undertaken are small. The Council rarely prosecutes an infringement and uses its by-laws persuasively to discourage misdemeanours. Every year the economic cost to all affected parties is unlikely to exceed \$15,000 (\$50 hour labour rate for 300 hours of work).

The losses from activity that might otherwise occur, such as profits from unregulated ad hoc commercial activity in the mall, cannot be quantified as there is no assessment benchmark.

The costs to other economic activity from unregulated activities can only be indirectly assessed in the form of complaints about the effects of disruptive and anti-social behaviour received by the Council. It is reasonable to expect that retail trading is vulnerable to losses from activities that shoppers find disruptive, or annoying. This behaviour is also likely to have a negative impact on the tourism visitor experience.

A deterrent is also needed against anti-social behaviour that causes a cost to the community and a risk to public health. Such activities include car dumping, damage to public infrastructure, and potentially harmful activities. Council officers are often available to intervene, often more readily available than a police officer in many cases, and a by-law is flexible enough to deal with gaps in existing State legislation.

A primary benefit of the by-law is establishing Council's facilities as safe and user friendly public places. Its purpose is to benefit the community as a whole with the creation of public places which facilitate the provision of a wide range of experiences and promotes physical well-being.

The costs of:

- potential risk of injury
- damage to property
- loss of amenity to the community; and
- the economic impacts of inappropriate activities and behaviours

that may be prevented by the by-law, on balance outweigh the relatively small economic costs of the by-law, leaving a net public benefit in favour of creating a by-law of this nature.

The economic impacts of the by-law are minimal. Hirers will still be required to adhere to Council's established protocols for hiring and use of facilities. Users will have clear guidelines as to behavioural requirements and will only suffer a financial consequence if they infringe the by-law requirements.

The Council has relevant procedures and policies that can be applied to permit applications as determined by the Chief Executive Officer. This may include the Booking and Usage Guidelines for Brisbane Street Mall and Civic Square, which can be obtained from [www.launceston.tas.gov.au](http://www.launceston.tas.gov.au) or by contacting our Customer Service Centre on 03 6323 3000.

## **9. Details of the proposed public consultation**

As part of the by-law making process, Council will invite submissions on the proposed by-law from members of the public. Identified stakeholders will be contacted and advised of the public consultation process. Stakeholders include Tasmania Police, Tasmania Fire Service, Tasmania Ambulance Service, Equal Opportunity Tasmania, Tasmanian Aboriginal Centre, Migrant Resource Centre Tasmania, Launceston Chamber of Commerce, Northern Tasmania Development Corporation, TBUG and CityProm,

## 10. Relevance of the Emergency Management Act 2006 and Council's Municipal Emergency Management Plan

The following matters have been identified as having the potential to effect the application of the *Emergency Management Act 2006* (Tas) ("Emergency Act") and City of Launceston Municipal Emergency Management Plan ("Emergency Plan") in the event of an emergency:

Potential issue	Answer
Driving or parking a vehicle in facility may contravene clause 4	An authorised officer can provide written permission for the driving or parking of vehicles in emergencies.
An evacuation centre may contravene clause 8.	The Chief Executive Officer is empowered to provide permission for activities that would otherwise contravene clause 8.
Possession of an animal may contravene clause 9.	An authorised officer can provide written permission for animals to be in a facility.
Activities of the State Emergency Service or other persons may contravene clause 10.	An authorised officer can provide written approval for activities that would otherwise constitute a nuisance.
The placement of emergency control devices may contravene clause 15.	The determination whether the actions covered by clause 15 constitute a contravention is made in light of the circumstances, which would include the occurrence of an emergency and public safety.
There does not appear to be a power for a permit to be cancelled to allow the facility to be used for emergency management purposes	The Chief Executive Officer is empowered to set the terms and conditions of any permit, which can include provision for emergency management.

The by-law is designed to address day-to-day behavioural issues and short term commercial use of Council facilities, with appropriate mechanisms to deal with any issues that may arise as a result of the by-law's application to emergency management.

To the extent that any provision of the by-law is inconsistent with the Emergency Act in relation to emergency management, the Emergency Act prevails.

## **11. Do you have any concerns or comments?**

Submissions about the by-law and RIS may be made in writing, addressed to and lodged with the Chief Executive Officer. Submissions can be made by email to [contactus@launceston.tas.gov.au](mailto:contactus@launceston.tas.gov.au) or by mail or in person at Town Hall, 18-28 St John Street, Launceston TAS 7250.

The submission must be received before the day specified in the advertisement which is no earlier than 21 days after the publication of the advertisement in The Examiner newspaper.

The Council will consider all submissions that have been made to it concerning the by-law and the RIS and, if it decides to alter the by-law as a result of any of these submissions, it will do so by an 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 process, please contact Duncan Campbell, Team Leader Legal Services, on (03) 6323 3000.**