

On-Street Parking Penalties By-Law No. 1 of 2022

Regulatory Impact Statement

Background

On 10 March 2022, Council resolved, by an absolute majority, that it intended to make a new by-law, specifying the penalties payable in respect of infringement notices issued under the *Local Government (Highways) Act 1982* ("Highways Act"). Once adopted, the by-law will be known as the On-Street Parking Penalties By-Law No. 1 of 2022 ("by-law").

The by-law will repeal the current penalty amounts payable in respect of infringement notices issued under the Highways Act. Those amounts are currently set by the *Parking By-Law No. 2 of 2013*.

The purposes of the new by-law are twofold:

1. The *Parking By-Law No. 2 of 2013* is due to expire on 10 June 2023, which would render Council being unable to issue infringement notices in respect of breaches of a number of parking offences, but for the implementation of the new by-law; and,
2. The new by-law will bring the City of Launceston into line with other Tasmanian councils in the setting of penalty amounts by reference to penalty units rather than dollar amounts.

Legislative compliance

Section 156A(1) of the *Local Government Act 1993* ("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.

Purpose and process of the RIS

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.

Objectives of the by-law and their achievement

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

Parking penalties that apply under infringement notices are currently set by the *Parking By-Law No. 2 of 2013*. That by-law is due to expire on 10 July 2023.

What are the objectives of the by-law?

The objectives of the by-law are to provide Council with an efficient and effective means of enforcing parking controls under the Highways Act. In turn, this will assist in achieving equity of access to parking in, and greater movement around, the city. The by-law does not affect the parking of cars in the Launceston municipality in any other way.

Without the by-law there would be a cost to the community arising from an increase in unlawful parking and or obstructions to the detriment of other road users. Without a mechanism to issue infringement notices, enforcement costs would increase significantly as it would be necessary to instigate court proceedings in order to enforce any relevant parking controls.

The penalties applicable under section 97, 98 and 99 of the Highways Act that are payable upon a successful prosecution through the courts, are unlikely to cover the Council's costs of such prosecution. Further, prosecutions divert valuable court time away from its other judicial activities.

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

The by-law sets the penalties payable in respect of contraventions of the Highways Act. The applicable penalties are stated as a proportion of a penalty unit, with the value of a penalty unit being set under the *Penalty Units and Other Penalties Act 1987*.

The by-law will provide Council and its parking officers with a quick, cost-effective means of enforcing parking controls.

The presence of a penalty for contravention, and a means of quickly and cost effectively enforcing such requirement, provides a significant deterrent effect on unlawful parking. Accordingly, road users are more likely to comply with parking controls which in turn will help to achieve equity of access and increased CBD mobility.

Restriction on competition and impact on the conduct of business

The by-law has been assessed as not providing any restriction upon competition. There is no competitor for the provision of on-street parking in the Launceston Municipality.

The by-law has no effect on whether parking in a particular instance is lawful or not. Rather, its only function is to set the penalty payable in respect of an infringement notice issued for an alleged contravention.

The by-law has no effect on the operation of existing private car parks, nor does it place any restriction on market entry for new car park operators.

The by-law has the potential to have a positive impact on business by encouraging road users to not overstay limits imposed on parking spaces. The availability of parking close to shops and facilities is an important consideration for many road users, so that the presence of an effective enforcement mechanism promotes lawful parking and is likely to have some impact on the availability of parking spaces for other users.

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

As detailed above, the by-law has been assessed as not having any restrictive effect on competition.

In respect of conduct of business, the costs and benefits of the by-law have been assessed and are presented below:

Costs	Benefits
May limit participation (effect on business, potential businesses and user)	The promotion of available on-street parking, accessible and user friendly public places for all (effect on business, government, community)
Enforcement costs (effect on government)	The availability of a cost effective and efficient enforcement mechanism (effect on government, courts, user)
Administrative costs (effect on government)	

The costs identified above relating to potential effects on participation are on the basis that increased parking penalties may discourage some users from utilising on-street parking if they are concerned with receiving an infringement notice. In turn, this could have some effect on the number of people in the city, which in turn could have an effect on the number of potential customers entering a business. Conversely, the availability of a cost effective enforcement mechanism will assist in promoting the fair use of car parking spaces and time limits, which in turn is expected to have a positive effect on availability and may encourage more users into the city. It is also important to highlight that the by-law has no effect on the underlying parking fee structure, and only becomes applicable in the event of non-compliance.

There are also some enforcement costs relating to the issuance of infringement notices. However, the availability of infringement notices avoids the need for Council to refer alleged parking offences to the courts at first instance. The enforcement and administrative costs involved in issuing infringement notices are significantly less than the costs involved were Council required to refer each matter to the courts for determination.

The availability of the infringement notice mechanism allows for the allegation of a parking offence to be made, and the alleged offender may elect to either pay the stated penalty or elect for a court hearing. Where an end user accepts the law has been breached, the infringement notice can simply be paid without adjudication by the courts.

In terms of underlying costs to the end user, a penalty payable in respect of an infringement notice is equal to or less than the penalty if Council elects to have the matter heard at the Magistrates Court. For example, the by-law will set the penalty payable in respect of an offence of parking without the meter running at 0.2-0.5 penalty units, whereas a successful prosecution would see the applicable penalty of up to 1 penalty unit

for the first offence and a 1-2 penalty units for second and subsequent offences. Without the by-law there would be a net cost to the community arising from a decrease in available parking spaces, and an increase in administrative and compliance costs.

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 a limited impact on business. To the extent that such impact is a negative impact, it is outweighed by the benefits flowing from available, accessible on-street parking.

Alternative options considered by the Council

As an alternative to issuing infringement notices in respect of contraventions of the sections 97 - 99 of the *Highways Act*, Council is able to prosecute alleged offences through the Magistrates Court.

Prosecution is considered inefficient to all parties involved because of the costs incurred by Council, the higher applicable penalty to an offender, and the administrative burden placed upon the Magistrates Courts in hearing traffic matters.

The costs incurred by Council in such matters are unlikely to be offset even in the event of a successful prosecution.

The Parliament has specifically set up an infringement notice regime under section 100 of the Highways Act to ensure that Council's can deal with on-street parking offences in an efficient way.

The availability of an option to issue infringement notices allows for the effective regulation of on-street parking, without the immediate need to refer matters to the courts.

Assessment of the greatest net benefit or least net cost to the community

The proposed by-law seeks to promote compliance and equity of access to parking at minimal cost. Whilst the by-law is intended to increase the amount payable under a relevant infringement notice from that which is currently applicable, such amount is only payable by those alleged to have contravened the requirements of the Highways Act.

It is expected that the increased penalty will encourage users to pay the fees associated with lawful parking, through the proper use of parking spaces, meters and voucher machines.

The cost to the community is borne by those people who do not comply with the relevant parking controls.

The greatest benefit to the community is in terms of the promotion of lawful parking and equity of access, which are expected to provide economic, social and amenity benefits.

Assessment of the direct and indirect economic, social and environmental impact of the by-law

The by-law has been assessed as having no direct economic, social or environmental impact.

Indirectly, the by-law is expected to have some positive economic benefit to the extent that it promotes higher turnover of road users and consequently increased availability of on-street parking.

To the extent that the increased parking penalties discourage people parking in the city, there may be positive environmental impacts by reason of people using alternative transport options including walking, riding or public transport.

Details of the proposed public consultation

As part of the by-law making process, Council is required to provide notice of the proposed by-law and invite submissions from members of the public.

Council will arrange for the publication of a notice in the Examiner Newspaper and for the notice and associated documentation to be placed on its website.

Notice will also be displayed at Town Hall and relevant documentation will be available for inspection and purchase.

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

The by-law has been assessed as not having an effect on the application of the *Emergency Management Act 2006* ("Emergency Act") and City of Launceston Municipal Emergency Management Plan.

To the extent that the by-law has any effect on emergency management, the Emergency Act prevails.

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 by email to 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 must 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.

It is intended that submissions will be published as part of Council's decision making processes.

If you have any questions about the process, please contact Duncan Campbell, Team Leader Legal Services, on (03) 6323 3000.