



## tasmanian conservation trust inc

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28 February 2019

### **Submission to the Review of Tasmania's Local Government Legislative Framework,**

Thank you for the opportunity to make a submission in response to the 'Review of Tasmania's Local Government Legislative Framework Discussion Paper December 2018' (Discussion Paper). In this submission we refer to the entire review process as the Local Government Legislative Framework Review. The Local Government Act is referred to as the LGA.

The TCT wishes to be involved in every stage of the review process.

I am willing to provide additional information on any matter raised in this submission.

### **Purpose of the review**

The TCT notes that the purpose of the review is to review the current legislation, the Local Government Act, but also to consider a "contemporary, flexible and best practice legislative framework". It is our view that the legislative framework includes other acts, in particular the Land Use Planning and Approvals Act. The review should have explicitly requested comments on the LUPA Act in regard to how it impacts the key matters raised in the Discussion Paper. The TCT has made some comments regarding the LUPA in this submission.

The TCT strongly supports the intended outcomes except for the reference to "Minimise the red tape and administrative burden on councils, business and the broader community". The use of the terms "red tape" and "administrative burden" is unnecessarily pejorative and could bias people's responses. To state an aim to reduce red tape assumes that this is a good thing. Clearly some administrative burden is essential and reducing it may have positive and negative impacts. The starting point for the review should be to establish whether there is a problem and if so how to deal with it without undue negative consequences.

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RECOMMENDATION: The stated outcome should be “too better understand the administrative burden involved with working with councils and too identify what administrative burden is unnecessary and could be minimized”.

## **Council governance and powers**

### **Clarence City Council's Public Places By-law**

The TCT has recently identified major short comings in the Clarence City Council's Public Places By-law (approved in July 2018) and raised these in the media and with the Parliamentary Standing Committee that reviews draft By-laws. The attached submission explains our concerns fully but in summary, the By-law could be used to seriously limit the community's right to speak in public and hold meetings and rallies. These powers could be used by the Council, with the General Manager having unconstrained authority to implement them, to limit or stop the public from speaking in public or holding events in response to decisions of the council, including during council elections. It is a matter of great concern that a Council would seek such draconian powers over rate-payers in relation to council owned and managed “public” lands.

Notably the Commissioner of Police stated in a submission on the Draft By-law that: “The proposed new power for the General Manager to ban a person from a public place if they have offended against the by-law is a significant power for a by-law and may be an unintended over reach that impinges against people's civil liberties.”

Despite the Council making a change in response to the Commissioner's concerns regarding the provision to ban a person from a public place, the change did not address his concerns. This raises another concern that the General Manager is responsible for advising Councillors on by-laws while also being the recipient of the powers it contains.

The Parliamentary Standing Committee recommended to Council (28 September 2018) that it review certain aspects of the By-law, in particular the proposal to ban people from public places and in doing so to consult with the Commissioner of Police. To my knowledge the Council has not made changes to the by-law and no further public input has been sort. The advice of the Parliamentary Standing Committee has not to my knowledge been made available to the public by the CCC.

One issue that we did not raise in our submission on the By-law is the fact that the By-law was approved by Council with very few people being aware of its content. Only one member of the community made a representation on the Draft By-law. While the Council spent a long time consulting its own staff about the preparation of the draft By-law there was only one limited opportunity for the “public” to comment on a By-law that had serious implications for its use of public land.

RECOMMENDATION: It the light of the serious concerns raised by the TCT, the Commissioner of Police and the Parliamentary Standing Committee in regarding to the CCC's Public Places By-law (and not yet fully addressed), that the Local Government Legislative Framework Review takes a close look at the LGA provisions dealing with the making of by-laws. As with many activities of councils there must be better ways to involve the community in making of by-laws, particularly where

they relate to public places and rights of public speaking and related democratic activities. The powers of the general manager in making and implementing by-laws should also be looked at and we include this in a recommendation regarding the powers of the general managers.

### **Council amalgamations and resource sharing**

I find it a glaring omission that the Discussion Paper does not raise issues dealing with council amalgamations and resource sharing. The Discussion Paper should have asked for views on these matters and articulated the generally accepted costs and benefits of both. The Discussion Paper should have outlined the various ways that some councils have requested their community's input on amalgamation options. The TCT's major concern with amalgamation is the potential for representation in smaller less populated municipalities to be diminished if their council is amalgamated with a larger council. There are ways of reducing the impact via quotas for each region within a larger municipality.

It is very concerning that the public debate largely avoids the potential loss of democratic representation resulting from amalgamations and I urge the Review to look closely at this issue.

RECOMMENDATION: That the Local Government Legislative Framework Review address the issue of amalgamation including by canvassing a range of options for minimizing loss of representation, such as consideration of a ward system, and outlining various ways councils can seek community input to amalgamation proposals.

### **Management of Joint Authorities**

Another matter of great concern is the lack of transparency in how councils manage and report on Joint Authorities. I raise one case study that I am particularly familiar with.

In September 2012 I first made complaints to the Director of Local Government regarding the failure of the owner councils to ensure that Copping Refuse Disposal Site Joint Authority (trading as Southern Waste Solutions SWS) provided information to the public regarding its operations as required following a review of the Joint Authority by the Minister for Local Government in 2008. Of particular importance is the Minister's recommendation that SWS provide quarterly reports to each participating council, including an open report provided to the public and a closed report provided to a closed meeting of council.

After my first complaint it took 13 months (October 2013) for the councils to agree to the Director's request to provide SWS's open and closed reports. But for at least another six months (until April 2014) some councils only provided reports to closed meetings of council. By September 2015 councils began providing open reports in their agenda papers but these reports were so brief and lacking in detail that they were virtually meaningless. My further correspondence in late 2015 delivered no changes.

A recent check of Clarence City Council's agenda papers and minutes shows that no open reports are being provided. For each meeting the agenda states that a report is pending and the representative is to report. But the minutes provide no information on the apparent verbal report. I attended a recent Council meeting

and the representative provided no verbal report. This failure to provide an open report to council is in total disregard of the recommendations made by the Minister for Local Government in 2008, the advice of the Director of Local Government in 2013 and the agreement of general managers in 2013. There seems to be no capacity to detect these problems other than when the general public complains and no effective means of requiring joint authority to act in a timely and effective manner when directly instructed to by the Director and Minister.

RECOMMENDATION: The Local Government Legislative Framework Review should give specific attention to how to ensure joint authorities are open to appropriate scrutiny by councils and the public. The review should also consider what changes may be needed to the Local Government Act or other actions that give greater assurances that when a council or joint authority are instructed to take specific actions by the Minister and/or the Director that these are undertaken. Furthermore, the Review should consider if the LGA should be amended to provide sanctions where directions are not implemented or are not implemented in a timely or effective manner.

### **General manager's powers**

As outlined in the Discussion Paper the council general managers have a great deal of power and influence over how a council operates. Critically the general manager has enormous control over provision of information to the councilors and general public and how this power is used can greatly affect the functioning of a council. As outlined above the general manager has a critical role in advising councilors on the making of by-laws as well as having sole authority over their implementation.

The TCT also wishes to raise the delegated powers that a general manager may be granted by the councilors, which can include the power to issue land owner consent for development on council owned or managed land and the power to issue an extension to a planning permit without reference to the councilors or input from the community. These powers result in a general manager having some of the powers of an elected councilor but without the requirement that they answer to the community at an election.

RECOMMENDATION: Given the significant authority of a general manager and the numerous examples of these powers being misused, the Local Government Legislative Framework Review should:

- consider amending the Local Government Act to better define and constrain the general manager's powers;
- review the provisions of the LGA in respect of the making and implementation of by-laws;
- require an annual performance review of general managers to be undertaken by the Director of Local Government which would include input from the local community regarding how well the general manager has addressed local interests.

### **Democracy and engagement**

The TCT does not have strong views on the voting system for local government and believe the questions around this issue are best left to the average voter.

However, we have seen examples of where we believe that councils make decisions on planning matters and expenditure during the election period or shortly before that are probably influenced by the upcoming election rather than just the assessment of the proposal against the planning scheme, public representations and the broader public interest.

RECOMMENDATION: We support consideration of a caretaker period that limits council's powers to make decisions on major developments or expenditure but does not prevent other key functions from continuing.

RECOMMENDATION: The TCT has a great deal of experience working with the community in relation to developments that are assessed by local councils and believe that there is a great need for better education of the community about the council election process and the broader role of councils and the community's role within it.

RECOMMENDATION: The TCT supports the right of residents who are not Australian citizens to vote as these people are likely to be paying rates and taxes, using the services provided by Councils and making valuable contributions to their local community. In short they justify having the same right as citizens at local government elections. However we cannot support the right of people to vote who do not live in the municipality but own property or a business (which includes the TCT). It seems antiquated to give an organization or business a vote when this right should be restricted to natural persons as with state and federal elections. It is certainly absurd and anti-democratic to allow a property or business owner more than one vote.

The TCT questions why democracy and engagement are separated into two sections. We believe that this section should address electoral democracy and participatory democracy, both being equally important.

## **Consultation**

### **Development on council owned or managed land**

In the attached article 'There is something wrong with the way Clarence City Council does its business' have outlined five case studies of where the Clarence City Council has initiated developments on Council owned or managed land (these are in various stages of planning or approval) where the Council has treated the community terribly. Critically, the council has decided to proceed with these developments (with one exception) without first consulting or seeking the approval of the effected local residents and others with an interest in these lands. In each case the Council ends up proceeding with a development that is widely unpopular, causes a great deal of anxiety within the community and negatively impacts existing users and adjacent residents. The key cause of such community upset is the failure to ask the community prior to proceeding with a development whether they want any development and if so what type of development. Beyond the initial step there is abundant evidence that Clarence City Council seems incapable of undertaking basic community consultation.

While the Local Government Act requires the local community to be consulted before public land is sole, leased or transferred the CCC has proceeded with developments without consulting the community. This occurs when the Council is

the proponent and land owner (Calverton Oval and Lauderdale) or where the council manages the land but the state government has responsibility for selling, leasing or transferring land (Rosny Hill, Kangaroo Bay and probably Seven Mile Beach). The CCC consults the state government in secret over the specifics of a lease or land transfer.

RECOMMENDATION: The Local Government Legislative Framework Review should consider amendments to the LGA that address the serious gaps in regard to public input to decisions over developments on council owned or managed lands.

### **Land Use Planning and Approvals Act**

The review should have had scope to consider how councils provide information and undertake consultation with developments proposed under the Land Use Planning and Approvals Act. While I realize that this is not a review of the LUPA Act, including the provisions that dictate when the community is and is not consulted on developments and the statutory time periods for this consultation. However, there are some councils that go beyond the LUPA requirements in order to consult, inform and involve the community, in particular where developments are likely to be of great community interest.

RECOMMENDATION: The Local Government Legislative Review should assess what further could be done to provide better consultation within the current limits of the LUPA Act. Consideration should be given to preparation of best practice guidelines for consultation.

A recent relevant example was the Central Highlands Council meeting regarding the proposed development at Lake Malbena. The council meeting was held at the Bothwell Town Hall, attracting about 100 people and the council provided more than four hours for the community and others to make statements and ask questions. Likewise I have attended meetings of the Hobart City Council Planning Committee which were held in large council meeting rooms to enable upward of one hundred people to attend. In contrast some councils make no special provision for council meetings that are likely to attract a great deal of public interest.

### **Examples of good and bad consultation**

The issues are wider than just "consultation". As the Discussion Paper states, "Councils are required to consult, involve and be accountable to the community in performing their function". I concur with the Discussion Paper which states that "the public have become increasingly passive and disengaged with traditional mechanisms, but more active in social media". I also agree with the statement that "The traditional ways of engaging through public notices, open council meetings and making information available for comment, frequently receive very little community feedback.

In my role with the TCT I provide advice to many individuals and community organisations and find they are increasingly frustrated at the lack of commitment to consultation from their local councils, lack of staff with relevant skill and the reliance on the traditional forms of consultation. Some councils are trying effective and popular new approaches. This has made other communities aware ask for improvements that their councils might consider.

The issue of community consultation was perhaps the most common concern publically expressed during the recent Clarence City Council elections. There was such a heightened level of concern that a community network formed, the Clarence Action Network. CAN formed prior to the election and lobbied during the election for council candidates to support its platform. Since the election CAN has become more formal and intends to continue as a body to consult with and advise the council.

**RECOMMENDATION:** The Local Government Legislative Framework review should investigate in detail the factors that inhibit better community consultation, involvement and accountability as well as reporting on the good examples of councils providing more effective means of consultation. But the Review should also ask the question, why is it that some councils have started to respond to community expectations for better consultation and others retain many barriers.

The concerns I have witnessed in regard to consultation can broadly be put to two categories: micro and macro. Micro relates to specific aspects of how council communicates and organizes meetings and macro issues relates to their policies, structures, expertise, resourcing and culture. Both need to be addressed to provide more effective outcomes.

Micro issues include the council building and meeting room, sound system and acoustics, audio visual equipment, the council web site, meeting times and days of the week and whether members of the public stand or sit when presenting to council.

I don't recall any council ever asking its rate-payers what time and day of the week they would prefer for Council meetings or if they would like to change the venues from time to time. The Glamorgan-Spring Bay Council meetings alternate between 5.00pm and 2.00 pm, the Central Highlands Council starts at 9.00am and the Clarence City Council starts at 7.30pm. Maybe all have advantages but the local community should have input to these decisions. The CCC starting time makes it very difficult for many too attend as meetings can finish at 9.30pm.

The Clarence City Council has had long term problems with its sound system and acoustics in the council chambers that have not to my knowledge been addressed. The problem could probably be addressed at least in part if the seating arrangement was altered. Currently the councilors and a few staff that attend take up the vast majority of the room and the community is squeezed into a small 'partitioned' area at the back of the room. This seating arrangement makes the community feel disengaged e.g. when putting a question to the councilors a member of the public is quite a distance from the nearest councilor and is talking to the backs of half of them. When making a deputation a member of the public is invited to stand at a micro phone near the Councilors table feeling quite exposed. Compare this to the situation at Kingborough, Glamorgan-Spring Bay and, as I am told, Launceston where a member of the public is allowed to sit at the councilors table which is circular, enabling everyone to see each other's face.

When important issues attract a large audience at Clarence City Council meetings the public gallery is easily filled and many have to sit in an adjacent room where they can hear the meeting but have limited capacity to see proceedings. Those in the gallery are jammed uncomfortably close together.

There have been instances recently at Clarence City Council meetings where an alderman has proposed a motion or amendment to a motion and the audience has too rely on hearing a single reading of it to follow the debate. As motions are amended during the debate it seems that councilors get very confused about the wording of the motion. I am told that the Brighton Council uses a large screen (visible to aldermen and the public gallery) to present a motion or a range of other documents and graphics that could easily be introduced in all councils.

Council web sites are critical to providing the essential information required by the community but some are very limited in how they provide information. Many councils include agenda papers and minutes as a stand-alone PDF documents which can be 400-500 pages and be massively large to down load for many people. Consideration should be given to providing both the stand-alone version and one which has bulky documents as separate PDF's. The Australian Government commonly does this where a particular development is advertised with numerous assessment reports.

I have not used recordings of council meetings but have heard complaints from community members that recordings often have problems such as unexplained omissions. Some of these community members have made submissions and will explain these concerns in more detail.

Macro issues include the content of a consultation policy, how it is formed and whether it is recognized and applied by the Council and the community.

My lengthy experience with Clarence City Council demonstrates that the Council thinks that producing a consultation policy is an outcome in itself rather than ensuring it is accepted by the community and is effectively applied. Many people in the community can site experiences of the council ignoring its own policy.

As a result of the very strong community campaign during last year's CCC elections for better consultation the Mayor has responded by saying that the consultation policy is being reviewed. We expect a fully fledged draft consultation policy to be released for comment without any consultation on what should be in the draft. Instead the council should have had an open process to investigate what problems the community had with Council's consultation and feed these ideas into a process to develop a draft consultation policy.

Many community people express disappointment at the apparent lack of skill and knowledge of those who seek to consult with them in some councils whilst in other councils staff demonstrate exemplary skills and knowledge. Councils such as Clarence also put very few resources into consultation perhaps seeing it as a unnecessary expense.

It is hard not to conclude that these problems in Clarence relate to a long term cultural problem, created largely by a Mayor and General Manager who have been at the helm for a long time and who share a very limited understanding or respect for the need to consult, involve and inform the community.

Another key way that councils try to consult the community in regard to broad directions of the Council is through the Council Strategic Plan. From my experience

there is very little public awareness of the function of these documents and not surprisingly little interest in commenting on them when open for public comment.

The Local Government Legislative Framework Review should give further consideration to whether there should be a requirement of councils to have consultation committees to allow regular input to council about its consultative processes. To assist in discussion over this idea the Review should provide an assessment of any existing committees and how they have performed.

## **Council revenue and expenditure**

The TCT has had limited experience with Council revenue and expenditure issues, but we wish to outline a very worrying case study about allocation of funds by Clarence City Council to a joint authority through a secretive process.

In 2016, with no prior consultation with rate-payers, Clarence City Council decided to spend \$4 million of rate-payer's money (a 1.4 m gift and a \$2.4 m loan) toward the construction of the proposed Copping Hazardous Waste Facility (or C-cell). The proponent is a council-owned business called Southern Waste Solutions. At the time it was co-owned by Clarence, Sorell, Tasman and Kingborough councils.

The decision was made in a closed meeting of Council, sometime in July or August 2016 (the date is unknown). A closed meeting means there were no members of the public present and no public record is made available regarding the decision or the discussion by councillors.

The rate-payers have not been told why Council made this decision, what the financial risks are and what advice they received. We understand that the conditions of the loan are that the SWS will only need to start to repay it when and if contracts are signed with businesses who want to send waste to the C-cell. It is not known if interest will be charged.

It could take many years for any money to be paid back, making the \$2.4 million unavailable for the rate-payers of Clarence. Many community projects will not receive funding because of this decision of council.

The Clarence City Council made no public announcement about its decision. The proponent, Southern Waste Solutions, issued a media release on 31 August 2016 which included a one sentence statement at the end, from the Clarence Mayor saying that: "The development will be funded through a combination of some \$2 m funds from the state government, while CCC will invest a further \$1.6 m and provide \$2.4 m loan to the organisation."

The media release was prepared by a public relations company and clearly aimed to minimise the attention the council would receive.

In June 2017 the Clarence City Council increased rates across the municipality by 1.9% for the 2016-17 financial year. The Council could have avoided such a high rate increase if it had not provided the \$4 million for the C-cell. The Local Government Act has a general objective that Councils must act and allocate funds in the interest of the rate-payers. But in this instance I cannot see how CCC acted in the interests of its rate-payers or those of Sorell where it is proposed.

RECOMMENDATION: The Review consider how decisions by councils to allocate large amounts of funds can be made more open to public scrutiny and that they must deliver outcomes that are in the interest of the community.

### **Performance, Transparency and accountability**

As outlined in this submission the Clarence City Council has failed in numerous ways to address the interests of its rate-payers including:

- allocation of millions of dollars to a joint authority through a secretive process;
- not providing public reporting in regard to the same joint authority contrary to an order of the Minister and Director of Local Government;
- progressing numerous developments on land that it owns or manages against the wishes of the local community; and
- has performed very poorly in regard to almost any measure of public consultation, involvement and communication.

The LGA has failed the community of Clarence by not having any capacity through the minister or the Director of Local Government to intervene to improve CCC's performance. Some problems are only reported to the Director when complaints are made by the community. It is left to the community to identify the multiple failings of CCC and ask whether there are systemic or cultural problems.

RECOMMENDATION: Specific recommendations are made in this submission regarding public reporting by joint authorities and failure to seek public input to decisions over developments on council owned or managed lands.

RECOMMENDATION: While I have documented numerous problems with the CCC it is possible that other councils have similar problems. To address poor performing councils such as the CCC the Local Government Legislative Framework Review should consider a range of changes to the Local Government Act to improve council transparency, accountability and performance, including:

- establishing in the act specific standards regarding provision of information, communication and consultation;
- establish in the act a requirement that councils are to produce and keep current policies to assist in delivering the standards outlined above;
- consider amendments to the LGA to require formal committees to assist in developing the policies (including consultation) and potentially being maintained as standing committees to assist with their implementation;
- amend the act to require annual reporting to the Director of Local Government on performance of councils (which might be broader than public consultation) including provision of public input.

Yours sincerely



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## **There is something wrong with the way Clarence city Council does its business**

Peter McGlone, Tasmanian Conservation Trust

Most people who live in Clarence would have heard of the controversy over Clarence City Council (CCC) support for a major tourism development on Crown land at Kangaroo Bay (now approved) and a proposed development for the top of the Rosny Hill Nature Recreation Reserve, an area managed by the Council. And there has been uproar recently over a Council by-law which gives Council powers to suppress protest and public speaking as well as prohibiting games on beaches without Council approval. But if you dig deeper there is a longer list of controversial developments on public land where the Clarence City Council has treated the community terribly. Not surprisingly many Council and Mayoral candidates in the Council election are focusing on the need for better consultation. Mayor candidate Richard James has said that the public should be consulted first and asked if they want major developments on public land before land being offered to developers.

### **Kangaroo Bay**

In 2017 Hunter Developments obtained approval from CCC for a Hotel (a 5-storey building on the Kangaroo Bay foreshore extending into the bay) and a Hospitality Training School and Apartments (a 5-storey building with frontage on Cambridge Road).

Despite this development being on public land and being unprecedented in terms of scale, the council did the absolute minimum in terms of consultation. The public consultation process on the development application was advertised on 17 December 2016 with representations closing on 12 January 2017, making it as hard as possible for the community to get organised and make representations and near impossible to consult with planning consultants or lawyers.

As if this was not bad enough, the council changed the assessment rules right at the end of the consultation process. On 9 January 2017, Council sought and was granted an urgent amendment to the *Clarence Interim Planning Scheme 2015*, just three days before the advertised public comment period closed on 12 January 2017. The amendment removed grounds for objection based on the allowable area for accommodation associated with the development.

The development will be built on land that was part crown land and part council land and the Council tried to keep the sale price of the land from the community. The sale price was agreed to in a closed meeting of Council and withheld from the people of Clarence and only made public after months of persistent calls from the community. The 'public' land was sold to Chambroad Petrochemicals (the parent company funding the project) for \$2.4 million.

The original 2008 Kangaroo Bay Urban Design Concept Plan, that was the result of extensive community consultation, was totally ignored by Council. Critically the Concept Plan showed development along Cambridge Road being set back from the street and it recommended it should be of a "scale to enable views over and between building envelopes". Hunter Development's approved development is jammed right up against Cambridge Road and towers over residences, blocking views.

### **Rosny Hill**

The next big development fight in Clarence is over a proposal by Hunter Developments for a large tourism development on top of Rosny Hill, a proposal that would dominate the 21 hectare bushland reserve. The developer has withdrawn its proposal just one day into the council election but has said it intends submitting another application.

In 2015, the Council decided to seek a preferred developer for this reserve without first asking the community what type of development they wanted or whether they wanted any development.

The preferred developer process was critically flawed. Hunter Developers was chosen as preferred developer despite there not being another acceptable expression of interest. The criteria issued by Council included the preference that the development be restricted to the two small development envelopes identified in the Rosny Hill Management Strategy. While this criteria was a 'preference', the concept submitted by Hunter Developments and accepted by Council was for a development more than five times the area of the development envelopes.

While the Council seemed to bend over backwards for the developer, it was dismissive of the community's interests. Residents of the Rosny and Montagu Bay were incensed at the possibility of an oversized development in their local reserve so they got organised. Before the developer made a development application, the locals got more than 200 local residents to sign an application to Council to have the reserve rezoned to restrict development to the small areas identified in the management strategy.

While the community's application was just to commence a process to determine the validity of rezoning, the Council refused to even debate it. The Mayor made dismissive comments to the media that he did not understand what the applicants wanted. Despite there not being a live application before council no councillor other than Richard James was willing to meet with the community members. Council insisted on the community paying the \$17,000 fee for lodging a rezoning application, despite the Council being the management authority and the local community being largely responsible for on ground management of the reserve for twenty five years.

The developer went quiet for the next three years. In June 2018, with a development application pending, the local community petitioned the council to hold a public meeting (as is its right under the Local Government Act) to let it air community concerns regarding the development. The council refused the petition claiming that, although the required number of signatures were obtained, they must all be either hardcopy or electronic. The Mayor dismissed the proposed meeting saying that the developer had already held a meeting (three years previous) and intended to hold another. He also directed that the community can wait for the development application and make a deputation (which is limited to just three minutes and made prior to the Council meeting).

The community persisted and got 1000 electronic signatures and attracted a 300 strong crowd of people to the Rosny Bowls Club. The motions passed by the meeting were ignored by the Council despite there being no valid development application.

Public opposition kept mounting with the recent revelation that the Council had adopted a By-law that seemed intended to stifle protests, rallies and public displays of signs. Perhaps these restrictions were inspired by the Kangaroo Bay protests and aimed at restricting opposition to Rosny Hill developments.

### **Calverton Oval South Arm**

Although it hasn't been in the media, there has been an intense fight happening at South Arm over a proposal by the Clarence City Council for a skate park at Calverton Oval. The Council is the applicant, planning authority and manager of the oval and intends using rate-payers money to force a skate park onto a largely unwilling community.

The location of the skate park is within 15 metres of the nearest houses, giving skaters a clear view into backyards and living rooms. Skate parks also create very loud noises and are

likened to shooting ranges. This has not put the Council off as they have sort to cram a skate park into a residential area - whereas most skate parks are well away from houses e.g. Rosny and Lauderdale.

This has upset most of the local residents. A group of residents have lodged an appeal, spending thousands of dollars of their own money, taking on their own council. The result of that appeal is pending.

Late in 2017 the Council responded to a request by a small group in the community who wanted a skate park, by developing a Draft Master Plan for Calverton Oval and releasing it for comment.

The draft master plan proposed to cram every type of custom made exercise equipment and park facilities that money could buy into the oval surrounds. The draft master plan was developed entirely in-house by Council officers and no one in the community was asked what they wanted. Then the consultation on the draft Master Plan was limited to releasing a map of the oval with the proposed facilities marked on it and asking a single yes/no question, 'Do you support the changes?'. There was no face-to-face meetings with local residents. No directed consultation with groups that used the oval (other than one that claims to represent the local community), the school or Coastcare. There was no attempt to determine the likely demand for the proposed skate park and other facilities. Out of 160 responses only 4 people wrote additional comments in addition to answering yes or no. Responses of people who lived next door were given equal weight as those from outside of South Arm. It is thought that many people responded after being asked to by a supporter of the proposed skate park. The responses only demonstrated who supported or opposed it and not whether they would use the facilities. Respondents weren't asked if they had other ideas not mentioned. Respondents were not asked how a skate park or other facilities could be constructed and operated to make it more acceptable.

The consultation was so bad that a local resident organised their own survey and included the results with their representation on the proposed skate park. They door knocked 100 houses closest to the oval and asked questions about their current use of the Oval, likely demand for the skate park and support for other development and use. It found a very low level of use of existing Council sporting and exercise facilities but a high number of people visiting the oval.

Only 10 % of residents said they lived with a skater and 8 % said they would use the skate park. By contrast 58 % of people wanted the oval retained but with better landscape around it. Sixty nine percent of people wanted minimal change.

The survey was totally ignored by the Council. It was not mentioned in the report by Council staff on public representations (possibly because the council should have done this work) and was not supplied to the Planning Appeals Tribunal.

A strong majority of representations made to the Council were opposed to the skate park, with 70 opposed and 61 in support. Only 21 of those supporting the skate park identified themselves being from the South Arm or Opossum Area, where as 58 of those opposed identified themselves as living in South Arm and Opossum Bay area, most living in the adjacent streets. All those opposing the development identified themselves and where they lived but nearly half of those opposed did not say where they lived and many didn't even name themselves.

The Councillor who put the motion to support the decision to approve the skate park highlighted that many pro-skate park submissions were original and most of the opponents were form letters. She did not mention the much higher proportion of opponents verses

supporters who identified as being from the local area. No councillor mentioned the survey of 100 residents even though all councillors got the report and heard the author give a deputation at a Council meeting.

### **Lauderdale Beach boat launching area**

Then there is the sad saga of the Lauderdale Beach boat launching area. Last month the Council did an about turn and agreed to return a boat launching access area and remove a unusable disability access way. But \$200,000 has been wasted and we must not forget the terrible abuse of process.

In August 2018 local residents awoke one morning to be surprised to find excavators on the Lauderdale Beach closing their boat launching area adjacent to the Lauderdale Canal. Those with long memories might have recalled that the Council had consulted them, four years prior, and those who read the council minutes would know that a decision to close the beach to boat launching was made in April 2014. Critically, the technical experts who advised Council back in 2013 (a Tasmanian Coastal Adaptation Decision Pathways report) never supported closing the boat launching access as an option. This idea came from the Aldermen themselves. But when Council consulted the Lauderdale residents in March 2014 the survey form never raised the possibility of closing the boat launching access. The survey results were used to justify closing the boat launching area.

Following months of community pressure the Council has decided to remove the disability access way because it is unusable by wheel chairs (after a storm washed away half a metre of the beach) and will return the boat launching access while also reshaping the dunes to protect from storms.

But this outcome could have been achieved without causing the community massive anxiety and wasting \$200,000 of rate-payers money – Council simply had to following the TCAP advice and talk honestly with the community of Lauderdale.

### **Seven Mile Beach Sports complex**

Now we have another potential fight over the council's plans for a large sports complex at Seven Mile Beach. To be completed.



## tasmanian conservation trust inc

Hon Tania Rattray MLC  
Chair  
Parliamentary Standing Committee on Subordinate Legislation  
Parliament House  
Hobart Tas 7000

13 September 2018

### **Clarence City Council Public Places By-law**

Thank you for allowing me to present to the Parliamentary Standing Committee on Subordinate Legislation (the Committee) on 20 September 2018 in regard to the Clarence City Council Public Places By-law (the By-law). Peter Edwards from the Rosny Hill Friends Network will also attend at the same time.

**While I have presented a brief outline of my concerns regarding the By-law to Committee member Alison Standon, I wish to provide all committee members with a more detailed explanation of my concerns and recommend some changes.**

The By-law was approved by the Clarence City Council (CCC) at its meeting on 16 April 2018 and subsequently certified by the General Manager on the 20 April 2018. I have emailed the complete agenda and minutes for the 16 April 2018 CCC meeting and have attached key relevant sections to this submission in hardcopy form. I understand the By-law has come into force following publication in the Government Gazette on 2 May 2018. The final by-law is required to be sent to the Parliamentary Standing Committee on Subordinate Legislation for review. Section 9 of the *Subordinate Legislation Committee Act 1969* provides the Committee with powers to request an authority who prepared subordinate legislation to amend, suspend or rescind the subordinate legislation.

I believe that there is a case for the Committee to use its powers to have certain elements of the by-law amended or rescinded. I believe that a number of community groups in Clarence share my concerns regarding the By-law.

Please note that I have provided a copy of this submission to Darren Hine, Commissioner of Police, as I have made reference to concerns he raised in relation to the draft by-law.

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## **Section 15: Banned entry to a public place**

This is a new category of offence and it is my most serious concern.

Section 15 provides the General Manager with the power to 'ban a person who has offended against this By-law from entering a specific public place'. I estimate that a fine of \$1554 applies for each offence.

Concerns regarding this Section 15 include:

- While it seems that the By-law requires the General Manager to issue a separate notice in regard each 'specific public place' that a person is to be banned from, there is no limit to the number of notices regarding different public places that can be issued in relation to a particular person at any given time.
- Given the type of places that are public places, this provision could apply to a wide range of places that people have a need to access to carry out their normal daily activities. The By-law defines a 'public place' as including:
  - 'any land or part of land (including highway), owned by or under the control of the council';
  - 'any publically accessible land, any sporting facility, any paths, multi-user paths, tracks, or trails';
  - 'facility owned, controlled, managed or maintained by Council'.
- The provision contains no requirement that the ban needs to be justified, including in terms of a person committing unwanted or disruptive behaviour, only that a previous offence under the By-law has been committed.
- The ban and the previous offence may be entirely unrelated and therefore inherently unjust.
- The General Manager has unconstrained discretion to decide the length that a ban applies, making it possible to apply it for the person's entire life.
- The General Manager has discretion to decide the area covered by a ban, i.e. what a specific public place is, making it possible to apply it very large area.
- The provision provides no process for the person who receives a ban to challenge it.

I believe that, if applied, Section 15 would seriously impinge civil liberties. Even if not applied, it has the potential to stifle public debate and activities, including during elections and in response to impending decisions of the council as a planning authority. People may fear the repercussions of their actions and choose to not undertake them.

The High Court of Australia raised this concern, regarding stifling of public debate, in its decision to strike down Tasmania's anti-protest laws in October 2017.

I note that nowhere, to my knowledge, has the CCC provided a reason for creating this new power.

I note that the Director of Local Government has only considered whether the draft By-law complies with the Local Government Act 1993 and presumably does not have authority to address wider considerations.

I note that the Commissioner for Police wrote in a submission to the CCC on 19 February 2018 regarding the draft By-law (included with the 16 April 2018 Council

agenda and attached here) outlining a number of concerns regarding the draft By-law, including several comments regarding the proposed provision regarding banning entry to a public place.

The Commissioner states that:

'The proposed new power for the General Manager to ban a person from a public place if they have offended against the by-law is a significant power for a by-law and may be an unintended over reach that impinges against people's civil liberties. Police officers possess a 'Dispersal of persons' power found in section 15B of the Police Offences Act 1935. That section states that a police officer may direct a person in a public place to leave that place and not return for a specified period of not less than 4 hours. However, it should be noted that the section also imposes strict guidance regarding the circumstances in which such a direction may be given.

The consultation draft provided for comment does not adequately define the operation, scope or limitations of such a strong new power or how its application may be enforced.'

These are very serious criticisms by the Commission of Police that should have been seriously addressed by the CCC but have not.

To my knowledge the only time that the CCC has responded to these concerns is the General Manager's report on the draft By-law (attached here) submitted as part of the CCC 16 April 2018 agenda papers. The same response is contained in a letter sent to the Commission of Police dated 2 March 2018.

In responding to the Tasmania Police concerns, the General Manger states that the provision to 'ban a person from public places if they offend against the By-law is regarded as a significant new power which can be applied too widely'.

The General Manager makes only one suggested change in response to this concern (that was included in the adopted By-law). The General Manager's response was that:

'The clause has therefore been redrafted to make it clear that the power only extends to the General Manager banning an offender from a specific public place and not any public place.'

Critically, the Commission's letter does not refer to concerns regarding 'any public place' but refers only to 'a public place'.

More importantly, the change made at the General Manager's recommendation fails to achieve his intended aim of limiting the number of places a person may be banned from. The General Manager can simply issue multiple notices to a person regarding different public places.

The change made at the General Manager's recommendation addresses none of the concerns raised by the Commission in relation to 'civil liberties' and its failure to 'adequately define the operation, scope or limitations' of the powers.

**Recommendation:** I recommend that the Committee considers striking out Section 15 entirely.

### **Section 33: Signage and advertising**

Section 33 (a) and (b) create what we believe are new or expanded offences relating to use of signs in a public place and Section 33 (c) deals with an offence relating to giving out pamphlets etc in a public place. A fine of \$777 applies to offences against this provision.

Part 5 of the By-law provides for a person to make an application to the General Manager for a permit or licence to use public places provided for under Part 4 of the By-law. Section 33 is in Part 3 of the by-law so it would seem that Part Five does not apply and there is no potential under the By-law to obtain a licence in relation to signage and advertising on public land.

Section 33 is excessive as part 33(a) prohibits a person from using a sign in any public land including where they are held by a person as well as where they are fixed to property or painted. This means that people attending an event on public land who hold a sign of any size, are committing an offence. This constitutes a complete ban on the use or possession of signs in a public place.

Section 33(b) seems to be the same as 33(a) but is worded slightly differently.

Section 33(c) makes it an offence to 'give out, distribute, scatter or throw down any handbills', 'pamphlets', etc. This makes it an offence to hand written information to other people while at an event in a public place. While it is understandable that scattering or throwing down pamphlets is seen as being unacceptable but presumably the Litter Act would apply. To prohibit giving out or distributing pamphlets or handbills in a public place is excessive as such activities constitute a key element of freedom of speech or expression, are a normal part of many public events and does not cause any harm.

The activities to which section 33(a), (b) and (c) may apply include entirely harmless activities that are part of many community events. These may include events that are aimed at raising public awareness of proposed developments that the council has planning authority for, including where the Council is the land owner and/or proponent. They may also include doing media interviews in regard to such development issues. These events may occur during elections.

Therefore the General Manager may use these powers to restrict public demonstrations of concern regarding proposed developments, limit media coverage and interfere with election events. But as stated regarding Section 15, the mere existence of such powers may inhibit people from organising or participating in such events.

**Recommendation:** I recommend that the Committee considers suspending provision 33 until the council revises it to address the concerns I have raised. The proposed new provision should be made available for public comment.

### **Section 38: Public assembly, speaking or entertainment**

Section 38(b) makes it an offence for a person in a public place to 'organise or participate in an assembly, rally, public speaking or similar activity'. A fine of \$777 applies to offences against this provision.

A person may make an application to the General Manager for a permit or licence to use public places for public assembly, speaking or entertainment.

Requiring a person to obtain a licence to organise a public assembly and to make it an offence to organise or participate in such an assembly without a permit, regardless of scale, location and circumstances, is excessive and unfair. The definition of an assembly is 'a group of people gathered together in one place for a common purpose'. A meeting of two or three people in a public place who undertake a private conversation could be seen to be an assembly and subject to the By-law. A simple family gathering at a park or beach would fit the definition of an assembly and be subject to the By-law.

Some community events are organised at short notice, e.g. responding to a request to do a media interview, and it is totally inappropriate to require a person to apply for a licence which could take days or weeks to obtain.

Similarly, the by-law unfairly applies to 'public speaking' regardless of the location, circumstances or scale. This provision could be used to unfairly limit public speaking that is inoffensive and in the interests of the community.

There are circumstances where a licence is justifiable e.g. if an assembly aims to bring together a very large number of people, the event may interfere with other users of a public place or the location is inherently hazardous or vulnerable to disturbance. Similarly, public speaking that disturbs other users or nearby residents, e.g. using amplification or when done late at night, could justify being regulated. However, the By-law includes no conditions or criteria to limit its application.

Licence applications for assemblies and public speaking could be refused by the General Manager and there is no requirement to provide reasons and nor does the By-law provide for any right to have that decision challenged.

The General Manager may use these powers to restrict public demonstrations of concern regarding proposed developments, limit media coverage and interfere with election events. But as stated regarding Section 15, the mere existence of such powers may inhibit people from organising or participating in such events.

**Recommendation:** I recommend that the Committee considers suspending provision 38 until the council revises it to address the concerns I have raised. The proposed new provision should be made available for public comment.

### **Other comments**

While sections 15, 33 and 38 of the By-law are of greatest concerns to the TCT we have not been able to provide a comprehensive critique of the By-law. Many other matters concern us and others relate to issues that are not relevant to the interests of the TCT but would greatly alarm the community. For example, Section 34 restricts ball games in public places 'unless in an area designated for that purpose'. This would make it an offence to play beach cricket in public places within the municipality unless the beach was designated. I know of no beach in Clarence that is designated for cricket and therefore this provision constitutes a ban on beach cricket in the municipality.

**Recommendation:** I recommend that the Committee considers requesting that the CCC undertake a comprehensive review of the By-law, preferably by an independent organisation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Peter McGlone'.

Peter McGlone  
Director  
Tasmanian Conservation Trust  
[peter@tct.org.au](mailto:peter@tct.org.au)

cc Darren Hine, Commissioner of Police, Tasmania Police



## tasmanian conservation trust inc

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5 March 2019

### **ADDENDUM: Submission to the Review of Tasmania's Local Government Legislative Framework**

#### **For inclusion in 'Democracy and engagement', 'Examples of good and bad consultation'**

I note that the Clarence City Council does not publish on its web site a Right To Information Application Form, whereas every other council I have looked at does. The CCC web site states that a form is available from the council offices or an application can be made by post or email. Surely a downloadable PDF form can easily be uploaded to the web site which ensures applicants provide the required information.

I have looked at a sample of council web sites, big and small, rural and urban and it seems that only Hobart City Council provides an online form for submitting representations on proposed developments. This is becoming a standard method for many government departments to obtain submissions and councils should be using this system.

Yours sincerely

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