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Ms Heather Salisbury
Acting General Manager
Hobart City Council
GPO Box 503
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Dear Ms Salisbury *Heather*

Thank you for providing the amended Regulatory Impact Statements (RIS) for the draft Hobart City Council Public Spaces By-law and draft Cark Park By-law.

Public spaces RIS

Mobile Food Vans (Itinerant vendors)

I note that there have been amendments made to the RIS in relation to the issue of mobile food vans following discussion with my officers. I am of the opinion that these changes satisfy the majority of the outlined concerns.

However, I remain concerned that there is potential for permits to be denied to mobile food vendors on the basis that the trading location of a van is too close to a fixed food establishment, and the reason for denying a permit would be to restrict competition.

As you would be aware, in accordance with the National Competition Principles, councils should not regulate to restrict competition unless it can be demonstrated that the benefits of the restriction to the community as a whole outweigh the costs, and the objectives of the legislation can only be achieved by restricting competition.

In order to be satisfied as per section 156A of the *Local Government Act 1993* (the Act), I seek that the Council insert a statement within the RIS or by-law that competition with one or more other businesses is not a factor in approving or denying a permit.

Drones

I am satisfied that the RIS has been adequately amended to include a reference to the new regulatory restrictions to drones. However, I still hold concerns that this regulatory approach is disproportionate to the risk. I do agree that drones pose some risk to public safety, and raise other issues such as privacy. Whether they create materially greater risk than other objects, which are not subject to the scope of proposed regulation, is the key issue.

I question whether other laws are sufficient to manage the risk of drones. For example, Part 2 of the *Police Offences Act 1935* includes provisions relating to public annoyance and breaches of privacy that are likely to be relevant to the inappropriate use of drones.

Furthermore, drone users could be subject to civil action for any injury caused to a person or property. I also consider the practical regulation of this activity would be difficult, given the use of drones by children and adults is already prolific in public places across the State (for example at beaches and parks.). Requiring a permit for use in this context appears disproportionate and unenforceable.

I note that the by-law only seeks to regulate drones over 2kg. However, this adds another level of complication to compliance officers when determining whether restrictions apply to a drone or not, especially when airborne.

Nonetheless, it is not within my jurisdiction to consider this matter under section 156A of the Act. I do intend to share these concerns with the Parliamentary Standing Committee on Subordinate Legislation (the Committee) given its role in reviewing by-laws in the context of the *Subordinate Legislation Committee Act 1969*.

The Committee may wish to consider my concerns when the by-law is made, particularly with regard to whether the by-law unduly trespasses on personal rights and liberties, and in the context that other Acts may deal with the matter.

Car Parking RIS and By-law

I note that there have been some amendments made to the RIS following officer level discussions. However, the primary concern about the fundamental justification for this by-law that were raised have not been addressed.

This draft by-law essentially gives the Council a competitive advantage over commercial operators and, currently, there is no legitimate justification provided as to why certification should be provided.

In Part 7 of the RIS – Discussion of Alternatives, the RIS states that the “only alternative option for Council would be to deal with the issue contractually”. However, I note that the RIS does not expand on why dealing with car parks on a contractual basis is not a viable alternate solution.

It is my understanding that private operators of multi-storey car parks regulate the activities in their private car parks on a contractual basis. I am unaware of any issues that private operators are experiencing by regulating in this way.

If there are systemic issues being experienced by private operators, then it is my opinion that a statewide approach should be explored as it is unlikely that these issues would be limited solely to Hobart operators.

The RIS has claimed that an absence of the by-law would prevent the control and regulation of people’s activities while outside their vehicles. I am unclear what activities the by-law is seeking to regulate other than activities addressed within the Police Offences Act. Again, private multi-storey car park operators manage without the benefit of a by-law.

While I am aware that section 170 of the Act provides councils with the power to make by-laws in relation to “Parking of Vehicles”, the existence of this power does not justify the existence of the by-law.

The purpose of the RIS is to assess whether it is in the **public** interest for the Council to impose restrictions and controls in this area. Currently, I am not satisfied, as per section 156A of the Act, that there is sufficient public interest for the Council to impose restrictions and controls in this area.

Council’s operation of off-street (multi-storey) car parking facilities are clearly commercial activities in competition with private sector operators in the Hobart municipality. The Council’s Annual Report indicates this is a multi-million dollar Significant Business Activity. The operation of such should be on competitively neutral grounds.

Therefore I will not certify that this statement is satisfactory and recommend that Council should pursue the alternative of contractual arrangements.

Yours sincerely

A handwritten signature in black ink, consisting of a stylized 'A' followed by a 'T' and a 'Y'.

Alex Tay
Director of Local Government

26 April 2018

