

## Access Control: A Joint Approach By Planners And Engineers

*M Gelling*

Jim called round the other evening. He looked a bit shaken and it didn't take long for him to tell me why. He'd been out in the country on business and, when driving home he'd come across a serious road accident.

He was one of the first on the scene and had used his mobile to call the emergency services. The police and an ambulance eventually came and Jim had tried to help but there wasn't much that he could really do. "I feel really bad," Jim said. "two people seriously injured and yet it all seemed so unnecessary. I gather that the driver came belting over the crest of a small hill just as this other chap was coming out of his driveway. What I can't understand is why an access was allowed where even blind Freddie could see it was dangerous."

I thought for a minute. I knew the road well; although it was in a rural area it was an arterial route which often carried quite a bit of traffic and the vehicle speeds could be pretty high. "Well it isn't so surprising that many collisions occur at driveways and junctions. Under English common law every landowner has the right to access a public road wherever his land touches that road irrespective of the location or the sight distance available, provided that passing motorists are not put in danger.<sup>(1) (2)</sup> It's called a property right and evolved from centuries of English case law based on customs of that country and it isn't the result of any legislation.

"And it's understandable, Jim. Prior to the Second World War rural roads were, by and large, unsealed tracks catering for few travellers. Most people lived in towns and walked (or used public transport) to travel to and from work and, in the rural areas, tourists and visitors were rare with little consequent pressure for service stations, motels and other commercial outlets catering for the passing traveller.

"Let's compare railways and arterial roads. Apart from the odd station or two no railway permits random accesses and unexpected entry to and exit from their lines. Conversely roads, which for centuries had catered for slow moving horsedrawn or pedestrian traffic, continued to allow the common law right of indiscriminate access to be exercised. The result is only to be expected: road accidents and loss of highway efficiency."

Jim nodded. "But," he asked, "surely the law should have changed when roads, began to improve and people drove faster? And we all know that the number of cars, even on our rural roads, goes on and on increasing."

"Well, in theory you're right, Jim, but it's not easy to change something that has existed for hundreds of years. Highway law is of ancient lineage and developed initially in medieval England. Australia inherited that system and though now much affected by statutory enactments the common law remains legally in operation where statute law is silent.

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And, of course, if the old Elizabethan law was still followed which said landowners had to ensure that, “the people have more ready and easy passage”<sup>(3)</sup> on the highway perhaps we wouldn’t need any change. In fact, from the very earliest times, English law recognised that the roadside owner couldn’t use his land in any way that might interfere with the public’s dominant right of passage on the highway.<sup>(4)</sup>

“What’s often overlooked by landowners is that they have duties and responsibilities as well as rights and benefits. Why, in the old days, the landowner over whose land the road ran even had to repair the road himself!

“How different from the case that you’re telling me about, Jim, where it sounds that the landowner has built, or is using, an access in an unsafe spot and, as a result, a couple of people have possibly been seriously injured! I know that it’s a bit complicated but it’s probably worth telling you how a British legal expert, Halsbury, explained the situation. He said:

‘The private right of access is subject to the public right of passage which is the higher right but the right of passage of the public is also subject to the private right of access to the highway where the adjoining owner can exercise that right by means which do not amount to a serious obstruction to the right of passage and are therefore not inconsistent therewith.’<sup>(5)</sup>

“And, as a judge in the Supreme Court of New Zealand commented:

‘.....difficulties may arise in defining exactly where the private rights of access and public rights of passage end and begin and in determining the nature and extent of the right of access in particular circumstances.’

“And, to complicate matters, there are a couple of other problems. The access may have been there for years, since the horse and buggy era! The landowner has right of access to a public road and this right can only be interfered with by State Governments under exceptional circumstances. Some form of legal control, especially in respect of major roads and freeways, has been enacted in all Australian States and New Zealand, and provision can be made for compensation for having compulsorily removed, or acquired, that property right.”

Jim broke in, “Well, someone should have interfered in this case, the access was just over the brow of a hill; it was bound to be dangerous!”

“Well, as I said, although the landowner has the right to access a public road wherever he chooses, he should only do so if anyone using the access isn’t putting others motorists at risk. Put simply, if an owner constructs an access at a potentially dangerous location then this might constitute a public nuisance.

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In fact,” I continued, “some legal experts are of the opinion that the courts would consider it unreasonable if a private access or driveway were built in such a place as to be a danger to other road users. The trouble is,” I added, “we’ve never come across a specific court case. The closest comparison is probably the decision that, ‘Access is a fundamental human requirement and.....if it cannot be reasonably provided under the circumstances prevailing at the time a building application is being considered, then such an application must be refused.’<sup>(8)</sup>

“Of course, there are some interesting legal decisions that could support this view. For instance, it’s a nuisance to obstruct a highway, or as the law says, ‘render it dangerous’<sup>(9)</sup>; to park or stand a vehicle on the roadway for an unreasonable time<sup>(10)</sup>; to leave buildings in disrepair so that they’re potentially dangerous to road users<sup>(11)</sup>; to place a frightening display on land adjacent to a highway<sup>(12)</sup>; or attract a crowd to a highway<sup>(13)</sup>, and so on”. I finished rather lamely - I couldn’t remember any more!

State Road Authorities can use powers set out in State legislation. Tasmania, for example, has the *Roads and Jetties Act 1935* that includes, at Section 16, the following:

“(1) Structures shall not be erected or placed and other works shall not be done in a State highway or subsidiary road without the consent in writing of the Minister.”

“Unfortunately, this section remains somewhat ambiguous. One interpretation is that where a landowner exercises his common law right to access a State Road then the Minister has power to specify the works required to link the access between the road boundary and the carriageway, but cannot refuse the application.”

There is, however, contrary legal opinion that the Minister has power to refuse, or withhold, permission for works within the State Road boundary where, in his opinion, an access would be undesirable or unsafe. This view acknowledges the landowners right to physically access the boundary of the State Road but he can be denied permission to undertake any works needed to extend the access to the carriageway.

I was really warming to the task , so I went on, “of course, a lot depends whether the term ‘access’ is used as a verb or a noun”. I saw Jim’s look of complete puzzlement so I explained, “if there is level land between the property and the carriageway and no works are necessary then he, the landowner, ‘accesses’ the highway. If, however, the ground is not level and works are required then the owner may have to construct ‘an access’. In the latter case the Minister may intervene and in the former not as the owner is simply exercising his common law right where no ‘works’ are undertaken!

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“Also, as he’s the custodian of public rights, the Attorney-General may institute an action for an injunction to restrain or suppress a nuisance on a highway and no actual injury or accident need have occurred<sup>(14)</sup>. The test, that various courts seem to have adopted, is a two-fold one which requires proof of the probability that risks are imminent and that they are likely to result in substantial damage”<sup>(15)</sup>.

Jim had been listening quietly but now he broke in again. “You know,” he said, “I always thought that the main purpose of what you term an ‘arterial road’ was to carry high-speed, long-distance traffic. In fact a few years ago didn’t the Tasmanian Commissioner for Town and Country Planning, in a Policy Statement<sup>(16)</sup>, make that point and stress that it was a sound planning principle that, wherever possible, houses, shops and factories are serviced by the local street system?”

“Yes, you’re quite right, Jim. The Commissioner pointed out that to avoid degrading the safety and efficiency of arterial roads there was a need to regulate access<sup>(17)</sup>. And so did the earlier Victorian Statement of Planning Policy<sup>(18)</sup> on which the Tasmanian document was based. “Ideally,” I mused, “there would be a duplicated system of roads, one set, like freeways, being just for long-distance traffic and the other for local traffic movements and to provide access to land; the trouble is, in Tasmania, and most of Australia, that’s unrealistic.

“Most rural roads have been built to serve long-distance traffic and simultaneously cater for the needs of access and local vehicle movements. Consequently, it is understood that on arterial roads through traffic must have preference and the number of accesses must be restricted to the minimum possible.”<sup>(19)</sup>

By this time Jim was looking more thoughtful. At last he said, “It seems to me that Road Authorities have a bit of a problem. So, tell me, how is the question of access control being tackled?”

I had to stop and think; it was a pretty tough question. I paused, and then answered. “What we’re really concerned about is: does a relationship exist between roadside access and the twin concerns of accidents and capacity. And, is the amenity of the roadside corridor a factor that should be considered?”

“Obviously, if this were Utopia then, between towns and villages, and a few junctions at selected points, no access onto an arterial road would be allowed. Undoubtedly, this would have a beneficial effect on accident rates for it is not simply coincidence that, worldwide, the lowest accident rates are experienced on freeways where traffic flows are separated and no access occurs except at interchanges.

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“However, it isn’t a perfect world and along rural roads, some handling high traffic volumes, many accesses and junctions exist. And you know how easy it is for accidents to occur, especially at places where many vehicles turn to and from the road; there may be unexpected last minute stops and turns; waiting vehicles propped in the centre of the road; restricted sight distances - sometimes I’m surprised that there aren’t more collisions!

“But, universally, studies have shown that the adverse effects, accidents, can be reduced in two ways. First, by ensuring that related to the speed of passing traffic, adequate visibility to and from the access is available. This enables motorists to enter the traffic stream without interfering with other road users, and drivers on the highway have sufficient time to react”

Jim appeared to be interested so I carried on. All State Road Authorities have adopted the sight distance which were established by the National Association of Australian State Road Authorities”.<sup>(20)</sup> I added a note of caution. By the way, two visibility standards may sometimes be mentioned. What we’re looking for isn’t the ‘stopping sight distance’; that’s the distance needed to make an emergency stop. What is required is the higher standard ‘intersection sight distance’ which enables a driver to enter the highway and be absorbed into the traffic stream without unduly disrupting other road users.

“Second, many accesses result in many accidents; in other words, the number and spacing of accesses can be important. The greater the intensity of development the higher the volume of traffic that enters and leaves these accesses. If I remember correctly, in 1977-78 the Main Roads department, Western Australia, surveyed accident records for 102 km of urban arterial roads and confirmed that the highest accident rates occurred along those sections where ribbon commercial had taken place<sup>(21)</sup>. Incidentally, even the number of accesses to single residences is important as, on average, 10 vehicle trips per day are generated by each house and, cumulatively, many hundreds of vehicles may turn to and from a multitude of driveways.”

The cumulative effect can be important and this is beginning to be recognised. Brindle<sup>(22)</sup> cites a recent legal decision in Colorado where, even though the application was for a single access which was “demonstrably a relatively safe access”, the concept of the “cumulative effect” was recognised and it was held that “the relative safety of a single access point is not the controlling factor”.

What’s frequently overlooked, Jim, is the location of accidents which, in so many cases is at junction or intersection. I understand that in Tasmania Road Safety officers believe that possibly 55%, or even 60%, of all accidents occur at an intersection, junction, access or driveway. And, due to high traffic speeds, the accidents in rural areas can be serious often involving fatalities and injuries.

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“Let’s see what else I can remember about accidents. Here in this country, the Expert Committee on Road Safety said, “As access control on arterial roads is improved so accident, injury and fatality rates can be expected to fall.”<sup>(23)</sup> This view was largely based on an extensive study undertaken in the USA. For example, a 1968 study<sup>(24)</sup> showed that access control was one of the most important means of preventing accidents. The study results showed that the highest accident rate was normally associated with a 4-lane, undivided highway, with no access control, whilst the lowest accident rate was recorded along 4-lane divided highways with full access control.

“In the USA there was further early work by Staffield<sup>(25)</sup> and Box<sup>(26)</sup>, both studies showing a generally rising accident rate as the number of access points increases. Box showed that accident rates are lowest on freeways and highest for roads with unlimited access. It was found, on rural roads where there was full access control, that there were 3.3 fatalities per 100 million miles travelled whereas, where there was no access control, the figure rose to 8.7 fatalities.” This work was replicated by that of Flora<sup>(27)</sup> in 1982 who studied rural accident rates as a function of the level of access control. Where there was full access control the number of fatalities was found to be 2.1 accidents per 100 million vehicle kilometres and 5.4 where there was no access control whatsoever.

At this point Jim broke in. “Wait a minute”, he said, “what do you mean by ‘full access control’ and ‘no access control’?”

“Full control of accesses is only applied to freeways,” I replied, “where there are no private accesses or at-grade junctions with public roads. On roads with partial access control there may be some at-grade junctions and even the occasional private driveway connection. ‘No access control’ means the Road Authority sets no limit on the number of connections and only controls the layout of the junction or access.

“One interesting point, Jim, is that as a result of some of these accident studies some planning authorities in the USA place an upper limit on the frequency of new developments requiring access onto major roads. For example, a policy that planning authorities were recommended to adopt in regard to rural primary arterial roads<sup>(28)</sup> was:

“Direct access from abutting property to the through lanes of rural primary arterials should be prohibited. The only exception should be the provision of access to rural farm residences and field drives where access to a lower classification of roadway cannot be economically provided. Where such access to farm residences or field drives is provided, the wording of the driveway permit should limit the use of the driveway to that specific purpose and land use’.

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“Now, that report also recommended that an upper limit be placed on the frequency, or spacing, of accesses to farm residences and the like. The more important the road then the less frequent should the accesses be or, to put it another way, the greater the spacing between accesses.

“Next, I could mention the studies that have been done in the UK. There the authorities know that two-thirds of all casualty accidents and one-third of all rural accidents, occur within 18 metres of a junction<sup>(29)</sup>. Even as far back as 1934 a study<sup>(30)</sup> in Britain showed that about three-quarters of road accidents occurred along built-up lengths of roads and, it was claimed, one of the most effective ways of reducing such accidents would be to curtail ribbon development with its proliferation of junctions and accesses; in 1935 the *Restriction of Ribbon Development Act* was passed.

“Also, a later British study<sup>(31)</sup> revealed that about a quarter of accidents on rural roads happened at junctions and most of those incidents were two vehicle accidents where one vehicle had been turning right into, or from, a side road.

“In respect of accesses and driveways, a survey<sup>(32)</sup> was undertaken of 2 310 casualty and property damage accidents in rural and urban parts of Berkshire. Access accidents in rural areas were found to be in much the same proportion as in urban areas and, whilst they are a lesser safety problem than junctions, are still highly significant at about one-eighth of all accidents.

“But, one of the most interesting studies, and one that researched the relationship between accidents and the spacing of accesses, took place in Ireland.<sup>(33)</sup> There, a survey confirmed that on 2 850 km of rural arterial routes carrying up to 8 700 vehicles per day, the average flow being 1 500 vehicles per day, accesses were the next most important factor contributing to accidents after traffic volumes.

“It was found that an increase of 1.4 major (or 2.9 minor) accesses per kilometre increased the accident rate by 15% at the mean fatal and injury accident level.”

“I notice that you haven’t mentioned much about Australia,” Jim pointed out. “What research has been done in this country?”

“Well,” I replied, “apart from the West Australian study<sup>(21)</sup> not much has been published in this country on rural accidents that includes access and driveway data. And, even if were, that’s not always the whole story because, fundamentally, it’s isolated rural development that can be the problem, not just access. How many times, for instance, does a vehicle run into a car parked outside a house, or hit a pedestrian, or another vehicle waiting to turn right into an access? They’re unlikely to be recorded as “access accidents” but the underlying cause is the same - ribbon

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development! As Brindle puts it, “Traffic service and safety is clearly affected by the degree of interaction between the traffic stream and abutting development.”<sup>(34)</sup>

“One report was, for example, published in 1984 the purpose of which was to describe casualty accidents on Australian rural highways.”<sup>(35)</sup> And, although data was collected from all States, the conclusion was that relatively few accidents occurred at intersections, the figures varying between 8% and 19%. But, accesses and driveways weren’t included!”

I paused for breath and Jim seized the opportunity. “Tell me,” he inquired, “if you reduce, or combine, the number of accesses or junctions along a road, but the total volume of traffic turning to and from the major road remains the same, will the number of accidents also reduce?”

“It isn’t possible,” I replied, “to estimate the accident risk at an individual access. However, it has been shown that a reduction of 30% in the expected number of accidents can be achieved by combining two minor roads.”<sup>(36)</sup><sup>(37)</sup> The UK Ministry of Transport went on to say that it therefore seemed reasonable to the extend that application to the grouping of accesses in the same way as for junctions.

“So, if we can lessen the number of junctions and accesses along a road then the likelihood, and the actual number, of accidents can be reduced. The reason is: if two T-junctions are combined (or individual accesses linked onto a service road) whilst the flow through the remaining junction is greater, drivers are more careful and, overall, there are fewer accidents.”<sup>(38)</sup>

“I can follow all that,” said Jim, “but what I don’t yet understand is how the number of accesses can affect the capacity of a road.”

Again, I had to stop and think before I replied. “A reduction in capacity is caused by vehicles using driveways and side roads interfering with the through movement of traffic. For example, interference occurs when a vehicle is propped, waiting to turn into driveway from a through traffic lane; this causes delay to following vehicles which have to adjust their speed, change lanes or even come to a stop. The amount of delay obviously depends upon the speed at which the turning vehicle can complete the manoeuvre.” I added slowly, “It was, I think, the US Highway Research Board that stated:”<sup>(39)</sup>

‘Inadequate access control has resulted in the functional obsolescence of an entire generation of new arterial facilities built only a short while ago.’”

“Also, the NZ Planning Tribunal said:

‘The primary function of state highways is to carry through traffic efficiently and safely. In rural areas they are usually the roads which carry the

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highest volumes of traffic. The greater the number of vehicles which stop, start or turn on a state highway the less efficient the highway will be.<sup>(40)</sup>

“And it was the Irish who developed a relationship to actually quantify the effect of roadside development on capacity. In general, it was suggested that every one point increase in their ‘development index’, which described the intensity of development abutting a highway, gave rise to a decline of one percentage point in capacity.”<sup>(41)</sup>

By this time Jim was looking more thoughtful. At last he said, “It seems to me that road authorities have a bit of a problem. Tell me, how is access control tackled elsewhere, overseas and interstate?”

I remembered that an Australian Road Research Board (ARRB) publication had identified a number of access control techniques.<sup>(42)</sup> “There are probably three different approaches that can be used, Jim. First, is “access planning” which minimises the number of access points by, for example, designing a subdivision so that access is to a side, or local, road and not to an arterial highway. In the ARRB report that I mentioned it was stated, ‘In Australia, Canberra stands out as a notable example of control of access to higher-order roads’.<sup>(43)</sup> The Golden Grove development in Adelaide might be another example.

“But,” I continued, “There’s another form of regulation which might be called ‘access management’ or the traffic engineering approach, and uses management features to control access. Such devices can include; the prohibition of turns, creation of one-way streets, re-routing of traffic, construction of parallel service roads and so on. Incidentally, it has been held that a landowner is not entitled to compensation because his means of access was to a local service road instead of directly onto the through traffic lane of the highway.”<sup>(44)</sup> It is to be noted that circuitry of travel is also, as the Americans would say, not compensable.

Also, a landowner can’t prevent a highway authority from constructing a median in the centre of the highway - even one which prevents right, turns to and from the property. The reason is that an abutting owner is entitled to access a highway, but not to all parts of the highway.

“In two American cases the owners of, first, a motel <sup>(45)</sup> and, second, a service station <sup>(46)</sup> both unsuccessfully tried to prevent the highway authority from installing the medians because, the owners claimed, the median would prevent potential customers from turning across the highway into the premises. The courts held that a landowner has no property right in the continuation or maintenance of the flow of traffic past his property, and they refused to prohibit construction of the medians.

Third, is the 'land use' control system adopted in countries such as the United Kingdom. There, the approach stemmed from what has been called the 'good neighbour' principle. This, a principle traditional to British property law, suggests that it is indeed reasonable to deny owners the right to use their land in certain ways, if those proposed uses would cause nuisance to others.<sup>(47)</sup>

Interestingly, it was the Uthwatt Committee Report that made an important influence on later planning legislation. Now, that Committee was established to advise on matters of compensation when a public authority had to compulsorily acquire land. Hang on, I think I've got a copy of the relevant section of the Report somewhere. Yes, here it is:

'Ownership of land involves duties to the community as well as rights in the individual owner. It may involve complete surrender of the land to the State or it may involve submission to a limitation of right of use of the land without surrender of ownership or possession being required. There is a difference in principle between these two types of public interference with the rights of public ownership.....Where property is taken over, the intention is to use those rights, and the common law of England does not recognise any right to requisition property by the State without liability to pay compensation to the individual for the loss of his property. The basis of compensation rests with the State to prescribe. In the second type of case where the regulating power of the State limits the use which an owner may make of his property but does not deprive him of ownership: whatever rights he may lose are not taken over by the State. They are destroyed on the ground that their existence is contrary to national interest. In such circumstances no claim for compensation lies at common law.'<sup>(48)</sup>

"Consequently, in the UK there is reliance on land use legislation to control access as the number, type and use of accesses is seen to be a direct effect of the development of land. So, the national government has the power to intervene in the planning process. All development proposals within 67 metres of a "Trunk Road", where the speed limit is 40 mph or more and whether or not access to that road is proposed, must be forwarded to the highway authority which has the power to direct that planning permission be refused."<sup>(49)</sup>

"To sum up, in the UK access to highways is controlled by planning legislation (incidentally, the formation of an access is 'deemed' development for which planning approval is required).<sup>(50)</sup> In other countries, such as the USA and Australia where, generally, planning controls are weaker, the responsibility for limiting access rests with the highway authority. In these countries private rights of access are regulated by appropriate legislation and, where applicable, compensation is given to the abutting owner".

“If I understand you correctly,” Jim said slowly, “in the UK no compensation is paid for limiting access, yet in Australia the situation is reversed. I must admit that I’m a bit puzzled; I’m not sure whether, or when, an owner is entitled to compensation.”

“I mentioned Halsbury before,” I replied, “and he explained the situation like this:

‘Interference with a private right of access will, if wrongful, support an action and an adjoining owner may accordingly recover damages..... where, however, the interference is authorised by statute no action will lie, and there will be no remedy unless compensation is provided for by statute.’<sup>(5)</sup>

“There’s also an Australian case which repeated that view of the common law provisions but then pointed out: ‘Cases exist where this common law is modified by statute and provision is made for the payment of compensation.’<sup>(51)</sup>

“In the USA there appears to be general agreement that the abutter’s right is subordinate to the public’s right of passage and, therefore, may be reasonably limited without the payment of compensation.<sup>(52)</sup> For example, it’s been held that:

‘ the right of access is merely a right to reasonable, but not unlimited, access to and from the land.’<sup>(53)</sup>

And, in yet another case:

“An abutter having access to a frontage road which provides reasonable access to the main traveled highway is afforded access to the public road system, and any circuitry of travel, once that access is given, is non-compensable.’<sup>(54)</sup>

“In the USA, it’s accepted that the right of access doesn’t mean that there’s a right of access to the public road at any point. Under its police powers the State may restrict the landowner to access at a designated point, or points, along the boundary in order to provide for the safe movement of traffic on the public road. And, as I pointed out, provided the landowner has reasonable access no compensation is due.<sup>(55)</sup>

“And a couple of other points, Jim. First, American courts have held that the highway authority may regulate the number and location of access driveways to a piece of land. Second, the access permitted may be indirect or even circuitous; that is, an abutting owner may have to travel further to get to his property due to one-way streets, median barriers or service roads. And, direct access to a highway may be denied if the owner still retains reasonable access to the highway through the local street network.<sup>(56)</sup>

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“What it adds up to, Jim, is that in the USA compensation must be paid where all access rights are eliminated, or where the alternative access arrangement is unreasonable. This can happen where freeways are being built and full access control is required. Of course, the road authority can sometimes provide substitute access by a service or frontage road; this action is generally held to be ‘non-compensable’.

“On the other hand, where only partial control is required, accesses may be permitted at locations acceptable to the highway authority. Then, the abutting owner is entitled to reasonable access and, as long as the landowner retains suitable access to his property, there is no question of compensation. That’s interesting because it seems to mean that in the case of partial control of access (which is the usual form of access control applied in Australia) American courts have accepted that provision of reasonable access removes the owner’s right to automatic compensation.”

“I was just about to ask you”, said Jim as I paused for breath, “what the position is in Australia. You said earlier that in this country access can be controlled by ‘appropriate legislation’; what does that mean?”

“All States have provision for some form of access control, at least on specific kinds of roads. For example, over 40 years ago the road construction authority in Victoria, then Vicroads, was already empowered to limit access to any declared road and, in addition, under the *Local Government Act*<sup>(57)</sup> municipal councils could make by-laws declaring any street to be a road of limited access.”

“And, what’s the situation in Tasmania?” Jim asked.

“The legislation is contained within the Roads and Jetties Act 1935 and s52(A)(1) provides that, ‘The Governor may, by proclamation, declare any State highway or subsidiary road, or part thereof to be a limited access road’. The effect is that the common law right of access of persons owning land abutting that State road is extinguished. Section 52B(2) provides that, ‘A person must not cause or permit a vehicle or livestock to cross the boundary of a limited access road at a place other than at a proclaimed place of access’.”

“A ‘proclaimed place of access’, what’s that?”, Jim broke in to ask.

“A proclaimed place of access usually provides access to a council road that junctions with a State road. Also, the Minister may agree to the establishment of licensed points of access, that is private accesses and driveways.<sup>(58)</sup> Importantly, another section of the Act<sup>(59)</sup> states that such a licence, ‘may be subject to conditions’, including, location and layout of crossing, duration of licence and the use of the access.

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“In other words, the Minister may approve accesses to serve abutting landowners and not only has control over the location and layout of such accesses but also can specify the purposes for which vehicles may use the access; for example, a condition could be that the access is used for agricultural purposes and one residence only. Any conditions refer solely to the use of the access by vehicles and can't control the way that land is used.

“If, for instance, a craft shop is established and the licence conditions are contravened, the Minister cannot close the shop. He can only revoke the licence and, to make the revocation effective, a fence may be erected across the access. Because the access is closed those customers visiting the craft shop, and choosing to park along the State Road, would be committing a trespass nuisance. This is because the Act<sup>(60)</sup> states that vehicles may not stop along the highway and can only pass and re-pass.

“But the advantage of a Limited Access proclamation is that the degree of access control that may be exercised is flexible and can vary between the extreme of complete control of access, that's called 'full control', to the other extreme of 'partial control' which simply a control over the location and number of access points.”

“What about compensation,” Jim enquired, “does any have to be paid?”

“I'm afraid so,” I responded. “Legislation says that a person whose land is injuriously affected by the proclamation of a limited access road is entitled to compensation.”

“I'll have to ask the question.” Jim interrupted, “What do you mean by, 'land injuriously affected'?”

“First of all, the phrase is important as, to claim compensation, a landowner has to show that he has been injuriously affected. The concept originated in the English *Lands Clauses Consolidation Act 1845*, which extended the common law right by giving compensation for 'injuriously affection' to owners where only part of their land was acquired. That Act contained no express provision for compensation where no land was taken but, over the years, the courts have awarded compensation in those circumstances provided that the following criteria have been satisfied: one, the damage or loss must result from an act made lawful by statute; two, in the absence of statutory powers the loss or damage would be actionable; and, three, the loss or damage must be an injury to lands.

“I've got an article about the subject here and it cites the following interpretation of the expression 'land injuriously affected':

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“Where by the construction of works there is a physical interference with any right, public or private, which the owner or occupier is, by law, entitled to make use of in connection with that property, and which right of access gives it a marketable value apart from the uses to which any particular occupant might put it, there is title to compensation; if by reason of such proclamation the property, as a property, is lessened in value...”<sup>(61)</sup>

“The whole business of compensation is complex. In New Zealand the *Public Works Act*<sup>(62)</sup> stated that anyone who is injuriously affected by the creation of a limited access road shall be entitled to full compensation. Yet, in a 1987 decision the NZ High Court held that:

“...without physical interference with the appellants’ right to subdivide their land, the land has not suffered any damage and accordingly their claim to compensation must fail.”<sup>(63)</sup>

“Nevertheless, access along important highways can be controlled, and that sounds pretty good to me,” said Jim. “So, why are there so many dangerous accesses? Isn’t the legislation being used?”

“Yes, Jim, it is; particularly when new highways are constructed. But, to date, this form of control has been sparingly used along existing roads due to the potentially high compensation claims that may arise and to try not to antagonise both rural landowners and local Councils who want development in their municipality.

Consequently, a Proclamation of Limited Access has, all too frequently, only been made when the levels of safety and efficiency of a State Road have already been significantly eroded.”

Jim looked a bit despondent but eventually asked, “Well, isn’t there anything else that can be done? After all, not only can accidents cause a lot of pain and misery but also they cost a lot of money. I seem to remember reading that the cost of a fatal accident is now estimated to be around \$1.5 million and \$325 000 per major and \$12 000 per minor, injury<sup>(64)</sup>. Added up over the State that represents an awful lot of money that could be saved!”

To answer; attempts are being made to control access by means other than Limited Access proclamations. But, you’ve got to remember one or two things; first, the actual number of accesses along a road doesn’t matter - they may only be farm gates used a couple of times a year. It’s the volume of traffic using, and turning to and from, an access that is important. The more intensely any land is developed the more traffic that will be generated and it’s a Council that makes land use decisions based upon its planning scheme.

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“Then, some developments may increase the use of existing accesses and, again, the decision is a town planning one. Moreover, although compensation may have to be paid if a proclamation of Limited Access is made, it doesn’t if access is controlled under town planning powers, Tasmanian planning legislation limiting compensation to cases where land is reserved for public purposes.<sup>(65)</sup> And, it has often been held that control of access from an individual property is within town planning powers<sup>(66)</sup>.”

It was Jim’s turn now. “So, what you’re saying is that rather than the highway authorities controlling access, planning agencies, which control the use of land, should also be relied upon to regulate the use and location of accesses?”

“What I am saying, Jim, is that road and planning authorities should be jointly responsible for control of access. To explain: many Tasmanian Councils are now drafting planning schemes in a “performance-based” format. Instead of a prescriptive scheme, where all uses in zones are identified as Permitted, Discretionary or Prohibited, a performance-based model requires proposals to be considered against a set of performance criteria.

“These standards can be quantifiable, or objective, and if a development proposal can meet all the relevant quantifiable standards, termed “acceptable solutions”, then it’s Permitted and approval is automatic. If, however, that proposal can’t meet one, or more, of the Acceptable Solutions then, within specified parameters, alternative ways of meeting those standards can be suggested by the proponent. These subjective standards are termed “Performance Criteria” and where a proposal has to rely upon one or more Performance Criteria, the application has to be treated as a Discretionary proposal.”

Jim was itching to butt in again. “Do I understand you to mean that if a development application meets all the required standards then, in fact, anything can happen anywhere?”

“That’s quite right, Jim, and you can see how important it is that standards are carefully drafted to ensure that they put into effect a Council’s objectives. One set of standards, the “Roads Schedule”, sets up a five category road hierarchy for the State. A Road Hierarchy simply says which roads have various levels of importance as traffic routes, and which should remain as quiet residential streets.

“This can help road authorities to achieve a major goal, which is to maintain or improve the safety and efficiency of the entire road network without hindering development aims and opportunities. Thus, Councils have a better idea of the developments that should occur along a road and the road designer will know what sort of traffic is likely to use the road, and can design the roadworks accordingly.”

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“Nice try,” said Jim, “but that doesn’t seem to give you any better control over accesses.”

“I’m coming to that. The Road Schedule specifies that of the five road categories the first three, Categories I-III, are of major importance as they Tasmania’s arterial roads. Now, bear in mind that the Schedule’s requirements can be met either via Acceptable Solutions or by way of Performance Criteria. So, an Acceptable Solution for a development proposed alongside a Category I, II or III Road outside a 60 km/h speed zone is that the access is to an adjoining Category IV or V road. What this means is that direct access to a Category I, II or III Road I, in this case, not an Acceptable Solution and I, in effect, Prohibited.

“But, this doesn’t mean that a development can’t occur; there is an option. The alternative Performance Criteria says that an application can be treated as Discretionary if it can be demonstrated to the “satisfaction of the Road Authority and the Council, that there is a compelling need for the use or development to be located on the site for environmental, economic, social, transport or other reasons”.

“In fact, the Criteria goes even further. Those authorities have to be convinced that for an access on to a Category I, II or III Road not only is the development needed and but also that it is of National, State, Regional or even Local importance, or that the outcome will be of public, and not just private, benefit.”

“It seems to me that what this means is that you’re not considering just the access, but in reality whether the development on that site is appropriate,” said Jim.

“Well,” I replied, “as I pointed out it is not the number of accesses that is important but how they are used. And, there’s another point; should not the Road Authority, which has to ensure the safety and efficiency of its roads, be involved in assessing the traffic effect of a development proposal?”

Jim looked somewhat surprised. “Doesn’t it mean that, effectively, the road authority has development control powers?”

“It could be read that way,” I replied. “But, what is occurring is that in lieu of authorities having to react to a development proposal it is the proponent who has to give good and sufficient reason for approval to be given. The two authorities also have to put their thinking caps on! And, there is growing support for the idea that the road authority should be involved in the assessment of development proposals along high-speed rural roads.

“Recently, the State’s Resource Planning and Development Commission, which approves planning schemes and amendments, refused a suggested change to a Road Schedule included in a Council planning scheme. The effect would have been to curtail the range of proposals affecting major arterial roads referred to the road

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authority. The Commission refused the amendment saying that where the Category I-III roads are the responsibility of the State Government then the Minister has a clear and legitimate interest to protect the safety and efficiency of those highways.

“The Commission pointed out that the State Road Authority, which reports to the Minister, should not be excluded by the planning scheme from the process of considering applications for development or use that may affect the safety and efficiency of State Roads. The availability of appeal rights was considered to be a poor substitute for prior consultation and agreement between Council and Road Authority.

“All this results in a potential developer having to come to talk with the two bodies prior to being able to make a planning application. This will provide an opportunity to see how the traffic effects can be successfully integrated into the road network.”

“Doesn’t this make Limited Access proclamations redundant”, asked Jim?

“Not entirely,” I replied, “ for those provisions can still be used effectively in a couple of situations. First, the compensation aspects can be judicially used to cover the cost of amalgamating, or relocating, existing accesses. And second, there may well be some Category IV or V Roads that are prime tourist links, where it is decided to try to maintain the amenity of the corridor outside the road reservation.

“To sum up, it is hoped that there will be some positive outcomes from this approach. These include: early consultation with developers; better co-operation with planning authorities; fewer planning appeals; considerable cost savings through the avoidance of compensation; the road authority’s ability to influence planning outcomes; and, importantly, minimising the number of accidents. You see, Jim, the more developments that can be encouraged into urban areas where drivers are more alert and there are lower speed, then the fewer accidents that will occur on the fast rural roads. After all, two-thirds of all accident fatalities, and one third of all injuries, occur in speed zones of 100km/h or more in Tasmania<sup>(67)</sup>.”

“And, is it working?” Jim enquired.

“It’s early days yet, Jim. To date only a few planning schemes include this Schedule. I reckon that if we can get it into new planning schemes as they are drafted that we’ll begin to have a good idea of the effect in a couple of years. Don’t know about you, Jim, but I’m as dry as a bone! D’you feel like sharing a tinny?”

Jim quickly responded, “I thought you’d never ask!”

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