

MARIBYRNONG CITY COUNCIL

Road Management Act 2004

REPORT SUMMARISING FINDINGS AND CONCLUSIONS OF THE REVIEW OF THE CURRENT ROAD MANAGEMENT PLAN OF THE MARIBYRNONG CITY COUNCIL AS THE RELEVANT RESPONSIBLE ROAD AUTHORITY

PURPOSE

The purpose of this report is to inform Council that a review of the current road management plan of the Council must, as a statutory requirement, be completed by 30 June 2021 in accordance with the section 54(5) of the *Road Management Act 2004* and that the review process has been conducted and completed.

This report –

- summaries the conclusions and findings of the review; and
- recommends to Council that it adopt the findings and conclusions of the review; and
- recommends to Council that, to implement the findings and conclusions of the review, Council proceed to amend the road management plan and to give formal public notice of the proposed amendment.

BACKGROUND

The 2001 decision of the High Court of Australia in *Brodie v Singleton Shire Council* significantly altered the law relating to the civil liability for and the responsibility of road authorities, including Councils, in relation to the performance of their road management functions.

The effect of the decision was to abolish the traditional legal defence of ‘non-feasance’, which had meant that road authorities, including Councils, could not be held liable for injury or loss caused by the condition of roads where works had previously not been done on the roads, and to replace this ‘defence’ with the concept of legal liability based on normal principles of negligence.

The *Road Management Act 2004 (Act)* has sought to address this significant change in the law. It allows road authorities to make and rely upon road management plans. If reasonable and appropriate, compliance with the standards in a road management plan allows a road authority a complete defence to allegations of breach of statutory duty and negligence in respect of alleged failures to remove hazards, repair defects or give warnings of hazards in public roads covered by the road management plan.

STATUTORY REVIEW REQUIREMENTS

Section 54(5) of the Act provides that a Council, in its capacity as a road authority, must, in accordance with the *Road Management (General) Regulations 2016 (Regulations)*, conduct a review of its road management plan at prescribed intervals.

Regulation 8(3) of the Regulations provides that an incoming municipal Council must review its road management plan within the period of 6 months after each general election or by the next 30 June, whichever is later.

In conducting the review, regulation 9 of the Regulations provides that Council –

“must ensure that the standards in relation to, and the priorities to be given to, the inspection, maintenance and repair of the roads and classes of road to which the plan applies are appropriate”.

On completion of the review, Council must produce a written report summarising the findings and conclusions of the review and make the review report available on the Internet site maintained by Council.

THE REVIEW PROCESS UNDERTAKEN

Pursuant to a decision made by the authorised delegate of Council to commence the statutory review process, such consultation and engagement (including with internal Council departments and external stakeholders) as was considered necessary to effectively conduct the review was commenced. Following the review, Council may, if the review indicates that it is appropriate to do so, and under a separate statutory process, proceed to amend its road management plan.

FINDINGS AND CONCLUSIONS

The review process undertaken involved –

- a consideration of existing service levels and intervention standards in the current road management plan;
- consultation with internal and external departments and stakeholders ;
- a consideration of Council’s public liability claims history and the manner in which Council has generally been performing its road management functions, including in relation to any particular problems or issues which have been experienced by Council’s road maintenance contractors in achieving service levels and intervention standards; and
- an analysis of Council’s customer satisfaction survey regarding maintenance of local roads
- an analysis of Council’s customer request management systems and Council’s compliance rate of managing customer requests related to management of roads.

As a result, it has been found and concluded by the review committee that –

- the current road management plan of Council is a satisfactory (and otherwise defensible) document for Council to rely upon in the continuing performance of its road management functions; and

Arising from the review and more, it is considered that –

- the standards in relation to, and the priorities to be given to, the inspection, maintenance and repair of the roads and classes of road to which the current road management plan are both reasonable and appropriate; and
- the standards, in the form of Council's inspection frequency, intervention requirements and response times, are considered reasonable having regard to the appropriate policy and budgetary settings in which the plan is to be considered; and
- the current road management plan otherwise –
 - satisfies the requirements of the Act, the Regulations and the Codes of Practice made under the Act;
 - is premised on a reasonable road management system;
 - contains reasonable standards relevant to intervention and service levels, inspection and response standards and times, and construction maintenance and repair standards; and
 - constitutes and contains a reasonable policy framework – one based substantially on financial, economic, political, social or environmental considerations – in relation to the construction, inspection, maintenance and repair of public roads within the municipal district for which Council is the responsible road authority; and
- to the extent the standards specified under the road management plan are achieved – and by way of complete policy defence (and other defences) to any legal proceedings or liability claims made against Council based on a breach of statutory duty or duty of care – Council would be able to satisfy its obligations and defend its position in relation to the performance of its road management functions and the exercise of powers over the public roads covered by the current road management plan.

FINANCIAL IMPLICATIONS

The type of road assets and the inspection, maintenance and repair standards included in the road management plan directly relate to Council's budget allocations, and budget and resource implications are an important consideration as a part of the overall review.

CONCLUSIONS

In conclusion, the road management review process now undertaken has identified that, while the current road management plan of Council is based on a management system which is considered reasonable and appropriate.