

Road Management Plan

Review Report



March 2017

1. Introduction

The *Road Management Act 2004 (RMA)* and the regulations made under that Act (*regulations*) require a newly-elected Council which already has a road management plan¹ to conduct and complete a review of its road management plan within a period of 6 months after the election of the Council or by 30 June next, whichever is later.

Port Phillip City Council (*PPCC* or *City of Port Phillip* or *Council*) has commenced a review of its road management plan (*review*) previously made by the Council under Division 5 of Part 4 of the RMA² (*existing RMP*).

2. Approach

This review report considers the existing RMP. Where any changes are suggested to the existing RMP, it is assumed that those changes will be noted as a part of the final Council review and – as appropriate and otherwise required – incorporated into the existing RMP, having regard to the structure and style of the existing RMP, and subject to a separate amendment process under the RMA.

3. Compliance brief

Macquarie Local Government Lawyers (*MLGL*) has been requested by the PPCC to review the existing RMP (*compliance brief*) in order to ensure that the existing RMP (including any amendments which may be suggested to the existing RMP, having regard to the review being undertaken by the Council) –

- Complies with the requirements of the RMA, the regulations and (as and where required) the Codes of Practice made under section 28 of the RMA (*Codes of Practice*);
- Addresses the decision of the Court of Appeal of the Supreme Court of Victoria in *Kennedy v Shire of Campaspe*³ (and other, subsequent, legal decisions which have considered the scope and purpose of the RMA); and

¹ Section 49 of the RMA provides that “a road authority may develop and publish a road management plan ...”.

² The Council’s present Road Management Plan Version 3.0 adopted by the Council on 26 November 2013 includes (as supporting and **incorporated documents**): ‘**Appendix A** – Municipal Boundary Roads’; ‘**Appendix B** – Proactive Inspection Frequencies’; ‘**Appendix C** – Reactive Inspections – Hazard Response Times’; ‘**Appendix D** – Road Asset Condition Inspections (Network Assets)’; ‘**Appendix E** – Arterial Roads Category’; ‘**Appendix F** – Road Classification’; and ‘**Appendix G** – Footpath Hierarchy’.

³ [2015] VSCA 47 (23 March 2015).

- Is otherwise satisfactory.

For the purposes of the compliance brief –

- If any *minor amendments* to the existing RMP are considered necessary or desirable, they are to be identified and corrected; and
- If more *substantive amendments* to the existing RMP are considered necessary or desirable, they are to be noted and separately addressed as and when required by the PPCC (and by way of *separate arrangements outside of the scope of the compliance brief and subject to MLGL receiving further instructions from the PPCC*).

4. Review report

This review report is prepared for the PPCC in accordance with the compliance brief (**review report**).

5. Our review

Having conducted a careful review of the existing RMP (including its seven **Appendices**), and *subject to the Council satisfactorily addressing or otherwise clarifying any issues set out in section 6 of this review report*, MLGL considers that the existing RMP of the PPCC, as a policy document of the Council, *will be suitable* –

- From a legal risk management and public liability perspective; and
- For adoption by the Council in accordance with the relevant provisions and requirements of the RMA and the regulations.

If the existing RMP is adopted by the Council, and *subject to the Council satisfactorily addressing or otherwise clarifying any issues set out in section 6 of this review report*, MLGL considers that the existing RMP –

- Satisfies the requirements of the RMA, the regulations and the Codes of Practice, including the Code of Practice for Road Management Plans, and in particular, that the existing RMP properly includes –
 - Appropriate determinations of standards for the purposes of section 41 of the RMA in relation to the inspection, maintenance and repair (and the prioritisation of inspection, maintenance and repair) of roadways, pathways, road infrastructure and road-related infrastructure in respect of the public roads (or

classes of public roads) to which the existing RMP applies, and for which the PPCC is the responsible road authority under the RMA;

- Suitable listings of road infrastructure;
 - Suitable inspection standards, which enable (or will enable) the Council to achieve the standards of maintenance and repair for different parts of the road reserve and different types of road infrastructure on public roads (or classes of public roads), for which the PPCC is the responsible road authority;
 - Appropriate maintenance and repair standards in relation to the condition to be achieved in the maintenance and repair of the roadways and pathways and other road infrastructure, for which the PPCC is the responsible road authority⁴; and
 - An appropriate management system concerning the manner which the Council is proposing to implement in order to discharge its duty to inspect, maintain and repair public roads, for which the Council is the coordinating road authority or the responsible road authority.
- Is premised on a reasonable road management system and contains reasonable standards relevant to intervention and service levels, inspection and response standards and times, and construction maintenance and repair standards;
 - Constitutes a reasonable and defensible policy framework – one otherwise based substantially on financial, economic, political, social or environmental considerations – in relation to the construction, inspection, maintenance and repair of those public roads within the municipal district of the City of Port Phillip, for which the PPCC is the responsible road authority, including suitable prioritisations for the maintenance and repair of road infrastructure on public roads;
 - To the extent the standards specified in the existing RMP are achieved – and by way of complete policy defence to any legal proceedings which may be commenced against the Council – discharges the statutory duty (and any common law duty) of the Council in relation to the performance or non-performance of its road management functions and the exercise of its powers over those public roads covered by the existing RMP;
 - Properly reflects the fact that the Council is under no statutory or common law duty to perform road management functions in respect to public highways which are not public roads or to maintain, inspect or repair the roadside of any public highway (whether or not a public road within the meaning of the RMA); and

⁴ Standards *should* (and in the existing RMP it is considered do) include the type or nature or seriousness of defects which require repair or a warning (***intervention level***) and the time within which such defects should be repaired or a warning erected after a known defect reaches the intervention level.

- On the basis that (and assuming) the existing RMP is to be presented to the Council for formal adoption as a *stand-alone and all-encompassing policy document* of the PPCC (for the inspection, repair and maintenance of public roads and footpaths within the municipality of the City of Port Phillip)⁵, satisfactorily addresses the decision of the Court of Appeal of the Supreme Court of Victoria in *Kennedy v Shire of Campaspe* (and other, subsequent, legal decisions which have considered the scope and purpose of the RMA) in relation to the status which a Court or Tribunal will afford to a road management plan when considering any policy defence of a Council in relation to any claim for damages or injury.

6. Suggested minor amendments to the existing RMP and any matters requiring clarification by the PPCC

MLGL suggests the following *minor amendments* to the existing RMP as a part of the review process being undertaken by the Council and otherwise in accordance with section 3 of the compliance brief –

- Page 5

Section 1 – Introduction

1.1 Background

- In the first paragraph, last sentence, add after the word “*community*” the following additional words “, *having regard to the resources and priorities of the Council*”.
- In the second-last paragraph, add after the word “*practices*” the following additional words “, *however, unless such policies, strategies, plans, systems, procedures or practices are incorporated by reference into the Road Management Plan, the Road Management Plan otherwise is, and at all times remains, a stand-alone and all-encompassing policy document of the PPCC (for the inspection, repair and maintenance of public roads, paths and road infrastructure within the municipality of the City of Port Phillip) and without recourse to any other policy, strategy, plan, system, procedure or practice of the Council requiring (or purporting to require) any act, matter or thing to be done by*

⁵ It is observed that the *operational requirements* of the existing RMP do not appear to be (and it is *otherwise assumed that they will not be*) ‘supplemented’ by, or with, any other procedure or practice of the Council or its staff or external contractors in relation to the inspection, repair or maintenance of public roads and footpaths, being procedures or practices which *may be seen as being in conflict, or inconsistent, with the standards and requirements set out in, and required by, the existing RMP.*

or on behalf of the Council in relation to the performance of the Council's public road, path and road infrastructure management functions".

1.2 Purpose

- In the second paragraph, after the word "City" add the following additional words "*, having regard to the resources and priorities of the Council*".
- In the third paragraph, insert before the words "*For the purposes of this Plan*" (the word "*For*" to now begin with a lower case 'f') the following additional words "*Unless inconsistent with the context or subject matter (and including if and where (outside of the cadastral road reserve) a road for which the Council has made a decision that the road is reasonably required for general public use, a road declared by the Council to be a public highway under section 204(1) of the Local Government Act 1989 or a municipal road under section 14(1) of the RMA),"*".

▪ Page 6

1.2 Purpose

- In the fifth paragraph, add a new bullet after the last bullet point to read "*Public highways which are not public roads or the roadside of any public highway (whether or not a public road within the meaning of the RMA)*".

▪ Page 7

1.3 Budget Provisions

- After the last paragraph insert the following –

"The Road Management Plan (in relation to the construction, inspection, maintenance and repair of those public roads within the municipal district of the City of Port Phillip for which the PPCC is the responsible road authority (including in relation to suitable prioritisations for the maintenance and repair of road infrastructure on public roads)) is expressly declared by the Council to be a policy document of the Council which is based substantially on financial, economic, political, social or environmental considerations."

"The Council expressly records that the level of funding which it has chosen to provide in order to implement the existing RMP has been significantly influenced by budgetary allocations and the

constraints which they entail in terms of the allocation of scarce Council resources”.

1.4 Legislative Control

- In the last paragraph (last-mentioned two bullet points), change the *Road Management (General) Regulations 2005*” to read *“Road Management (General) Regulations 2016”* and the *Road Management (Works and Infrastructure) Regulations 2005*” to read *“Road Management (Works and Infrastructure) Regulations 2015”*.

- Page 9

1.7.2 Consent to Undertake Works in Road Reserve

- In the first paragraph, change the *Road Management (Works and Infrastructure) Regulations 2005*” to read *“Road Management (Works and Infrastructure) Regulations 2015”* and add after this *“and to comply with the requirements of the Local Government Act 1989 and the Council’s local laws made under that Act”*.

- Page 10

Section 2 – Road Management

2.2 Road Classifications

- In the last paragraph, last sentence, after the words *“Register of Public Roads”*, add *“and the Council has not otherwise made a decision that the roads are reasonably required for general public use or that the roads are not roads the subject of a declaration under section 204(1) of the Local Government Act 1989 or that the roads are not declared to be municipal roads under section 14(1) of the RMA”*.

- Page 11

2.3.2 Municipal Roads

- In the second paragraph, add a new sentence as follows *“The care and management function of the Council in respect to such roads is discretionary, and otherwise subject to the RMA”*.
- Delete the last paragraph in relation to keeping roads open for public traffic etc., as this requirement has been the subject of legislative repeal.

2.4 Register of Public Roads

- After the first paragraph, insert “*A public road is a road for which the Council has made a decision that the road is reasonably required for general public use or a road the subject of a declaration made under section 204(1) of the Local Government Act 1989 or a road declared a municipal road under section 14(1) of the RMA*”.

- Page 16

2.7.2 Removal of Redundant Vehicle Crossings

- In the last paragraph, change and correct the reference to “2013/14”.

- Page 21

Section 3 – Inspection and Response Standards

3.3.2 Exceptional Circumstances

- Change the third paragraph to read –

“In the event that the Chief Executive Officer (CEO) of the Council has considered the impact of such an event on the limited financial and other resources of the Council and the Council’s other competing priorities and budgetary constraints (whether or not in conjunction with the Council) and has determined that any standards of, or requirements in, the RMP cannot be adequately met, then pursuant to and reliant on the principles set out in Section 83 of the Wrongs Act and otherwise, they will inform the Manager City Infrastructure Services that some, or all, of the timeframes and response times are to be suspended, pending further notice”.

- Page 22

Section 5 – Review

5.1 Plan Review

- In the first paragraph, change the *Road Management (General) Regulations 2005* to read “*Road Management (General) Regulations 2016*”.
- Insert a new section, main heading and text as follows, and before the Appendices –

“6 – Statement of Intent and Effect

*This Road Management Plan including the Appendices incorporated by reference into this Road Management Plan (**existing RMP**) is, and remains, a stand-alone and all-encompassing policy document of the PPCC (for the inspection, repair and maintenance of public roads, paths and road infrastructure within the municipality of the City of Port Phillip) and without recourse to any other policy, practice or procedure of the Council requiring (or purporting to require) any act, matter or thing to be done by or on behalf of the Council in relation to the performance of the Council’s public road, path and road infrastructure management functions.*

*If (and to the extent) any other policy, practice or procedure of the Council requires (or purports to require) any act, matter or thing to be done by or on behalf of the Council in relation to the performance of the Council’s public road, path and road infrastructure management functions in circumstances where a standard to be applied is in conflict, or inconsistent, with the standards specified by the existing RMP (**other standards**), then the standards specified by the existing RMP prevail over the other standards and the other standards have no force or effect.*

This Road Management Plan (in relation to the construction, inspection, maintenance and repair of those public roads within the municipal district of the City of Port Phillip for which the PPCC is the responsible road authority (including in relation to suitable prioritisations for the maintenance and repair of road infrastructure on public roads)) is expressly declared by the Council to be a policy document of the Council and one which is based substantially on financial, economic, political, social or environmental considerations.

The Council expressly records that the level of funding which it has chosen to provide in order to implement the existing RMP has been significantly influenced by budgetary allocations and the constraints which they entail in terms of the allocation of scarce Council resources”.

7. A possible substantive amendment to the existing RMP

PPCC *may* wish to consider the following more *substantive amendment* to the existing RMP: whether it is desirable to introduce into the existing RMP a degree of greater flexibility with respect to the timing of inspections so as to allow for any failure to carry out an inspection within the necessary time interval to be cured by a subsequent inspection, regardless of when the results of the inspection actually become known to, or within, the Council.

If this substantive amendment is required, then MLGL would require further instructions from the PPCC (and a consequential extension to the compliance brief would need to be provided by Council, for which MLGL would provide the PPCC with an additional fee arrangement for approval by the PPCC).

8. Further assistance

If there are any queries arising out of this review report or if anything requires clarification, please feel free to contact the author of the review report below for the purposes of a telephone discussion.

Peter Lucas
Partner
MACQUARIE LOCAL GOVERNMENT LAWYERS