

SCHEDULE 2 - REGISTER OF PUBLIC ROADS POLICY



**MAROONDAH CITY COUNCIL
ENGINEERING SERVICES**

ROAD MANAGEMENT ACT 2004

**REGISTER OF PUBLIC ROADS POLICY
POLICY NUMBER: RMA 001**

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REGISTER OF PUBLIC ROADS POLICY

Introduction

The Road Management Act 2004 (the Act) was introduced into Victorian law, after receiving royal assent on 11 May 2004.

Section 19(1) of the Act imposes a statutory duty upon Council to keep a register of all municipal roads that are public roads. For a road to be included in the register Council has to decide whether '*... the road is reasonably required for general public use.....*' Section 17(3).

This policy sets out the framework for Council to decide whether a road is a public road. The inclusion in the register of a public road is an acknowledgement by Council that it is the coordinating road authority in respect of the road or area of land, and therefore has the responsibility for its on-going maintenance and the risk associated with this function.

Policy Aim

The aim of this policy is to establish a framework for making consistent, structured and justifiable decisions as to whether a road or area of land is reasonably required for general public use and is therefore considered to be a "public road" for the purpose of including it in Council's Register.

Schedule 1 of the Act also requires that the Council as the coordinating road authority keep the classification of each public road listed in its Register. This policy is therefore required to establish a road classification system, which will be used in the determination of appropriate levels of service to be applied to municipal roads¹.

Council's Register will be available for inspection by the general public at the Municipal Offices in accordance with the requirements of section 19(5) of the Act, and will contain the mandatory information the Act requires to be recorded: Clause 1 of Schedule 1.

REGISTER OF PUBLIC ROADS

What is a Public Road?

The Act does not provide an exhaustive definition of what is a road. Section 3 provides that a road includes any public highway (defined to mean a common law highway); any ancillary area (such as a carpark adjacent to a public road); and any land declared to be a road by a road authority.

Of roads relevant to Council (municipal roads), the legislation provides that the following municipal roads are public roads: roads declared under the Local Government Act 1989; and, roads which VicRoads declare to be a municipal road.

Of the remaining municipal roads only those roads that Council makes a decision are reasonably required for general public use become public roads.

Where the legislation dictates or Council has made a decision that a municipal road is a public road, this road **must** be included on Council's Register.

¹ Section 3 defines a municipal road as any road which is not a State road.

Register Content

The following information must be included in the Register in accordance with the provisions of Schedule 1 of the Act:

- (a) the name of each public road;
- (b) if a road becomes a public road after 1 July 2004, the date on which the road became a public road;
- (c) if the public road ceases to be a public road, the date the road ceased to be a public road;
- (d) the classification of the public road;
- (e) the reference of any plan or instrument made on or after 1 July 2004 that fixes or varies the boundaries of a public road;
- (f) any ancillary areas;
- (g) the reference to any arrangement under which road management functions in respect of any part of a public road or ancillary area is transferred to or from another road authority;
- (h) any other matter required to be included by this Act, the relevant road Minister, or which is prescribed.

REQUIRED CONSIDERATIONS

Is the area of land a road?

It is Council policy that the following criteria should be considered when deciding whether an area of land is considered to be a road:

- Is it a public highway including a highway at common law?;
- Is it an ancillary area?;
- Has the land been declared to be a road, or forming part of a public highway or ancillary area?;
- Has Council previously been deemed to be the responsible authority for it?;
- Has the land been developed or constructed for use as a road?; and
- Any other relevant matter brought to Council's attention?

A public road is not limited to the trafficable road pavement. Under the common law definition, a road or area of land, can be shown to be a public highway through dedication and demonstrated long-term use. A road, shared footway, or car park that has been dedicated to and used by the public over a sufficient period of time is considered to be a common law public highway.

If the area of land is considered to be a road then consideration needs to be given whether the road is reasonably required for general public use.

Is the road reasonably required for general public use?

It is Council policy that the following criteria should be considered when deciding whether a municipal road is reasonably required for general public use:

- Has it been developed or constructed for use by the general public?;
- Does it serve a defined purpose or function for the general public?;
- Is there evidence that it is currently being used by the general public?;
- Is there unrestricted public access?; and
- What are the consequences if public access was removed?

- Can the needs for public use of this land be readily accommodated with alternatives?
- Any other relevant matter brought to Council's attention?

If a decision is made that an area of land is a road and is reasonably required for general public use, then that area of land is a public road and must be registered.

Section 17(5) of The Act clarifies that *"The removal of a public road from the register or non-inclusion of a road on the register of public roads does not affect the status of the road as a public highway or affect the right of public use of the public highway."*

If Council decides an area of land is a public road then Council is the co-ordinating road authority for that public road. This means that Council has a statutory duty under the Act to inspect, repair and maintain that public road in accordance with standards set out in any road management plan adopted by Council. If Council decides that an area of land is not a public road then Council does not have any statutory or common law duty to inspect, repair or maintain the area of land.

SPECIFIC LAND USE ISSUES

Rights of Way (ROW)

A ROW (laneway), constructed or unconstructed, that has the potential to provide property access to a number of properties and act as a thoroughfare and is constructed or developed for use by the general public, will generally be considered to be a public road and therefore be included in the Register. An appropriate maintenance and inspection regime will be applied to the area of land that reflects the expected frequency of use by the public and the associated risk.

Body Corporate Driveways

Historically, a number of body corporate developments throughout the municipality have in their plan of subdivision named the common property as a private street. In some instances a street name blade has been installed and street directories have listed the common properties as a street.

Legally the common property in such developments is the property of the body corporate, which is made up of the owners of the lots within the development. Functionally, such common property is used as a driveway. Therefore, body corporate common property is privately owned land that does not form part of the municipal road network and is the responsibility of the body corporate to maintain. It is Council's policy that such driveways not be registered as public roads.

For the sake of clarity Council maintains a separate list of body corporate driveways that either appear to be part of the road network or have been named as private streets on the plan of subdivision, but are not public roads.

Ancillary Areas

An ancillary area is an area of land owned or managed by Council that's use is ancillary to the use of an adjacent road. The following criteria are to be considered in determining whether an area of land can be considered an ancillary area:

- Is it under Council's ownership or management?;
- Required by Council or the public for use other than as a road?;
- No prior owner is exercising any rights of private ownership over the land?; and
- Any other relevant matter brought to Council's attention?

Boundary Roads

Where Council's municipal boundary has been established on a road, the boundary is the centre line of the road reservation. In such cases a single road will have two coordinating road authorities, being the neighbouring municipalities who are each responsible for the portion of road within their own municipal district.

Council has formalised agreements with each of its adjoining municipalities agreeing to transfer road management functions for each boundary road to a single responsible road authority.

The current agreements are included within Schedule 8 of this Plan and within the Register in Schedule 8 and as required by the Act.

Crown Land or Freehold Title

Council has the care and maintenance for roads, pathways and car parks that are located on crown land and freehold title. These can include reserve access tracks that are formed and provide access to car parks and shared pathways that have been constructed by Council, or have been historically maintained by Council, and therefore require consideration for inclusion in the register of public roads.

It is considered that roads, car parks, pedestrian pathways or access tracks located on crown land or separate freehold title, that Council accepts are a common law public highway, are constructed and developed for use by the public, and are reasonably required for general public use, will be included in the Register of Public Roads.

MAINTAINING REGISTER OF PUBLIC ROADS

Amendments to the Register of Public Roads

The register of public roads will need to be maintained in an ongoing basis. It is proposed that the register of public roads be maintained under delegation to ensure it is readily updated on a regular basis.

New Subdivisional Roads

When a new subdivision, which includes subdivisional roads, is released to the public for the sale of lots within the subdivision that does not mean that Council accepts that the subdivisional roads have been constructed to Council's standard. Council's policy is not to adopt a new subdivisional road as a public road unless and until the developer's maintenance period for that road has expired and any maintenance issues that have arisen during the maintenance period have been resolved to Council's satisfaction. Until a subdivisional road is adopted as a public road its maintenance and the safety of those who use the road remains the responsibility of the developer and / or abutting property owners.

ROAD CLASSIFICATION FRAMEWORK

Introduction

The Road Management Act 2004 (The Act) Schedule 1(d) requires that the road classification for all public roads must be recorded in the register of public roads. The road classification will assist Council in determining the priorities and regimes it applies to the inspection, maintenance and repair programs for its road network and associated assets.

Requirement to Develop Road Classification System

Schedule 1 Register of Public Roads 1 (d) requires that *“The register must include – (d) the classification, if any, of the public road.”*

Existing Road Classification System

Council’s existing SMEC Pavement Asset Management System utilises the following categories of road classifications:

1. Local
2. Principal Local
3. Minor Collector
4. Collector
5. Major Collector
6. Minor Arterial
7. Sub-Arterial
8. Arterial
9. Major Arterial
10. Car Park

Council has not previously adopted a road classification system for use in the preparation of its maintenance and inspection programs or in the strategic development of its road network. The road classifications will assist Council in making determinations about the desired levels of service, intervention levels, maintenance and construction standards, and setting of programs and priorities for maintenance and inspection of its road network.

The existing Road Classifications were developed for asset management modelling purposes and it is recommended that a streamlined road classification system be adopted to meet the requirements of The Act. A streamlined system will ensure that more uniform and manageable standards can be applied for the inspection, maintenance and repair of Council’s assets.

Definitions

Municipal Roads under the definition provided in Section 3 of The Act *“means any road which is not a State Road, including any road which –*

- (a) *is a road referred to in section 205 of the Local Government Act 1989; or*
- (b) *is a road declared by VicRoads to be a municipal road under section 14(1)(b); or*
- (c) *is part of a Crown land reserve under the Crown land (Reserves) Act 1978 and has the relevant municipal council as the committee of management.”*

Section 3 of The Act defines a **State Road** as *“means a road which –*

- (a) *is a freeway or arterial road; or*
- (b) *is a declared to be a non-arterial State road under this Act; or*
- (c) *is the responsibility of a State road authority under another Act;”*

The definitions provided for the road classifications are in part taken from VicRoads Traffic Engineering Manual Volume 1 Edition 3 1999 ¹.

State Roads (VicRoads)

Freeway – has the meaning of a road that is declared to be a freeway under section 14 of The Act. Those roads whose main function is to form the principal routes for the movement of goods and people¹.

Arterial Road- has the meaning of a road that is declared to be an arterial road under section 14 of The Act. Arterial Roads are roads previously classified by VicRoads as a Declared Main Road or State Highway. VicRoads are the coordinating road authority in respect of these roads.

Municipal Road (Council)

Link Road – Those roads that supplement the main arterial roads in providing through traffic movement to an individually determined limit that is sensitive to roadway characteristics and abutting land uses¹. The Act contains a Link Road definition that applies to City Link Roads and should not be confused with a link road used for road classification purposes.

Collector Road - Important local roads whose function is to distribute traffic between the arterial roads and the local road system and to provide access to abutting property.¹

Local Access Road - Those roads and streets not having a significant through traffic function, whose function is to provide access to abutting property.¹

Ancillary Area – an area of land that is ancillary to a public road. Section 18(1) of The Act makes provision that *“a co-ordinating road authority may designate an area of land owned or managed by the co-ordinating road authority as an ancillary area, to be maintained by a responsible road authority as ancillary to a public road.”* An example of an ancillary area is a car park that is adjacent to a public road.

Pathway – means a footpath, bicycle path or other area constructed or developed by a responsible road authority for use by members of the public other than with a motor vehicle but does not include any path –

- (a) which has not been constructed by a responsible road authority; or
- (b) which connects to other land;

1 VicRoads Traffic Engineering Manual Volume 1 Edition 3 1999

Proposed Road Classification System

The classification system proposed to meet the requirements of Schedule 1 Register of Public Roads of The Act are primarily based on Council's existing road classifications, and discussions at a regional level to ensure consistency across regions.

The road network will be categorised based on a functional classification system. While the capacity of roads can dictate its use, the functional classification allows each road to be assessed based on its purpose and destination.

As Council does not have what are considered to be rural areas as provided for in the Ministerial Code of Practice – ‘Operational Responsibility for Declared Freeways and Arterial Roads’, a rural classification has not been developed.

Key Factors

The key factors taken into consideration in establishing the road classification system are as follows:

- Linkages with other roads in the network;
- Linkages with commercial and residential areas in the municipality;
- Existing and predicted traffic volumes;
- Difference between the existing VicRoads and Local Road network;
- Level of transportation of goods and services;
- Adjacent recreational facilities;
- Use of the network for public transport and school bus routes; and
- Location of schools.

Road Classifications

The following road classification have been developed:

Classifications

State Roads

- Freeway
- Arterial Road

Municipal Roads

- Link Road
- Collector Road
- Local Access Road
- Ancillary Area
- Right of Way
- Pathway

Sub Categories

Within each of the Road Classifications a number of sub categories may apply to assist with the determination of appropriate levels of service for inspection and maintenance programs and priorities. The sub-categories developed are as follows:

- Constructed
- Unconstructed
- Service Road – Constructed
- Service Road – Unconstructed
- Carparks – Constructed
- Carparks – Unconstructed
- Reserve Access Track - Constructed
- Reserve Access Track – Unconstructed
- Pathways – formally constructed
- Pathways – informally constructed

It is Council's policy that the above Road Classification System be adopted for use in the Register of Public Roads.

CONSIDERATION OF ARTERIAL ROADS

Arterial Roads are roads previously classified by VicRoads as a Declared Main Road or State Highway, and VicRoads will continue to be the relevant coordinating road authority in respect of these roads. An example of a Declared Main Road is Canterbury Road or Bayswater Road, and Maroondah Highway is a State Highway.

Council has the ability to enter into an arrangement with VicRoads, and other authorities, to transfer a road management function. Under these circumstances Council can choose to take on the full maintenance responsibility for the road and its adjacent assets (or aspects of the road) and consequently the full liability and risk associated with them.

Council formally considered this matter at its meeting of 7 June 2004 and resolved to hand back responsibility for arterial roads in accordance with the provisions of the Act and the Proposed Ministerial Code of Practice – ‘Operational Responsibility for Declared Freeways and Arterial Roads’.

If a transfer or delegation arrangement is ever established at some time in the future it must be included in the register of public roads in accordance with the provisions of Schedule 1 of The Act.

The Road Management Act 2004 and the Proposed Ministerial Code of Practice – ‘Operational Responsibility for Declared Freeways and Arterial Roads’ provide clarity in relation to the demarcation of responsibility. The code of practice clarifies that on Arterial Roads Council is responsible for the maintenance of all assets behind the back of kerb or table drain that are not associated with the through traffic function of the road. For example, the Council assets include pathways, street furniture etc, while VicRoads is responsible for the road pavement, kerb and channel, central medians etc.

In order to clarify the operational responsibility Council has for the maintenance of assets on Arterial Roads it is proposed to keep a separate list from the register of public roads. The Arterial Road register will list arterial roads where Council has an operational maintenance responsibility.