

## 7 ADVOCACY AND COMMUNITY SERVICES

### 7.1 RESPONSE TO NOM 927 SMALL TOWN FIRE PREVENTION AND MITIGATION

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**Attachments:** Nil

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#### SUMMARY

This report provides a response to Notice of Motion No. 927 relating to reviewing the current fire prevention roadside slashing and spraying works. With specific focus on increasing the area of roadside slashing and spraying activities conducted for fire prevention works within the speed reduction zones of townships to improve fire prevention measures.

The report highlights the liability of slashing VicRoads roads. If Council acknowledges that there is a municipal fire risk on one section of road, all VicRoads roads would need to be assessed by Mitchell Shire Council.

#### RECOMMENDATION

**THAT** Council;

1. Continue with current regime of slashing Council roads only.
2. Continue to work with VicRoads and other Public Authorities responsible for managing land within Mitchell Shire Council in accordance with points 1 to 3 of Councils resolution of 14 July 2014 (NOM782)
3. Write to the Chief Fire Officer outlining concerns Council has on VicRoads and land managed by Public Authorities more broadly, preparing a list of areas of concern and requesting that the areas be assessed on a Municipal Fire Risk basis yearly.
4. Advocate for residents and write a letter to the Roads Minister to increase funding to VicRoads to maintain roadsides with an emphasis on the urban/rural interface. (Fire preparedness).

#### BACKGROUND

At the Ordinary Council meeting held on the 20 November 2017, a Notice of Motion was moved and resolved as follows:

*THAT Council officers in conjunction with any relevant Government agencies undertake a review of the current fire prevention works program, with specific focus on increasing the area of works undertaken within the speed reduction zones of the*

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RESPONSE TO NOM 927 SMALL TOWN FIRE PREVENTION AND MITIGATION (CONT.)

*townships to improve fire prevention measures and prepare a fully costed report and present to Council by March 2018.*

Mitchell Shire Council (MSC) manages approximately 1,500km of roads and roadsides. The resources required for comprehensive roadside fire management, in addition to the current general maintenance of roadsides that are performed by Council, are considerable.

Current roadside fire prevention works include slashing roadside at height and width clearance from guideposts where possible (three meters, or one slasher width) to ensure safe clearway for vehicles to be able to pull off the road safely without risk of the vehicle catching fire. Slashing on roadsides also creates a small fire break and reduces the risk of fire escaping from Council managed roadsides. Roadside spraying is generally conducted when a slasher is not able or is too dangerous to access an area due to the landscape.

### **ISSUES AND DISCUSSION**

This Notice of Motion relates to municipal fire prevention schedule of works outside speed reduction zones of townships, this report includes the authority of Council and the responsibility of public authorities.

VicRoads slash a mower width from the guide post where possible, which provides a safe area for vehicle drivers to move off the road where required, which in turn also provides a clearway in the case of a fire so that vehicle traffic can reasonably move along the road, where practicable during a fire.

The majority of the small township roadsides mentioned within the original Notice of Motion are VicRoads which are slashed once a year or fire season. VicRoads will slash a mower width from the guidepost where possible.

A written response (email) to Council November 2018 from the Municipal Association of Victoria (MAV), stated that, *VicRoads' Road Bushfire Risk Assessment Guidelines were developed in response to this recommendation (2009 Royal Commission into Black Saturday) and was a direct result of the work undertaken by VicRoads, with the support of the Country Fire Authority (CFA), the former Department of Sustainability and Environment, the Municipal Association of Victoria and associated municipalities.*

*The Road Bushfire Risk Assessment Guidelines address four key fire management objectives:*

- 1. Prevent fires on roadsides;*
- 2. Contain roadside fires;*
- 3. Manage safety of road users; and*
- 4. Provide control lines.*

*Objectives 1 and 2 are relevant to VicRoads' obligations under section 43 of the Country Fire Authority Act 1958.*

RESPONSE TO NOM 927 SMALL TOWN FIRE PREVENTION AND MITIGATION (CONT.)

*VicRoads has applied the Road Bushfire Risk Assessment Guidelines across the State, and determined the required mitigation works as part of the annual fire management works program.*

*Within Mitchell Shire, Vic Roads identified and assessed with respect to Objectives 1 and 2. The Wallan-Whittlesea Road from Wallan to the Epping-Kilmore Road intersection was identified as 'high risk' and a more detailed assessment of the roadside was conducted by VicRoads as per the Guidelines. This road did not meet the Guideline triggers for additional works over and above the routine grass mowing program.*

*The Epping-Kilmore Road was identified as a moderate risk road and does not receive additional fire management works per the Guidelines.*

*Both roads will receive routine grass mowing in accordance with VicRoads' standard maintenance specifications which is to cut to 3m behind the guideposts with a tractor and drawn slasher where possible and practicable. On many roads the desired 3m width cannot be achieved due to narrow road shoulder widths and the presence of table drains or cut batters, etc. This work is programmed for completion by 30 November 2019 and no other mowing or fire management works are planned.*

All Government agencies (Public Authorities) have a responsibility which is equal to Councils to ensure that the land that they own is managed in accordance with the *Country Fire Authority Act 1958*, therefore the Municipal Fire Prevention Officer (MFPO) is not able to issue a Fire Prevention Notice in accordance with the *Country Fire Authority Act 1958* which in part states;

#### **Section 41 Fire Prevention Notices**

- (1) *In the country areas of Victoria, the fire prevention officer of a municipal council may serve a fire prevention notice on the owner or occupier of land in the municipal district of the council (other than a public authority) in respect of anything-*

Public Authorities are responsible for managing their own land. The Local Laws unit does request Public Authorities to conduct works within their management on a regular basis.

Roadsides along Kilmore East, Reedy Creek and Clonbinane are maintained by Mitchell Shire Council.

#### **MUNICIPAL ASSOCIATION OF VICTORIA (MAV), LEGAL ADVICE:**

*From a fire prevention perspective, Council under section 43 of the Country Fire Authority Act 1958 has duties and powers. Other public authorities have the same duties and powers under this section. These include that they take all practicable steps (including burning) to prevent the occurrence of fires on, and minimise the danger of the spread of fires on and from:*

- (a) any land vested in it or under its control or management; and*
- (b) any road under its care and management.*

*Relating specifically to roadside of VicRoads' roads. Under the Road Management Act 2004 (RMA) the responsible road authority for different categories of roads is outlined in section 37. VicRoads is the responsible road authority for the entire road*

RESPONSE TO NOM 927 SMALL TOWN FIRE PREVENTION AND MITIGATION (CONT.)

*reserve for a Freeway. Council can be the responsible authority for some parts of arterial roads. These include the roadside of an 'urban area'. Under the Road Management Act 2004 'urban area' has the definition as where the speed limit of 60km or less normally applies (not if temporary for roadworks etc). There are other categories including where;*

- the area has buildings on land next to the road, or there is street lighting at intervals not exceeding 100 metres;*
- for a distance of at least 500 metres; or*
- the length of a road is less than 500 metres, over the length of the road.*

*In light of the above where the speed limit of an arterial road is normally 60km or under, this will be an urban area and council will be the responsible road authority.*

*It is considered that it will be a road under Council's care and management for the purposes of the powers and duties under the Country Fire Authority Act 1958. Therefore, Council would be required to take all practicable steps to prevent the occurrence of fires or spread of fires from that roadside.*

## **FIRE PREVENTION MEASURES RURAL URBAN INTERFACE**

Every year the assistant to the Municipal Fire Prevention Officer conducts inspections throughout the municipality, these inspections are targeted to detect fire hazards within the urban rural interface on private land. In the 2018-2019 fire season in excess of 1500 properties were inspected throughout the municipality, of these there were 623 Fire Prevention Notices issued, this was down from 765 issued 2017-2018 fire season.

## **CONSULTATION**

Mitchell Shire Council Fire Prevention works change on an annual basis with new roads being included and others being removed.

Towards the end of 2017, the Municipal Fire Prevention Officer and Municipal Emergency Management Coordinator consulted with VicRoads on their current roadside slashing regime highlighting areas of concern. There was no indication that there would be any variance to the current slashing program.

Every year the MFPO and Emergency Management and Recovery Coordinator (EMRC) meet with Brigades and the CFA to determine if the works on roadsides meets expectations and is in line with requirements taking into consideration local knowledge. Each year feedback is received, and the slashing and spraying list adjusted accordingly.

On 24 March 2014, a Notice of Motion relating to fire prevention measures on land owned/controlled by public authorities was carried by Council. The report was presented to Council at its Ordinary Council Meeting (NOM 782). In response to this a report was presented to Council on 14 July 2014. The report identified two (2) measures to address the concerns relating to the appropriate management of fuels loads on land owned/ controlled by public authorities. These measures were as follows;

1. The Municipal Fire Prevention Officer identifies a risk on land owned or managed by a public authority

## RESPONSE TO NOM 927 SMALL TOWN FIRE PREVENTION AND MITIGATION (CONT.)

2. A letter will be written to the Chief Executive Officer of that public owned/managed land requesting remedial action be taken to reduce/eliminate the fire risk within a certain timeframe
3. If no remedial action is taken, the Municipal Fire Prevention Officer is to write to the Chief Fire Officer, noting the fire hazard identified and to also include the letter issued to the Chief Executive Officer
4. If no remedial action is taken, Council is to conduct the works and follow up payment of the works undertaken

Points 1 through 3 are included in this current recommendation (NOM 927), point 4 is not included in this recommendation as the works cannot be completed by the current panel of fire prevention roadside slashing and spraying providers. The legal and liability implications that this exposes to Council is significant. (Refer to MAV Legal response on page eight (8)).

Although this process was previously endorsed by Council, point 4 puts Council at risk cannot apply. The cost to Council would be significant with no ability to be reimbursed by VicRoads. Council's responsibility is to only manage roads under the control of Council, not other agencies roads.

### **FINANCIAL, RESOURCE AND ASSET MANAGEMENT IMPLICATIONS**

An estimated cost to conduct slashing and spraying works on VicRoads roads for fire prevention is approximately \$110 per kilometer. This does not include traffic management and does not include fire prevention equipment. It is also noted that this is for three (3) meters from the guidepost.

In line with Section 186 of the *Local Government Act 1989*, Council issued a public tender for the roadside slashing of Council roads. Council approved the writing of Contracts with successful tenderers on 17 September 2018.

The tender specifications were clear that the tender was for the slashing of Council roads and authority to contractors can only be given to provide slashing services on Council roads.

Council officers do not have authority under the current contract to authorise the slashing of non-Council roads and the contractors are not covered as having Council delegation under the contract for non-Council roads.

### **POLICY AND LEGISLATIVE IMPLICATIONS**

Whilst investigating this Notice of Motion, information was received from the Municipal Association of Victoria (MAV) of a recent class action. Information provided below:

The Hume bushfire class action which was a claim for \$60M is an example of where Councils will significantly increase their risk profile by taking on roadside maintenance for VicRoads. The broad scope of that agreement left open the argument that Council was responsible for amongst other things roadside tree management which brought into play an obligation to assess and report "hazard" trees under the *Electricity Safety Act 2002*. A limb fell onto the adjacent high voltage cables and caused a bushfire.

## RESPONSE TO NOM 927 SMALL TOWN FIRE PREVENTION AND MITIGATION (CONT.)

In that case even though Council used a contractor to conduct the inspections there were three (3) problems that caused Council to nonetheless still be exposed:

1. Conflicting reports over time on the condition of the tree that Council didn't pick up.
2. Despite taking on responsibility for the roadside, Council had insufficient funds to carry out all recommended works and as such only actioned high-risk issues and not this identified "moderate" risk. It is crucial that if council takes on such a liability that it also has budgeted adequate funds to carry out any works identified.
3. Council's contract with the contractor didn't require adequate insurance cover. As the contractor only had \$5M coverage (clearly inadequate for the potential liability exposure to bushfire) this meant more fell back onto Council in the settlement of the class action.

If Council chose to take on this liability from VicRoads, then the following is recommended:

1. Ensure that the agreement documented with VicRoads clearly sets out roles and responsibilities in specific terms leaving nothing open to debate.
2. Suggest the agreement specifically carves out Council assuming any responsibility for VicRoads' obligations under the *Electricity Safety Act*. That Council's role does not to include making assessments of the health or structure of roadside trees which is to remain with VicRoads. However, even with the best attempts at this, if Council conducts an assessment of a roadside tree it will not avoid at least being implicated in any proceedings should that tree ultimately cause damage.
3. Contract arborists with adequate Public Liability and Public Insurance cover of at least \$50M. The contractor indemnifies Council for any acts or omissions by the contractor.

## RISK IMPLICATIONS

There are significant risks associated conducting works on roads managed by VicRoads.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
Fire taking place on VicRoads roadsides	High	Slash grass on VicRoads Roads	Cost to Council as VicRoads will not conduct further slashing activities
Taking on liability for VicRoads roads	High	Possible litigation as a result of treatment	No available resource

Should Council require contractors to provide slashing services on non-Council roads, then Council will need to conduct another tender as the specifications have changed significantly and will also require the Public Liability insurance to be

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RESPONSE TO NOM 927 SMALL TOWN FIRE PREVENTION AND MITIGATION (CONT.)

increased from \$20 million to \$60 million based on the recent experience of Hume City Council. (refer to Policy and Legislative Implications below).

### **MAV LEGAL RESPONSE**

Without an agreement setting out the responsibilities of the parties, the level of exposure will depend upon the facts of the case. Where there is no agreement, it is open to VicRoads and claimants to argue that Council has taken on the responsibility for these works and the roadside. Whereas, if there is an agreement in place it is clear what Council has agreed to do and more importantly what it will not do, which remains the responsibility of VicRoads.

Where Council decides to take on additional responsibility in relation to VicRoads roadsides, it will always have a greater exposure to liability as it is taking on further responsibility. Without an agreement in place, it may be at a higher risk.

Council will be responsible for any loss or damage arising from its actions. It may also be liable for loss or damage arising from its omissions where it is seen to have taken on responsibility for the roadside.

There are several councils that have entered into agreements with VicRoads to undertake works on VicRoads roadside. These agreements are for things such as clearing debris, mowing grass etc. These agreements are legally binding, not Memorandum of Understandings.

### **SUSTAINABILITY IMPLICATIONS (SOCIAL AND ENVIRONMENTAL)**

A review of the areas to determine if there are environmental overlays will need to be conducted.

### **CHARTER OF HUMAN RIGHTS IMPLICATIONS**

The rights protected in the *Charter of Human Rights and Responsibilities Act 2006* were considered in preparing this report and it's determined that the subject matter does not raise any human rights issues.

### **OFFICER DECLARATION OF CONFLICT OF INTEREST**

No officers involved in the preparation of this report have any direct or indirect interest in this matter.

### **CONCLUSION**

An extensive review of Mitchell Shire Council municipal fire roadside slashing and spraying regime is conducted in consultation with brigades and the CFA as required.

VicRoads and more broadly Public Authorities are responsible for their roadsides and land within their management, it is their responsibility to manage and where appropriate conduct works on their land as required.

That Council agree to the 4 recommendations noted within this report.