**Road Management (Works and Infrastructure) Regulations 2015**

**Regulatory Impact Statement**

Date: April 2015

**Prepared for VicRoads by Niskin Enterprises Pty Ltd**

(Ref No: n2930680)

**Consultation Period**

Public comments are invited on the regulatory impact statement and accompanying Regulations. Copies may be obtained from the VicRoads webpage at [www.vicroads.vic.gov.au](http://www.vicroads.vic.gov.au/) (select 'Acts and regulations' under the About VicRoads tab); email: RMBresponses@roads.vic.gov.au, or telephone: (03) 9854 2762.

Written submissions will be received up to 5:00 pm on Friday, 15 May 2015 at the following address:

Director – Network Policy and Standards,

VicRoads,

 Level 10, 1 Spring Street,

Melbourne Vic 3000

or by email to: RMBresponses@roads.vic.gov.au.

All submissions will be treated as public documents

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# Executive Summary

### Overview

The proposed remaking of the Road Management (Works and Infrastructure) Regulations 2005 will deliver the following key benefits:

* Exempt utilities, providers of public transport and road authorities from obtaining consent for minor works and result in an estimated $16 million of annual savings to this sector.
* Fee reductions to ten consent application fee categories and fee increases to six consent application fee categories.

The regulatory impact statement presents an option for full cost recovery that cannot be introduced without an amendment to the **Road Management Act 2004** to provide a power to include the cost of an inspection following the completion of works in the prescribed fee for a consent application to conduct works within a road reserve.

### Introduction

The **Road Management Act 2004** (the Act) requires, amongst other things, consent from a coordinating road authority for works conducted in, on, under or over a road. This is commonly referred to as a ‘Consent for Works’. A road includes the roadway (or road pavement), shoulders, pathways and roadside. The consent for works conducted in, on, under or over a road applies to all types of Victorian roads; freeways, arterial roads, municipal roads and non-arterial State roads.

The Act states that VicRoads is the coordinating road authority for freeways and arterial roads, and local councils are the coordinating road authority for municipal roads. The Department of Environment, Land, Water and Planning (DELWP), in its role as a State road authority, is a coordinating road authority for a number of non-arterial State roads on Crown land, such as national parks.

The statutory framework for works conducted in, on, under or over a road is detailed in the Act. This statutory framework includes a consent application process and consent conditions. The Act also imposes duties on infrastructure managers and works managers in respect to conducting works in, on, under or over a road.

The Road Management (Works and Infrastructure) Regulations 2005 (the Regulations) sunset on 21 June 2015 and are proposed for re-making with a few minor amendments.

The objective of the Regulations, by and large, is to reduce the regulatory burden on utilities, providers of public transport and responsible road authorities by establishing a range of exemptions from the requirements to obtain consent or give notice for minor works that do not have significant impacts on road safety, traffic or other infrastructure, set out shorter periods for the determination of certain consent decisions by coordinating road authorities and provide for longer periods for submitting notifications upon the completion of works. The exempted minor works provides an estimated $16 million annual saving to this sector.

The Regulations also prescribe restrictions on the types of conditions that can be imposed on a consent issued by coordinating road authorities and set out a schedule of fees for consent applications for all persons seeking to conduct works in, on, under or over a road.

The consent application fees for conducting works within a road reserve are the only aspects of the regulations that impose a significant economic or social burden on a sector of the public and are assessed accordingly.

### Rationale for government intervention

The rationale for government intervention into the market where persons are conducting works within road reserves is first and foremost to prevent road safety hazards and avoid traffic congestion. Secondly, to protect the integrity of the road infrastructure that is owned and managed by road authorities (VicRoads, other State road authorities and local councils) and to protect environmental assets within the road reserve.

The primary function of a road reserve is to meet the transport needs of the community, including motor vehicle owners, freight operators, public transport providers, motorcyclists and bicyclists. The pathways (footpaths) serve the needs of pedestrians and bicyclists.

The road reserve is also shared by utilities and providers of public transport. Utility infrastructure (electricity, gas, water, sewerage and telecommunications) in the form of pipes, conduits, cables etc are located within the road reserve. Most utility infrastructure is normally located underground; sometimes under pathways, the nature strip or the roadway. The exact location of utility infrastructure is dependent on the size of the road reserve.

The use of the road reserve by utilities ranges from minimal to significant depending on the type of infrastructure and nature of the works. Minimal use generally entails the connection of their customers to the main infrastructure. Significant use or occupation of the road reserve generally involves the installation of new pipelines/cabling and/or renewal of ageing infrastructure. The latter type of use is more likely to result in works that have the potential to impact on road safety, traffic flows and the integrity of the road infrastructure.

Providers of public transport (tram, train and bus) also share a road reserve in the form of tracks, rail level crossings and bus/tram stops. As a minimum, this use may involve repairs and maintenance of this infrastructure. More significant works involving major elements of public transport infrastructure located within the road reserve may involve the installation and/or renewal of tram tracks and rail tracks (located on a crossing with a road). These works are likely to have the potential to impact on road safety, traffic flows and the integrity of the road infrastructure.

Developments on the land abutting the road reserve (particularly large retail and business complexes and residential subdivisions) may require significant variation to the design of the road e.g access lanes through a roadside to an arterial road and deceleration turning lanes into the complex.

All of these works within road reserves have to varying degrees, the potential to impact road users’ safety, the normal traffic flow and the integrity of the road infrastructure.

### Size of the Market for Works within a Road Reserve

Works are conducted within a road reserve by:

* Electricity, gas, water, sewerage, and telecommunication utilities and/or their agents (contractors);
* Public transport providers and/or their agents (contractors);
* Responsible road authorities and/or their agents (contractors); and
* Developers, builders, plumbers and other persons.

There are an estimated 140,527 works conducted annually within a road reserve; with 109,196 exempt minor works as shown in the table below. The estimated number of works is based on VicRoads data and a sample of local councils and utilities. The estimation has been adjusted upwards by 20% to allow for non-compliant works operating without consent.

 **Estimated Number of Works Conducted within a Road Reserve**

|  |  |
| --- | --- |
| Freeways & Arterial roads – consent required | 2,027 |
| Municipal roads – consent required | 29,304 |
| Exempt Minor Works – conducted on all roads \* | 109,196 |
| Total works  | 140,527 |

**Note**: \*Works conducted by utilities, providers of public transport and responsible road authorities but excludes ‘works conducted in an emergency’ (refer section 63(2)(e) of the Act).

### Nature and Extent of the Problem

As stated previously, the **Road Management Act 2004** requires the consent of the coordinating road authority to conduct works within a road reserve (other than for works conducted in an emergency and other types of works as specified in section 63(2) of the Act). The objective of the consent for works requirement is to ensure road safety, efficient traffic operation and the structural integrity of road and non-road infrastructure.

However, some types of works have minimal impact on road safety, traffic operation and the structural integrity of road and non-road infrastructure. These types of works are considered low risk. Hence, applying the Act’s consent requirements on specific parties conducting low risk works would impose an unnecessary regulatory burden.

The current regulations exempt low risk works (e.g minor works other than traffic impact works) conducted by utilities, providers of public transport and road authorities.

The cost to VicRoads, other State road authorities and 79 local council coordinating road authorities in providing consent for works needs to be funded either by those that directly benefit from the consent (e.g an infrastructure manager or works manager) or from taxpayer and/or ratepayer funds. In the absence of regulations, a coordinating road authority’s administrative cost associated with assessing and issuing a consent for works would not be recovered from those that directly benefit from the consent.

Without the regulations prescribing consent exemptions for certain low risk works, Table 1 above indicates that an estimated 109,196 exempt minor works would require the payment of an estimated $16 million per annum in consent application fees by utilities, providers of public transport and road authorities.

In respect of consent application fees, the original intention of the Road Management (Works and Infrastructure) Regulations 2005 was to exempt only utilities, providers of public transport and responsible road authorities from applying for consent when conducting ‘minor works’ that were not ‘traffic impact works’. However, the uncertainty of the drafting of the definition of ‘minor works’ in the current regulations has allowed some unintended scope for ‘other persons’ such as developers, builders and plumbers conducting some of the works as described in the definition of ‘minor works’ (e.g the excavation of less than 8.5 square metres of roadway, pathway or shoulder) to be treated as minor works. Although there are no exemptions from consent when ‘other persons’ conduct works that come within the definition of ‘minor works’, the uncertainty of the original drafting has resulted in the lower scale of fees applying not only to utilities, providers of public transport and responsible road authorities (i.e when they are conducting ‘minor works’ that are ‘traffic impact works’) but also to ‘other persons’ conducting what can be defined as ‘minor works’.

The time involved in a coordinating road authority undertaking an assessment of a consent application submitted by ‘other persons’ such as developers, builders and plumbers is greater than the time involved in a consent application for ‘minor works’ given that they do not have the equivalent quality systems, skills and resources that are available to utilities, providers of public transport and responsible road authorities. Accordingly, the drafting of the current definition of ‘minor works’ has allowed ‘other persons’ to pay a lower consent application fee, resulting in a significant cost under-recovery by the coordinating road authority when assessing an application for consent.

VicRoads has assumed, based on its limited experience and consultation with eight compliant local councils, that the time involved in a coordinating road authority undertaking an assessment of a consent application submitted by ‘other persons’ such as developers, builders and plumbers is greater than the time involved in a consent application for ‘minor works’ given that they do not have the equivalent quality systems, skills and resources that are available to utilities, providers of public transport and responsible road authorities. There is, however, no evidence that this has been the case more broadly in practice nor, therefore, that the drafting of the definition of ‘minor works’ that has allowed ‘other persons’ to pay a lower consent application fee, has resulted in a significant cost under-recovery by the coordinating road authority when assessing an application for consent. The cost estimates on which the fees in this RIS are based are, nonetheless, based on this assumption that the processes currently used by councils are more costly.

#### Funding the Administration for Consent for Works

A review of the consent applications process involving VicRoads, local councils, utilities and providers of public transport found an inconsistent approach across the coordinating road authorities. Some local councils ‘rubber stamp’ applications without any on-site inspection, others undertake some minor oversight such as checking Google satellite maps for trees or other non-road infrastructure. Some undertake targeted on-site inspections prior to issuing consents, and others undertake an on-site inspection for every consent application. In the main, VicRoads does not undertake on-site inspections for minor works and, as necessary, undertakes on-site inspections for works (other than minor works). For large scale utility capital works, VicRoads would undertake an on-site inspection prior to issuing consent.

While the regulations are intended to provide a uniform approach across the State, a significant number of local councils have continued to operate using approaches that existed prior to the introduction of the Act. At least 20 of the 79 local councils have adopted fees that are inconsistent with the prescribed fees. About 30 local councils refer to the consent for works within the road reserve using the former title ‘road opening permit’.

Some local councils prefer to charge a flat fee rather than apply the prescribed fee categories that relate to the speed limit of the municipal road and/or whether the works are conducted on or off the roadway, shoulder and pathway.

Data on the exact number of consent for works issued by VicRoads, other State road authorities and the 79 local council coordinating road authorities across the 16 different consent application fee categories is not collected by any government agency. Accordingly, the number of consent for works applications and the associated fee revenue has been estimated based on a sample of VicRoads, local council coordinating road authorities and utilities.

The following estimations are not intended to provide a definitive and an accurate assessment of the overall revenue and costs associated with assessing consent applications. The purpose is to provide an indication of the likely cost recovery level.

Based on the sampling, VicRoads has an estimated under-recovery of $304,154 per annum and local council coordinating road authorities have an estimated under-recovery of $3,599,631 per annum. As can be seen below, this results in a shortfall of $3,903,785 or about 49% of total estimated costs.

### Estimated Consent Application Fee Revenue & Costs

|  |  |  |  |
| --- | --- | --- | --- |
|  | Estimated Revenue | Estimated Costs | Deficit/Surplus |
| VicRoads | $651,887 | $956,041 | ($304,154) |
| Local Councils | $3,388,772 | $6,988,403 | ($3,599,631) |
| Total | $4,040,659 | $7,944,444 | ($3,903,785) |

Notwithstanding the aforementioned cost under-recovery estimations, it should be noted that the revenue estimation may be higher or lower given that at least 20 of the 79 local council coordinating road authorities charge consent fees lower than the prescribed fees in the existing Road Management (Works and Infrastructure) Regulations 2005. In some cases, local councils charge a flat fee that is higher than the lowest prescribed fee.

As stated previously, the estimations should be treated with a deal of caution in terms of the exact level of cost recovery. However, the estimations provide a reasonable approximation of the cost recovery level on a consent application basis given that a review has been undertaken in consultation with VicRoads and local councils of the time and assessment activities that are necessary to comply with clause 16 of Schedule 7 of the Act. More importantly, the estimations reveal cross-subsidisation between consent application fee categories and significant cost under-recovery for any works conducted on a roadway, shoulder or pathway of any class of road.

The primary reasons for the cost under-recovery are due to the anomaly in the drafting of the definition of ‘minor works’ in the regulations and the non-provision of a head of power in the Act to prescribe a fee for an inspection following the completion of the works. Section 122 of the Act currently only allows, in regard to an inspection, for the charging of a fee for carrying out an inspection in connection with an application for consent.

The absence of a fee for the inspection of the completed works results in substantial cost under-recovery for all types of works conducted on a roadway, shoulder or pathway. These types of works invariably require reinstatement after excavation and coordinating road authorities conduct inspections to ensure the reinstatement has been undertaken in accordance with their technical standards and specifications.

Cost analysis of the sixteen consent application fee categories revealed five consent application fees exceeded the cost for coordinating road authorities to provide consent; resulting in cross-subsidisation between consent applicants. This, together with the requirement for taxpayers and/or ratepayers to subsidise the estimated $3.9 million shortfall, is inconsistent with the Victorian Government’s cost recovery principles.

### Objectives

The primary objective of the proposed regulations is to reduce the regulatory burden imposed by the Act for the conduct of certain classes of infrastructure and works undertaken by specific parties that have in place processes to minimise any adverse impacts on road safety, traffic operation and the structural integrity of road and non-road infrastructure located within the road reserve.

The secondary objective is to fund the efficient and equitable regulation of works within road reserves by prescribing consent fees that fully recover the costs of administration.

### Appropriate Threshold for Exemptions

As part of the process of remaking these regulations, the various exemptions were examined to ensure the road safety, traffic and infrastructure objectives (which were based on the works and infrastructure principles as set out in clause 14 of Schedule 7 of the Act) were being complied with in practice. This examination also looked at whether there was further scope to increase the types of exemptions without having a significant impact on road safety, traffic and road infrastructure.

There are five categories of works for which exemptions are prescribed in the regulations:

* Minor works conducted by utilities, providers of public transport, responsible road authorities and their agents (other than traffic impact works);
* Inspection and maintenance of water valves by fire authorities and water corporations (other than traffic impact works);
* Construction, repair or maintenance of pathways by responsible road authorities (other than traffic impact works);
* Clause 18, Schedule 7 (agreement between coordinating road authorities and utilities); and,
* Driveway works on an arterial road or mowing any part of the roadside (other than freeways) by any person (other than traffic impact works)

Minor works essentially involve routine non-road infrastructure repairs and maintenance conducted by utility and public transport infrastructure managers and responsible road authorities.

The rationale for these exemptions of specified works conducted by utilities, providers of public transport, fire authorities, responsible road authorities and their agents is that they are required to operate within their own legislation (for example the **Local Government Act 1989**, the **Metropolitan Fire Brigades Act 1958**, the **Country Fire Authority Act 1958** or the relevant utility and public transport legislation (e.g **Electricity Industry Act 2000**, **Electricity Safety Act 1998**, **Gas Industry Act 2001**, **Gas Safety Act 1997**, **Pipelines Act 2005**, **Bus Services Act 1995**, **Rail Management Act 1996**, and **Water Industry Act 1994**) which regulates their conduct and facilitates public accountability. In the majority of cases, they are quality assured organisations with systems in place to ensure that they are meeting the requirements of the coordinating road authority. These organisations or their agents also conduct these types of works on a daily basis and therefore have access to the necessary skills and resources to meet the specific duties of infrastructure managers and works managers as required under Part 1 of Schedule 7 of the Act.

The Infrastructure Reference Panel established under the Act has endorsed the exemptions on the grounds that these organisations have the appropriate quality assurance systems to mitigate risks to road safety, traffic flow and the integrity of road infrastructure. These organisations generally outsource installation, renewals and repair/maintenance to contractors. These organisations typically impose rigorous contractual obligations on their contractors such as security deposits for the successful completion of works within designated times and to prescribed quality requirements (including appropriate compliance with coordinating road authority reinstatement requirements).

While there are from time to time, issues between coordinating road authorities and utility contractors regarding the timing and quality of road reinstatement, it would appear the utilities’ contractual arrangements operating in a competitive market where contractors tender for work provides a suitable market mechanism to ensuring road safety, minimal traffic disruption, and the protection of the integrity of the road infrastructure.

As a whole, the utility sector has improved its performance in terms of community engagement with appropriate consultation about forthcoming works and educating their contractors about their regulatory obligations regarding works within a road reserve. Some utilities such as South East Water, City West Water and Yarra Valley Water have recently developed an accreditation system for their contractors to strengthen the quality of work.

While there is scope for improvement by utilities to ensure their contractors consistently meet the requirements of coordinating road authorities, it would appear that those coordinating road authorities that have established appropriate systems (including post reinstatement inspections) and importantly, have clearly communicated their expectations for reinstatement, tend to have minimal issues with utilities regarding the quality of reinstatement.

Other states and territories provide similar exemptions for minor installations, repairs and maintenance of utility and public transport infrastructure on public roads. Comparable interstate legislation to the **Road Management Act 2004**, where it exists, provides a general exemption to utilities and providers of public transport to undertake minor installation, repairs and maintenance. This is invariably complemented by utility and public transport legislation in each jurisdiction that provides explicit exemptions for minor installations, repairs and maintenance of infrastructure on public roads and public land.

Several options have been investigated to ascertain whether they are feasible options for further consideration. These options include reducing the scope of exemptions, extending the current exemption for minor works that do not have traffic impacts to other persons; earned recognition; allowing agreements between coordinating road authorities and other persons; alternative thresholds for consent application categories based on the size of the works and risk-based reinstatement inspections.

As part of the review of exemptions, the Infrastructure Reference Panel has consulted with utilities, providers of public transport and responsible road authorities and considers that the existing threshold for exemptions is appropriate and does not need to be broadened or lowered. Experience under the existing regulations suggests that the relevant parties, when conducting works on roads, have demonstrated an ability to minimise impacts on road safety, traffic operation or the integrity of road infrastructure.

The proposed Regulations also clarify the minor works exemption to ensure that it applies only to utilities, providers of public transport and responsible road authorities, and their agents. This clarification has been incorporated to avoid the situation that has prevailed under the current Regulations whereby certain works conducted by other persons (e.g developers, builders and plumbers) have been interpreted as ‘minor works’ and as a result, charged a lower consent application fee, even though this was not the intention of the provision. This change has been made despite the fact that VicRoads has no evidence of adverse outcomes having resulted from this misinterpretation (expressed, for example, through complaints from residents or as evidenced by problems relating to road safety, congestion or road infrastructure damage). Moreover, although the scope of the definition of minor works and the application of the exemption was discussed with the Infrastructure Reference Panel, the issue of the proposed approach to the application of consent fees has not been tested with other stakeholders, including developers, builders and plumbers.  Rather, this decision has been based on an assumption, together with limited experience, by VicRoads about the capacity of these parties and the risks associated with them and the work they undertake, not on demonstrated behaviours. In effect, then, the proposed Regulations are seeking to maintain what was intended to be the legal status quo with only limited evidence, based on the experiences of one or two road authorities that current practices may, in some cases, have undermined the achievement of the underlying objectives of the Act/Regulations. This means that:

* additional costs will be imposed on some parties (particularly developers and builders or plumbers) who will be required to pay higher consent application fees; and
* the proposed Regulations may not exploit all possible opportunities to reduce burdens while still achieving the underlying objectives of the legislation/Regulations.

There also is no evidence that the current practice has affected cost recovery levels because VicRoads does not know whether more extensive (costly) application processes have been conducted by councils for works that have been granted exemptions erroneously. Rather, VicRoads has made an assumption, based on what VicRoads considers to be good practice consistent with the ‘works and infrastructure management principles’ established in the Act, that these additional processes are necessary and have been implemented by councils for these applications.

VicRoads has, nonetheless, decided to reinforce the original intent of the 'consent for works' exemptions in the existing Regulations because it considers this to be the most effective way of managing the appropriate use of roads, including the conduct of works, in a manner that seeks to reduce the risk of adverse impacts on road safety, traffic congestion and damage to road infrastructure whilst also achieving the ‘works and infrastructure management principles’ as set out in the Act, notwithstanding the lack of definitive evidence that this is the case.

### Review of Fees

Given the significant variation in the nature of the consent application assessment process across coordinating road authorities, the costs have been calculated on a transaction basis, with the calculations adopting an efficient cost base that takes into account the policy objectives and the level of risk to road safety, traffic movements and the integrity of the road infrastructure.

The rationale for the 16 separate consent application fee categories is that some types of road such as a freeway or arterial road carry higher volumes of vehicles and any works on these roads have greater potential risk for road safety and traffic disruption compared to a municipal road or non-arterial State road with a maximum speed limit of less than 50 km per hour and low traffic volumes.

The location, scale and type of the works is also taken into consideration (e.g excavations of a roadway, shoulder or pathway that are more than 8.5 sq m) with some of these works being more likely to have a greater potential risk for road safety, traffic disruption and the integrity of road infrastructure.

The basis for the distinction between conducting and not conducting works on a roadway, shoulder or pathway, is that this road infrastructure is invariably excavated and requires reinstatement as close as possible to the original condition to ensure structural integrity. This also serves to prevent trips and falls particularly for pedestrians and bicyclists. Given the risks and costs associated with unsatisfactory or delayed reinstatement of a roadway, shoulder or pathway, coordinating road authorities should undertake inspection of the completed reinstatement works. Accordingly, the cost of inspections of completed works is applied to any works conducted on a roadway, shoulder or pathway on any class of road.

Pre-consent onsite inspections undertaken by a coordinating road authority are, in general, confined to large scale works (referred to as works (other than minor works) in the regulations) that pose potential road safety and traffic congestion risk on specific classes of road; freeways, arterial roads and municipal roads / non-arterial State roads on which the maximum speed limit for vehicles is more than 50 km per hour.

Accordingly, the number of tasks and the associated time taken by coordinating road authorities to consider a consent application is dependent on the type of road, scale of works and the location of the works (i.e whether the proposed works are to be conducted on a roadway, shoulder or pathway or within the roadside).

The cost analysis of the consent application fees revealed a reduction in the time spent for administrative processing compared to the cost analysis undertaken for the regulations in 2005. In the previous cost analysis, the time allocation for the administrative function was estimated at one hour for most consent applications and up to 1.5 hours for consent applications in relation to works on a freeway. The review revealed that the administrative function took about 30 minutes on average for all types of consent applications.

The review also found that the process functions for consent applications for the lowest risk roads (municipal roads and non-arterial State roads on which the maximum speed limit for vehicles is not more than 50 km per hour) were slightly more involved than estimated in the previous cost analysis undertaken in 2005.

### Fee Options

Several fee options were considered including incentive based fees and fees based on the value of works. Incentive based fees such as a rental fee for the occupied space of the road could potentially expedite the completion of the works and reduce traffic congestion and delays to road users. This could be appropriate where road works occupy significant road space and works take a long time to complete, thus imposing potentially substantial costs on other road users. This is likely to only occur for large-scale works conducted by utilities, providers of public transport and developers. Although there are some direct financial incentives to minimise the time to complete works, this may not always be sufficient to optimise the completion of works in a timely manner. It is not clear whether congestion currently is a significant issue and whether there are significant opportunities for performance to be improved for these large-scale works. However, if this were a significant issue, one option would be to adopt a pricing structure similar to that adopted in the United Kingdom to ensure broader costs were borne by utilities, providers of public transport and developers. Under the UK approach, there is a stepped charge system for streets of different 'traffic sensitivity', with overrun charges levied when undertakers of work breach the planned duration as agreed through notices or permits. Pricing could vary by location (e.g. major arterial roads), type of works (e.g. area of road), and duration (e.g. time to complete works above a base period). This potentially would help to reduce congestion and the time taken to complete works but may also give rise to the undertakers of works 'gaming' the system if it is not carefully designed (e.g. overstating the likely time to complete a work to avoid paying an overrun charge).

This option would be particularly effective for large-scale works undertaken by utilities and providers of public transport. However, these organisations have appropriate incentives to complete their works safely and expeditiously; including legislative customer service obligations and financial incentives to avoid foregone revenue resulting from their customers not being able to use and pay for their infrastructure services. To avoid any unnecessary financial losses, utilities and providers of public transport impose appropriate performance requirements on their contractors to complete the works within specified timeframes and to required standards.

Similarly, a scale of fees based on the value of works was considered. However, the time and resources involved in processing a consent application is unrelated to the value of works involved. For example, the cost of a works (other than minor works) may be less than minor works due to the type of works, installation techniques used and the party conducting the works.

The following five options were considered and assessed:

Option 1: Current fee levels

Option 2: Fees based on partial cost recovery

Option 3: Fees based on full cost recovery

Option 4: Maximum fees

Option 5: Fees based on an hourly rate

As the costs and benefits of these options could not be fully quantified, multi-criteria analysis (MCA) was undertaken for all options.

The MCA involves:

* Specifying assessment criteria;
* Assigning a ‘weighting’ to each criterion;
* Assigning scores for each option in relation to each criterion; and
* Calculating a weighted score for each option.

MCA allows a decision to be made based on the weighted scores. The option assigned the highest weighted score is the ‘preferred option’.

The MCA was undertaken using criteria consistent with the key principles in the Department of Treasury and Finance Cost Recovery Guidelines:

* Efficiency
* Effectiveness
* Equity
* Simplicity

Option 3 was found to have the highest score and achieves full cost recovery. However, there is no head of power in the Act to recover costs associated with the inspection of completed works. As a result, Option 3 cannot be recommended without an amendment to the Act to provide the appropriate head of power. In view of this, Option 2 is the preferred option with the next highest score. The fees in Option 2 are based on an efficient cost base and achieve partial cost recovery; with an estimated annual shortfall of $1,131,126.

### Competition Assessment

A competition assessment was undertaken and found the proposed regulations do not act to restrict competition on the construction, utility and public transport industries.

The various exemptions from consent and notifications apply equally to all utilities and public transport providers.

The proposed fees impose a nominal cost relative to the cost of the average infrastructure works being conducted; even for smaller scale works involving the installation of a driveway on an arterial road by a builder.

### Comparison of Current and Proposed Fees

The proposed fees in Option 2 would increase six consent application fee categories and reduce ten consent application fee categories.

As can be seen below, all of the consent application fees for works on a freeway or arterial road have been reduced other than the following consent application fees for arterial roads that have increased: Works (other than minor works) not conducted on, or on any part of the roadway, shoulder or pathway and minor works, conducted on, or on any part of the roadway, shoulder or pathway.

**Current and Proposed Fees for Works on a Freeway and Arterial Road**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Type of Road | Type of Works | Current Fees  | Proposed Fees | ProposedFee Units | Difference(Dollars) | Difference % |
| Freeway | Works, other than minor works, conducted on, or on any part of the roadway, shoulder or pathway  | $595.80 | $570.91 | 43.2 | ($24.89) |  -4% |
| Works, other than minor works, not conducted on, or on any part of the roadway, shoulder or pathway  | $423.70 | $398.81 | 30.2 | ($24.89) |  - 6% |
| Minor Works, conducted on, or on any part of the roadway, shoulder or pathway  | $331.00 | $211.71 | 16.0 | ($99.29) | - 30% |
| Minor Works, not conducted on, or on any part of the roadway, shoulder or pathway  | $132.40 | $125.66 | 9.5 | ($6.74) | - 5% |
| Arterial road | Works, other than minor works, conducted on, or on any part of the roadway, shoulder or pathway  | $595.80 | $570.91 | 43.2 | ($24.89) | - 4% |
| Works, other than minor works, not conducted on, or on any part of the roadway, shoulder or pathway  | $331.00 | $398.81 | **30.2** | **$67.81** | **+20%** |
| Minor Works, conducted on, or on any part of the roadway, shoulder or pathway  | $152.30 | $211.71 | **16.0** | **$59.41** | **+ 39%** |
| Minor Works, not conducted on, or on any part of the roadway, shoulder or pathway  | $132.40 | $125.66 | 9.5 | ($6.74) | - 5% |

As can be seen from the Table below, half of the consent application fees for works on a municipal road or non-arterial State road have been increased (highlighted in bold).

**Current and Proposed Fees for Works on a Municipal road and non-arterial State road**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Type of Road | Type of Works | Current Fees  | Proposed Fees | ProposedFee Units | Difference(Dollars) | Difference % |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is more than 50 kilometres per hour  | Works, other than minor works, conducted on, or on any part of the roadway, shoulder or pathway  | $595.80 | $570.00 | 43.1 | ($25.80) | - 4% |
| Works, other than minor works, not conducted on, or on any part of the roadway, shoulder or pathway  | $331.00 | $310.23 | 23.5 | ($20.77) | - 6% |
| Minor Works, conducted on, or on any part of the roadway, shoulder or pathway  | $152.30 | $122.05 | 9.3 | ($30.25) | - 20% |
| Minor Works, not conducted on, or on any part of the roadway, shoulder or pathway  | $66.20 | $78.75 | **6.0** | **$12.55** | **+19%** |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles is not more than 50 kilometres per hour  | Works, other than minor works, conducted on, or on any part of the roadway, shoulder or pathway  | $264.80 | $310.23 | **23.5** | **$45.43** | **+17%** |
| Works, other than minor works, not conducted on, or on any part of the roadway, shoulder or pathway  | $66.20 | $78.75 | **6.0** | **12.55** | **+19%** |
| Minor Works, conducted on, or on any part of the roadway, shoulder or pathway  | $152.30 | $122.05 | 9.3 | $30.25 | **-**20% |
| Minor Works, not conducted on, or on any part of the roadway, shoulder or pathway  | $66.20 | $78.75 | **6.0** | **$12.55** | **+19%** |

### Comparison of Current and Proposed Consent Application Fees payable by other persons

The clarification of the definition of ‘minor works’ (i.e to only apply to utilities, providers of public transport and responsible road authorities - and their agents) will not change the current requirement for ‘other persons’ such as developers, builders and plumbers to apply for consent for all works that they propose to conduct (i.e no exemptions apply). The clarification will, however, result in a significant increase in consent applications fees when ‘other persons’ propose to conduct those types of works that could previously have been interpreted as coming within the definition of ‘minor works’. The cost of these fees is more than likely to be passed onto their customers. The consent fees that have been applied for certain types of ‘minor works’ conducted on freeways and arterial roads by ‘other persons’ are compared in the Table below with the fees that will apply as a result of the clarification of the definition of ‘minor works’.

**Comparison of Current and Proposed Consent Application Fees payable by ‘other persons’ for works conducted on a Freeways and Arterial road**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Type of Road | Work Type - Current Regulations | Current Fees | Work Type - Proposed Regulations | Proposed Fees |
| Freeway | Minor works, conducted on the roadway, shoulder or pathway | $331.00 | Works (all work types), conducted on the roadway, shoulder or pathway | $570.91 |
| Minor works, not conducted on the roadway, shoulder or pathway | $132.40 | Works (all work types), not conducted on the roadway, shoulder or pathway | $398.81 |
| Arterial Road | Minor works, conducted on the roadway, shoulder or pathway | $152.30 | Works (all work types), conducted on the roadway, shoulder or pathway | $570.91 |
| Minor works, not conducted on the roadway, shoulder or pathway | $132.40 | Works (all work types), not conducted on the roadway, shoulder or pathway | $398.81 |

A similar comparison of current and proposed fees payable by ‘other persons’ conducting works on municipal roads is provided below.

**Comparison of Current and Proposed Consent Application Fees payable by ‘other persons’ for works conducted on a Municipal road**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Type of Road | Work Type - Current Regulations | Current Fees | Work Type - Proposed Regulations | Proposed Fees |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is more than 50 kilometres per hour  | Minor works, conducted on the roadway, shoulder or pathway | $152.30 | Works (all work types), conducted on the roadway, shoulder or pathway | $570.00 |
| Minor works, not conducted on the roadway, shoulder or pathway | $66.20 | Works (all work types), not conducted on the roadway, shoulder or pathway | $310.23 |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles is not more than 50 kilometres per hour  | Minor works, conducted on the roadway, shoulder or pathway | $152.30 | Works (all work types), conducted on the roadway, shoulder or pathway | $310.23 |
| Minor works, not conducted on the roadway, shoulder or pathway | $66.20 | Works (all work types), not conducted on the roadway, shoulder or pathway | $78.75 |

# Stakeholders Questions

Without limiting the matters about which stakeholders may wish to comment, stakeholder feedback is sought specifically on several matters as listed below.

### 1. Definition of ‘minor works’ (refer to page 60)

One important element of the definition of ‘minor works’ provides that minor works must not include the excavation of an area of the roadway, pathway or shoulder that exceeds 8.5 square metres. The 8.5 square metres area is based on the excavation of a trench across a typical 7.4 metre wide two-lane two-way roadway with a trench width of 1.2 metres, resulting in a total area of 8.8 square metres (rounded to 8.5 square metres).  The 1.2 metre trench width represents an average width for the laying of a 600 mm water main across a road. Smaller water mains require a narrower trench width, while for electricity, the installation of 2 typically sized conduits across the road also require a trench width of around 600 mm. The Infrastructure Reference Panel adopted the 8.5 square metres area as a compromise between a preference by road authorities for a maximum area of about 5 square metres and the utilities preference for around 10 to 11 square metres.

**Is the 8.5 square metre threshold reasonable? Should the threshold be higher or lower, and on what basis?**

**What are the advantages and disadvantages of increasing or decreasing the threshold?**

**Are there any other aspects of the definition that warrant reconsideration?**

### 2. Definition of ‘traffic impact works’ and ‘peak hour traffic works’ (refer to page 60)

The definition of ‘traffic impact works’ includes works conducted on a freeway, on an arterial road that requires deviation of vehicular traffic into an on-coming traffic lane, in a clearway or bus lane when in operation, requiring the closure to vehicular traffic of a part of a roadway for a continuous period of more than 12 hours or for more than 24 hours in 7 days, and disruption to a tram or bus operated by a provider of public transport.

To remove uncertainty about the interpretation of some of the existing ‘traffic impact works’ definitions, the proposed regulations remove reference to ‘significant’ impact or delay and replace it with more specific circumstances such as on the roadway within 20 metres on either side of a children’s crossing and on the roadway of an arterial road in an urban area that cause specified delays during the periods from 6 am to 9 am and 3 pm to 7 pm on a weekday (defined as 'peak hour traffic works' in Regulation 7)." . Similar provisions are included for works conducted on a road that cause specified delays to a tram or bus operating within metropolitan Melbourne, Geelong, Ballarat and Bendigo.

**Are the various thresholds prescribed in the definition of ‘traffic impact works’ and ‘peak hour traffic works’ appropriate or do they impose any unnecessary restrictions?**

### 3. Risk Assessment of Works (refer to page 40)

**Do you agree with the risk weightings VicRoads has assigned to various works and those who undertake these works? Please provide specific information about the nature of the risks associated with work undertaken by parties such as developers, the capabilities of these parties to manage such risks, and evidence that these risks have manifested in practice.**

**Given the risks from such works and the capabilities of developers, builders and other parties to manage these, what is a practicable, alternative definition of exempt minor works that may achieve the objectives in an alternative way? What would be the benefits and costs of such an approach?**

### 4. Conditions that must not be imposed as part of a consent (refer to page 73)

Regulation 18 prescribes conditions that a coordinating road authority must not impose as part of a consent. These include:

* a condition relating to visual amenity or aesthetics unless the condition relates to road infrastructure;
* a condition relating to the technical design of, or the equipment or techniques used in the installation of, non-road infrastructure by a utility or a provider of public transport;
* a condition that is not reasonably relevant to the conduct of the proposed works;
* a condition requiring non-road infrastructure that would normally be placed above ground to be placed under a road;
* a condition relating to environmental impact considerations other than in relation to the matters referred to in clause 14 of Schedule 7 to the **Road Management Act 2004**;
* a condition requiring an indemnity in respect of the conduct of the proposed works that extends beyond a 12 month warranty period; and
* a condition on a utility, provider of public transport or responsible road authority, or their agents, relating to financial security in respect of the conduct of the proposed works.

**Are the conditions in regulation 18 appropriate? Do the prescribed conditions constrain the ability of a local council to impose conditions that reflect the preferences of their communities?**

**Are there other conditions that consent applicants consider a coordinating road authority should not impose as part of a consent?**

### 5. Processes for the determination of a consent application (refer to pages 81-85)

A review of the requirements of clause 16 of Schedule 7 of the Act that must be considered for any consent application was undertaken in consultation with VicRoads and local councils conforming to the aforementioned requirements for works on each type of road and the location of the works (either on or not on the roadway, pathway or shoulder). That is, the time involved and the associated costs are calculated in accordance with the processes that must be followed under clause 16 of Schedule 7 of the Act. These costs are not based on the processes used by some local councils that have adopted different approaches or imposed different application fee structures to those set out in the Act or prescribed in the Regulations.

**Are the assessment processes and the times allocated for each type of assessment appropriate for each of the consent application fees detailed in Appendix 2?**

**To what extent do councils currently not fully recover costs for works that have been incorrectly given exempt status?**

**To what extent are councils undertaking processes beyond what is required or charged for under the current regulations? This could include processes such as undertaking post-works inspections or applying tasks required under the works (other than minor works) category for works that are charged/ classified as minor works.**

### 6. Appropriateness of the cost assumptions used for local council coordinating road authorities (refer to page 80)

The overhead costs for local council coordinating road authorities is based on VicRoads overhead costs due to the difficulty of obtaining overhead costs across the 79 local councils.

**Are these cost assumptions appropriate?**

### 7. Incentive-based fee structure (refer to page 74)

**Do large-scale works conducted by utilities, providers of public transport and developers cause significant congestion to warrant consideration of incentive based fees with a pricing structure that would vary according to location, type of works and duration of the works?**

### 8. Waiver of Consent Application Fees (refer to page 52)

**In which cases do road authorities apply waivers for fees or part of a fee? Are fee waivers applied because the risk/harm associated with a particular work is perceived to be lower than those generally associated with that particular type of work category? If so, are reasons for a lower risk weighting due to the nature of the works (e.g. familiarity with a particular work, technology or location, so they are considered 'routine'?) and/or the type of persons undertaking works (e.g. familiarity with a particular person with a history of undertaking good road works/reinstatements)?**

# 1. Background

## 1.1 Overview

The **Road Management Act 2004** (the Act) requires, amongst other things, consent from a coordinating road authority for works conducted in, on, under or over a road. This is commonly referred to as a ‘Consent for works’. A road includes the roadway (or road pavement), shoulders, pathways and roadside.

The Act provides for a consent application process and consent conditions. The Act also imposes duties on infrastructure managers and works managers in respect of conducting works in, on, under or over a road.

The consent for works conducted in, on, under or over a road applies to all types of Victorian roads; freeways, arterial roads, municipal roads and non-arterial State roads. The Act states that VicRoads is the coordinating road authority for freeways and arterial roads, and local councils are the coordinating road authority for municipal roads. The Department of Environment, Land, Water and Planning (DELWP), in its role as a State road authority, is a coordinating road authority for a number of non-arterial State roads on Crown land, such as national parks.

Most of the statutory framework for the consent for works conducted in, on, under or over a road is detailed in the Act, supported by the existing Road Management (Works and Infrastructure) Regulations 2005 (the Regulations). These Regulations, which sunset on the 21 June 2015, are proposed for re-making with a few minor amendments.

The objective of these Regulations, by and large, is to reduce the regulatory burden on utilities, providers of public transport and responsible road authorities by providing consent and notification exemptions for minor works that do not have significant impacts on road safety, traffic or other infrastructure, set out shorter periods for the determination of certain consent decisions by coordinating road authorities and provide for longer periods for submitting notifications upon the completion of works. The Regulations also prescribe restrictions on the types of conditions that can be imposed on a consent issued by coordinating road authorities and set out a schedule of fees for consent applications for all persons seeking to conduct works in, on, under or over a road.

The Department of Treasury and Finance’s ‘Victorian Guide to Regulation’ requires that a regulatory impact statement be prepared for the remaking of statutory rules (regulations) that impose a significant economic or social burden on a sector of the public. The fees for consent applications impose an economic burden and are evaluated accordingly. The exemptions do not impose a burden as such but seek to remove a burden. Nonetheless, the scope and appropriateness of the exemptions and the restriction of conditions that can be imposed by coordinating road authorities are evaluated to ensure the appropriate threshold has been set in the current and proposed regulations.

## 1.2 Road Management Act 2004

There is a clear recognition in the Act for the provision of essential services by utilities and providers of public transport in sharing the road network and the intent to exempt utilities and providers of public transport from written consent to undertake certain works provided they do not compromise road safety, traffic and road infrastructure assets.

The primary object of the Act *“is to establish a coordinated management system that will promote a road network at State and local levels that operates as part of an integrated and sustainable transport system under the* ***Transport Integration Act 2010*** *and the responsible use of road reserves for other legitimate purposes”*.

As part of the primary object of the Act, the role of utility and public transport infrastructure managers within the road network is clearly articulated in section 4(2)(d) and (g) and states, *“in seeking to achieve the primary object, this Act,*

*d) provides mechanisms for coordinating the placement and maintenance of infrastructure on road reserves, and the carrying out of related works, so as to –*

1. *minimise interference with road use;*
2. *facilitate the effective and efficient provision of utility and public transport services;*
3. *minimise interference with other infrastructure and the provision of utility and public transport services”*

*g) “sets out the powers and duties of road authorities to manage roads, the duties of infrastructure managers which install and maintain infrastructure on roads and the duties of work managers which carry out works on roads”*.

Section 63 (1) of the Act requires that a person must not conduct any works in, on, under or over a road without the written consent of the coordinating road authority to the conduct of the proposed works.

Section 63 (2) provides a range of exemptions from the requirement to obtain consent such as works specified under other Acts (e.g tree clearing around power lines under the **Electricity Safety Act 1998**), works conducted in an emergency (e.g burst water main) and works prescribed in regulations.

Section 64 and clause 13 of Schedule 7 requires a works manager to provide notification of the completion of works within 7 days to the relevant coordinating road authority. However, the period of 7 days can be varied by the relevant coordinating road authority or by the regulations.

Schedule 7 ‘Infrastructure and Works on Roads’ sets out specific duties of infrastructure managers and works managers in Part 1 of the Schedule and specific powers of coordinating road authorities with respect to infrastructure and works on roads in Part 2 of the Schedule.

The *Code of Practice for the Management of Infrastructure in Road Reserves* (the Code) made under the Act calls for mutual co-operation between road authorities, utilities and providers of public transport to facilitate the installation, maintenance and operation of road and non-road infrastructure in road reserves. For example, when road authorities, be they VicRoads or local councils, are considering road widening, there is an expectation that they will consult with utilities and providers of public transport along with other affected land-owners, of the impact of the proposed road widening on their infrastructure. The Code imposes similar obligations on utilities and providers of public transport to consult with road authorities when they are proposing to conduct works on their infrastructure within the road reserve.

## 1.3 Other Relevant Legislation

There are several pieces of legislation that directly interact with the **Road Management Act 2004** in respect to the management of roads and the conduct of works on roads. These are specifically the **Local Government Act 1989**, **Alpine Resorts (Management) Act 1997**, **Crown Land (Reserves) Act 1978**, **Forests Act 1958**, **National Parks Act 1975**, and **Road Safety Act 1986**. Also relevant are the Road Safety (Traffic Management) Regulations 2009, Victoria Planning Provisions and utility legislation/regulations.

### 1.3.1 Local Government Act 1989, Alpine Resorts (Management) Act 1997, Crown Land (Reserves) Act 1978, Forests Act 1958, and National Parks Act 1975

To ensure a single consent system for works conducted on roads, and other matters, operates consistently across the State of Victoria, section 205(2) of the **Local Government Act 1989** was amended during the passage of the **Road Management Act 2004** to make it clear that the care and management of all roads vested in a local council were to be subject to the **Road Management Act 2004** and the related Codes of Practice and regulations made under this Act.

*Section 205 Councils to have the care and management of certain roads*

*(1) A Council has the care and management of—*

*(a) all public highways vested in the Council; and*

*(b) all roads that are the subject of a declaration under section 204(2); and*

*(c) all public highways on Crown land and roads vested in a Minister (other than freeways and arterial roads within the meaning of the Road Management Act 2004 and public highways and roads vested in a public authority); and*

*(d) all roads that the Council has agreed to have the care and management of.*

*(2) This section is subject to the Road Management Act 2004.*

Section 206 of the **Local Government Act 1989** does provide powers of local councils over roads. However, this does not include powers in respect to works conducted on roads.

Clause 2(i) of Schedule 8 in the **Local Government Act 1989** ‘Provisions with respect to Local Laws’, also makes it clear that *“A local law must not duplicate, overlap or conflict with other statutory rules or legislation”*.

The **Alpine Resorts (Management) Act 1997**, **Crown Land (Reserves) Act 1978**, **Forests Act 1958**, and **National Parks Act 1975** provide similar provisions.

Section 5(1) of the **Road Management Act 2004** overrides any other Act if there is an inconsistency between the **Road Management Act** **2004** and any other Act in relation to the performance of a road management function.

### 1.3.2 Road Safety Act 1986

Section 99A of the **Road Safety Act 1986** requires any person conducting works on a road to have a traffic management plan, engage trained and qualified persons to carry out the works and direct traffic to ensure the activities are conducted in a safe manner for road users and persons carrying out the works.

In accordance with section 99A(4)(a) of the **Road Safety Act 1986**, the Road Safety (Traffic Management) Regulations 2009 prescribe the contents of a traffic management plan. Similarly, in accordance with section 99A (5), a *Code of Practice for Worksite Safety - Traffic Management* has been made.

The provisions of the **Road Safety Act** **1986** are complemented by the requirements of the **Occupational Health and Safety Act 2004** in respect to persons engaged in carrying out the works on a road. WorkSafe has also published a Guide for ‘Undertaking Work Near Underground Assets” (July 2004) for the construction and utility sector.

### 1.3.3 Utility Regulations

Legislation, regulations, codes, Australian and industry standards governing electricity, gas, sewerage, water and telecommunications prescribe the positioning of utility infrastructure on road reserves, minimum spacing requirements between underground utility infrastructure, the depth of infrastructure, for each type of utility infrastructure. The *Code of Practice for the* *Management of Infrastructure in Road Reserves* made under the Act further complements the utility legislation.

## 1.4 Relevant Non-Regulatory Schemes

‘Dial before you Dig’ is a national referral service for information on underground pipes and cables. The service is provided to enable anyone to identify what type of infrastructure is located below the ground, including within a road reserve. It does not provide the exact position and depth of the infrastructure. In most cases, this information can be obtained from the responsible utility.

## 1.5 Infrastructure Reference Panel

An Infrastructure Reference Panel is established under section 31 of the Act to provide advice on the effective coordination of the use of road reserves by utilities and providers of public transport, and to provide advice to the Minister in respect to the proposed regulations.

The Infrastructure Reference Panel consists of 16 members appointed by the Minister including nominees of the Ministers administering the **Transport Integration Act 2010**, **Local Government Act 1989**, **Electricity Industry Act 2000**, **Electricity Safety Act 1998**, **Gas Industry Act 2001**, **Gas Safety Act 1997**, **Pipelines Act 2005**, **Bus Services Act 1995**, **Rail Management Act 1996**, and **Water Industry Act 1994**.

One is a person selected by the Minister administering the **Transport (Compliance and Miscellaneous) Act 1983** as a representative of road users. One is a nominee of the Minister for Information and Communication Technology, in relation to any person or body providing a service under the authority of the **Telecommunications Act 1997** of the Commonwealth.

Other members include:

* the Chief Executive of VicRoads or a nominee of the Chief Executive of VicRoads;
* the President of the Municipal Association of Victoria or a nominee of the President of the Municipal Association of Victoria;
* the Department Head of the Department of Environment, Land, Water and Planning or his or her nominee; and,
* the Chairperson of the Essential Services Commission established under the **Essential Services Commission Act 2001** or his or her nominee.

Section 32 of the Act provides the functions of the Infrastructure Reference Panel:

*(a) to provide advice to the Government of Victoria on the effective coordination of the use of road reserves by utilities and providers of public transport consistent with the principal object of road management;*

*(b) to act as the vehicle for consultation with, and obtaining advice from, relevant stakeholders, including utilities, providers of public transport and community organisations, in relation to their use of road reserves;*

*(c) to provide information and advice to the Minister in relation to the making of Codes of Practice dealing with matters under Schedule 7 and whether proposed Codes of Practice are consistent with the works and infrastructure management principles;*

*(d) to provide information and advice to the Minister in relation to the making of regulations dealing with matters under Schedule 7 and whether proposed regulations are consistent with the works and infrastructure management principles;*

*(e) to provide advice on any other matter referred to the Infrastructure Reference Panel by the Minister.*

Section 32(d) provides a direct role for the Infrastructure Reference Panel to provide advice to the Minister in respect to the consistency of the proposed regulations with the works and infrastructure principles set out in Schedule 7 of the Act.

Additionally, section 132(5) of the Act provides that the Minister must ensure that there is consultation with the Infrastructure Reference Panel before regulations are made under section 132(3) of this Act.

The Panel has reviewed the current regulations and recommended several minor amendments to the proposed regulations as detailed in section 4.2.

# 2. Nature and Extent of the Problem

## 2.1 Overview

This section is divided into several parts. The first part covers the rationale for government intervention into works conducted within road reserves, the second part identifies the specific sources of risk that could give rise to the problems the Act seeks to address. The third part analyses the size of the market. The fourth part reviews whether the extent of the problem has changed over the past ten years since the introduction of the Road Management (Works and Infrastructure) Regulations 2005. The fifth part analyses the level of cost recovery to administer consent applications.

## 2.2 Rationale for government intervention

The rationale for government intervention into the market where persons are conducting works within road reserves is first and foremost to prevent road safety hazards and avoid traffic congestion. Secondly, to protect the integrity of the road infrastructure that is owned and managed by road authorities (VicRoads, other State road authorities (e.g Department of Environment, Land, Water and Planning (DELWP) and local councils) and to protect environmental assets within the road reserve.

A road reserve includes the roadway (or road pavement), shoulders of a road, pathways and roadside. The primary function of a road reserve is to meet the transport needs of the community, including motor vehicle owners, freight operators, public transport providers, motorcyclists and bicyclists. The pathways (footpaths) serve the needs of pedestrians and bicyclists.

Utility infrastructure (electricity, gas, water, sewerage and telecommunications) in the form of pipes, conduits, cables etc are also located within the road reserve. Most utility infrastructure is normally located underground; sometimes under pathways, the nature strip or the roadway. The exact location of utility infrastructure is dependent on the size of the road reserve.

The use of the road reserve by utilities ranges from minimal to significant depending on the type of infrastructure and nature of the works. Minimal use generally entails the connection of their customers to the main infrastructure. Significant use or occupation of the road reserve generally involves the installation of new pipelines/cabling and/or renewal of ageing infrastructure. The latter type of use is more likely to result in works that have the potential to impact on road safety, traffic flows and the integrity of the road infrastructure.

Providers of public transport (tram, train and bus) also share a road reserve in the form of tracks, rail level crossings and bus/tram stops. As a minimum, this may involve repairs and maintenance of this infrastructure. More significant works involving major elements of public transport infrastructure located within the road reserve may involve the installation and/or renewal of tram tracks and rail tracks (located on a crossing with a road). These works are likely to have the potential to impact on road safety, traffic flows and the integrity of the road infrastructure.

Developments on the land abutting the road reserve (particularly large retail and business complexes and residential subdivisions) may require significant variation to the design of the road e.g access lanes through a roadside to an arterial road and deceleration turning lanes into the complex.

All of these works within road reserves have to varying degrees, the potential to impact road users’ safety, the normal traffic flow and the integrity of the road infrastructure.

## 2.3 Nature of the Problem

The Act, in recognising that the road reserve is available for other appropriate uses in addition to the movement of people and goods (e.g utility and public transport infrastructure and the provision of access to adjoining development), seeks to manage these other uses and associated works (e.g installation, maintenance and repair) through the application of the ‘works and infrastructure management principles’ prescribed in section 20(2) of the Act:

(a) the minimisation of road safety hazards;

(b) the avoidance or minimisation of damage or disruption to infrastructure on roads;

(c) the avoidance or minimisation of disruption to plans for the development of road infrastructure and non-road infrastructure;

(d) the avoidance or minimisation of disruption to traffic;

(da) the priority of different modes of transport on specified roads;

(e) the avoidance or minimisation of disruption to the effective and efficient delivery of utility and public transport services;

(f) the efficient use of resources of road authorities and infrastructure managers and the minimisation of cost to the community of infrastructure and services.

In addition to these ‘works and infrastructure management principles’, Schedule 7 of the Act also sets out a number of specific duties of infrastructure managers and works managers in managing their respective infrastructure or in conducting works within the road reserve.

To manage these other uses and works, and as stated previously, the **Road Management Act 2004** requires the consent of the coordinating road authority to conduct works within a road reserve (other than for works conducted in an emergency and other types of works as specified in section 63(2) of the Act). The objective of the consent for works requirement is to ensure road safety, efficient traffic operation and the structural integrity of road and non-road infrastructure.

The consent application process allows coordinating road authorities to consider proposed works against these principles and duties. However, the consent process also imposes burdens on the road authorities and the parties conducting works (e.g utilities, providers of public transport, other persons) that may not always be proportionate to the risk associated with the works.

Specifically, consent applications for works submitted by all parties involve consideration by coordinating road authorities of the following matters:

* technical design standards, proposed location of the works / infrastructure within the road reserve (e.g whether the location of the proposed works / infrastructure is likely to create a roadside hazard), likely impacts on any road infrastructure for which another responsible road authority is responsible, and possible impacts on on-road public transport.
* future road strategies and road development proposals (e.g road widening, duplication or reconstruction) that may be impacted by the proposed works.
* works methodology and its impact on traffic operation/congestion or road user safety, and the proposed timing of the work.
* road reinstatement methodology to ensure compliance with reinstatement standards and specifications.
* potential environmental and heritage impacts associated with the works.
* road intersection and traffic signal operational impacts based on an analysis of SCATS (the Sydney Coordinated Adaptive Traffic System) to determine traffic volumes, traffic flow impacts and necessary mitigation measures (e.g re-phasing of traffic signals).

As a part of this consent application assessment process, coordinating road authorities, on many occasions, require amendments to the proposed location of the works due to the impact on the aforementioned factors (the exact extent of such amendments is not known as coordinating road authorities do not collect data on the number of consent applications that require amendment).

The review of plans by road authorities can also help to prevent any unnecessary road safety or traffic congestion issues that may otherwise arise (e.g in relation to the timing of works, the management of traffic through the worksite, notification requirements to public transport operators) or take direct action itself to assist in the efficient flow of traffic and avoidance of any consequential congestion impacts on the surrounding road network (e.g due to road closures or detours at the worksite). The uncertainty of the interpretation of the current definition of ‘traffic impact works’ in respect to “significant delay to a tram or bus operator and significant impact on access to a bus or tram stop” has imposed an administrative burden to coordinating road authorities in developing a consistent approach but has not resulted in any documented harm to public transport operators and/or users.

Some types of works within the road reserve do not require a coordinating road authority to consider the impact of the location of the works given that the infrastructure already exists and the works are focused more on the maintenance and repair of that existing infrastructure.

Hence, section 63(2) of the Act allows for certain exemptions from the consent process, including:

* works that a person is required to conduct as specified in other legislation;
* works for which an exemption applies as prescribed by regulations; and
* works conducted in an emergency.

Two broad factors influence the extent of the risk (i.e road safety, traffic operation and structural integrity of the road) associated with particular works:

1. ***The nature and location of the work being undertaken.*** The potential risks are, for example, likely to be lower in the following circumstances:
	* the smaller the worksite or the area of the roadway, pathway or shoulder to be excavated.
	* where work (e.g maintenance or repair) is conducted on existing non-road infrastructure within a road reserve.
	* for works that do not have a significant impact on the safe or efficient operation of high volume and/or high speed roads, on-road public transport or a traffic impact on any road.
	* for works that do not affect road safety or the efficient traffic operation of roads or the structural integrity of road infrastructure.
2. ***The underlying characteristics of the party conducting the works.*** In particular, risks are likely to be lower (all other things being equal) where the party conducting the work:
	* has extensive experience and conducts such works relatively frequently.
	* has appropriate internal quality systems.
	* is subject to other legislation that may mitigate these risks.
	* has appropriately trained and skilled staff and appropriate resources to conduct the works safely and reinstate road infrastructure to appropriate standards.

Example of low risk works:

A regional water authority proposes to construct a water main along the road reserve of an arterial road. It will be constructed along the verge of the road (clear of the shoulder) at a depth of 0.8 metres for a distance of 100 metres and then cross under the arterial road by boring to connect to an existing water main. As no area of the road pavement will be broken up, and the works will be undertaken from the verge of the road, there is not expected to be a significant impact on traffic or road safety.[[1]](#footnote-1)

Example of high risk works:

A utility wishes to connect a consumer to a service provided by the utility on a busy, 4 lane arterial road. The existing service is located beneath the road pavement and will necessitate the excavation of 3 square metres of roadway. The works would require the closure of one traffic lane for 4 to 6 hours and the introduction of a temporary speed restriction through the work site. Although these works only require the excavation of a relatively small area of roadway, they are expected to have a significant impact on traffic because the road is a busy urban arterial road, the works require the closure of a traffic lane and a temporary speed reduction is proposed, with the consequent traffic merging reducing road safety and traffic flows[[2]](#footnote-2).

## 2.4 Size of the Market for Works within a Road Reserve

Works are conducted within a road reserve by:

* Electricity, gas, water, sewerage, and telecommunication utilities and/or their agents (contractors);
* Public transport providers and/or their agents (contractors);
* Responsible road authorities and/or their agents (contractors); and
* Other persons – e.g developers, builders, plumbers.

As shown in Table 1 below, there are an estimated 140,527 works conducted annually within a road reserve. The estimated number of works is based on VicRoads data and a sample of local councils and utilities. The estimation has been adjusted upwards by 20% to allow for non-compliant works operating without consent.[[3]](#footnote-3) The sampling data analysis is provided in Appendix 1.

 **Table 1:** **Estimated Number of Works Conducted within a Road Reserve**

|  |  |
| --- | --- |
| Freeways & Arterial roads – consent required | 2,027 |
| Municipal roads – consent required | 29,304 |
| Exempt Minor Works – conducted on all roads\* | 109,196 |
| Total works  | 140,527 |

**Note**: \*Works conducted by utilities, providers of public transport and responsible road authorities, but excludes ‘works conducted in an emergency’ (refer section 63(2)(e) of the Act). These works being those that come within the definition of ‘minor works’ as prescribed in the existing Road Management (Works and Infrastructure) Regulations 2005 and primarily involve the installation, repair and/or maintenance of utility, public transport and road authority infrastructure, and also include those works that require the excavation of an area of roadway, pathway or shoulder, that does not exceed 8.5 square metres. These works exclude those ‘minor works’ that are ‘traffic impact works’. (also as defined in the existing Road Management (Works and Infrastructure) Regulations 2005), for which an exemption from consent does not apply.

As can be seen from Table 2 below, an estimated 109,196 ‘minor works’ (that were conducted on roads by a utility, provider of public transport or road authority) were exempt from consent. The estimation is based upon the sampling data analysis in Appendix 1.

As can be seen from Table 2, an estimated 24,879 minor works (1,436 minor works on freeways and arterial roads and 23,443 minor works on municipal roads and non-arterial State roads) were conducted by utilities, providers of public transport, road authorities, developers, builders, plumbers and other persons for which an exemption from consent did not apply. Most local councils advised that about 80 percent (or 23,443 in number) of consents were for minor works, while 20 percent (or 5,861) of consents were for works that were not minor works.

The definition of ‘minor works’ (as prescribed in the existing Road Management (Works and Infrastructure) Regulations 2005) provides the threshold for all other works and these are referred to as ‘works (other than minor works)’.

As can be seen from Table 2, an estimated 6,452 ‘works (other than minor works)’, for which consent was required, were conducted by utilities, public transport providers, road authorities, developers, builders, plumbers and other persons.

**Table 2: Estimated Number of Works by Road Classification**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Works (other than minor works) | Minor Works – Consent required | Exempt Minor Works \* | Total Works |
| Freeways & Arterial roads | 591 | 1,436 | Not available | 2,027 |
| Municipal roads and non-arterial State roads | 5,861 | 23,443 | Not available | 29,304 |
| All roads | - | - | 109,196 | 109,196 |
| Total | 6,452 | 24,879 | 109,196 | 140,527 |

Source: Sampling data analysis in Appendix 1

**Note**: \*Works conducted by utilities, providers of public transport and responsible road authorities but excludes ‘works conducted in an emergency’ (refer section 63(2)(e) of the Act). ). These works being those that come within the definition of ‘minor works’ as prescribed in the existing Road Management (Works and Infrastructure) Regulations 2005 and primarily involve the installation, repair and/or maintenance of utility, public transport and road authority infrastructure, and also include those works that require the excavation of an area of roadway, pathway or shoulder, that does not exceed 8.5 square metres. These works exclude those ‘minor works’ that are ‘traffic impact works’ (also as defined in the existing Road Management (Works and Infrastructure) Regulations 2005), for which an exemption from consent does not apply.

Data on whether the works are conducted on or off the roadway, shoulder or pathway within a road reserve is difficult to obtain from local council coordinating road authorities. Based on VicRoads data, it is estimated that about 80 percent of all works are conducted on the roadway, shoulder or pathway, with the remaining 20% of works conducted on the roadside within the road reserve.

To reiterate, the above market analysis is based on the sampling data analysis in Appendix 1 and includes an additional 20% of works that are non-compliant and conducted without the appropriate consent. This is done purely for analysing the size of the market. The 20% of non-compliant works is removed from any further analysis in respect to the current level of cost recovery discussed in section 2.5.2. As a result, VicRoads issued 1,689 consents and local council coordinating road authorities issued an estimated 24,420 consents.

As can be shown in Table 3 below, the estimated number of works has been adjusted to remove the uncertainty in the drafting of the definition of ‘minor works’ in the current regulations as discussed in section 2.5.2 The adjusted number of works is based on utilities, providers of public works and responsible road authorities conducting about 30 percent of works and ‘other persons’ conducting 70 percent of works.[[4]](#footnote-4)

**Table 3: Estimated Number of Works by Road Classification under Proposed Regulations**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Works (other than minor works) 1 | Minor Works – Consent required 2 | Exempt Minor Works 3 | Total Works |
| Freeways & Arterial roads | 1,435 | 254 | Not available | 1,689 |
| Municipal roads and non-arterial State roads | 18,559 | 5,861 | Not available | 24,420 |
| All roads | - | - | 109,196 | 109,196 |
| Total | 19,994 | 6,115 | 109,196 | 135,305 |

**Note:**1. This works category includes works conducted by utilities, providers of public transport, responsible road authorities and other persons.

2. Minor works are conducted only by utilities, providers of public transport and responsible road authorities.

3.Exempt minor works are works conducted only by utilities, providers of public transport and responsible road authorities, but excludes ‘works conducted in an emergency’ (refer section 63(2)(e) of the Act).

## 2.5 Extent of the Problem

### 2.5.1 Regulatory Burden

The extent of the risk associated with particular works varies according to the type and scale of the works, and the parties conducting the works. The two key factors that influence the extent of the risk are discussed for each of the key stakeholders that conduct works within a road reserve.

#### Utilities, providers of public transport and road authorities

Utilities, providers of public transport and road authorities conduct routine repairs and maintenance of their existing non-road infrastructure. These infrastructure managers undertake an estimated 109,196 of these types of works (Table 2 refers) which, in general, do not have any significant impact on road safety (including on both high volume urban roads and high speed rural roads), traffic congestion (including delays to public transport services) or the structural integrity of road infrastructure.

Utilities, providers of public transport and road authorities undertake these works on a regular basis and, as a consequence, have appropriate internal systems, trained and skilled staff and available resources to conduct these works safely and to reinstate the road to road authority required standards. These infrastructure managers are also subject to certain performance requirements as set out in specific legislation under which they operate,

Alternatively, other types of non-road infrastructure maintenance and repair works conducted by utilities, providers of public transport and road authorities are likely to have an impact on road safety and efficient traffic operations in circumstances such as the closure of lanes in peak hour traffic or the upgrading or renewal of existing non-road infrastructure located under the roadway that involves road closures or traffic detours. By comparison, utilities and providers of public transport in particular also undertake major service extensions or upgradings (e.g trunk gas or water main extensions to new Greenfield urban developments, installation of new electricity transmission lines) that are located within the road reserve that require significant assessment by road authorities to ensure that they do not impact on road safety, traffic operation, future proposed roadworks (e.g road widenings, duplications or realignments) and structural integrity of the road.

Appropriate reinstatement of the roadway has been an issue for some of the major service extensions or upgrading works conducted by utilities from time to time. The extent of these reinstatement issues is relatively small to the total number of these type of works conducted by utilities. A review of VicRoads complaints database from July 2012 to July 2014 revealed 22 or 4 percent of the 539 complaints received about the condition of the road were related to reinstatements. The other complaints were unrelated to works within a road reserve. Most of the 22 complaints were directed at utilities. This is understandable given that most large scale works are undertaken by utilities. However, theVicRoads complaints database does not provide any information on the outcome of the complaint investigation as to whether the complaint was justified.

Manningham City Council’s complaints database (which also does not provide any detailed outcome of the complaint investigation) may provide some insight into the nature of complaints relating to road reinstatements. Of the 150 complaints received from residents in respect to utility large scale works, about half of the complaints related to materials on the nature strip and/or temporary reinstatements during the course of the works. Hence, the complaints were not directly related to the appropriate permanent reinstatement of the road.

It would appear that notwithstanding the quality standards, experience and skills of utilities, providers of public transport and road authorities and/or their contractors, there have been some incidents with road reinstatements in respect to works for major service extensions and/or upgradings; although the extent of the problem is difficult to determine given that coordinating road authorities do not keep detailed data on the nature of the complaints and the outcomes of complaint investigations.

#### Other parties

Developers conduct large-scale developments (e.g shopping centres, residential subdivisions, urban redevelopment) that involve the construction of new, or alteration of existing, access arrangements to the abutting roads. This invariably requires further changes to the existing road infrastructure such as the construction of deceleration / acceleration / turning lanes, the installation of traffic signals and the construction of new intersections. These works, particularly on urban arterial roads, present a higher risk to road safety, efficient traffic operation and the structural integrity of the road.

As shown in Table 4, developers do not undertake the low risk works that could be construed as minor works Developers, in undertaking these larger scale road construction works, are likely to engage road contractors. To ensure that they do not impact on the safe and efficient operation of the road and the quality standards of any new or reinstated roadway areas, both during construction and in the future ongoing operation of the road, road authorities need to undertake considerable reviews of both the design specifications and construction standards of these roadworks. At the same time, road authorities need to review the performance of any such road contractors to ensure that they have the necessary quality systems, experience and skills to conduct the works appropriately.

Builders, plumbers and other persons (such as sub-contractors) conduct a considerable number of works within a road reserve that require consent. There is limited data on compliance levels amongst this group of stakeholders other than VicRoads 2012 audit of works within a road reserve that found about 20 percent of the works being conducted without consent. Hume City Council is the only local council (from the 11 local councils consulted) to issue road management infringement notices. In 2012/13, Hume City Council issued 143 road management infringement notices to builders, plumbers and/or their subcontractors for not obtaining consent to conduct works and/or for not complying with the consent conditions (e.g inappropriate road reinstatement). Other local councils consulted anecdotally advised of similar levels of non-compliance amongst builders, plumbers and/or their subcontractors both in terms of not having a consent or not undertaking road reinstatements to the required standard. There is no evidence that this level of non-compliance has resulted in any road safety issues. However, VicRoads believes that the detection of non-compliant parties may have prevented adverse outcomes, particularly in regard to the reinstatement of the road infrastructure.

While in many cases this group conducts small scale works within a road reserve, the works are not undertaken on their existing non-road infrastructure but invariably the infrastructure belonging to utilities. This group would undertake works within a road reserve infrequently and not have the necessary experience, skills and internal quality systems compared to utilities, providers of public transport and road authorities and/or their contractors. However, some individual companies within this group (particularly plumbing companies) may have comparable experience, skills and internal quality systems in their particular field of expertise, but these skills do not extend to roadworks, traffic management or working safely on roads under traffic as these are activities that they undertake infrequently. The risks associated within this group would vary widely from high risk (those that conduct works within a road reserve occasionally to a lower risk for those that conduct them on a more regular basis but certainly not as frequently as is the case with utilities.

Table 4 below provides a summary of the aforementioned risk analysis for each of the key stakeholder groups affected.

**Table 4: Risks to Road Safety, Efficient Traffic Management and Structural Integrity of Road Infrastructure**

|  |  |
| --- | --- |
| Nature and Location of Works | Party Conducting the Works |
| Utilities, providers of public transport and road authorities  | Developers | Builders,plumbers and other persons |
| Maintenance or repair of existing non-road infrastructure. | Low / Medium (subject to traffic impact / scale of works) | N/A | N/A |
| Replacement / relocation of existing, non-road infrastructure. | Low / Medium (subject to scale / location of works) | N/A | N/A |
| Worksite consisting of excavation of an area of roadway, pathway or shoulder. | Low to High (subject to area of excavation / traffic impact) | Medium / High (subject to area of excavation) | High |
| Installation of new, or extension of existing, non-road infrastructure. | Medium / High (subject to length / location of works) | N/A | N/A |
| Connection of a consumer to a service. | Low / Medium (subject to length / location of works) | N/A | High |
| Repair of existing property service connection. | N/A | N/A | High |
| Development projects on land abutting road reserve. | N/A | High | N/A |

**Refer to Stakeholder Question 3 on page 23**

#### Regulatory Cost

Without any regulations prescribing consent exemptions for certain low risk works (e.g ‘minor works’ in the existing Road Management (Works and Infrastructure) Regulations 2005), Table 1 above indicates that an estimated 109,196 exempt minor works would require the payment of an estimated $16 million per annum in consent application fees by utilities, providers of public transport and road authorities. In addition, these parties would also incur compliance costs of about $7.6 million per annum in the preparation of consent applications.[[5]](#footnote-5)

Similarly, utilities, providers of public transport and road authorities would be required to pay an estimated $3 million per annum for 9,400 consent applications (for other works) and incur compliance costs of $650,000 per annum in the preparation of consent applications, while other persons (developers, builders and plumbers) would be required to pay an estimated $7 million per annum for 21,931 consent applications and incur compliance costs of $1.5 million per annum in the preparation of consent applications.[[6]](#footnote-6)

If the regulations did not provide any exemptions, coordinating road authorities would need to employ appropriate resources and administrative systems to deal with an estimated 135,305 consent applications per annum (excludes non-compliant works).

The provisions in the current regulations also impose a potential burden on coordinating road authorities, who have to make decisions on consent applications within certain timeframes. The current 20 day approval response period as provided in the Act can create unnecessary delays for utilities, particularly in connecting customers to existing services within acceptable timeframes that comply with their regulatory, customer service or other obligations (e.g Energy Safe Victoria priority/incident response times or other response times specified in Electricity Safety Management Schemes). This would not be possible if coordinating road authorities only had to respond within 20 business days. At the same time, the limited resources and funding available to coordinating road authorities will impact on their ability to respond in a timely manner that enables utilities to meet these regulatory and customer service obligations. VicRoads and local councils consulted during this review did not raise any issues with lowering the prescribed 20 day timeframe for certain types of utility works.

The current regulations also prevent a range of specified conditions from being imposed on a consent. These include:

* a condition relating to visual amenity or aesthetics unless the condition relates to road infrastructure;
* a condition relating to the technical design of, or the equipment or techniques used in the installation of, a service provided by a utility or a provider of public transport;
* a condition that is not reasonably relevant to the conduct of the works;
* a condition requiring non-road infrastructure that would normally be placed above ground to be placed under a road;
* a condition relating to environmental impact considerations other than in relation to the matters referred to in clause 14 of Schedule 7 to the **Road Management Act 2004**;
* a condition requiring the infrastructure manager or works manager conducting works to be responsible for any liability, loss, damage, cost or expense suffered or incurred by the relevant road authority in respect of the negligent conduct of the works, or failure to reinstate the works, that extends beyond a 12 month warranty period; and
* a condition on a utility or provider of public transport relating to financial security in respect of the conduct of works.

These conditions potentially impose a burden on local council coordinating road authorities by constraining them from imposing conditions that might reflect the preferences of their communities. Despite this, none of the local councils consulted raised any concerns about the consent conditions and any conflict with community preferences other than one local council in respect to the condition relating to financial security. In this case, the local council considered imposing a financial security would improve compliance with the required technical standards for road reinstatement. While there have been some instances regarding the timeliness and quality of reinstatements, these have been resolved between coordinating road authorities and utilities/providers of public transport through a process of education of the utilities/providers of public transport contractors.

The current regulations, however, in identifying a range of conditions that cannot be imposed on a consent, recognise that road authorities do not have the necessary technical expertise or experience associated with utility and public transport infrastructure and works (e.g the maintenance or installation of electrical, gas or water infrastructure assets or services). Also, certain road authority conditions could potentially conflict with requirements that these non-road infrastructure managers are required to comply with under their own legislation (e.g **Electricity Safety Act 1998**).

The current regulations also impose a 12 month warranty for the reinstatement of road infrastructure in cases where the roadway, pathway or shoulder has been excavated. The rationale for the 12 month warranty period is to expose the quality of the road reinstatement to dry and wet seasons over the course of a year to ensure it meets the required technical standards. The warranty period potentially imposes a burden on organisations conducting works if the warranty period is too long as well as for coordinating road authorities if the length of the warranty period is considered too short. However, coordinating road authorities, utilities and providers of public transport consulted during the preparation of this regulatory impact statement considered the 12 month warranty period provided a reasonable timeframe to verify if the quality of the road reinstatement complied with the required technical standards.

### 2.5.2 Funding the Administration for Consent for Works

The cost to VicRoads, other State road authorities and 79 local council coordinating road authorities in providing consent for works needs to be funded either by those that directly benefit from the consent (e.g an infrastructure manager or works manager) or from taxpayer and/or ratepayer funds. In the absence of regulations, a coordinating road authority’s administrative cost associated with assessing and issuing a consent for works would not be recovered from those that directly benefit from the consent.

As noted earlier, the focus of a consent application assessment by a coordinating road authority is on the impact of the proposed works on road safety, efficient traffic operation and the structural integrity of the road infrastructure, together with any likely adverse impact the proposed works may have on future road developments and/or environmental/heritage values.

This assessment involves inspecting a road authority’s road widening plans and local council planning schemes for future road construction and local council native vegetation/environmental/heritage overlays. The location of the proposed works within a road reserve will also determine the likely traffic management response required to mitigate traffic congestion. Other aspects that are assessed include ensuring the applicant’s reinstatement methodology (techniques and materials) is compliant with road authority technical standards. Again, this applies regardless of the scale of the proposed works.

The assessment process is consistent with clause 16 of Schedule 7 to the Act that requires a coordinating road authority to have regard to the works and infrastructure management principles (as discussed in section 2.3) in its consideration of a consent application. All of the aforementioned matters in clause 16 are required to be checked for all consent applications (particularly for works on a roadway, shoulder or pathway of a road) to ensure compliance with the works and infrastructure management principles. In doing so, road safety, efficient traffic management and the integrity of the road infrastructure are not compromised.

Utilities, providers of public transport and road authorities are more likely to conduct much larger scale works (e.g major service extensions or upgradings) than other parties and it is expected that more time and effort would be involved in assessing their consent applications. However, the *Code of Practice for the Management of Infrastructure in Road Reserves* (the Code) made under the Act calls for mutual co-operation between road authorities, utilities and providers of public transport to facilitate the installation, maintenance and operation of road and non-road infrastructure in road reserves. For example, when road authorities, be they VicRoads or local councils, are considering road widening, there is an expectation that they will consult with utilities and providers of public transport along with other affected land-owners, of the impact of the proposed road widening on their infrastructure. The Code imposes similar obligations on utilities and providers of public transport to consult with road authorities when they are proposing to conduct works on their infrastructure within the road reserve. As a consequence, any substantial issues associated with these larger scale works are resolved prior to the lodgement of the consent application and are, therefore, outside the scope of the consent application assessment process.

#### Setting Appropriate Fees

There is a strong principle of providing a service at the minimum cost necessary to achieve the policy objective. This is clearly articulated in the Department of Treasury and Finance (DTF) Cost Recovery Guidelines**,** *“cost recovery charges should be set according to an ‘efficient’ cost base: best practice cost recovery arrangements require charges are set at a level that recover the ‘efficient’ (i.e minimum) costs of providing the good/service at the required quality, or of undertaking the necessary regulatory activity.”[[7]](#footnote-7)*

*“It is important to ensure that the level and standard of provision of government goods and services, and the nature of any regulation imposed by government, are the minimum necessary to meet the needs of the community and achieve the Government’s objectives. Without this discipline, the ability to cost recover may create incentives that can result in unnecessarily high cost recovery charges.”[[8]](#footnote-8)*

A review of the consent applications process found an inconsistent approach across the coordinating road authorities. Some local councils ‘rubber stamp’ applications without any on-site inspection, others undertake some minor oversight such as checking Google satellite maps for trees or other non-road infrastructure. Some undertake targeted on-site inspections prior to issuing consents, and others undertake an on-site inspection for every consent application.

In the main, VicRoads does not undertake on-site inspections for minor works and, as necessary, undertakes on-site inspections for larger scale works that are likely to impact on road safety, traffic operations or the structural integrity of the road. For more significant utility capital works, VicRoads would also undertake an on-site inspection.

For major road infrastructure or traffic mitigation works undertaken by developers, as part of the development of land adjoining, and gaining access to, the road, VicRoads requires the inspection of the completed road works to ensure compliance with its construction standards (while VicRoads generally deals with issues around the scope of the necessary mitigation works through the planning permit process). Developers are still required to submit a consent application for the works but the consent fees are generally waived. The inspection as referred to here relates to the planning permit process (and applicable VicRoads conditions imposed on the permit) under the **Planning and Environment Act 1987**. As part of this process, VicRoads requires the developer’s works to be certified as complying with specified design and construction standards. This certification (by inspection) can either be conducted by the developer or the developer can engage VicRoads to perform the certification inspection. Where the developer engages VicRoads, VicRoads can then charge the developer for its costs under section 123 of the Act. This is different to what a consent application fee can cover (in accordance with section 122 of the Act). Accordingly, the section 123 charge is only applied by VicRoads to developers and not to other consent for works applications. Developers comprise a very small proportion of the total number of consent for works applications. It is noted that the ability to charge for services under section 123 of the Act applies to all road authorities.

While the Act and the existing Road Management (Works and Infrastructure) Regulations 2005 are intended to provide a uniform approach across the State, a significant number of local councils have continued to operate using approaches that existed prior to the introduction of the Act. At least 20 local councils have adopted processes as made under local laws and fees that are inconsistent with the fees as prescribed in the existing regulations. Some local councils prefer to charge a flat fee rather than apply the prescribed fees. In some cases, local councils are rubber-stamping consent applications without any due consideration and simply collecting the fee. About 30 local councils refer to the consent for works within the road reserve using the former terminology of ‘road opening permit’.

Given that some local councils have adopted the prescribed fees in recent years following VicRoads efforts to disseminate information and to provide training to interested local councils, it would appear that most of the non-compliant local councils lack awareness and/or the resources to prioritise the changes required. While the lower consent application fees of these non-compliant local councils may reflect prima facie lower processing costs, it should be noted that their costs are not comparable to the costs (processes) needed to be incurred. Specifically, these local councils are not following the various requirements that must be considered in a consent application under clause 16 of Schedule 7 of the Act.

These local councils are operating outside the requirements of the **Local Government Act 1989** whichwas amended during the passage of the **Road Management Act 2004** to make it clear that the care and management of all roads vested in a local council were to be subject to the **Road Management Act 2004** and the related regulations and Codes of Practice made under this Act.

Accordingly, local councils that are still operating under the old regime are using local laws to require applications for road opening permits rather than the consent for works provisions under the **Road Management Act 2004**. The local law mechanism is different to the process for assessing consents under the Act. This is also inconsistent with clause 2(i) of Schedule 8 in the **Local Government Act 1989** ‘Provisions with respect to Local Laws’ that makes it clear that *“A local law must not duplicate, overlap or conflict with other statutory rules or legislation”*. Those local councils operating under the old regime are required to comply with the **Road Management Act 2004** and the associated codes and regulations. In this case, local councils are obligated to apply the prescribed consent application fees to ensure a uniform system operates across Victoria.

Local councils that have not adopted all aspects of the regulations have not made this decision based on their roads having a lower risk to road safety, efficient traffic operation and structural integrity of the road infrastructure. The risk to road safety and efficient traffic operation varies according to the type of road and whether the proposed works are conducted on or not on the roadway, pathway or shoulder. The risk to road safety for works conducted on a municipal road in a rural town is similar to works conducted on a municipal road in metropolitan regions. A lane closure in a municipal road located in a rural town is still likely to affect efficient traffic operations, particularly if it is located in the commercial centre. These risk factors need to be assessed regardless of where the road is located while the amount of time required to make an assessment will vary based on the type of road (freeway, arterial and municipal road).

It is difficult to ascertain whether local councils that are not applying the required processes under clause 16 of Schedule 7 of the Act experience adverse consequences (problems relating to road safety, congestion or inadequate road reinstatements) given that local councils do not collect data on adverse consequences. That said, VicRoads has no evidence that adverse consequences - problems relating to road safety, congestion or road infrastructure damage - have resulted when councils apply these different processes. It, thus, is not clear that the processes on which the cost estimates in this RIS are based truly represent the most efficient process - and thus the costs - required to meet the underlying objectives of the Act and Regulations. However, VicRoads has relied upon the 75 percent of local councils that are complying with the processes specified in the Act rather than giving consideration to local councils that are using other processes.

#### Extent of the Problem in relation to fees

Generally, a regulatory impact statement would provide the total expenditure and revenue of a regulatory authority and provide guidance on the level of cost recovery in respect to administering licences and permits. In this case, it is difficult to replicate that approach for the following reasons.

The regulations prescribe fees that are applicable to many organisations: VicRoads, other State road authorities and 79 local council coordinating road authorities that all have their own approach and associated costs.

Secondly, for all coordinating road authorities including VicRoads, the consent for works within a road reserve is but one of several functions performed within a division of each organisation. In most cases, a single person within a local council road asset maintenance team is responsible for the consent application assessment. For many local councils, the volume of consent applications is too low to fully occupy the time of one officer and these officers would process other permit applications such as for asset protection and road occupancy.

At VicRoads, there are several persons based across its regional offices who are dedicated to the administrative aspects of consent applications. However, detailed assessments and advice are often referred to other specialist sections within VicRoads, particularly for works (other than minor works).

A review of the requirements of clause 16 of Schedule 7 of the Act that must be considered for any consent application was undertaken in consultation with VicRoads and local councils conforming to the aforementioned requirements for works on each type of road and the location of the works (either on or not on the roadway, pathway or shoulder). With this information on the time and type of assessment activity, an efficient cost base was calculated to determine the overall level of cost recovery across all coordinating road authorities.

However, data on the exact number of consent for works issued by VicRoads, other State road authorities and the 79 local council coordinating road authorities across the 16 different consent application fee categories is not collected by any government agency. Accordingly, the number of consent for works applications and the associated fee revenue has been estimated based on a sample of VicRoads, local council coordinating road authorities and utilities.

Due to the absence of detailed data, the mid point of a consent application fee has been used for some consent application categories; different classes of road that have the same type of works but different consent application fees. By way of example,the current consent application fee for works (other than minor works) not conducted on a roadway, shoulder or pathway on a freeway is $423.70 and $331.00 on an arterial road. The mid-point for these works on freeways and arterial roads would be $377.35. Mid point consent application fee calculations are provided in the footnotes to Tables 5 and 6.

The following estimations, as set out in Tables 5, 6, 7 and 8 are not intended to provide a definitive and an accurate assessment of the overall revenue and costs associated with assessing consent applications. The purpose is to provide an indication of the likely cost recovery level.

Based on the sampling, Table 5 shows that, under the existing regulations, VicRoads has an estimated under-recovery of $304,154 per annum and local council coordinating road authorities have an estimated under-recovery of $3,599,631 per annum. As can be seen from Table 5, this results in a shortfall of $3,903,785 or about 49% of total estimated costs.

**Table 5: Estimated Consent Application Fee Revenue & Costs**

|  |  |  |  |
| --- | --- | --- | --- |
|  | Estimated Revenue | Estimated Costs | Deficit/Surplus |
| VicRoads | $651,887 | $956,041 | ($304,154) |
| Local Councils | $3,388,772 | $6,988,403 | ($3,599,631) |
| Total | $4,040,659 | $7,944,444 | ($3,903,785) |

Note: The estimated revenue is based on the prescribed fees for 2014/15 and the estimated costs are based on the current costs as reviewed in Appendix 2.

The primary reasons for the cost under-recovery are due to the uncertainty in the drafting of the definition of ‘minor works’ in the existing regulations and the non-provision of a head of power in the Act to prescribe a fee for an inspection following the completion of the works (e.g an inspection of the permanent reinstatement of the roadway). Section 122 of the Act currently only allows, in regard to an inspection, for the charging of a fee for carrying out an inspection in connection with an application for consent.

In respect of consent application fees, the original intention of the Road Management (Works and Infrastructure) Regulations 2005 was to exempt only utilities, providers of public transport and responsible road authorities from applying for consent when conducting ‘minor works’ that were not ‘traffic impact works’. However, uncertainty in the drafting of the definition of ‘minor works’ in the current regulations has allowed some unintended scope for certain works conducted by ‘other persons’ (e.g developers, builders and plumbers) to also be interpreted as ‘minor works’ (specifically the excavation of less than 8.5 square metres of roadway, pathway or shoulder). This definition of 'minor works' in the existing Regulations only sought to provide exemptions from consent for certain types of works that relate only to minor repairs and maintenance of utility, public transport and road authority infrastructure. The definition sub-clause that refers to the excavation of less than 8.5 square metres of roadway, pathway or shoulder was intended to relate to the minor repairs and maintenance stated in the definition and conducted by utilities, providers of public transport and road authorities. However, it is drafted in such a way that it appears as a stand-alone provision relating to any type of works; not just utility, public transport and road authority infrastructure works. There is no evidence that this uncertainty around the definition led to any harms (e.g impacts on road safety and traffic congestion or damage to road infrastructure) other than to the level of cost recovery to the extent that the specified processes are followed.

Accordingly, if there were no 'minor works' exemptions, there would only be a single scale of consent application fees in the current regulations based on the type of road and location of the proposed works (i.e whether on the roadway, pathway, shoulder or roadside) and not on the type of works, who was proposing to conduct those works and whether or not those works were likely to have a significant impact on traffic (i.e ‘traffic impact works’). The original intention of the regulations was that the only exemption would apply for “minor works” but that it would not apply if those minor works were assessed as “traffic impact works”.

Although there are no exemptions from consent when ‘other persons’ conduct works that come within the definition of ‘minor works’, the uncertainty of the original drafting has resulted in the lower scale of fees applying not only to utilities, providers of public transport and responsible road authorities (i.e when they are conducting ‘minor works’ that are ‘traffic impact works’) but also to ‘other persons’ conducting what can be defined as ‘minor works’. The time involved in a coordinating road authority undertaking an assessment of a consent application submitted by ‘other persons’ (e.g developers, builders and plumbers) would, having regard to the higher level of risk of such works, require a similar level of assessment and fees equivalent to the more significant scale of works conducted by utilities, providers of public transport and responsible road authorities. This is demonstrated in sections 2.5.1.

Accordingly, the current definition of ‘minor works’ has allowed ‘other persons’ to pay a lower consent application fee for ‘minor works’, resulting in a significant cost under-recovery by the coordinating road authority when assessing an application for consent. In effect, VicRoads has assumed that coordinating road authorities are undertaking the processes for works (other than minor works) for these ‘minor works’ consent applications but not charging the consent fees for works (other than minor works). VicRoads has estimated this to be $2,774,834 per annum or 71 per cent of the total cost under-recovery of $3,903,785. VicRoads contributes $167,534 and Local councils a further $2,607,300 to the $2,774,834 under recovery (Tables 6 and 7).

The ‘A’ column in Table 6 represents the number of current consents issued. This is multiplied by the fee in Column ‘B’ to calculate the current fee revenue. About 70 per cent of current minor works consents in Column ‘A’ are conducted by other persons (developers, builders and plumbers) but should be treated as consents for works (other than minor works). To determine the actual cost, Column ‘C’ represents the adjusted number of consents after transferring 70 percent of the minor works consents for other persons to the works (other than minor works) category. For example, 70 percent or 473 of the 676 consents issued for minor works conducted on the roadway, shoulder or pathway have been transferred to works (other than minor works) conducted on the roadway, shoulder or pathway in Column ‘C’. The 473 consents have been added to the current 676 consents in this category equalling a total of 1,149 consents. This is multiplied by Column ‘D’ to calculate the current costs for this works category (Column E). The deficit/surplus column represents the difference between Column ‘Revenue AxB’ and Column ‘Costs CxD’. The deficit/surplus column is attributable to the lower consent application fee and also the difference between the current fees and costs to undertake the required processes. The same calculations have been applied to Table 7.

**Table 6: VicRoads Estimated Cost Under-Recovery Due to ‘Other Persons Paying a Lower Consent Application Fee**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Type of Works | A (No. consents)[[9]](#footnote-9) | B (current fees) | RevenueA x B | C (No. consents) | D (costs) | CostsC x D | Deficit/Surplus |
| Works, other than minor works, conducted on the roadway, shoulder or pathway | 676 | $595.80 | $402,761 | 6764731149 | $570.91 | $385,935$270,040$655,975 | ($253,214) |
| Works, other than minor works, not conducted on the roadway, shoulder or pathway | 168 | $377.35[[10]](#footnote-10) | $63,395 | 168118286 | $398.81 | $67,000$47,060$114,060 | ($50,665) |
| Minor works, conducted on the roadway, shoulder or pathway | 676 | $241.65[[11]](#footnote-11) | $163,355 | 203 | $211.71 | $42,977 | $120,378 |
| Minor works, not conducted on the roadway, shoulder or pathway | 169 | $132.40 | $22,376 | 51 | $125.66 | $6,409 | $15,967 |
| Total | 1,689 |  | $651,887 | 1,689 |  | $819,421 | ($167,534) |

**Note:** The estimated costs are based on the current costs as reviewed in Appendix 2.

As can be seen in Table 7 below, further analysis of Local council’s revenue and costs shows $2,607,300 cost under-recovery due to other persons (developers, builders and plumbers) paying a lower consent application fee.

**Table 7: Local councils Estimated Cost Under-Recovery Due to ‘Other Persons Paying a Lower Consent Application Fee**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Type of Works | A (No. consents) [[12]](#footnote-12) | B (current fees) | Revenue A x B | C (No. consents) | D (costs) | CostsC x D | Deficit/Surplus |
| Works, other than minor works, conducted on the roadway, shoulder or pathway | 1,954 | $430.30[[13]](#footnote-13) | $840,806 | 1,9545,4707,424 | $440.11 | $859,975$2,407,402$3,267,377 | ($2,426,571) |
| Works, other than minor works, not conducted on the roadway, shoulder or pathway | 2,930 | $198.60[[14]](#footnote-14) | $581,898 | 2,9308,20511,135 | $194.49[[15]](#footnote-15) | $569,856$1,595,790$2,165,646 | ($1,583,748) |
| Minor works, conducted on the roadway, shoulder or pathway | 7,814 | $152.30 | $1,190,072 | 2,344 | $122.05 | $286,085 | $903,987 |
| Minor works, not conducted on the roadway, shoulder or pathway | 11,722 | $66.20 | $775,996 | 3,517 | $78.75 | $276,964 | $499,032 |
| Totals | 24,420 |  | $3,388,772 | 24,420 |  | $5,996,072 | ($2,607,300 |

**Note:** The estimated costs are based on the current costs as reviewed in Appendix 2.

The absence of a fee for the inspection of the completed works results in a cost under-recovery of $1,128,951 or 29 percent of the total cost under-recovery of $3,903,785. VicRoads contributes $136,620 and Local councils a further $992,331 to the $1,128,951 cost under recovery.

As can be seen in Tables 8 and 9, the absence of a fee for the inspection of the completed works results in a cost under-recovery for works (other than minor works) and minor works conducted on the roadway, shoulder or pathway. These types of works invariably require reinstatement after excavation and coordinating road authorities conduct inspections to ensure the reinstatement has been undertaken in accordance with their technical standards and specifications.

The A column in Table 8 represents the number of consents that should be issued after adjusting for about 70 per cent of current minor works consents conducted by other persons (developers, builders and plumbers) that should be treated as consents for works (other than minor works). Columns A, B & C have been transposed from Table 6 to provide a reference point to show the calculation of the incremental costs associated with the post works inspection cost in Column D which is added to Column B, with the combined sum represented in Column E. The number of consents that should be issued (Column A) is multiplied by the costs in Column E to calculate the total costs in Column F with the difference between Columns C and F shown in the last column as a deficit or surplus. The same calculations have been applied to Table 9.

**Table 8: VicRoads Estimated Cost Under-Recovery Due to the Absence of Post-Works Inspection Fee**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Type of Works | A (No. consents) | B (Costs) | C (Total Costs)A x B | D (Post Works Inspection Cost) | E (B+D costs) | F Total CostsA x E | Difference b/n C and F Deficit/Surplus |
| Works, other than minor works, conducted on the roadway, shoulder or pathway | 1149 | $570.91 | $655,975 | 101.05 | $671.96 | $772,082 | ($116,107) |
| Works, other than minor works, not conducted on the roadway, shoulder or pathway | 286 | $398.81 | $114,060 | n/a | $398.81 | $114,060 | $0.00 |
| Minor works, conducted on the roadway, shoulder or pathway | 203 | $211.71 | $42,977 | $101.05 | $312.76 | $63,490 | ($20,513) |
| Minor works, not conducted on the roadway, shoulder or pathway | 51 | $125.66 | $6,409 | n/a | $125.66 | $6,409 | $0.00 |
| Total | 1,689 |  | $819,421 | 1,689 |  | $956,041 | ($136,620) |

**Note:** The estimated costs are based on the current costs as reviewed in Appendix 2.

**Table 9: Local councils Estimated Cost Under-Recovery Due to the Absence of Post-Works Inspection Fee**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| Type of Works | A (No. consents)  | B (costs) | C Revenue A x B | D (Post Works Inspection Cost) | E (B+D costs) | F Total CostsA x E | Difference b/n C and F Deficit/Surplus |
| Works, other than minor works, conducted on the roadway, shoulder or pathway | 7,424 | $440.11 | $3,267,377 | $101.59 | $541.70[[16]](#footnote-16) | $4,021,581 | ($754,204) |
| Works, other than minor works, not conducted on the roadway, shoulder or pathway | 11,135 | $194.49 | $2,165,646 | n/a | $194.49 | $2,165,646 | $0.00 |
| Minor works, conducted on the roadway, shoulder or pathway | 2,344 | $122.05 | $286,085 | $101.59 | $223.64 | $524,212 | ($238,127) |
| Minor works, not conducted on the roadway, shoulder or pathway | 3,517 | $78.75 | $276,964 | n/a | $78.75 | $276,964 | $0.00 |
| Totals | 24,420 |  | $5,996,072 |  |  | $6,988,403 | ($992,331) |

**Note:** The estimated costs are based on the current costs as reviewed in Appendix 2.

Notwithstanding the aforementioned cost under-recovery estimations, it should be noted that the revenue estimation may be higher or lower given that at least 20 of the 79 local council coordinating road authorities charge consent fees lower than the prescribed fees in the Road Management (Works and Infrastructure) Regulations. In some cases, local councils charge a flat fee that is higher than the lowest prescribed fee.

The revenue estimation may also be affected by the ability of coordinating road authorities to waive part or the whole of the consent application fee. Some utility companies advised that some local council coordinating road authorities either fail to invoice or waive the entire fee for about 50 percent of their consent applications. It should be noted that coordinating road authorities can only waive a consent application fee in part or whole on a case by case basis.

**Refer to Stakeholder Question 8 on page 24**.

As stated previously, the estimations should be treated with a deal of caution in terms of the exact level of cost recovery. However, the estimations provide a reasonable approximation of the cost recovery level on a consent application basis given that a review has been undertaken in consultation with VicRoads and local councils of the time and assessment activities that are necessary to comply with clause 16 of Schedule 7 of the Act. More importantly, the estimations reveal cross-subsidisation between consent application fee categories and significant cost under-recovery for any works conducted on a roadway, shoulder or pathway of any class of road. This is inconsistent with the Government’s cost recovery policy.

## 2.6 Economic and Social Justification for Regulation

In the absence of regulation, all parties would incur costs to obtain consent for all works within the road reserve that have minimal impact on road safety, traffic operations and the integrity of road infrastructure. Accordingly, this is an unnecessary regulatory burden given that the Act seeks to only require consent for works that have an impact on road safety, traffic operation and the integrity of road infrastructure.

In the absence of regulation, the cost to coordinating road authorities to administer the consent application process would not be recovered.

# 3. Objectives of the Proposed Regulations

## 3.1 Overview

The Victorian Guide to Regulation states, *“The objectives should identify the ends to be achieved, or the broad policy outcomes desired, rather than the means by which they will be achieved”.*

## 3.2 Primary Objective

The primary objective of the proposed regulations is to reduce the regulatory burden imposed by the Act for the conduct of certain classes of infrastructure and works undertaken by specific parties that have in place processes to minimise any adverse impacts on road safety, traffic operation and the structural integrity of road and non-road infrastructure located within the road reserve.

## 3.3 Secondary Objective

The secondary objective is to fund the efficient and equitable regulation of works within road reserves by prescribing consent application fees that fully recover the costs of administration.

## 3.4 Reconciliation with the Stated Objectives in the Road Management Act 2004 and the Road Management (Works and Infrastructure) Regulations 2005

The policy objective is not always reflected in the stated objective in Acts and Regulations.

The primary object of the **Road Management Act 2004** *“is to establish a coordinated management system that will promote a road network at State and local levels that operates as part of an integrated and sustainable transport system under the* ***Transport Integration Act 2010*** *and the responsible use of road reserves for other legitimate purposes”*.

As part of the primary object of the Act, the role of utility and public transport infrastructure managers in using the road reserve to provide their services is clearly articulated in section 4(2)(d) and (g) and states, *“in seeking to achieve the primary object, this Act,*

*d) provides mechanisms for coordinating the placement and maintenance of infrastructure on road reserves, and the carrying out of related works, so as to –*

1. *minimise interference with road use;*
2. *facilitate the effective and efficient provision of utility and public transport services;*
3. *minimise interference with other infrastructure and the provision of utility and public transport services”*

*g) “sets out the powers and duties of road authorities to manage roads, the duties of infrastructure managers which install and maintain infrastructure on roads and the duties of work managers which carry out works on roads”*.

In his Second reading speech on the Road Management Bill 2004, the Minister said:

*“The Bill enables exemptions from these (consent) requirements to be set out in regulations. The Bill also states that it is intended that those type of works that do not have significant impacts on road safety, traffic or other infrastructure will be exempted by the regulations. It is intended that these regulations will be made before the provisions of the Bill dealing with the management of infrastructure and works on roads come into operation. For example, it is expected that the connection of electricity to a house by running a cable from a power line would be exempt from the requirement to obtain consent. A coordinating road authority will be required to have regard to the principles set out in a code of practice when exercising these powers, and the road authority may not unreasonably withhold consent to the carrying out of works. There will be an appeal process to ensure that these powers are exercised reasonably”.*

#### Treasury Cost Recovery Guidelines

The Victorian Government’s policy is that fees and user charges should be set on a full cost recovery basis to ensure efficiency and equity unless there are exceptional circumstances.[[17]](#footnote-17)

As stated in the Department of Treasury and Finance’s *Cost Recovery Guidelines*, the adoption of cost recovery has the potential to advance efficiency and equity objectives. In respect to efficiency objectives, *“Appropriate cost recovery can improve the way that resources are allocated within the economy, thereby contributing to allocative efficiency (a situation where resources are allocated in a way that maximises the net benefit to society). By requiring payment for goods/services provided by government, cost recovery charges can give important signals to users about the costs of the resources involved in their provision. Full cost recovery ensures that all the relevant costs of bringing the good/service to market are incorporated in the relevant price signals”*.

In regards to equity objectives, *“horizontal equity refers to treating people in similar situations in similar ways. In the case of cost recovery, horizontal equity refers to those who benefit from government activities, or those that contribute to the need for government regulation, having to pay the associated costs. This improves equity because it avoids the situation where all taxpayers have to pay the associate costs regardless of whether or not they benefit from – or give rise to the need for – the government activity/regulation”*. [[18]](#footnote-18)

# 4. Nature and Effect of the Proposed Regulations

## 4.1 Authorising Provisions

Section 132(1) of the **Road Management Act 2004** states, *“the Governor-in- Council may make regulations for or with respect to any matter or thing required or permitted by this Act to be prescribed or necessary to be prescribed to give effect to this Act”.*

Exemptions and other matters

Specifically in respect to the re-making of the proposed regulations, section 132(3), (4) and (5) of the Act provides the power to make regulations for:

1. *exemptions from requirements under this Act to obtain consent from a coordinating road authority;*
2. *exemptions from requirements under this Act to give notice to a coordinating road authority;*
3. *restrictions on the powers of a coordinating road authority to impose conditions on any consent;*

*(ca) circumstances in which, or conditions subject to which, the powers of a coordinating road authority to impose conditions on any consent may be exercised;*

1. *the variation of the period within which notice of completion of works is to be given under clause 13 of Schedule 7;*
2. *a period of business days for the purposes of clause 17 of Schedule 7.*

*(4) The objective of Regulations to be made under this Act for the purposes of subsection (3) is to—*

*(a) establish a process for the exercise of powers in respect of the management of infrastructure and works on road reserves which is consistent with the works and infrastructure management principles;*

*(b) provide for the exemption from consent requirements of classes of infrastructure and works which do not have significant impacts on road safety, traffic or other infrastructure.*

*(5) The Minister must ensure that there is consultation with the Infrastructure Reference Panel before regulations are made under this Act for the purposes of subsection (3).*

Fees

Section 122 of the Act provides the enabling power to charge fees.

*(1) If authorised under the regulations, a road authority may charge and recover reasonable fees for -*

1. *considering an application for an approval, permit or consent;*
2. *carrying out an inspection in connection with an application for an approval, permit or consent;*
3. *issuing an approval, permit or consent;*
4. *issuing a certificate.*

*(2) The amount of a fee must not exceed the amount prescribed or determined in accordance with the regulations.*

Section 132(9) of the Act specifies the type of fees that can be prescribed in the regulations.

*A power conferred by this Act to make regulations providing for the imposition of fees may be exercised by providing for all or any of the following matters-*

1. *specific fees;*
2. *maximum or minimum fees;*
3. *maximum and minimum fees;*
4. *scales of fees according to the value of goods or services provided for the fees;*
5. *the payment of fees either generally or under specified conditions or in specified circumstances;*
6. *the reduction, waiver or refund, in whole or in part, of the fees.*

The fees as prescribed in the regulations apply to the consideration, by a coordinating road authority, of an application for consent to conduct works on a road. In considering the application, clauses 16(5) and (6) of Schedule 7 of the Act provide the following:

*(5) A coordinating road authority may having regard to the works and infrastructure management principles—*

*(a) upon an application, give its consent to proposed works; or*

*(b) upon an application, refuse to give its consent to proposed works but consent is not to be unreasonably withheld; or*

*(c) at its initiative without an application, give its consent to proposed works; or*

*(d) give its consent so as to apply to a particular case or class of cases or generally to apply to all cases or to different classes of cases.*

*(6) A coordinating road authority may, having regard to the works and infrastructure management principles, give its consent subject to any reasonable conditions relating to the conduct of the proposed works which the coordinating road authority considers appropriate.*

## 4.2 Proposed Regulations

The Road Management (Works and Infrastructure) Regulations 2005 were made on 21 June 2005 and are due to sunset on 21 June 2015. The 2005 regulations have been reviewed and it is proposed to re-make these regulations with amendments to the definitions of ‘minor works’ and ‘traffic impact works’ together with a few other minor amendments.

#### Proposed Amendments to the Current Regulations

It is proposed to clarify the definition of ‘minor works’ and ‘traffic impact works’.

In respect of ‘minor works’, it is proposed to clarify that the types of works as prescribed in the definition of ‘minor works’ are only those conducted exclusively by utilities, providers of public transport and responsible road authorities (and their agents). This amendment is consistent with the original intent of establishing a category of works that could be conducted by these infrastructure managers without the need to apply for consent. The rationale for the ‘minor works’ exemptions for the aforementioned infrastructure managers reflected the fact that they operate generally under their own legislation, are quality assured organisations with appropriate systems in place to ensure compliance with road authority requirements, they conduct these ‘minor works’ on a daily basis and they have access to the necessary traffic management and reinstatement skills to conduct the works safely and reinstate road authority infrastructure appropriately. The amendment removes the uncertainty around the definition of ‘minor works’ being able to be applied to ‘other persons’ (e.g developers, builders and plumbers) conducting some of the works as included in the definition (in particular, works involving the excavation of less than 8.5 square metres of roadway, pathway or shoulder). There is no evidence that this uncertainty around the definition led to any harms (e.g impacts on road safety and traffic congestion or damage to road infrastructure) other than to the level of cost recovery. This amendment will have an impact on the scale of consent application fees to be paid by ‘other persons’ when conducting certain types of works. This impact is assessed in Options 2 and 3 of Section 5.8

The definition of ‘minor works’ is also to be amended to:

* include specific public transport infrastructure works involving the repair and maintenance of tram tracks, bus and tram stop infrastructure and other public transport infrastructure located on the roadside
* exclude works conducted by a utility to decommission or remove certain utility non-road infrastructure
* exclude service extension works from the minor works exemption purely as a drafting approach proposed by Parliamentary Counsel.

In relation to ‘traffic impact works’, it is proposed to include within the definition works conducted within 20 metres of a children’s crossing or in a bus lane when in operation, certain works conducted on arterial roads within specified peak period travel times and works on roads that are likely to cause specified delays to trams or buses at certain peak period travel times.

It is proposed to clarify the current consent and notification exemption under Regulation 11 for fire authorities to include a water corporation and an agent of a water corporation in respect to works consisting of the inspection or maintenance of water valves and fire hydrants under its management. As advised by the Country Fire Authority, fire authority inspections focus primarily on identifying the presence of water valves and fire hydrants and ensuring that they can be accessed. Water corporations, on the other hand, are responsible for the maintenance and repair of the water valves and fire hydrants. Water corporations are currently exempt under the definition of minor works in the regulations (i) “works, other than minor works referred to above, conducted for the purpose of repair, inspection, operation or testing of an asset or for the purposes of a survey”. Accordingly, Regulation 11 clarifies and makes clear the existing exemption afforded to water corporations in respect to the inspection of water valves and fire hydrants.

Regulation 18(1)(f) provides clarification to infrastructure managers or works managers that their liabilities do not extend beyond the 12 month warranty period. The rationale for the 12 months is set out in clause 56(4) of the Code of Practice for Management of Infrastructure in Road Reserves – *“Utilities should be responsible for 12 months’ maintenance of their reinstatement works and any associated repairs to the road infrastructure needed as a consequence of poor performance of those reinstatement works. This allows for a full season of weather conditions. If maintenance or repair works are necessary before the end of the 12 month period, the road authority and the utility should agree on the extent of those works before they are undertaken.”*

Regulation 19 deletes the requirement to include particulars of any proposed traffic management plan with an application for consent in circumstances where the proposed works may affect non-road infrastructure which is the responsibility of an infrastructure manager or works manager other than the applicant. The removal of this requirement, which only applies to a limited class of works (and not all works requiring consent) is not considered material to the consent application or to the processing of an application by a coordinating road authority. In many circumstances, an infrastructure manager or works manager may apply for consent many months in advance of the proposed works, at which time a traffic management plan (which is a requirement of the **Road Safety Act 1986**) may not have yet been prepared. Without the amendment to Regulation 19, an infrastructure manager or works manager may be restricted in their ability to submit a timely application for consent, resulting in possible unnecessary delays to their works program.

#### Description of Proposed Regulations

**Part 1 – Preliminary**

Regulations 1 to 9 set out the objectives, authorising provision, commencement, revocation and definitions.

The definition of ‘minor works’ (Regulation 6) and ‘traffic impact works’ (Regulation 5) are pivotal to the operation of the exemptions and notification requirements and are discussed in further detail.

Minor works are defined broadly to include those types of works that comprise the repair, maintenance and installation of certain utility and public transport infrastructure and that do not have significant impacts on road safety, traffic or other infrastructure. One important element of the definition provides that minor works must not include the excavation of an area of the roadway, pathway or shoulder that exceeds 8.5 square metres. The 8.5 square metres area is based on the excavation of a trench across a typical 7.4 m wide two-lane two-way road with a trench width of 1.2 m; a total area of 8.8 square metres (rounded to 8.5 square metres).  The 1.2 m trench width represents an average width for the laying of a 600 mm water main across a road. Smaller water mains require a narrower trench width, while for electricity, the installation of 2 typically sized conduits across the road also require a trench width of around 600 mm. The Infrastructure Reference Panel adopted the 8.5 square metres area as a compromise between a preference by road authorities for a maximum area of about 5 square metres and the utilities preference for around 10 to 11 square metres.

The definition of 'minor works' also includes works undertaken so as to enable a person to be provided with a service by a utility (being the connection of a consumer to a service as described in the existing regulations).  Regulation 8 then excludes from this definition 'service extension works', being more significant works conducted by a utility that have the potential to cause greater impacts on the structural integrity of road infrastructure and the roadside by way of extended excavations or the installation of extended lengths of roadside poles (potential roadside hazards).  These types of works require the coordinating road authority to assess the impacts of these service extension works on the structural integrity of the road infrastructure (including the roadside), road safety and traffic operations".

**Refer to Stakeholder Question 1 on page 22**.

The definition of ‘traffic impact works’ includes works conducted on a freeway, on an arterial road that requires deviation of vehicular traffic into an on-coming traffic lane, in a clearway or bus lane when in operation, requiring the closure to vehicular traffic of a part of a roadway for a continuous period of more than 12 hours or for more than 24 hours in 7 days, and disruption to a tram or bus operated by a provider of public transport.

To remove uncertainty about the interpretation of some of the existing ‘traffic impact works’ definitions, the proposed regulations remove reference to ‘significant’ impact or delay and replace it with more specific circumstances such as on the roadway within 20 metres on either side of a children’s crossing and on the roadway of an arterial road in an urban area during the periods from 6 am to 9 am and 3 pm to 7 pm on a weekday. The time periods are defined as 'peak hour traffic works' in Regulation 7, with this definition being included as a separate definition for drafting reasons only in an attempt to simplify and improve the understanding of the definition of 'traffic impact works'." The aforementioned thresholds reflect the busiest times on the road network (particularly on freeways and arterial roads) and are likely to affect road safety and cause significant congestion and road user delays. Similar provisions are included for works conducted on a road that cause specified delays to a tram or bus operating within metropolitan Melbourne, Geelong, Ballarat and Bendigo.

**Refer to Stakeholder Question 2 on page 22**.

Regulation 9 provides a mechanism for a relevant Minister on the advice of the Infrastructure Reference Panel to make a declaration that specific types of work are traffic impact works and may have a significant impact on road safety, traffic or other infrastructure.

**Part 2 - Exemptions**

Regulation 10 provides exemptions from consent and notification upon completion of minor works (other than traffic impact works) to utilities, providers of public transport, responsible road authorities and/or their agents. However, notification must be given where minor works involve the excavation of any part of the roadway, pathway or shoulder (other than an excavation associated with the repair, maintenance, installation or replacement of a pole).

Regulation 11 provides exemptions from consent and notification upon completion of works (other than traffic impact works) consisting of the inspection or maintenance of water valves and fire hydrants to the Metropolitan Fire and Emergency Services Board, the Country Fire Authority, a water corporation and/or their agents. As noted previously, this exemption has been extended to include water corporations as they are responsible for the maintenance and repair of the water valves and fire hydrants.

Regulation 12 provides exemptions from consent and notification upon completion of pathway works (other traffic impact works) to responsible road authorities and/or their agents.

Regulation 13 provides an exemption from consent to conduct works to a person who has an agreement (as made under clause 18 of Schedule 7 of the Act) with the relevant coordinating road authority.

Regulation 14 provides a timeframe for utilities, providers of public transport and/or their agents to give notification upon completion of certain prescribed works. The prescribed timeframe is the period ending on the 14th day of the month next following the completion of the works. This is a longer period than the 7 days prescribed in the Act that applies to other persons. The rationale for the more generous time given to utilities, providers of public transport and/or their agents is due to the greater volume of minor works (for which notification is required) undertaken by these organisations to meet their legislative requirements.

Regulation 15 provides discretion to a coordinating road authority to exempt a person from giving notification upon completion of works for which consent has been given.

Regulation 16 provides an exemption from providing notice (as required under clause 7 of Schedule 7 of the Act) about any proposed installation of non-road infrastructure or related works on the road reserve to utilities, providers of public transport, responsible road authorities and/or their agents.

Regulation 17 provides an exemption to any person from obtaining consent and providing notification upon completion of works (other than traffic impact works) in relation to driveway works on an arterial road and the mowing of any part of a roadside.

**Part 3 – Consents**

Regulation 18 prescribes conditions that a coordinating road authority must not impose as part of a consent. These include:

* a condition relating to visual amenity or aesthetics unless the condition relates to road infrastructure;
* a condition relating to the technical design of, or the equipment or techniques used in the installation of, non-road infrastructure by a utility or a provider of public transport;
* a condition that is not reasonably relevant to the conduct of the proposed works;
* a condition requiring non-road infrastructure that would normally be placed above ground to be placed under a road;
* a condition relating to environmental impact considerations other than in relation to the matters referred to in clause 14 of Schedule 7 to the **Road Management Act 2004**;
* a condition requiring an indemnity in respect of the conduct of the proposed works that extends beyond a 12 month warranty period; and
* a condition on a utility, provider of public transport or responsible road authority, or their agents, relating to financial security in respect of the conduct of the proposed works.

These restrictions on conditions were developed in consultation with the Infrastructure Reference Panel and Utilities Working Group. Most of the restrictions are to ensure coordinating road authorities do not overreach the legislative and industry standards required by utilities and providers of public transport. Other restrictions have been included to ensure coordinating road authorities do not capriciously add conditions that are unrelated to road management, road infrastructure or the conduct of the works (e.g visual amenity).

The reason for a 12 month warranty period for the reinstatement of works is to subject a reinstatement to four seasons of weather to ensure its structural integrity and longevity.

Regulation 19 prescribes the particulars that must be included in an application for written consent. These particulars relate to the provision of copies of certain information required to be prepared under Schedule 7 of the Act, such as notices to, and consultation with, various parties as required by clauses 8 and 10 in Schedule 7 of the Act. As noted, the Act requires the consultation to be undertaken. This regulation requires that evidence of such consultation has been undertaken. This would form a very minor component of the effort and time required to prepare and submit a consent application.

**Part 4 – General**

Regulation 20 clarifies the maximum period of notification upon completion of works to a coordinating road authority to be seven business days rather than the seven calendar days as specified in clause 13 of Schedule 7 of the Act.

Regulation 21 reduces the maximum period for consideration of applications for consent for service extension works from 20 business days as specified in clause 17 of Schedule 7 of the Act to 15 business days, and for connecting a consumer to a service, from 20 business days to 3 business days. However, this only applies where the proposed works to connect a consumer to a service (being exempt ‘minor works’) are not ‘traffic impact works’. This only applies in these cases as a connection of a consumer to a service is a relatively small scale of works. The reason for these reductions is to allow utilities sufficient time to comply with service delivery requirements under their own legislation or service obligations, and to minimise inconvenience and disruption to utility customers. This constitutes about 7,500 consent applications per annum from utilities (about 30% of minor works consent applications) across the State or an average of about 94 consent applications per annum per coordinating road authority. It is considered that this low volume of consent applications for consumer connection works by utilities that are ‘traffic impact works’ is unlikely to impose a significant administrative burden on coordinating road authorities. Local councils that were consulted did not consider the timeframes to be too short.

**Part 5 – Fees**

Regulation 22 (and Schedule) prescribes the fees for applications for consent in terms of fee units under the **Monetary Units Act 2004**. A fee unit is set at $13.24 from 1 July 2014 to 30 June 2015. The fees are exempt from GST and are expressed in dollar values in Tables 10 and 11 below and compared with the current fees (2014/15).

As can be seen from Table 10 below, all of the consent application fees for works on a freeway or arterial road have decreased other than the following consent application fees for arterial roads that have increased (highlighted in bold): Works (other than minor works) not conducted on, or on any part of the roadway, shoulder or pathway and minor works, conducted on, or on any part of the roadway, shoulder or pathway. All groups are equally affected by the increases/decreases in consent application fees subject to the location of the works within the road reserve.

**Table 10: Comparison of Current and Proposed Fees for Works on a Freeway and Arterial Road**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Type of Road | Type of Works | Current Fees  | Proposed Fees | Proposed Fee Units | Difference(Dollars) | Difference % |
| Freeway | Works, other than minor works, conducted on, or on any part of the roadway, shoulder or pathway  | $595.80 | $570.91 | 43.2 | ($24.89) |  -4% |
| Works, other than minor works, not conducted on, or on any part of the roadway, shoulder or pathway  | $423.70 | $398.81 | 30.2 | ($24.89) |  - 6% |
| Minor Works, conducted on, or on any part of the roadway, shoulder or pathway  | $331.00 | $211.71 | 16.0 | ($99.29) | - 30% |
| Minor Works, not conducted on, or on any part of the roadway, shoulder or pathway  | $132.40 | $125.66 | 9.5 | ($6.74) | - 5% |
| Arterial road | Works, other than minor works, conducted on, or on any part of the roadway, shoulder or pathway  | $595.80 | $570.91 | 43.2 | ($24.89) | - 4% |
| Works, other than minor works, not conducted on, or on any part of the roadway, shoulder or pathway  | $331.00 | $398.81 | **30.2** | **$67.81** | **+20%** |
| Minor Works, conducted on, or on any part of the roadway, shoulder or pathway  | $152.30 | $211.71 | **16.0** | **$59.41** | **+ 39%** |
| Minor Works, not conducted on, or on any part of the roadway, shoulder or pathway  | $132.40 | $125.66 | 9.5 | ($6.74) | - 5% |

As can be seen from Table 11 below, half of the consent application fees for works on a municipal road or non-arterial State road have been increased (highlighted in bold).

**Table 11: Comparison of Current and Proposed Fees for Works on a Municipal road and non-arterial State road**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Type of Road | Type of Works | Current Fees  | Proposed Fees | ProposedFee Units | Difference(Dollars) | Difference % |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is more than 50 kilometres per hour  | Works, other than minor works, conducted on, or on any part of the roadway, shoulder or pathway  | $595.80 | $570.00 | 43.1 | ($25.80) | - 4% |
| Works, other than minor works, not conducted on, or on any part of the roadway, shoulder or pathway  | $331.00 | $310.23 | 23.5 | ($20.77) | - 6% |
| Minor Works, conducted on, or on any part of the roadway, shoulder or pathway  | $152.30 | $122.05 | 9.3 | ($30.25) | - 20% |
| Minor Works, not conducted on, or on any part of the roadway, shoulder or pathway  | $66.20 | $78.75 | **6.0** | **$12.55** | **+19%** |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles is not more than 50 kilometres per hour  | Works, other than minor works, conducted on, or on any part of the roadway, shoulder or pathway  | $264.80 | $310.23 | **23.5** | **$45.43** | **+17%** |
| Works, other than minor works, not conducted on, or on any part of the roadway, shoulder or pathway  | $66.20 | $78.75 | **6.0** | **12.55** | **+19%** |
| Minor Works, conducted on, or on any part of the roadway, shoulder or pathway  | $152.30. | $122.05 | 9.3 | ($30.25) | -20% |
| Minor Works, not conducted on, or on any part of the roadway, shoulder or pathway  | $66.20 | $78.75 | **6.0** | **$12.55** | **+19%** |

# 5. Options

The exemptions do not technically impose a significant economic or social burden on a sector of the public — their purpose is to remove an economic burden for certain groups. Nonetheless, as part of the process of remaking these regulations, the various exemptions have been examined to ensure the objectives of the Regulations were being achieved in practice.

Several options have been investigated to ascertain whether they are feasible options for further consideration. These options include reducing the scope of exemptions, extending the current exemption for minor works that do not have traffic impacts to other persons; earned recognition; allowing agreements between coordinating road authorities and other persons; alternative thresholds for consent application categories based on the size of the works and risk-based reinstatement inspections.

## 5.1Reducing the scope of exemptions

As noted above, certain parties are currently exempt from the consent process because they present a lower risk of poor outcomes, given, for example, their experience and the fact that utilities, providers of public transport, fire authorities, responsible road authorities and their agents are required to operate within their own legislation (for example the **Local Government Act 1989**, the **Metropolitan Fire Brigades Act 1958**, the **Country Fire Authority Act 1958**).

However, there have been from time to time, issues between coordinating road authorities and utility contractors regarding the timing and quality of road reinstatement, particularly in respect to large scale non exempt works. There is also scope for improvement by utilities to ensure their contractors consistently meet the requirements of coordinating road authorities.

VicRoads believes, however, that the nature of the utilities’ contractual arrangements — where contractors tender for work — provides a suitable market mechanism to ensuring road safety, minimal traffic disruption, and the protection of the integrity of the road infrastructure.

And, as a whole, the utility sector has improved its performance in terms of community engagement with appropriate consultation about forthcoming large scale non-exempt works and educating their contractors about their regulatory obligations regarding works within a road reserve. Some utilities such as South East Water, City West Water and Yarra Valley Water have recently developed an accreditation system for their contractors to strengthen the quality of work.

Moreover, while, it appears that coordinating road authorities that have established appropriate systems (including post reinstatement inspections) and importantly, have clearly communicated their expectations for reinstatement, tend to have minimal issues with utilities regarding the quality of reinstatement.

Several regulatory and market changes have occurred to the way works are conducted on roads. In respect to regulatory changes, clause 5(a) in Schedule 7 of the Act requires that “*an infrastructure manager or works manager must if practicable, use methods which do not involve excavating or breaking up the surface of a roadway or pathway or interfering with infrastructure in preference to methods that do*”. The *Code of Practice for Management of Infrastructure in Road Reserves* (as made under the Act) in providing good practice guidance on the manner in which works on roads should be conducted recommends boring under a road rather than the traditional form of open trenching to ensure protection of the road infrastructure.

As a means of reducing the cost of utility infrastructure renewals, the market has developed trenchless technology that is commonly adopted by utilities. This entails creating fewer and smaller excavations within the road reserve (and particularly within the roadway) to enable the insertion of a sleeve into the existing pipeline infrastructure. As a result of these changes, the impact of works on the road reserve is far less intrusive than in the past.

In respect of works conducted by utilities and private contractors on freeways and arterial roads, there are few complaints about the quality of reinstatements. A review of VicRoads’ complaint database from July 2012 to July 2014 revealed that only 22, or 4%, of all 539 complaints received about the condition of the road were related to reinstatements.

The issue of reinstatements for municipal roads is somewhat more varied. The impact of works on road infrastructure was the key issue raised by local councils. The City of Greater Geelong states at the outset of its Work within Road Reserve Manual, *“It is apparent that there is a limited understanding of the standards for Municipal road reinstatements which is resulting in poor quality workmanship being conducted by those carrying out the work and those responsible for overseeing the work”.[[19]](#footnote-19)*

Notwithstanding the aforementioned concerns, the City of Greater Geelong advised that reinstatements are less of a general concern since publication of their Manual due to their efforts to build relationships with utilities and their contractors.

Local councils that have put in the time and effort to develop strong relationships with utilities and/or their contractors as to their requirements for reinstatement, together with an appropriate resourcing of site inspections, tend to have fewer issues with reinstatements than local councils that do not. There were only a handful of issues related to the quality of permanent reinstatement (i.e where the reinstatement had subsided or failed).

South East Water advised that sometimes a failed reinstatement is not due to the technique and/or materials used but rather the poor condition of the existing roadway pavement that tends to deteriorate around the permanent reinstatement.

There would appear to be appropriate safeguards in Schedule 7 of the Act in regard to the duties placed on infrastructure managers and works managers. In particular, the duty to reinstate roads as soon as practicable and as near as practicable to the equivalent standard that existed prior to the commencement of works. In addition, Schedule 7 of the Act empowers a road authority to give notice to an infrastructure manager or works manager that rectification works are required, may conduct the rectification works if the notice is not complied with, and may recover costs from the infrastructure manager or works manager who conducted the original works. These provisions in the Act together with the *Code of Practice for the Management of Infrastructure in Road Reserves* and relevant utility legislation, regulations, codes and Australian and industry standards provides the necessary safeguards for road safety, traffic and the integrity of both utility and road infrastructure.

Other states and territories provide similar exemptions for minor installations, repairs and maintenance of utility and public transport infrastructure on public roads. Comparable interstate legislation to the **Road Management Act 2004**, where it exists, provides a general exemption to utilities and providers of public transport to undertake minor installation, repairs and maintenance. This is invariably complemented by utility and public transport legislation in each jurisdiction that provides explicit exemptions for minor installations, repairs and maintenance of infrastructure on public roads and public land.

Driveways and mowing are undertaken on the roadside within a road reserve and are considered a low risk to road safety, traffic flows and the integrity of the road infrastructure.

The Infrastructure Reference Panel has endorsed the exemptions on the grounds that these organisations have the appropriate quality assurance systems to mitigate risks to road safety, traffic flow and the integrity of road infrastructure. These organisations generally outsource installation, renewals and repair/maintenance to contractors. These organisations typically impose rigorous contractual obligations on their contractors such as security deposits for the successful completion of works within designated times and to prescribed quality requirements (including appropriate compliance with coordinating road authority reinstatement requirements).

Consultation with VicRoads, 11 local councils, utilities and providers of public transport did not reveal any documented road safety or traffic operation issues in respect to exempted minor works.

## 5.2 Extending the current exemption to other persons

This option would extend the current exemption from consent (under the existing regulations) for minor works that do not have traffic impacts to other persons, not just to utilities, providers of public transport and road authorities.

As noted below, VicRoads has determined that it is not appropriate to extend the consent exemption to other parties. This is despite the fact that VicRoads has not found any evidence of relatively greater harms having resulted from works conducted by other parties, such as developers, even where statutory application processes have not been followed by coordinating road authorities. That is, there is no evidence - expressed, for example, through complaints from residents, or as evidenced by problems relating to road safety, congestion or road infrastructure damage - that works conducted by these parties has resulted in any adverse outcomes that undermine the achievement of the underlying objectives of the Act/Regulations. Rather, this decision has been based on an assumption by VicRoads about the capacity of these parties and the risks associated with them and the work they undertake, rather than being based on demonstrated behaviours. This means that:

* additional costs will be imposed on some parties who will now have to pay higher consent application fees
* the proposed Regulations may not exploit all possible opportunities to reduce burdens while still achieving the underlying objectives of the legislation/Regulations.

VicRoads has, nonetheless, decided to reinforce the original intent of the 'consent for works' exemptions in the existing Regulations because it considers this to be the most effective way of managing the appropriate use of roads, including the conduct of works, in a manner that seeks to reduce the risk of adverse impacts on road safety, traffic congestion and damage to road infrastructure whilst also achieving the ‘works and infrastructure management principles’ as set out in the Act.

#### Developers

As shown in section 2.5.1 developers undertaking large scale developments such as shopping centres or residential subdivisions are likely to engage contactors that have comparable experience, skills and internal quality systems to utilities, providers of public transport and road authorities in respect to conducting works safely and undertaking appropriate road reinstatements. In this respect, developers are unlikely to pose a risk to the structural integrity of the road infrastructure.

However, developers are undertaking significant changes to the road infrastructure that poses a medium to high risk to road safety and efficient traffic operations during the course of those works (depending on the size of the excavation of the road). Most of the attributes of low risk works such as undertaking works involving the maintenance or repair on existing non-road infrastructure do not apply to developers.

Based on the above, developers pose a risk in terms of the nature and location of the work being undertaken but generally not in regard to the experience, quality systems, skills and resources to reinstate the road infrastructure to appropriate standards. While the existence of quality systems/skills may be evident, the other reasons/risks in the previous paragraph necessitate a consent application to be applied for by developers.

Accordingly, developers only partially meet the criteria for low risk works as these works generally impact on the roadway and the management of traffic safety and efficiently through the worksite. Thus, VicRoads has determined that it would not be appropriate to extend exemptions from consent for minor or small-scale works to developers.

#### Other parties

Other persons such as builders and plumbers as a group are unlikely to have the experience, quality systems, skills and resources to reinstate the road infrastructure to appropriate standards and also pose a higher risk to road safety and efficient traffic operation due to the level of non-compliance with consent conditions (e.g road reinstatements to the required standard). While builders and plumbers are likely to conduct works within a small area of the road reserve relative to other parties, the works are not conducted on their existing non-road infrastructure and are likely to have significant traffic and associated impacts.

Accordingly, builders and plumbers do not meet most of the criteria for low risk works within a road reserve and the extension of the current exemption from consent for minor works. Thus, VicRoads has determined that it would not be appropriate to extend exemptions from consent for minor or small-scale works to other parties.

## 5.3 Earned Recognition

Earned recognition is a relatively new regulatory option that enables regulators to reduce the regulatory burden to business if they have invested in the standards required to mitigate a problem that regulation has been introduced to overcome or demonstrated prior competence in delivering the required outcomes of the regulations. With this option, a regulator can rescind earned recognition if a business fails to comply with the required standards.

Earned recognition, as it could apply to the conduct of works on roads is concerned, would primarily relate to the post inspection component of the consent process for any type of works (other than exempt minor works) with a particular focus on those works where the roadway, shoulder or pathway has been excavated and requires reinstatement. While the earned recognition concept is consistent with the existing ‘minor works’ exemptions as they apply to utilities, providers of public transport and road authorities (based on their organisational skills, resources and experience) it is not considered suitable for application to works conducted by ‘other persons’ given the reasons stated in section 2.5.1 of this document and the need for a coordinating road authority to consider on a case by case basis whether the proposed location of the works meets the requirements of the works and infrastructure management principles (refer to section 2.3). A person or an organisation does not have access to all of the information that is considered by a coordinating road authority in its determination of a consent application (e.g. road widening proposals, traffic management impacts)

Given that utilities, providers of public transport, road authorities and some contractors engaged by developers are likely to have the experience, quality systems, skills and resources to reinstate the road infrastructure to appropriate standards, earned recognition may be a feasible option for those organisations that demonstrate a consistent track record in compliance with consent conditions, specifically the reinstatement of the road infrastructure to the appropriate standard as this would obviate the need for the road authority to undertake a post works reinstatement inspection and the associated fee for each consent granted.

This would also provide a strong price signal and incentive to organisations that conduct works within the road reserve on a regular basis to comply with the consent conditions and standards of reinstatement. This would save these organisations from a range of costs, including inspection costs, staff time and labour costs in attending a reinstatement inspection and costs associated with any rework or rectification of unsatisfactory reinstatement works.

However, post works inspections fees are not currently prescribed in the regulations and there is no enabling power in the Act to prescribe such fees. At this point in time, consent applicants are not incurring any post works inspection costs which means that a waiver of these costs does not exist. The earned recognition option would require an amendment to the Act.

## 5.4 Risk based reinstatement inspections

Residents tend to make complaints relating to the condition of the road reinstatementand this would appear to partially offset the need for coordinating road authorities to conduct reinstatement inspections.However, the limited and incomplete complaints data discussed in section 2.5.1 suggests that residents tend to make complaints about the appearance of the nature strip, or in cases where temporary reinstatements conducted during the course of the works have caused a pedestrian fall or led to the damage of a motor vehicle. However, inadequate reinstatements (such as the lack of required compaction and/or use of inappropriate materials) can lead to subsidence/ cracking of the road infrastructure over time that might not necessarily be detected and reported immediately by a local resident. However, in the longer-term, the cost to repairing the inadequate road reinstatement will be incurred by the road authority.

While complaints provide a useful source of possible non-compliance with road reinstatements, it is unreasonable to expect residents to identify technically inferior reinstatements.

Accordingly, reliance solely on complaints to detect non-compliant reinstatements is not feasible. At present, and as is the case within some VicRoads regions, risk-based random inspections are already used to ensure the most appropriate use of the limited resources / funds available within the overall road maintenance budget. This occurs both during the works and after completion.  The current legislation does not preclude or mandate any inspections of works (whether during or post). However, the ability of a road authority to conduct inspections lies entirely within the constraints of available resources and funds.  Such an approach is underpinned by identifying and targeting those organisations that do not have the experience, quality systems, skills and resources to reinstate the road infrastructure to appropriate standards.

This option would complement the earned recognition option.

## 5.5 Agreements between coordinating road authorities and other persons

Clause 18 of Schedule 7 in the Act enables a coordinating road authority to enter into agreements with a road authority, an infrastructure manager or a works manager in respect of proposed works on roads. Works managers include persons such as developers, builders and plumbers. However, such agreements are generally used for the installation of major utility service extensions and upgradings. The potential use of agreements is to save the coordinating road authority the time and effort involved in considering multiple consent applications for different stages of a major service extension or upgrade. Similarly, utilities, providers of public transport and road authorities would avoid the need to prepare and submit multiple consent applications.

Agreements could be used for single site, one-off major projects or for area-wide projects over an extended area and period of time. This is unlikely to be the case for developers, builders and plumbers as they will be seeking consent for works related to a specific site rather than a number of interrelated works across an entire municipality as is the case for utility major service extensions and upgradings.

Most consent applications submitted by developers, builders and plumbers are likely to need to be assessed on a case by case basis. Accordingly, it is unlikely that coordinating road authorities would consider entering into an agreement with these parties. In any event, the ability to enter into an agreement is provided in the Act itself, and not the regulations.

## 5.6 Alternative threshold

The current regulations provide a limited number of works categories: exempt minor works, minor works, works (other than minor works), driveway works on arterial roads and the mowing of roadsides. The first two categories are currently only available to utilities, providers of public transport and road authorities.

Given the low threshold for exempt minor works, most consent applications are targeted at works (other than minor works). Consideration was given to extending the number of works categories based on the size of the works given that the minor works definition in the current regulations prescribes a maximum area of 8.5 square metres for the excavation of a roadway, shoulder or pathway within the road reserve. The basis for the current threshold of 8.5 square metres is explained in section 4.2.

However, as discussed in section 2.5.2, the assessment of a consent application by a coordinating road authority is not related so much to the scale of the proposed works (other than the 8.5 sq metre threshold) but rather to the way a party proposes to conduct the works and any adverse impacts on future road developments and/or environmental/heritage values. The assessment of a consent applicant’s reinstatement methodology (techniques and materials) is to ensure compliance with the road authority’s technical standards and does not take into consideration the size of the works.

Further consideration was also given to expanding the range of existing exemptions under the ‘minor works’ definition. The Infrastructure Reference Panel comprising representatives from coordinating road authorities, utilities, providers of public transport and road authorities did not identify any other types of works that could be added to the existing range of exemptions.

As part of the review of the existing exemptions, the Infrastructure Reference Panel has consulted with utilities, providers of public transport and responsible road authorities and considers the existing threshold for exemptions is appropriate and does not need to be broadened or lowered. Experience under the existing regulations suggests that the relevant parties, when conducting works on roads, have demonstrated an ability to minimise impacts on road safety, traffic operation or the integrity of road infrastructure.

## 5.7 Conditions

The current regulations impose a range of specified conditions that a coordinating road authority cannot impose on a consent. The rationale for limiting the conditions is to ensure that coordinating road authorities do not impose conditions that are unrelated to the road infrastructure, are outside their technical competence / expertise or impose unnecessary financial burdens on organisations conducting works within the road reserve.

The removal of the conditions that cannot be imposed such as visual amenity or aesthetics and/or environmental impacts (unless the condition relates to road infrastructure) would create considerable uncertainty for consent applicants and subject some consent applications to unnecessary arbitrary and subjective decisions particularly in respect to visual amenity. At the same time, infrastructure managers and works managers are required to comply with existing environmental legislation covering the protection of native vegetation as well as heritage legislation such as the **Aboriginal Heritage Act 2006**.

The 12 month warranty period applies to all types of works and consents issued. The removal of the 12 month warranty period for road reinstatement would impose uncertainty to organisations conducting works given that other factors (the previous condition of the road, natural subsidence) unrelated to the reinstatement of the road are likely to affect the reinstatement. It would seem unreasonable to impose rectification costs for unrelated factors that affect the reinstatement beyond 12 months (refer also section 2.5.1). Allowing coordinating road authorities to impose a financial security on utilities, providers of public transport and road authorities for the purposes of ensuring a reinstatement is completed in a timely manner and to the required technical standards appears a reasonable condition to impose on a consent. One local council suggested that this would help them to enforce the standard reinstatement conditions associated with a consent. While there have been some instances regarding the timeliness and quality of reinstatements, these have been resolved between coordinating road authorities and utilities/providers of public transport.

Coordinating road authorities that have had issues in the past have developed relationships with utilities and providers of public transport and explained their expectations in respect to reinstatement and sought agreement from these organisations to ensure that their contractors meet these requirements. Local council coordinating road authorities advised that this strategy had achieved compliance with the required technical standards for road reinstatement. In view of this, it would seem unnecessary to allow coordinating road authorities to impose a financial security on utilities, providers of public transport and road authorities given the increased administrative costs to both parties to deal with a small number of reinstatement issues relative to the total number of works conducted annually.

**Refer to Stakeholder Question 4 on page 23**.

## 5.8 Fees Options

#### Incentive-based fees

A rental fee based on the space used, time of day or length of operation that the works would occupy a road reserve was, for example, considered as part of the sunsetting process. This would be an appropriate alternative for further consideration if road safety and in particular traffic disruption and consequent inconvenience to road users was deemed to have been a significant problem. This form of fee mechanism would provide a strong price signal and incentive to infrastructure and works managers to complete the work in an efficient and timely manner.

This could be appropriate where road works occupy significant road space and works take a long time to complete, thus imposing potentially substantial costs on other road users. This is likely to only occur for large-scale works conducted by utilities, providers of public transport and developers. Although there are some direct financial incentives to minimise the time to complete works, this may not always be sufficient to optimise the completion of works in a timely manner. It is not clear whether congestion currently is a significant issue and whether there are significant opportunities for performance to be improved for these large-scale works. However, if this were a significant issue, one option would be to adopt a pricing structure similar to that adopted in the United Kingdom to ensure broader costs were borne by utilities, providers of public transport and developers. Under the UK approach, there is a stepped charge system for streets of different 'traffic sensitivity', with overrun charges levied when undertakers of work breach the planned duration as agreed through notices or permits. Pricing could vary by location (e.g. major arterial roads), type of works (e.g. area of road), and duration (e.g. time to complete works above a base period). This potentially would help to reduce congestion and the time taken to complete works but may also give rise to the undertakers of works 'gaming' the system if it is not carefully designed (e.g. overstating the likely time to complete a work to avoid paying an overrun charge).[[20]](#footnote-20)

This is likely to only occur for large-scale works conducted by utilities, providers of public transport and developers. Although there are some direct financial incentives to minimise the time to complete works, this may not always be sufficient to optimise the completion of works in a timely manner. If this were a significant issue, one option would be to adopt a pricing structure similar to that adopted in the United Kingdom to ensure broader costs were borne by utilities, providers of public transport and developers. That is, pricing could vary by location (e.g. major arterial roads), type of works (e.g. area of road), and duration (e.g. time to complete works above a base period).

**Refer to Stakeholder Question 7 on page 24**.

While the Act clearly expresses a need for minimal traffic inconvenience, and the protection of road safety and road infrastructure, the market operates in such a way that utilities and developers impose strict commercial obligations on their contractors to deliver completion of projects and/or repairs/maintenance within commercial timeframes and quality key performance indicators.

Invariably security deposits and the use of bank guarantees are imposed by utilities and developers on their contractors, and in the case of utilities, it is common practice that the contractor’s bank guarantee is not released until 12 months after the completion of works to align with the regulated 12 month warranty period for road reinstatements. Given that utilities and developers submit most of the consent applications, and have strong market incentives to complete works within time and budget, it is considered inappropriate to consider a rental type fee for the occupation of a road reserve.

At the same time, a rental type fee approach, which in effect allows traffic disruption and inconvenience upon payment of a monetary sum, is considered to be inconsistent with the Act which seeks to establish a system for the management of safe and efficient public roads that best meet the needs and priorities of State and local communities. To this end, the Act establishes the ‘consent for works’ process that provides for road authorities to effectively manage the impact and timing of works in a way that minimises adverse community safety and travel time reliability outcomes (e.g requiring works to be conducted outside peak travel periods). The Act also provides enforcement mechanisms where conditions of consent are not complied with or reinstatement standards are unsatisfactory. Contractor market mechanisms simply reinforce the management system established by the Act.

Works (other than minor works), undertaken by Yarra Trams, are more likely to lead to significant traffic disruption. Yarra Trams advised that the State Government stipulated that any such works should, where reasonably practicable, be conducted during school holidays when traffic volumes are lower. These works are conducted as expeditiously as possible as Yarra Trams incurs additional costs during the works. These include the payment for replacement buses on tram routes undergoing works to transfer their normal tram customers before and after the works. Yarra Trams has a strong financial incentive to complete the works expeditiously as it needs to pay for replacement buses for inconvenienced tram commuters.

Given the above, utilities and providers of public transport have appropriate incentives to complete their works safely and expeditiously; including legislative customer service obligations and financial incentives to avoid foregone revenue resulting from their customers not being able to use and pay for their infrastructure services. To avoid any unnecessary financial losses, utilities and providers of public transport impose appropriate performance requirements on their contractors to complete the works within specified timeframes and to required standards. Developers also have similar financial incentives to complete works in a timely fashion. In view of this, it is unlikely that incentive-based fees would result in works being completed earlier than under the current arrangements that utilities and providers of public transport use to complete works safely and in a timely manner.

#### Fees based on value of works

Similarly, a scale of fees based on the value of works was considered. However, the time and resources involved in processing a consent application is unrelated to the value of works involved. For example, the cost of a works (other than minor works) may be less than minor works due to the type of works, installation techniques used and the party conducting the works.

#### Fees in other Australian jurisdictions

A comparison of consent fees with other jurisdictions has been undertaken. The other state and territory road authorities do not currently charge a consent fee. Several of the other states, particularly Queensland and South Australia indicated that their regulations were to be reviewed shortly and the introduction of consent fees is more than likely. However, the Northern Territory and the Australian Capital Territory do charge consent fees. While some state road authorities have chosen not to charge consent fees, local councils in the other states do charge consent fees to varying levels. In New South Wales, it is common for local councils to charge a consent fee whereas it is more sporadic amongst local councils in Queensland, South Australia and Western Australia. Most New South Wales local councils charge a consent fee within the $120 to $150 range.

#### Options considered for further consideration — cost-based fees

In light of the considerations outlined above, the feasible alternatives considered below in relation to fees are based on the time and associated costs for coordinating road authorities to process applications and issue consent for works within a road reserve. Specifically:

Option 1: Current fee levels

Option 2: Fees based on partial cost recovery

Option 3: Fees based on full cost recovery

Option 4: Maximum fees

Option 5: Fees based on an Hourly Rate

Options 3, 4 and 5 have the potential to deliver full cost recovery but with different impacts on efficiency and equity.

# 6 Analysis of Options for Consent Application Fees

This section is divided into four parts:

1. description and rationale for the consent application fee structure;
2. consent application requirements;
3. cost methodology;
4. cost components for consent application fees

### Description and Rationale for the Consent Application Fee Structure

There are 16 separate consent application fees across the 4 categories of road:

* Freeway;
* Arterial road;
* Municipal or non-arterial State road where the maximum speed limit is more than 50 km per hour; and,
* Municipal or non-arterial State road where the maximum speed limit is less than 50 km per hour.

For each road category, there are two primary categories of consent application fees being ‘works (other than minor works)’ and ‘minor works’ (where those minor works are ‘traffic impact works’). These two primary fee categories are further categorised as to whether they are, or are not, conducted on, or on any part of, the roadway, shoulder or pathway (refer to the Schedule to the regulations).

The Act provides definitions for a roadway, shoulder and pathway:

***roadway*** *means—*

*(a)  in the case of a public road, the area of the public road that is open to or used by members of the public and is developed by a road authority for the driving or riding of motor vehicles;*

*(b)  in the case of any other road, the area of the road within the meaning of road**in section 3(1) of the Road Safety Act 1986—*

*but does not include a driveway providing access to the public road or other road from adjoining land;*

***shoulder*** *means the cleared area, whether or not constructed or sealed, next to a roadway that provides clearance between the roadway and the roadside but does not include any area that is not in the road reserve;*

***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.*

The rationale for the 16 separate fee categories is that some types of road such as a freeway or arterial road carry higher volumes of vehicles (and travelling at higher speeds) and any works on these roads have greater potential risk for road safety and traffic disruption compared to a municipal or non-arterial State road with a maximum speed limit of less than 50 km per hour and low traffic volumes.

The location, scale and type of the works is also taken into consideration (e.g excavations of a roadway, shoulder or pathway that are more than 8.5 square metres) with some of these works being more likely to have a greater potential risk for road safety, traffic disruption and the integrity of road infrastructure.

The basis for the distinction between conducting and not conducting works on a roadway, shoulder or pathway, is that this road infrastructure is invariably excavated and requires reinstatement as close as possible to the original condition to ensure structural integrity. This also serves to prevent trips and falls particularly for pedestrians and bicyclists.

Accordingly, the number of tasks and the associated time taken by coordinating road authorities to consider a consent application is dependent on the type of road, scale of works, the location of the proposed works (i.e whether the proposed works are to be conducted on a roadway, shoulder or pathway or within the roadside) and who is conducting the works.

At the lower end, a consent application for minor works (that are ‘traffic impact works’) on a municipal road with a speed limit of less than 50 km per hour is a relatively straightforward administrative process. Whereas at the other end of the scale, a consent application for works (other than minor works) on a freeway requires due consideration of the proposed design of the works (e.g the positioning of utility infrastructure), traffic impact and response, road safety impact and response, methodology for reinstatement of any excavated roadway, impact on environmental and heritage assets as well as a pre-consent on-site inspection and post-works inspection of the final roadway reinstatement works.

The clarification of the definition of ‘minor works’ in the proposed regulations will make it clear that minor works, for which exemptions from consent may apply, are only those type of works conducted by utilities, providers of public transport and responsible road authorities (or their agents).

### Consent Application Requirements

The consent application form is described in the *Code of Practice for the Management of Infrastructure in Road Reserves*. The consent application form requests the following information:

* General details of the applicant;
* Type, location and proposed timing of works
* Description of works;
* Temporary and permanent reinstatement methodologies and standards
* Traffic impact and traffic management
* Consultation
* Assets of other parties that may be affected by the works

The consent application is also required to include detailed plans of the proposed works and other supporting information.

### Cost Methodology

The Department of Treasury and Finance’s Cost Recovery Guidelines outline two methodologies for determining the appropriate cost base: the ‘fully distributed cost’ and ‘incremental cost’ method.

The fully distributed cost method is described as “*the most comprehensive costing approach, and allocates all costs (including direct, indirect and capital cost components) to the output, and is typically used where cost-recovered activities account for a large proportion of an agency’s activities*”. The incremental cost method recognises that it may be inappropriate to attempt to recover overhead and capital costs if these would be incurred anyway, even if a particular activity were not undertaken. The fully distributed cost method is used to calculate the costs per transaction.

#### Determining the base case

The base case is the Act in the absence of the proposed regulations. Technically, in this case, no fees would be charged and there would be no exemptions from consent (other than those provided in section 63(2) of the Act), and none of the costs associated with administering the consent for works system would be recovered. (For the purposes of the fees analysis that follows, however, the base case is assumed to include the exemptions contained in the proposed Regulations.) Based on the costs estimated below, this would leave an annual shortfall of an estimated $7.9 million which would need to be funded by VicRoads and other State road authorities out of general taxpayers revenue, and in the case of local councils, out of ratepayers revenue.

#### Estimating the efficient cost base

Given the significant variation in the nature of the consent application assessment process across coordinating road authorities, the costs have been calculated on a transaction basis, with the calculations adopting an efficient cost base that takes into account the policy objectives and the level of risk to road safety, traffic movements, and the integrity of the road infrastructure.

A review of the requirements as set out in clause 16 of Schedule 7 of the Act that must be considered for any consent application was undertaken in consultation with VicRoads and local councils. That is, the time involved and the associated costs are calculated in accordance with the processes that must be followed under clause 16. The costs are not based on the processes used by some local councils that are not complying with the aforementioned requirements.

The discussion above about the extent of the problem revealed considerable differences in approach amongst local councils in the administration of consent applications. Given the absence of interstate fees particularly by state road authorities, it has not been possible to benchmark the efficiency of costs against those in other jurisdictions. Nonetheless, as noted in section 5.8, similar processes to those adopted in Victoria are adopted in other jurisdictions.

Hence, the efficient cost base has been calculated based on the time and associated costs required to complete each specific task by coordinating road authorities that fully comply with VicRoads *Guide to Working in the Road Reserve* (2009) rather than those coordinating road authorities that have avoided critical steps or simply ‘rubber stamped’ a consent application.

#### VicRoads & Local Council Salary Costs

Salaries have been based on the midpoint of VRO3 and VRO 4 salaries for officers at VicRoads and Band 5B and Band 7B salaries for officers at a local government level. As a number of local councils having enterprise bargain agreements with their staff, the salaries for the various bands vary between local councils. Accordingly an average salary has been used for Bands 5B and 7B.

The salary oncosts and indirect costs per employee below are based on VicRoads. These costs are likely to be of a similar magnitude incurred by local councils and are used accordingly for calculating the consent for works application fees.

Salary oncosts

Holiday Pay Loading 8.8%

Long Service Leave 3.9%

Payroll Tax 4.85%

WorkCover Premiums 3.9%

Superannuation 9.5%

Total salary oncosts: 30.95%

Indirect costs - Corporate overheads per person

IT & licences $7,214

Accommodation rent $6,643

Stationary, printing, other office expenses etc $13,214

Training $1,460

Human Resources & Payroll $6,249

Total: $34,780

Indirect costs per hour per employee = $20.80 ($34,780 divided by 1672 hours).

Total annual hours used to calculate hourly rates

Number of weeks worked per annum

= 52-4 (annual leave)-2 (sick leave)-2 (public holidays) =44 weeks

Average weekly hours = 38

Total annual hours = 1,672

**Refer to Stakeholder Question 6 on page 24**.

### Cost Components for Consent Application Fees

The consent application fees comprise up to three main cost components:

* Administrative;
* Assessment (includes specialist advice); and
* Inspection.

The administrative cost component applies to each of the 16 consent application fee categories, while the assessment and inspection cost components apply depending on the type of road, scale of works and whether the works are proposed to be conducted on either the roadway, shoulder or pathway, or within the roadside.

Utilities and providers of public transport are strongly encouraged in the *Code of Practice for Management of Infrastructure in Road Reserves* (the Code)toundertake early consultationwith coordinating road authorities prior to submitting a consent application. This is likely to occur primarily for works (other than minor works) that may have a significant impact on road infrastructure.

The early consultation between utilities/providers of public transport and coordinating road authorities is likely to be undertaken over a period of time prior to submitting a consent application to identify many of the issues that need to be considered as part of the development of the scope and design of the proposed works. This early consultation is intended to resolve these issues prior to an application for consent being submitted.

As a result of the early consultation, the assessment process for consent applications involves ensuring that the issues discussed during consultation are incorporated into the consent application. Hence, the assessment process is, for most cases, a relatively straightforward task of checking that the issues discussed and agreed upon, are adequately covered in the consent application. Accordingly, the number of hours to process and check these matters in the consent application is relatively low compared with the actual number of hours undertaken by both parties in the consultation phase. It should be noted that there is no provision in the Code for coordinating road authorities to charge a fee for their time during the consultation phase with utilities and providers of public transport.

A summary of the tasks and the associated costs for each of the three cost components is provided below for VicRoads and local councils.

#### VicRoads Administrative Cost to Process Consent Applications

VicRoads advised that it has a consistent process for administering all consent applications it receives, including the issuing of a written consent, as is outlined above. The administrative tasks comprise the following:

* Application received (either via a centralised email system or post) and input of information into the Non-Road Infrastructure Works (NRIW) Database.
* If new applicant, request a customer supply number from the Accounts Receivable Team to enable an invoice to be raised.
* Check that the category of works nominated in the application is correct.
* Submit Invoice Request Form to Accounts Receivable Team to prepare and issue an invoice to the applicant.
* Prepare and send consent letter to applicant with standard conditions together with appropriate works-specific conditions (where applicable).

This process takes an average of about 30 minutes per application and is undertaken in VicRoads by a VRO3 to VRO4 at $79.82 per hour or $39.91 for the 30 minutes task.

The salary is based on the midpoint of the combined VRO3 and VRO4 salaries = $74,583 divided by 1672 hours = $44.61 per hour.

The hourly rate of $44.61 is multiplied by 30.95 percent for salary oncosts or 1.3095 = $58.42 and indirect costs of $20.80 per hour = $79.22 per hour.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| VRO 3to 4hourly rate | Salary oncosts hourly rate | Indirect Costs hourly rate | Total hourly rate | Administrative processing time (hours) | Cost  |
| $44.61 | $13.81 | $20.80 | $79.22 | 0.5 | $39.61 |

#### VicRoads Assessment Cost to Process Consent Applications

Most consent applications, particularly for works (other than minor works), require assessments to be provided from a range of areas within VicRoads, including to review:

* technical design standards, proposed location of the works / infrastructure within the road reserve (e.g whether the location of the proposed works / infrastructure is likely to create a roadside hazard), likely impacts on any road infrastructure for which another responsible road authority is responsible, and possible impacts on on-road public transport.
* future road strategies and road development proposals (e.g road widening, duplication or reconstruction) that may be impacted by the proposed works.
* works methodology and its impact on traffic operation/congestion or road user safety, and the proposed timing of the work.
* road reinstatement methodology to ensure compliance with VicRoads reinstatement standards and specifications.
* potential environmental and heritage impacts associated with the works.
* road intersection and traffic signal operational impacts based on an analysis of SCATS (the Sydney Coordinated Adaptive Traffic System) to determine traffic volumes, traffic flow impacts and necessary mitigation measures (e.g re-phasing of traffic signals).

These abovementioned tasks are undertaken by VRO 4 officers and the salary is based on the midpoint of the VRO4 salaries = $83,318 divided by 1672 hours = $49.83 per hour.

The hourly rate of $49.83 is multiplied by 30.95 percent salary oncosts or1.3095 = $65.25 and indirect costs of $20.80 per hour = $86.05 per hour.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| VRO 4hourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Cost  |
| $49.83 | $15.42 | $20.80 | $86.05 | $86.05 |

#### VicRoads Inspection Costs

VicRoads inspection activities, where appropriate, include an inspection of the site of the proposed works as part of the consent assessment process and / or an inspection following completion of the works to verify that the reinstatement of the roadway, shoulder or pathway, or roadside, has been completed to the required standards.

A total of one hour has been calculated for each inspection based on consultations with VicRoads. The one hour allocation comprises about 30 minutes of actual inspection at the work site and 30 minutes for travel to and from the proposed work site.

Inspection activities are undertaken by VRO 4 officers and the salary is based on the midpoint of the VRO4 salaries = $83,318 divided by 1672 hours = $49.83 per hour.

The hourly rate of $49.83 is multiplied by 30.95 percent salary oncosts or1.3095 = $65.25 and indirect costs of $20.80 per hour = $86.05 per hour.

Vehicle expenses are incurred as part of these inspection activities. An allowance of 20 km travel (to and from the proposed works site)[[21]](#footnote-21) covers most consent applications and is multiplied by the per km rate allowed by the Australian Taxation Office (ATO) 0.75 cents per km rate to cover motor vehicle operating costs.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| VRO4 hourly rate | Salary oncosts | Corporate overheads | Total hourly rate | Inspection/Travel Time hours | Cost  |
| $49.83 | $15.42 | $20.80 | $86.05 | 1 | $86.05 |
| Vehicle Cost @0.75 cents per km \*20 km average travel | $15.00 |
| Total | $101.05 |

#### Local Councils Administrative Cost to Process Consent Applications

Local councils advised it takes about 30 minutes to administratively process a consent application and issue the consent. This administrative process is the same for all types of consent applications. The following provides a general description of the key tasks:

Administrative Tasks

* Receipt and record application submitted by email, post or in person.
* Check that the category of works nominated in the application is correct.
* Provide over-the counter or send consent letter to applicant with standard conditions together with appropriate works-specific conditions (where applicable).

The process also takes an average of 30 minutes per application at the local government level and is normally undertaken by a Band 5 officer. The salary of a Band 5 is the midpoint of the Band (i.e 5B) = $64,000 divided by 1672 = $38.28 per hour.

The hourly rate of $38.28 is multiplied by 30.95 percent salary oncosts or1.3095 = $50.13 and indirect costs of $20.80 per hour = $70.93 per hour. The cost for a 30 minutes transaction at local government level is $35.46.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Band 5B hourly rate | Salary oncosts | Corporate overheads | Total hourly rate | Administrative processing time –hours | Cost  |
| $38.28 | $11.85 | $20.80 | $70.93 | 0.5  | 35.46. |

### Local Council Assessment Costs to Process Consent Applications

Local councils undertake similar tasks to VicRoads (see above) other than any requirement to reprogram traffic signals. VicRoads is responsible for making any signal adjustments on behalf of local councils. Most consent applications, particularly for works (other than minor works), require assessments to be provided from a range of areas within local councils, including to review:

* technical design standards, proposed location of the works / infrastructure within the road reserve (e.g whether the location of the proposed works / infrastructure is likely to create a roadside hazard), likely impacts on any road infrastructure for which another responsible road authority is responsible, and possible impacts on on-road public transport.
* future road strategies and road development proposals (e.g road widening, duplication or reconstruction) that may be impacted by the proposed works.
* works methodology and its impact on traffic operation/congestion or road user safety, and the proposed timing of the work.
* road reinstatement methodology to ensure compliance with local council reinstatement standards and specifications.
* potential environmental and heritage impacts associated with the works.
* road intersection and traffic signal operational impacts in consultation with VicRoads.

The abovementioned tasks are undertaken by Band 7 officers and the salary is based on the midpoint of the Band 7B salary = $84,000 divided by 1672 hours = $50.24 per hour.

The hourly rate of $50.24 is multiplied by 30.95 percent salary oncosts or1.3095 = $65.79 and indirect costs of $20.80 per hour = $86.59 per hour.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Band 7Bhourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Cost  |
| $50.24 | $15.55 | $20.80 | $86.59 | $86.59 |

#### Local Council Inspection Costs

Where appropriate, local councils undertake on-site inspection activities prior to issuing consent and after the works have been completed to verify that the reinstatement of the roadway, shoulder or pathway has been completed satisfactorily.

Inspection activities involving pre consent onsite inspection generally occurs for works (other than minor works) conducted, and not conducted, on a roadway, pathway or shoulder. This is due to the significant scale of the works.

A total of one hour has been calculated for each inspection based on consultations with 11 local councils. The one hour allocation comprises about 30 minutes of actual inspection at the work site and 30 minutes for travel to and from the proposed work site.

Inspection activities involving post works inspection of a reinstatement occurs on any type of road for works (other than minor works) and minor works (that are ‘traffic impact works’) that are conducted on a roadway, pathway or shoulder.

Inspection activities are undertaken by Band 7 officers and the salary is based on the midpoint of the Band 7B salary = $84,000 divided by 1672 hours = $50.24 per hour.

The hourly rate of $50.24 is multiplied by 30.95 percent salary oncosts or1.3095 = $65.79 and indirect costs of $20.80 per hour = $86.59 per hour.

Vehicle expenses are incurred as part of the inspection activities. An allowance of 20 km travel (to and from the proposed works site)[[22]](#footnote-22) covers most consent applications and is multiplied by the ATO’s 0.75 cents per km rate to cover motor vehicle operating costs.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Band 7B hourly rate | Salary-oncosts | Corporate overheads | Total hourly rate | Inspection/Travel Time -hours | Cost  |
| $50.24 | $15.55 | $20.80 | $86.59 | 1 | $86.59 |
| Vehicle Cost@0.75 cents per km \*20 km average travel | $15.00 |
| Total | $101.59 |

**Refer to Stakeholder Question 5 on page 24.**

#### Option 1: Current fee levels

Under this option the current fees prescribed in the regulations would be maintained. Table 12 below compares the current consent application fees with the current costs. Five consent application fees (highlighted in bold) are higher than the actual costs and eleven consent application fees are below cost; leading to cross-subsidisation between consent applicants.

**Table 12: Comparison of Current Costs and Current Fees**

|  |  |  |
| --- | --- | --- |
|  | **Works, other than minor works** | **Minor works** |
|  | Conducted on, or on any part of the roadway, shoulder or pathway | Not conducted on, or on any part of the roadway, shoulder or pathway | Conducted on, or on any part of the roadway, shoulder or pathway | Not conducted on, or on any part of the roadway, shoulder or pathway |
|  | Current Cost | Current Fee | Current Cost | Current Fee | Current Cost | Current Fee | Current Cost | Current Fee |
| Freeway | $671.96 | $595.80 | $398.81 | **$423.70** | $312.76 | **$331.00** | $125.66 | **$132.40** |
| Arterial road | $671.96 | $595.80 | $398.81 | $331.00 | $312.76 | $152.30 | $125.66 | **$132.40** |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is more than 50 kilometres per hour  | $671.59 | $595.80 | $310.23 | **$331.00** | $223.64 | $152.30 | $78.75 | $66.20 |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles is not more than 50 kilometres per hour  | $411.82 | $264.80 | $78.75 | $66.20 | $223.64 | $152.30 | $78.75 | $66.20 |

**Costs**

As shown in Table 13 below, the cost of this option generates estimated total revenue of $4,040,659 compared with the estimated total costs of $7,944,444; leaving a shortfall of $3,903,785.

**Table 13: Estimated Consent Application Fee Revenue & Costs**

|  |  |  |  |
| --- | --- | --- | --- |
|  | Estimated Revenue | Estimated Costs | Deficit/Surplus |
| VicRoads | $651,887 | $956,041 | ($304,154) |
| Local Councils | $3,388,772 | $6,988,403 | ($3,599,631) |
| Total | $4,040,659 | $7,944,444 | ($3,903,785) |

Note: The estimated revenue is based on the prescribed fees for 2014/15 and the estimated costs are based on the current costs as reviewed in Appendix 2.

This option also entails cross-subsidisation between the 16 consent application fee categories; with applicants paying more for some works conducted on a freeway and arterial road while applicants are paying below cost for most works conducted on a municipal road or non-arterial State road.

**Benefits**

This option would enable some applicants to continue to pay lower consent application fees than would otherwise be the case under a full cost recovery scenario for each individual consent application fee category. Specifically, other persons such as builders and plumbers who are currently charged minor works consent application fees due to the uncertainty surrounding the drafting of the definition of ‘minor works’ would continue to pay lower consent application fees for works involving excavations of a roadway, pathway or shoulder less than 8.5 square metres.

#### Option 2: Fees based on partial cost recovery (Preferred Option)

This option would fully recover the costs associated with each of the sixteen consent application fee categories other than the costs associated with inspections following completion of the works. Table 14 shows a comparison of the current prescribed consent application fees with the proposed fees in this option. Ten of the consent application fees would decline and six consent application fees would increase (highlighted in bold).

**Table 14: Fees based on partial cost recovery**

|  |  |  |
| --- | --- | --- |
|  | **Works, other than minor works** | **Minor works** |
|  | Conducted on, or on any part of the roadway, shoulder or pathway | Not conducted on, or on any part of the roadway, shoulder or pathway | Conducted on, or on any part of the roadway, shoulder or pathway | Not conducted on, or on any part of the roadway, shoulder or pathway |
|  | Current Fee | Option 2 Fee | Current Fee | Option 2 Fee | Current Fee | Option 2 Fee | Current Fee | Option 2 Fee |
| Freeway | $595.80 | $570.91 | $423.70 | $398.81 | $331.00 | $211.71 | $132.40 | $125.66 |
| Arterial road | $595.80 | $570.91 | $331.00 | **$398.81** | $152.30 | **$211.71** | $132.40 | $125.66 |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is more than 50 kilometres per hour  | $595.80 | $570.00 | $331.00 | $310.23 | $152.30 | $122.05 | $66.20 | **$78.75** |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles is not more than 50 kilometres per hour  | $264.80 | **$310.23** | $66.20 | **$78.75** | $152.30 | **$122.05** | $66.20 | **$78.75** |

**Costs**

As can be seen in Table 15, this option would generate an estimated $6,815,493 in revenue with a shortfall of $1,128,951. This shortfall would need to be funded from taxpayers and ratepayers.

**Table 15: Summary of Estimated Costs and Fee Revenue**

|  |  |  |  |
| --- | --- | --- | --- |
|  | Estimated Costs | Estimated Revenue | Deficit/Surplus |
| VicRoads | $956,041 | $819,421 | $136,620 |
| Local Councils | $6,988,403 | $5,996,072 | $992,331 |
| Total | $7,944,444 | $6,815,493 | $1,128,951 |

The estimated revenue is based on the calculations provided in Tables 16 and 17 below. As can be seen from Table 16, this option prevents VicRoads from fully recovering its costs for any works conducted on the roadway, shoulder or pathway of a freeway or arterial road.

**Table 16: Option 2 -VicRoads Estimated Consent Application Fee Revenue and Costs – Freeways and Arterial Roads**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Type of Works | A (No. consents) | B (current costs) | Total cost A x B | C (Fees) | Fee Revenue A x C | Deficit/Surplus |
| Works, other than minor works, conducted on the roadway, shoulder or pathway | 1149 | $671.96 | $772,082 | $570.91 | $655,975 | ($116,107) |
| Works, other than minor works, not conducted on the roadway, shoulder or pathway | 286 | $398.81 | $114,060 | $398.81 | $114,060 | $0.00 |
| Minor works, conducted on the roadway, shoulder or pathway | 203 | $312.76 | $63,490 | $211.71 | $42,977 | ($20,513) |
| Minor works, not conducted on the roadway, shoulder or pathway | 51 | $125.66 | $6,409 | $125.66 | $6,409 | $0.00 |
| Total | 1,689 |  | $956,041 |  | $819,421 | ($136,620) |

As can be seen from Table 17, this option prevents local councils from fully recovering its costs for any works conducted on a roadway, shoulder or pathway on a municipal road.

**Table 17: Local councils Estimated Consent Application Fee Revenue and Costs – Municipal Roads**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Type of Works | A (No. consents)  | B (current costs) | Total costs A x B | C (Fees) | Fee Revenue A x C | Deficit/Surplus |
| Works, other than minor works, conducted on the roadway, shoulder or pathway | 7,424 | $541.70 | $4,021,581 | $440.11 | $3,267,377 | ($754,204) |
| Works, other than minor works, not conducted on the roadway, shoulder or pathway | 11,135 | $194.49 | $2,165,646 | $194.49 | $2,165,646 | $0.00 |
| Minor works, conducted on the roadway, shoulder or pathway | 2,344 | $223.64 | $524,212 | $122.05 | $286,085 | ($238,127) |
| Minor works, not conducted on the roadway, shoulder or pathway | 3,517 | $78.75 | $276,964 | $78.75 | $276,964 | $0.00 |
| Totals | 24,420 |  | $6,988,403 |  | $5,996,072 | ($992,331) |

Under this option, the clarification of the definition of ‘minor works’ has an impact on persons other than utilities, providers of public transport and responsible road authorities (and their agents). For other persons such as developers, builders and plumbers, the fee applicable for all consent applications will be assessed under the ‘works (other than minor works) fee category. This will result in a significant increase in consent applications fees. The cost of these fees is more than likely to be passed onto their customers. Table 18 below compares the current fees for works conducted on freeways and arterial roads by other persons with the fees as proposed as a result of the clarification of the definition of ‘minor works’.

**Table 18: Comparison of Current and Proposed Consent Application Fees payable by other persons for works conducted on freeways and arterial roads**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Type of Road | Current Type of Works | Current Fees | Proposed Type of Works | Proposed Fees |
| Freeway | Minor works, conducted on the roadway, shoulder or pathway | $331.00 | Works, other than minor works, conducted on the roadway, shoulder or pathway | $570.91 |
| Minor works, not conducted on the roadway, shoulder or pathway | $132.40 | Works, other than minor works, not conducted on the roadway, shoulder or pathway | $398.81 |
| Arterial Road | Minor works, conducted on the roadway, shoulder or pathway | $152.30 | Works, other than minor works, conducted on the roadway, shoulder or pathway | $570.91 |
| Minor works, not conducted on the roadway, shoulder or pathway | $132.40 | Works, other than minor works, not conducted on the roadway, shoulder or pathway | $398.81 |

A similar comparison of current and proposed fees payable by other persons that conduct works on municipal roads is provided in Table 19 below.

**Table 19: Comparison of Current and Proposed Consent Application Fees payable by other persons for works conducted on municipal roads**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Type of Road | Current Type of Works | Current Fees | Proposed Type of Works | Proposed Fees |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is more than 50 kilometres per hour  | Minor works, conducted on the roadway, shoulder or pathway | $152.30 | Works, other than minor works, conducted on the roadway, shoulder or pathway | $570.00 |
| Minor works, not conducted on the roadway, shoulder or pathway | $66.20 | Works, other than minor works, not conducted on the roadway, shoulder or pathway | $310.23 |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles is not more than 50 kilometres per hour  | Minor works, conducted on the roadway, shoulder or pathway | $152.30 | Works, other than minor works, conducted on the roadway, shoulder or pathway | $310.23 |
| Minor works, not conducted on the roadway, shoulder or pathway | $66.20 | Works, other than minor works, not conducted on the roadway, shoulder or pathway | $78.75 |

**Benefits**

This option enables VicRoads and local councils to fully recover costs associated with consent applications for any works not conducted on a roadway, shoulder or pathway. Consent applicants undertaking any works on a roadway, shoulder or pathway would continue to benefit from below-cost fees and save an estimated $1,128,951 per annum.

#### Option 3: Fees based on full cost recovery

This option would fully recover the costs (including the inspections following completion of the works) associated with each of the sixteen consent application fee categories. As can be seen in Table 20 below, this option would lead to fee increases for eleven consent application fee categories (highlighted in bold) and a fee reduction for five consent application fee categories. Detailed cost analysis for each of the sixteen consent application fee categories is provided in Appendix 2.

**Table 20: Fees based on full cost recovery- comparison of current & option 3 fees**

|  |  |  |
| --- | --- | --- |
|  | **Works, other than minor works** | **Minor works** |
|  | Conducted on, or on any part of the roadway, shoulder or pathway | Not conducted on, or on any part of the roadway, shoulder or pathway | Conducted on, or on any part of the roadway, shoulder or pathway | Not conducted on, or on any part of the roadway, shoulder or pathway |
|  | Current Fee | Option 3 Fee | Current Fee | Option 3 Fee | Current Fee | Option 3 Fee | Current Fee | Option 3 Fee |
| Freeway | $595.80 | **$671.96** | $423.70 | $398.81 | $331.00 | $312.76 | $132.40 | $125.66 |
| Arterial road | $595.80 | **$671.96** | $331.00 | **$398.81** | $152.30 | **$312.76** | $132.40 | $125.66 |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is more than 50 kilometres per hour  | $595.80 | **$671.59** | $331.00 | $310.23 | $152.30 | **$223.64** | $66.20 | **$78.75** |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles is not more than 50 kilometres per hour  | $264.80 | **$411.82** | $66.20 | **$78.75** | $152.30 | **$223.64** | $66.20 | **$78.75** |

**Costs**

As can be seen in Table 21, this option would generate an estimated $7,944,444 in revenue enabling full cost recovery.

**Table 21: Summary of Estimated Costs and Fee Revenue**

|  |  |  |  |
| --- | --- | --- | --- |
|  | Estimated Costs | Estimated Revenue | Deficit/Surplus |
| VicRoads | $956,041 | $956,041 | $0.00 |
| Local Councils | $6,988,403 | $6,988,403 | $0.00 |
| Total | $7,944,444 | $7,944,444 | $0.00 |

Most of the consent application fee increases are related to inspections following completion of the works for those works conducted on a roadway, shoulder or pathway on any class of road. However, the non-provision of a head of power in section 122 of the Act to prescribe a fee for an inspection following completion of the works prevents the recovery of the associated costs.

Similar to Option 2, the clarification of the definition of ‘minor works’ has an impact on persons other than utilities, providers of public transport and responsible road authorities (and their agents). For other persons such as developers, builders and plumbers, the fee applicable for all consent applications will be assessed under the works (other than minor works) fee category. This would result in a significant increase in consent applications fees only for works conducted on the roadway, shoulder or pathway due to the requirement to undertake inspections. The cost of these fees is more than likely to be passed onto their customers. Table 22 below compares the current fees for works conducted on freeways and arterial roads by other persons with the Option 3 fees as proposed as a result of the clarification of the definition of ‘minor works’.

**Table 22: Comparison of Current and Option 3 Consent Application Fees payable by other persons for works conducted on freeways and arterial roads**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Type of Road | Current Type of Works | Current Fees | Proposed Type of Works | Proposed Fees |
| Freeway | Minor works, conducted on the roadway, shoulder or pathway | $331.00 | Works, other than minor works, conducted on the roadway, shoulder or pathway | $671.96 |
| Arterial Road | Minor works, conducted on the roadway, shoulder or pathway | $152.30 | Works, other than minor works, conducted on the roadway, shoulder or pathway | $671.96 |

A similar comparison of current and proposed fees payable by other persons that conduct works on municipal roads is provided in Table 23 below.

**Table 23: Comparison of Current and Option 3 Consent Application Fees payable by other persons for works conducted on municipal roads**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Type of Road | Current Type of Works | Current Fees | Proposed Type of Works | Proposed Fees |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is more than 50 kilometres per hour  | Minor works, conducted on the roadway, shoulder or pathway | $152.30 | Works, other than minor works, conducted on the roadway, shoulder or pathway | $671.59 |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles is not more than 50 kilometres per hour  | Minor works, conducted on the roadway, shoulder or pathway | $152.30 | Works, other than minor works, conducted on the roadway, shoulder or pathway | $411.82 |

**Benefits**

This option would fully recover the costs for processing all consent application categories, particularly for works (other than minor works) and minor works (that are ‘traffic impact works’) conducted on a roadway, shoulder or pathway on a freeway, arterial road, municipal road or non-arterial State road. Full cost recovery would eliminate the estimated $3,903,785 shortfall. These reforms tend to improve prima facie allocative efficiency. However, the consent application fee is a small cost input relative to the cost of works whether conducted by a utility, developer, builder or a plumber. Hence, the impact on allocative efficiency is considered to be minimal.

#### Option 4: Maximum fees

This option would set maximum fees to enable coordinating road authorities to match their consent application fees exactly with their costs. A maximum fee could also be based on the efficient costs set out in Option 3 as a means to provide incentives for coordinating road authorities to adopt efficient practices and to allow for greater efficiency to the extent that it would allow coordinating road authorities to charge lower fees to reflect lower costs. However, it is well documented that local council coordinating road authorities have budget pressures from Commonwealth and State Governments transferring responsibilities to the local government sector without appropriate funding. Accordingly, local councils face budget constraints and competing priorities that are likely to impact on some of their responsibilities such as the management of consents for works and are unable to commit the resources to prioritise the changes required to adopt the prescribed processes that need to be undertaken to process a consent application. Given this, setting a maximum fee based on efficient costs is unlikely to change a local council’s priorities in terms of resource allocation to adopt efficient costs. Similarly, the maximum fee could be differentiated for different categories of coordinating road authorities if there are differences in the costs between authorities (small rural and large metropolitan local councils). However, as discussed in section 2.5.2, the cost differences are primarily due to the lack of compliance by some coordinating road authorities with the requirements of clause 16 of Schedule 7 of the Act.

**Costs**

There are several issues with setting a maximum fee. Firstly, the maximum fee needs to be determined and cover all expected cost bases from all coordinating road authorities (i.e VicRoads, 79 local councils and other State road authorities). The costs to undertake this exercise may exceed the benefits for some coordinating road authorities that have low volumes of consent applications. For full cost recovery to be achieved, the setting of maximum fees requires a detailed knowledge of the time and associated costs allocated to each of the assessment processes across VicRoads and 79 local councils. To enable full cost recovery for all coordinating road authorities, the maximum fee would be based on the highest cost coordinating road authority. This is likely to be more than the efficient costs in Option 3 given that each coordinating road authority will have different levels of productivity and efficiency in terms of resource utilisation. A maximum fee may also generate revenue-seeking behaviour where the maximum fee is adopted rather than a lower fee where a coordinating road authority has lower costs than the maximum fee.

Consent applicants, in particular utilities, could face a multitude of different consent application fees across municipalities rather than the current statutory process to consent application fees that apply across the State.

**Benefits**

Given that there are 79 local council coordinating road authorities as well as VicRoads and other State road authorities processing consent applications, a maximum fee would ensure each coordinating road authority could set its fee according to its exact costs, provided the maximum fee threshold is high enough for the costs incurred by every coordinating road authority.

#### Option 5: Fees based on an Hourly Rate

This option would provide an hourly rate to process consent applications. Based on the cost analysis, the administrative process would be charged at $80 and $71 per hour by VicRoads and local councils respectively. For specialist advice, VicRoads and local councils would charge $87 per hour and $101 per hour respectively for on-site inspections. The hourly rates are based on the cost analysis in Appendix 2.

**Costs**

There would be transparency and accountability issues regarding the costs associated with providing consent by each coordinating road authority. There would likely be disagreements between applicants and coordinating road authorities over the size of the consent application fee, particularly for applications for works (other than minor works). The hourly rate and the actual number of hours taken to provide any service is not an efficient fee regime in non-competitive markets. In the case of works within a road reserve, the relevant coordinating road authority is the single provider of consents and has no pressure compared with a competitive market to ensure it provides consent within an efficient time frame.

**Benefits**

A fee based on an hourly rate has the potential to enable a coordinating road authority to align its costs associated with the processing of consents. Those coordinating road authorities that were required to invest more time into a consent application would fully recover their costs. However, whether the total amount of time invested was efficiently applied to the consent application process would always be open to question.

#### Summary of Fee Options

As can be seen in Table 24 below, Option 3 delivers full cost recovery and is superior to Options 1 and 2. However, full cost recovery cannot be delivered under Option 3 without the Act being amended to provide a head of power to prescribe a fee for the conduct of an inspection following completion of the works.

**Table 24: Summary of Cost Recovery for Options 1, 2 &3**

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Estimated Costs** | **Estimated Revenue** | **Deficit/Surplus** |
| Option 1 | $7,944,444 | $4,040,659 | ($3,903,785) |
| Option 2 | $7,944,444 | $6,835,531 | ($1,128,951) |
| Option 3 | $7,944,444 | $7,966,657 | $0.00 |

**Table 25: Comparison of Option 1, 2 & 3 Consent Application Fees**

|  |  |  |
| --- | --- | --- |
|  | **Works, other than minor works** | **Minor works** |
|  | Conducted on, or on any part of the roadway, shoulder or pathway | Not conducted on, or on any part of the roadway, shoulder or pathway | Conducted on, or on any part of the roadway, shoulder or pathway | Not conducted on, or on any part of the roadway, shoulder or pathway |
| Fees | Option 1 | Option 2 | Option 3 | Option 1 | Option 2 | Option 3 | Option 1 | Option 2 | Option 3 | Option 1 | Option 2 | Option 3 |
| Freeway | $595.80 | $570.91 | $671.96 | $423.70 | $398.81 | $398.81 | $331.00 | $211.71 | $312.76 | $132.40 | $125.66 | $125.66 |
| Arterial road | $595.80 | $570.91 | $671.96 | $331.00 | $398.81 | $398.81 | $152.30 | $211.71 | $312.76 | $132.40 | $125.66 | $125.66 |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is more than 50 kilometres per hour | $595.80 | $570.00 | $671.59 | $331.00 | $310.23 | $310.23 | $152.30 | $122.05 | $223.64 | $66.20 | $78.75 | $78.75 |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles is not more than 50 kilometres per hour | $264.80 | $310.23 | $411.82 | $66.20 | $78.75 | $78.75 | $152.30 | $122.05 | $223.64 | $66.20 | $78.75 | $78.75 |

### Multi-Criteria Analysis of the Fee Options

Multi-criteria analysis (MCA) was undertaken as the costs and benefits of every option could not be fully quantified.

The MCA involves:

* Specifying assessment criteria;
* Assigning a ‘weighting’ to each criterion;
* Assigning scores for each option in relation to each criterion; and
* Calculating a weighted score for each option.

MCA allows a decision to be made based on the weighted scores. The option assigned the highest weighted score is the ‘preferred option’.

The MCA was undertaken using criteria consistent with the key principles in the DTF Cost Recovery Guidelines:

* Efficiency
* Effectiveness
* Equity
* Simplicity

The weightings for each of the criterion are provided in the Table 26 below.

**Table 26: Multi-Criteria Analysis Criteria Weightings**

|  |  |  |
| --- | --- | --- |
| Criteria | Assessment | Weighting |
| Efficiency | Full cost recovery ensures that all the relevant costs of bringing the good/service to market are incorporated in the relevant price signals. Allocative efficiency is achieved when the value consumers place on a good or service equals the cost of resources used in production | 50% |
| Effectiveness | The fee structure should facilitate compliance with the regulations and avoid the potential for the fee levels to deter compliance. | 20% |
| Equity | The fees should be based on a ‘users pay’ principle, where the user who benefits from government regulation pays for the service.  | 20% |
| Simplicity | The fee structure should be simple for business to understand and for the road authority to administer | 10% |

The efficiency of the fee levels and the ability to fully recover costs is a key Government objective and has the highest weighting accordingly. The other criteria have similar weightings in view of the compliance levels and the ability of persons to pay varies considerably between small business operators and utilities.

In the MCA, each option is given a score from – 10 to + 10 against each criterion. For each option, scores are assigned relative to the base case (which has a score of zero); either -10 if the impact is negative and +10 if the impact is positive. Each score is converted to a weighted score with an assessment for the basis of the score.

**Option 1: Current Fee Levels**

|  |  |  |  |
| --- | --- | --- | --- |
| Criteria | Weighting | Score | Weighted Score |
| Efficiency | 50% | +4 | 2.0 |
| Effectiveness | 20% | -2 | -0.4 |
| Equity | 20% | - 4 | -0.8 |
| Simplicity | 10% | -6 | -0.6 |
| Total |  |  | 0.2 |

In terms of efficiency, full cost recovery is not achieved, but is still more significant than in the base case where no costs would be recovered. Option 1 achieves 50% cost recovery and would receive a score of + 5. However, five of the sixteen consent application fees exceed cost recovery. The level of under-recovery has a negative effect on allocative efficiency (albeit small) and the score has been adjusted to + 4.

In terms of effectiveness, the current fee structure relative to the base case could, prima facie, deter compliance with the consent application process. However the current fees represent a small proportion of the total costs for works conducted within a road reserve. A lack of awareness by some parties that conduct works within a road reserve infrequently about the requirement to seek consent is more likely to affect compliance with the consent application process although the current fees may deter compliance for some parties. Accordingly, Option 1 receives a negative score of -2.

In regards to equity, some of the current fee categories cross-subsidise other fee categories. Five consent application fees are higher than the actual costs and eleven consent application fees are below cost; leading to cross-subsidisation between consent applicants. The post works inspection cost, where it is undertaken, is subsidised by taxpayers and/or ratepayers. Option 1 receives a score of -4 reflecting the degree of under-recovery is relatively small for most fee categories.

The fee structure is difficult for some local councils to administer and for small business builders and plumbers to understand and receives a negative score of -6 relative to the base case.

**Option 2: Fees based on partial cost recovery (Preferred Option)**

|  |  |  |  |
| --- | --- | --- | --- |
| Criteria | Weighting | Score | Weighted Score |
| Efficiency | 50% | +9 | 4.5 |
| Effectiveness | 20% | -4 | -0.8 |
| Equity | 20% | +4 | 0.8 |
| Simplicity | 10% | -6 | -0.6 |
| Total |  |  | 3.9 |

In terms of efficiency, full cost recovery is not achieved, but this option recovers more costs than in the base case or relative to option 1. Option 2 achieves 86% cost recovery and a score of +9.The level of under-recovery has a negative effect on allocative efficiency (albeit small) but is lower than option 1 and receives a higher score accordingly. However, each of the sixteen consent application fees is based on efficient costs but excludes post works inspection costs.

In terms of effectiveness, option 2 is similar to Option 1 for the same reasons stated in Option 1. However, the removal of the drafting uncertainty in respect to the definition of ‘minor works’ will prevent other persons such as builders and plumbers submitting minor works consent applications as currently undertaken in Option 1. Accordingly, this group will pay, in some limited cases, substantial fee increases relative to Option 1. Notwithstanding that the consent application fees represent a small proportion of the costs associated with works, the significant fee increase may deter compliance with the consent application process amongst some persons within this group. Accordingly, Option 2 receives a lower score relative to Option 1.

In regards to equity, option 2 removes the cross-subsidy that exists between fee categories in Option 1. There are increases to six consent fee categories and reductions to ten of the consent application fee categories compared to the current fee structure. However, the post works inspection cost, where it is undertaken, is still subsidised by taxpayers and/or ratepayers under this option. Option 2 receives a higher score of +6 relative to Option 1.

The fee structure is the same as under option 1, which has been difficult for some local councils to administer and for small business builders and plumbers to understand. Option 2 receives the same negative score as Option 1.

**Option 3:** **Fees based on full cost recovery**

|  |  |  |  |
| --- | --- | --- | --- |
| Criteria | Weighting | Score | Weighted Score |
| Efficiency | 50% | 10 | 5.0 |
| Effectiveness | 20% | -6 | -1.2 |
| Equity | 20% | 10 | 2.0 |
| Simplicity | 10% | -6 | - 0.6 |
| Total |  |  | 5.2 |

In terms of efficiency, full cost recovery is achieved and receives a score of +10 and is higher compared to Options 1 and 2.

In terms of effectiveness, Option 3 is similar to Option 2. However, the addition of post-works inspection fees under Option 3 to the significant increases to some consent fee categories in Option 2, may deter some persons within the group of builders and plumbers to comply with the consent application process. Accordingly, Option 3 receives a lower score of -6 compared with Option 2.

In regards to equity, this option would lead to fee increases for eleven consent application fee categories and a fee reduction for five consent application fee categories. The removal of the taxpayer/ratepayer funded post works inspection, where undertaken, together with the removal of cross-subsidies that existed to some extent in Options 1 and 2, enables Option 3 to receive a higher score of +10.

Similar to Options 1 and 2, the fee structure is difficult for some local councils to administer and for small business builders and plumbers to understand. Option 3 receives the same score as Options 1 and 2.

**Option 4: Maximum Fees**

|  |  |  |  |
| --- | --- | --- | --- |
| Criteria | Weighting | Score | Weighted Score |
| Efficiency | 50% | 8 | 4.0 |
| Effectiveness | 20% | -8 | -1.6 |
| Equity | 20% | +4 | 0.8 |
| Simplicity | 10% | -6 | -0.6 |
| Total |  |  | 2.6 |

In terms of efficiency, full cost recovery maybe achieved for each coordinating road authority. For full cost recovery to be achieved, the setting of maximum fees requires a detailed knowledge of the time and associated costs allocated to each of the assessment processes across VicRoads and 79 local councils. To enable full cost recovery for all coordinating road authorities, the maximum fee would be based on the highest cost coordinating road authority. This is likely to be more than the efficient costs in Option 3 given that each coordinating road authority will have different levels of productivity and efficiency in terms of resource utilisation. As a result, this Option is more likely to over-recover compared to Option 3 as most coordinating road authorities would set their fees at the maximum fee level. The times and associated costs in Option 3 were based on the reasonable time that would be taken by an efficient coordinating road authority who complied with the requirements of clause 16 of Schedule 7 of the Act. In view of this, Option 4 receives a lower score of +8 relative to Option 3.

 In terms of effectiveness, Option 4 would have the same issues as Option 3. However, there is potential for even higher consent application fees than Option 3 and Option 4 receives a lower score of -8.

In regards to equity, Option 4 is likely to result in a mixture of fee increases and reductions that are still higher than the consent application fees based on full cost recovery in Option 3. Option 4 receives the same score as Option 2.

The fee structure would be the same as Options 1, 2 and 3 and the same score is applied.

**Option 5: Fees based on Hourly Rates**

|  |  |  |  |
| --- | --- | --- | --- |
| Criteria | Weighting | Score | Weighted Score |
| Efficiency | 50% | 8 | 4.0 |
| Effectiveness | 20% | -8 | -1.6 |
| Equity | 20% | +4 | 0.8 |
| Simplicity | 10% | -2 | -0.2 |
| Total |  |  | 3.0 |

In terms of efficiency, full cost recovery is achieved but is similar to option 4 in that each coordinating road authority will have different levels of productivity and efficiency in terms of resource utilisation. This is likely to lead to over-recovery of costs relative to the efficient costs associated with Option 3. That is some coordinating road authorities would charge more for a consent application due to the longer hours taken even though another coordinating road authority may take less time for the exact same type of consent application. For these reasons, Option 5 receives the same score as Option 4.

In terms of effectiveness, the uncertainty of the total cost for a consent application could deter a greater proportion of builders and plumbers to avoid the consent application process as some coordinating road authorities are likely to charge large fees based on the inefficient time allocation to the assessment process. Transparency and accountability issues would likely arise in relation to number of hours taken for a consent application, and likely to lead to disputes where consent applicants received a large fee. For these reasons, Option 5 receives the same score as Option 4.

In regards to equity, Option 5 is likely to reflect the actual cost involved in assessing consent applications by coordinating road authorities. However, the consent fees are likely to be higher than the consent application fees based on full cost recovery in Option 3 for the reasons discussed above. Option 5 receives the same score as Option 2.

A standard hourly rate for all types of road works would be simpler than the other options for businesses to understand compared to the other options and achieves a higher score accordingly.

#### Summary of options analysis

The Table below provides a summary of the scores for each option. While Options 2, 3, 4 & 5 have similar high scores for the efficiency criteria, the effectiveness criteria primarily determined the final score. Option 3 has the highest score with 5.2 and achieves full cost recovery. However, there is no head of power in the Act to recover post works inspection costs. As a result, Option 3 cannot be recommended until the Act is amended to provide the appropriate head of power. In view of this, Option 2 is the preferred option with the next highest score. The fees in Option 2 are based on an efficient cost base and achieve partial cost recovery.

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  |  | Base Case – No Fees | Option 1 – Current Fees | Option 2 – Fees based on Partial Cost Recovery | Option 3 – Fees based on Full Cost Recovery | Option 4 – Maximum Fees | Option 5 – Fees based on Hourly Rate |
| Criteria | Weighting | Score | Weighted Score | Score | Weighted Score | Score | Weighted Score | Score | Weighted Score | Score | Weighted Score | Score | Weighted Score |
| Efficiency | 50% | 0 | 0 | 4 | 2.0 | 9 | 4.5 | 10 | 5.0 | 8 | 4.0 | 8 | 4.0 |
| Effectiveness | 20% |  |  | -2 | -0.4 | -4 | -0.8 | -6 | -1.2 | -8 | -1.6 | -8 | -1.6 |
| Equity | 20% | 0 | 0 | -4 | -0.8 | 4 | 0.8 | 10 | 2.0 | 4 | 0.8 | 4 | 0.8 |
| Simplicity | 10% | 0 | 0 | -6 | -0.6 | -6 | -0.6 | -6 | -0.6 | -6 | -0.6 | -2 | -0.2 |
| **Total** | **100%** |  |  |  | **0.2** |  | **3.9** |  | **5.2** |  | **2.6** |  | **3.0** |

# 7. Impact on Small Business

This section analyses the impact of the proposed regulations on small business. A small business is defined by the Australian Bureau of Statistics as a business employing less than 20 people. Most building and plumbing businesses are by definition a small business.

Most of the proposed regulations exempt utilities, public transport providers and road authorities from consent and notification upon completion of works. These exemptions also include their agents. Most of these players tend to contract out their infrastructure works and most of these contractors would probably not fall within the definition of a small business.

The consent application fees for works (other than minor works) and minor works (where an exemption does not apply), impose a relatively small cost component to the overall cost of the works and are not deemed to have a significant impact.

Developers that fall within the definition of a small business are likely to be involved in residential subdivision and industrial complex developments. These developments are likely to have significant impacts on road/traffic flow and require mitigation works (e.g traffic signals at a new intersection, right or left turn lanes into a new development). Developers would need to apply for consent (and pay the relevant application fee) as the type of works that they conduct do not come under either the existing or proposed definition of “minor works”. However, these developers and/or their contractors are likely to benefit from a reduction for some consent application fees if the works are located on an arterial road or municipal road or non-arterial State road where the maximum speed limit for vehicles is more than 50 kilometres per hour.

Small businesses such as builders and plumbers are more likely to undertake most of their work in residential streets (municipal road where the maximum speed limit for vehicles is not more than 50 kilometres per hour). If these works are not conducted on a roadway, pathway or shoulder, the proposed fee is $78.75 compared to the current fee of $66.20. However, the proposed consent application fees for all works conducted on municipal roads where the maximum speed is more than 50 kilometres, together with freeways and arterial roads, are significantly greater than the current fees as discussed in Option 2. While small business will incur the cost initially, it is more than likely that developers, builders and plumbers will pass this cost onto their customers.

# 8. Competition Assessment

### Overview

The National Competition Policy Agreement sets out specific requirements with regard to all new legislation adopted by jurisdictions that are party to the agreements. Clause 5 (1) of the Competition Principles Agreement sets out the basic principle that must be applied to both existing legislation, under the legislative review process, and to proposed legislation:

The guiding principle is that legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:

1. The benefits of the restriction to the community as a whole outweigh the costs; and
2. The objectives of the regulation can only be achieved by restricting competition.

### Definition of Market

The primary markets affected by the proposed regulations are construction, utility and provider of public transport works conducted within a road reserve.

### Test for Restriction on Competition

Under the Guidelines for the application of the Competition Test to New Legislative Proposals, legislative schemes are deemed to contain restrictions on competition if they:

* Allow only one company or person to supply a good or service;
* Require producers to sell to a single company or person;
* Limit the number of industry or individual producers; and
* Limit the number of persons engaged in an occupation.

### Assessment

The proposed regulations do not contain any of the above restrictions. Any individual or business can obtain consent to undertake works in, on, under or over a road reserve, provided that they can meet the road safety, traffic management and road infrastructure / reinstatement conditions.

The various exemptions from consent and notifications apply equally to all utilities and public transport providers.

The proposed fees impose a nominal cost relative to the cost of the average infrastructure works being conducted; even for works conducted by a property owner to install, maintain or repair of a driveway on an arterial road where such works are deemed to be traffic impact works and, therefore, require consent.

In view of the above, this assessment concludes that the proposed regulations do not act to restrict competition on the construction, utility and public transport industries and/or any other sector that might conduct works within a road reserve.

# 9.Implementation and Enforcement

### Implementation

Given the different approaches undertaken by local council coordinating road authorities, VicRoads will seek to encourage all local councils to adopt a consistent approach in respect to consent for works within a road reserve; including the adoption of the prescribed fees to ensure consistency and certainty for utilities, developers, builders, plumbers and other persons proposing to conduct works within the road reserve.

VicRoads has over the past ten years conducted training seminars for local councils with support from the Municipal Association of Victoria (MAV) and information sessions for utilities, providers of public transport and road authorities. VicRoads will continue to provide training seminars and also develop best practice administrative guidelines for local councils to enable the collection of baseline data and key performance indicators (KPIs) as described in section 11. The baseline data and KPIs will be used to undertake an evaluation of the regulations. In addition, VicRoads will monitor local council coordinating road authorities to verify that they have adopted the prescribed application fees and notify local councils that are charging incorrect fees to implement the prescribed fee structure, and to the application of the Act’s consent for works process. Where some local council coordinating road authorities continue to not adopt the prescribed consent application fees or any other aspects of the consent for works process, VicRoads will seek the reasons for non-adoption and assist in whatever way it can to facilitate adoption.

The commencement of the proposed fee structure and the other amendments will become effective with the remaking of the regulations on 20 June 2015.

### Enforcement

Section 63 of the Act prescribes maximum penalties for a person conducting any works in, on, under or over a road without the written consent of the coordinating road authority. The penalty in the case of a natural person is 10 penalty units and in the case of a body corporate, 50 penalty units.

Section 64 of the Act prescribes maximum penalties for an infrastructure manager or works manager not complying with clause 13 of Schedule 7, being the requirement to give notice of completion of works. In the case of a natural person 5 penalty units and in the case of a body corporate 25 penalty units.

Section 65 of the Act prescribes penalties for non-compliance with the conditions to which a written consent under clause 16 of Schedule 7 is subject. In the case of a natural person 10 penalty units and in the case of a body corporate 50 penalty units.

Section 71 of the Act enables VicRoads and municipal councils (if they are the relevant road authority) to appoint an officer or employee to be an authorised officer for the purposes of the Act. Amongst other things, authorised officers or a member of the police force under section 90 of the Act, may serve a road management infringement notice on a person who has committed a road management infringement specified in Schedule 8 of the Act or in the regulations.

Schedule 8 of the Act prescribes two types of road management infringement in respect to works conducted within a road reserve:

* conducting works in, on, under or over a road without written consent as required under section 63. Schedule 8 of the Act prescribes 3 penalty units in the case of a natural person or 15 penalty units in the case of a body corporate.
* failure of a works manager, within 7 days of completing any works, including any reinstatement works, to notify the relevant coordinating road authority as to the works that have been completed (section 64 of the Act refers). Schedule 8 of the Act prescribes 2 penalty units in the case of a natural person or 5 penalty units in the case of a body corporate.

A few local council coordinating road authorities have enforced the regulations by actively undertaking random inspections and issuing infringement notices to persons that have not obtained consent and/or have not met the consent conditions such as complying with the road reinstatement standards.

VicRoads will promote the efforts of these local councils to other coordinating road authorities as a best practice approach to enforcement and to meeting the objectives of the Act and regulations.

# 10. Consultation

The following local councils were consulted during the preparation of the regulatory impact statement:

Bendigo

Boroondara

Central Goldfields

Geelong

Greater Dandenong

Hume City Council

Manningham

Moreland

Whitehorse

Wyndham

Yarra City

The primary purpose of consultation with local councils was to ascertain the processes and associated costs of the consent application process. It was made clear, particularly from local councils complying with the decision-making requirements of clause 16 of Schedule 7 of the Act, that their costs were greater than the current prescribed consent application fees. Specifically, in terms of recovering costs associated with pre and post inspections.

The following utility companies and providers of public transport were consulted:

APA

CitiPower / Powercor

United Energy & Multinet Gas

South-East Water

Yarra Valley Water

Yarra Trams

The primary purpose of the consultation with the utilities and providers of public transport was to collect data on their consent applications given the absence of reliable data across coordinating road authorities. Utilities and providers of public transport were supportive of the current exemption threshold but expressed concerns about the inconsistent approach to the consideration of consent applications and the different scale of consent application fees across coordinating road authorities.

# 11. Conclusions and Evaluation Strategy

The membership of the Infrastructure Reference Panel represents a wide cross-section of the key parties involved in works and infrastructure within a road reserve.

The review of the current regulations has found an inconsistent approach by coordinating road authorities in relation to the most basic administrative aspects of the consent process.

VicRoads will continue to work with the 79 local councils to develop a consistent approach to consent, notification, inspection regimes, reinstatement standards, and other conditions to ensure certainty and consistency for utilities, public transport providers, developers, builders and plumbers regardless of where they conduct works within a road reserve in Victoria.

Similarly, some utilities have taken different approaches to compliance, while others have established comprehensive compliance systems and developed strong working relationships with coordinating road authorities and the community. VicRoads will continue to promote the adoption of best practice compliance systems amongst utilities and providers of public transport.

The following evaluation strategy has been developed to ensure continuous improvement and accountability.

### Objectives of the regulatory proposal

The primary objective of the proposed regulations is to reduce the regulatory burden imposed by the Act for the conduct of certain classes of infrastructure and works undertaken by specific parties that have in place processes to minimise any adverse impacts on road safety, traffic operation and the structural integrity of road and non-road infrastructure located within the road reserve.

The secondary objective is to fund the efficient and equitable regulation of works within road reserves by prescribing consent application fees that fully recover the costs of administration.

### Baseline data

Currently only basic consent data is kept by VicRoads and some local council coordinating road authorities. To enable evaluation of the appropriateness of the exemption threshold, the following baseline data will need to be collected:

* Consent applications that require more information or amendments by the coordinating road authority prior to issuing consent, and disaggregated by the reason for any amendment (road safety, efficient traffic operation, location of the works).
* The number of consents by type of road and the location of the works (on or not on the pathway, shoulder or roadway).
* The number of consents issued to each key group (utilities, providers of public transport & road authorities; developers and builders/plumbers and other persons).
* The number and type of consent applications that required pre-consent onsite inspections.
* The number and type of consent applications that required post-works onsite inspections.
* The number of road safety incidents and traffic delays, road reinstatement issues caused by organisations operating without consent or not complying with consent conditions.
* The incidence and extent of congestion caused by works to enable an assessment of incentive-based fees.
* The nature of complaints and the outcome of the complaint investigation.
* The number of consent applications for which the relevant fee was waived or varied.

The collection of this data will help to inform future policy development. For example, the number of road safety incidents,traffic delays and road reinstatement issues caused by organisations not complying with consent conditions would help to demonstrate the extent of any link between non-compliance and these harms, and therefore, whether the exemptions could be broadened.

### Key Performance Indicators

Ideally, key performance indicators should reflect improved outcomes to road safety, efficient traffic management and to the structural integrity of the road infrastructure. Given the current absence of data in respect to road safety and traffic congestion/delay incidents, appropriate baseline data will need to be developed first before establishing a KPI with a specific target reduction or stated number of road safety and traffic congestion/delay incidents.

Similar baseline data will need to be developed to enable a KPI for a reduction in the number of inadequate road reinstatements.

However, given the significant variation in the administration of the current regulations by coordinating road authorities, an additional KPI will be included to measure the proportion of coordinating road authorities that are fully compliant with the administration of the regulations.

### Plan

The quality of the evaluation will be dependent on coordinating road authorities developing the appropriate information systems for the collection of the identified baseline data. VicRoads will advise coordinating road authorities of the evaluation process and the need for them to collect the baseline data stated above and adopt appropriate information systems shortly after the proposed regulations have been made.

### Consultation plan

Key stakeholders will be consulted.

### Timing

The evaluation is planned to occur five years after the commencement of the proposed regulations, subject to appropriate implementation of baseline data amongst a sample of coordinating road authorities.

### Responsible Agency

VicRoads

# Appendix 1: Consent and Minor Works Notifications

### Summary of Data Analysis

Table A1 shows the estimated number of works conducted within a road reserve, including those works that were conducted without obtaining prior consent (estimated at 20% of the total number of works conducted with a consent).

**Table A1: Estimated Number of Works Conducted within a Road Reserve 2013/14**

|  |  |
| --- | --- |
| Freeway & Arterial roads – consent required | 2,027 |
| Municipal roads – consent required | 29,304 |
| Exempt Minor Works – conducted on all roads \* | 109,196 |
| Total works  | 140,527 |

**Note**: **\*** Works conducted by utilities, providers of public transport and responsible road authorities but excludes ‘works conducted in an emergency’ (refer section 63(2)(e) of the Act).

The Road Management (Works and Infrastructure) Regulations 2005 provide for the following general types of works:

Works requiring consent:

* works (other than ‘minor works’)
* ‘minor works’ that are ‘traffic impact works’ – conducted by a utility, provider of public transport or responsible road authority (or its agent)

Works exempt from consent:

* ‘minor works’ (Exempt minor works) – conducted by a utility, provider of public transport or responsible road authority (or its agent)

Table A2 shows the number of works conducted by work type and road classification (excludes works conducted without obtaining prior consent). VicRoads issued 591 consents for works (other than minor works) on freeways and arterial roads. This is about 29 percent of total consents issued by VicRoads. Local councils issued an estimated 5,861 consents for works (other than minor works) on municipal roads or about 20% of total consents issued by local councils. As can be seen below, minor works requiring consent and exempt minor works account for about 95 percent of total works conducted within a road reserve.

**Table A2: Estimated Number of Works by Road Classification 2013/14**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | Works (other than minor works) | Minor Works – Consent required | Exempt Minor Works | Total Works |
| Freeways & Arterial roads | 591 | 1,436 | Not available | 2,027 |
| Municipal roads and non-arterial State roads | 5,861 | 23,443 | Not available | 29,304 |
| All roads | - | - | 109,196 | 109,196 |
| Total | 6,452 | 24,879 | 109,196 | 140,527 |

### Data Collection Approach and Limitations

VicRoads consent data was analysed and a sample of local council consents and minor works data was collected for the period 2013/14 to estimate the total number of consents issued and the number of minor works conducted for which an exemption from consent applied. In addition, works data was also obtained from a sample of electricity, gas and water utilities for the 2013/14 period (refer Tables A3 and A4). This was used to estimate the total number of consent for works applications and minor works exemptions by the utilities sector.

The sampling of utility data on consents (Table A3 refers) revealed 610 consents for less than half of the utility sector. On the other hand, VicRoads data showed a total of 610 consents for the entire utility sector. This significant differential in the number of consents between the utility sector sample and VicRoads data may be the result that, in some instances, consent was deemed to have been given (in accordance with clause 17(5) of Schedule 7 of the Act) because VicRoads did not respond within the prescribed period (e.g 20 business days). As a result, these consent applications would not be processed by VicRoads. Some VicRoads regional offices have heavy workloads that prevent them from processing every consent application with the allocated resources.

### Sample of Utility Consent & Exempt Minor Works Data

A sample of utilities listed in the Table A3 below provided data on the number of consent applications and exempt minor works for 2013/14. As can be seen, a total of 3,225 consents were submitted (610 to VicRoads and 2,255 to local councils). A total of 17,346 exempt minor works were conducted for 2013/14.

The sampled data was used to estimate consents applications and exempt minor works for other electricity, gas and water utilities.

**Table A3: Utility Consents and Exempt Minor Works 2013/14**

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Utility** | **VicRoads** | **Local Councils** | **Total** | **Exempt Minor Works** |
| APA  | 250 | 350 | 600 | 11,500 |
| Citipower | 180 | 1,151 | 1,331 | n/a |
| Powercor | 48 | 98 | 146 | n/a |
| Yarra Trams | n/a | n/a | 30 | n/a |
| S/E Water | n/a | n/a | 330 | 3,540 |
| Yarra Valley Water | 30 | 275 | 305 | n/a |
| City West Water | 31 | 175 | 206 | n/a |
| Coliban Water | 10 | 30 | 40 | n/a |
| Barwon Water | 8 | 15 | 23 | 1,361 |
| Gippsland Water | 6 | 15 | 21 | 854 |
| GM Water | 6 | 21 | 27 | n/a |
| South Gippsland Water | 2 | 10 | 12 | 91 |
| N/E Water | 15 | 21 | 36 | n/a |
| Goulburn Valley Water | 10 | 56 | 66 | n/a |
| Lower Murray Water | 14 | 38 | 52 | n/a |
|  | 610 | 2,255 | 3,225 | 17,346 |

n/a: data not available

The total number of consents obtained by APA (gas), CitiPower and Powercor (electricity) is 2,077 or an average of 692 each. Using an average of 692 consents for the other electricity (SP Ausnet, Jemena & United Energy) and gas (Origin Energy & Multigas) provides an estimate of 3,460 consents for these distributors. Applying the 11,500 APA exempt minor works to these 5 distributors as well as to CitiPower and Powercor provides an estimate of 80,500.

It is assumed that City West Water and Yarra Valley Water would have similar exempt minor works to South East Water’s 3,540. This provides an estimate of 7,080 exempt minor works for these two metropolitan water corporations.

It is assumed Coliban Water, Goulburn Murray Water, North East Water, Goulburn Valley Water and Lower Valley Water would have similar exempt minor works to Gippsland Water as they have a similar number of consents. This provides an estimate of 4,270 exempt minor works for these regional water corporations.

On the basis of the foregoing estimates, the total number of consent applications is estimated at about 6,685 with 109,196 exempt minor works.

**Table A4: Estimations of Utility Consents and Exempt Minor Works**

|  |  |  |
| --- | --- | --- |
|  | Number of Consent Applications | Number of Exempt Minor Works |
| Sampled utility data  | 3,225 | 17,346 |
| Estimates of other electricity & gas distributors | 3,460 | 80,500 |
| Estimates of City West Water & Yarra Valley Water | - | 7,080 |
| Estimates of regional water corporations |  -  | 4,270 |
| Total estimate | 6,685 | 109,196 |

Utilities (electricity, gas, water) are the main sector seeking consent to conduct works within a road reserve. There are an estimated 109,196 exempt minor works conducted by utilities within the road reserve.

### VicRoads Consent Data

As can be seen from Table A5 below, utilities were issued with 610 or 36% of the 1,689 consents for works. Developers, builders, plumbers and other persons account for the other 1,079 issued consents.

**Table A5: VicRoads Number of Issued Consents for Works 2013/14**

|  |  |  |
| --- | --- | --- |
| **VicRoads Region** | **Total Number of Consent for Works Issued** | **Number of Consent for Works Issued to Utilities** |
| Metropolitan South East | 274 | 85 |
| Metropolitan North West | 900 | 279 |
| Eastern Victoria | 122 | 83 |
| North Eastern Victoria | 110 | 30 |
| Northern Victoria | 169 | 73 |
| Western Victoria | 73 | 32 |
| South Western Victoria | 41 | 26 |
| Total  | 1,689 | 610 |

Source: VicRoads Non-Road Infrastructure Works (NRIW) database

Table A6 shows the percentage of consents issued by the scale of works and location within the road reserve. As can be seen, most of the works (other than minor works) and minor works are conducted on the roadway, shoulder or pathway. A third of consent application fees are waived. Most of these consents are issued to developers who pay a fee for service under section 123 of the Act that incorporates the costs associated with a consent application.

**Table A6: Number of Consents Issued by VicRoads by scale of works and location within the road reserve for 2013/14**

|  |  |  |  |
| --- | --- | --- | --- |
| **Type of Consent**  | **Works (other than minor works)** | **Minor Works – Consent required** | **Works - Fees Waived** |
|  | Conducted on, or on any part of, the roadway, shoulder or pathway | Not conducted on, or on any part of, the roadway, shoulder or pathway | Conducted on, or on any part of, the roadway, shoulder or pathway | Not conducted on, or on any part of, the roadway, shoulder or pathway | Location on road reserve unknown |
| FreewayArterial Road | 507 | 84 | 507 | 101 | 490 |
| Percentage | 30% | 5% | 30% | 6% | 29% |

### Metropolitan and Rural/Regional Municipalities

A sample of metropolitan and rural/regional local councils listed in the Tables A7 and A8 provided estimated data on consents issued for 2013/14. As can be seen, from Table A7, the number of consents issued ranged from 208 to 900, with an average of 444 consents.

#### Metropolitan Municipalities

**Table A7: Sample of Consents issued by Metropolitan Municipalities for 2013/14**

|  |  |
| --- | --- |
| **Metropolitan Municipality** | **Number of Consents** |
| City of Greater Dandenong | 208 |
| Hume | 461 |
| Manningham | 250 |
| Moreland | 500 |
| Port Phillip | 286 |
| Whitehorse | 500 |
| Wyndham | 900 |
| Total | 3,105 |
| Average | 444 |

#### Rural and Regional Municipalities

The wide variance in the number of consents for rural and regional municipalities is significant as can be seen in Table A8 below. In view of this, it has been estimated that rural and regional municipalitieswould have about half of the consents of metropolitan municipalities; an average of 222 consents.

**Table A8: Sample of Consents issued by Rural and Regional Municipalities**

|  |  |
| --- | --- |
| **Rural/Regional Municipality** | **Number of Consents** |
| Bendigo | 600 |
| Central Goldfields | 90 |
| Geelong | 126 |

Based on the average number of consents for metropolitan and rural/regional municipalities, the total number of consents issued by 79 local council coordinating road authorities has been calculated:

31 metropolitan municipalities \* 444 = 13,764 consents

48 rural and regional shires \*222 = 10,656 consents

Total consents: 24,420 consents

20% of works without a consent = 4884 works

Total works (with & without consent) 29,304 works

This analysis provides an estimation of the total size of the market for works within a road reserve across local councils.

**Table A9: Summary of Consents for Works across 79 municipalities**

|  |  |  |
| --- | --- | --- |
|  | **Average number of consents** | **Total Works** |
| 31 metropolitan municipalities | 444 | 13,764 |
| 48 rural & regional municipalities | 222 | 10,656 |
| Sub-total |  | 24,420 |
| 20% non-compliance |  | 4,884 |
| Total |  | 29,304 |

# Appendix 2: Cost Analysis for the 16 Consent Application Fees

The following cost analysis incorporates the cost methodology and three cost components discussed in Section 6, where applicable, to the 16 consent application fee categories.

**Table A10: Freeway –Works (other than minor works) – conducted on, or on any part of the roadway, shoulder or pathway**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Tasks | VRO 4hourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Time Allocation (hours) | Cost  |
| Review technical design standards, proposed location of the works / infrastructure within the road reserve (e.g whether the location of the proposed works / infrastructure is likely to create a roadside hazard), likely impacts on any road infrastructure for which another responsible road authority is responsible, and possible impacts on on-road public transport.Review future road strategies and road development proposals (e.g road widening, duplication or reconstruction) that may be impacted by the proposed works.Review works methodology and its impact on traffic operation/congestion or road user safety impacts, and the proposed timing of the work. Review road reinstatement methodology to ensure compliance with VicRoads reinstatement standards and specifications.Review potential environmental and heritage impacts associated with the works.Assess freeway interchanges and traffic signal operational impacts based on an analysis of SCATS (the Sydney Coordinated Adaptive Traffic System) to determine impact on operation of freeway ramps. | $49.83 | $15.42 | $20.80 | $86.05 | 4 | $344.20 |
| Pre consent on-site inspection  | $49.83  | $15.42 | $20.80 | $86.05 | 2 | $172.10 |
| Vehicle Cost for inspection @0.75 cents per km \*20 km average  | - | $15.00 |
| Post works inspection (reinstatement) | $49.83  | $15.42 | $20.80 | $86.05 | 1 | $86.05 |
| Vehicle Cost for inspection @0.75 cents per km \*20 km average  | - | $15.00 |
| Administrative | $44.61 | $13.81 | $20.80 | $79.22  | 0.5 | $39.61 |
| Total | 7.5 | $671.96 |

**Table A11: Freeway –Works (other than minor works) – not conducted on, or on any part of the roadway, shoulder or pathway**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Tasks | VRO 4hourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Time Allocation (hours) | Cost  |
| Review technical design standards, proposed location of the works / infrastructure within the road reserve (e.g whether the location of the proposed works / infrastructure is likely to create a roadside hazard), likely impacts on any road infrastructure for which another responsible road authority is responsible, and possible impacts on on-road public transport.Review future road strategies and road development proposals (e.g road widening, duplication or reconstruction) that may be impacted by the proposed works.Review works methodology and its impact on traffic operation/congestion or road user safety impacts, and the proposed timing of the work. Review road reinstatement methodology to ensure compliance with VicRoads reinstatement standards and specifications.Review potential environmental and heritage impacts associated with the works. | $49.83 | $15.42 | $20.80 | $86.05 | 3 | $258.15 |
| Pre consent on-site inspection  | $49.83  | $15.42 | $20.80 | $86.05 | 1 | $86.05 |
| Vehicle Cost for inspection @0.75 cents per km \*20 km average  | - | $15.00 |
| Administrative | $44.61 | $13.81 | $20.80 | $79.22  | 0.5 | $39.61. |
| Total | 4.5 | $398.81 |

**Table A12: Freeway -Minor works – conducted on, or on any part of the roadway, shoulder or pathway**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Tasks | VRO 4hourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Time Allocation (hours) | Cost  |
| Review technical design standards, proposed location of the works / infrastructure within the road reserve (e.g whether the location of the proposed works / infrastructure is likely to create a roadside hazard), likely impacts on any road infrastructure for which another responsible road authority is responsible, and possible impacts on on-road public transport.Review works methodology and its impact on traffic operation/congestion or road user safety impacts, and the proposed timing of the work. Review road reinstatement methodology to ensure compliance with VicRoads reinstatement standards and specifications.Review potential environmental and heritage impacts associated with the works. | $49.83 | $15.42 | $20.80 | $86.05 | 2 | $172.10 |
| Post works inspection (reinstatement)  | $49.83  | $15.42 | $20.80 | $86.05 | 1 | $86.05 |
| Vehicle Cost for inspection @0.75 cents per km \*20 km average  | - | $15.00 |
| Administrative | $44.61 | $13.81 | $20.80 | $79.22  | 0.5 | $39.61 |
| Total | 3.5 | $312.76 |

**Table A13: Freeway -Minor works – not conducted on, or on any part of the roadway, shoulder or pathway**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Tasks | VRO 4hourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Time Allocation (hours) | Cost  |
| Review works methodology and its impact on traffic operation/congestion or road user safety impacts, and the proposed timing of the work. Review road reinstatement methodology to ensure compliance with VicRoads reinstatement standards and specifications.Review potential environmental and heritage impacts associated with the works. | $49.83 | $15.42 | $20.80 | $86.05 | 1 | $86.05 |
| Administrative | $44.61 | $13.81 | $20.80 | $79.22  | 0.5 | $39.61 |
| Total | 1.5 | $125.66 |

**Table A14: Arterial Road – Works (other than minor works) – conducted on, or on any part of the roadway, shoulder or pathway**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Tasks | VRO 4hourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Time Allocation (hours) | Cost  |
| Review technical design standards, proposed location of the works / infrastructure within the road reserve (e.g whether the location of the proposed works / infrastructure is likely to create a roadside hazard), likely impacts on any road infrastructure for which another responsible road authority is responsible, and possible impacts on on-road public transport.Review future road strategies and road development proposals (e.g road widening, duplication or reconstruction) that may be impacted by the proposed works.Review works methodology and its impact on traffic operation/congestion or road user safety impacts, and the proposed timing of the work. Review road reinstatement methodology to ensure compliance with VicRoads reinstatement standards and specifications.Review potential environmental and heritage impacts associated with the works.Assess road intersection and traffic signal operational impacts based on an analysis of SCATS (the Sydney Coordinated Adaptive Traffic System) to determine traffic volumes, traffic flow impacts and necessary mitigation measures (e.g re-phasing of traffic signals).  | $49.83 | $15.42 | $20.80 | $86.05 | 4 | $344.20 |
| Pre consent on-site inspection  | $49.83  | $15.42 | $20.80 | $86.05 | 2 | $172.10 |
| Vehicle Cost for inspection @0.75 cents per km \*20 km average  | - | $15.00 |
| Post works inspection (reinstatement) | $49.83  | $15.42 | $20.80 | $86.05 | 1 | $86.05 |
| Vehicle Cost for inspection @0.75 cents per km \*20 km average  | - | $15.00 |
| Administrative | $44.61 | $13.81 | $20.80 | $79.22  | 0.5 | $39.61 |
| Total | 7.5 | $671.96 |

**Table A15: Arterial Road –Works (other than minor works) – not conducted on, or on any part of the roadway, shoulder or pathway**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Tasks | VRO 4hourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Time Allocation (hours) | Cost  |
| Review technical design standards, proposed location of the works / infrastructure within the road reserve (e.g whether the location of the proposed works / infrastructure is likely to create a roadside hazard), likely impacts on any road infrastructure for which another responsible road authority is responsible, and possible impacts on on-road public transport.Review future road strategies and road development proposals (e.g road widening, duplication or reconstruction) that may be impacted by the proposed works.Review works methodology and its impact on traffic operation/congestion or road user safety impacts, and the proposed timing of the work. Review road reinstatement methodology to ensure compliance with VicRoads reinstatement standards and specifications.Review potential environmental and heritage impacts associated with the works. | $49.83 | $15.42 | $20.80 | $86.05 | 3 | $258.15 |
| Pre consent on-site inspection  | $49.83  | $15.42 | $20.80 | $86.05 | 1 | $86.05 |
| Vehicle Cost for inspection @0.75 cents per km \*20 km average  | - | $15.00 |
| Administrative | $44.61 | $13.81 | $20.80 | $79.22  | 0.5 | $39.61 |
| Total | 4.5 | $398.81 |

**Table A16: Arterial Road -Minor works – conducted on, or on any part of the roadway, shoulder or pathway**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Tasks | VRO 4hourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Time Allocation (hours) | Cost  |
| Review works methodology and its impact on traffic operation/congestion or road user safety impacts, and the proposed timing of the work. Review road reinstatement methodology to ensure compliance with VicRoads reinstatement standards and specifications.Review potential environmental and heritage impacts associated with the works.Assess road intersection and traffic signal operational impacts based on an analysis of SCATS (the Sydney Coordinated Adaptive Traffic System) to determine traffic volumes, traffic flow impacts and necessary mitigation measures (e.g re-phasing of traffic signals).  | $49.83 | $15.42 | $20.80 | $86.05 | 2 | $172.10 |
| Post works inspection (reinstatement) | $49.83  | $15.42 | $20.80 | $86.05 | 1 | $86.05 |
| Vehicle Cost for inspection @0.75 cents per km \*20 km average  | - | $15.00 |
| Administrative | $44.61 | $13.81 | $20.80 | $79.22  | 0.5 | $39.61 |
| Total | 3.5 | $312.76 |

**Table A17: Arterial Road -Minor works – not conducted on, or on any part of the roadway, shoulder or pathway**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Tasks | VRO 4hourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Time Allocation (hours) | Cost  |
| Review works methodology and its impact on traffic operation/congestion or road user safety impacts, and the proposed timing of the work. Review potential environmental and heritage impacts associated with the works.Review future road strategies and road development proposals (e.g road widening, duplication or reconstruction) that may be impacted by the proposed works | $49.83 | $15.42 | $20.80 | $86.05 | 1 | $86.05 |
| Administrative | $44.61 | $13.81 | $20.80 | $79.22  | 0.5 | $39.61 |
| Total | 1.5 | $125.66 |

**Table A18: Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is more than 50 kilometres per hour –Works, (other than minor works) – conducted on, or on any part of the roadway, shoulder or pathway**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Tasks | Band 7B hourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Time Allocation (hours) | Cost  |
| Review technical design standards, proposed location of the works / infrastructure within the road reserve (e.g whether the location of the proposed works / infrastructure is likely to create a roadside hazard), likely impacts on any road infrastructure for which another responsible road authority is responsible, and possible impacts on on-road public transport.Review future road strategies and road development proposals (e.g road widening, duplication or reconstruction) that may be impacted by the proposed works.Review works methodology and its impact on traffic operation/congestion or road user safety impacts, and the proposed timing of the work. Review road reinstatement methodology to ensure compliance with local council reinstatement standards and specifications.Review potential environmental and heritage impacts associated with the works.Review road intersection and traffic signal operational impacts in consultation with VicRoads.  | $50.24 | $15.55 | $20.80 | $86.59 | 4 | $346.36 |
| Pre consent on-site inspection  | $50.24  | $15.55 | $20.80 | $86.59 | 2 | $173.18 |
| Vehicle Cost for inspection @0.75 cents per km \*20 km average  | - | $15.00 |
| Post works inspection (reinstatement) | $50.24.  | $15.55 | $20.80 | $86.59 | 1 | $86.59 |
| Vehicle Cost for inspection @0.75 cents per km \*20 km average  | - | $15.00 |
| Administrative | $38.28 | $11.85 | $20.80 | $70.93  | 0.5 | $35.46 |
| Total | 7.5 | $671.59 |

**Table A19: Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is more than 50 kilometres per hour –Works (other than minor works) – not conducted on, or on any part of the roadway, shoulder or pathway**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Tasks | Band 7B hourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Time Allocation (hours) | Cost  |
| Review technical design standards, proposed location of the works / infrastructure within the road reserve (e.g whether the location of the proposed works / infrastructure is likely to create a roadside hazard), likely impacts on any road infrastructure for which another responsible road authority is responsible, and possible impacts on on-road public transport.Review future road strategies and road development proposals (e.g road widening, duplication or reconstruction) that may be impacted by the proposed works.Review works methodology and its impact on traffic operation/congestion or road user safety impacts, and the proposed timing of the work. Review potential environmental and heritage impacts associated with the works.Review road intersection and traffic signal operational impacts in consultation with VicRoads.  | $50.24 | $15.55 | $20.80 | $86.59 | 2 | $173.18 |
| Pre consent on-site inspection  | $50.24  | $15.55 | $20.80 | $86.59 | 1 | $86.59 |
| Vehicle Cost for inspection @0.75 cents per km \*20 km average  | - | $15.00 |
| Administrative | $38.28 | $11.85 | $20.80 | $70.93  | 0.5 | $35.46 |
| Total | 3.5 | $310.23 |

**Table A20: Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is more than 50 kilometres per hour - Minor works – conducted on, or on any part of the roadway, shoulder or pathway**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Tasks | Band 7B hourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Time Allocation (hours) | Cost  |
| Review works methodology and its impact on traffic operation/congestion or road user safety impacts, and the proposed timing of the work. Review road reinstatement methodology to ensure compliance with VicRoads reinstatement standards and specifications. Review potential environmental and heritage impacts associated with the works.Review road intersection and traffic signal operational impacts in consultation with VicRoads.  | $50.24  | $15.55 | $20.80 | $86.59 | 1 | $86.59 |
| Post works inspection (reinstatement) | $50.24  | $15.55 | $20.80 | $86.59 | 1 | $86.59 |
| Vehicle Cost for inspection @0.75 cents per km \*20 km average  | - | $15.00 |
| Administrative | $38.28 | $11.85 | $20.80 | $70.93  | 0.5 | $35.46 |
| Total | 2.5 | $223.64 |

**Table A21: Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is more than 50 kilometres per hour - Minor works – not conducted on, or on any part of the roadway, shoulder or pathway**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Tasks | Band 7B hourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Time Allocation (hours) | Cost  |
| Review works methodology and its impact on traffic operation/congestion or road user safety impacts, and the proposed timing of the work. Review potential environmental and heritage impacts associated with the works. | $50.24 | $15.55 | $20.80 | $86.59 | 0.5 | $43.29 |
| Administrative | $38.28 | $11.85 | $20.80 | $70.93  | 0.5 | $35.46 |
| Total | 1.0 | $78.75 |

**Table A22: Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is not more than 50 kilometres per hour –Works (other than minor works) – conducted on, or on any part of the roadway, shoulder or pathway**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Tasks | Band 7B hourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Time Allocation (hours) | Cost  |
| Review technical design standards, proposed location of the works / infrastructure within the road reserve (e.g whether the location of the proposed works / infrastructure is likely to create a roadside hazard), likely impacts on any road infrastructure for which another responsible road authority is responsible, and possible impacts on on-road public transport.Review works methodology and its impact on traffic operation/congestion or road user safety impacts, and the proposed timing of the work. Review road reinstatement methodology to ensure compliance with local council reinstatement standards and specifications.Review potential environmental and heritage impacts associated with the works.Review road intersection and traffic signal operational impacts in consultation with VicRoads.  | $50.24 | $15.55 | $20.80 | $86.59 | 2 | $173.18 |
| Pre consent on-site inspection  | $50.24  | $15.55 | $20.80 | $86.59 | 1 | $86.59 |
| Vehicle Cost for inspection @0.75 cents per km \*20 km average  | - | $15.00 |
| Post works inspection (reinstatement) | $50.24  | $15.55 | $20.80 | $86.59 | 1 | $86.59 |
| Vehicle Cost for inspection @0.75 cents per km \*20 km average  | - | $15.00 |
| Administrative | $38.28 | $11.85 | $20.80 | $70.93  | 0.5 | $35.46 |
| Total | 4.5 | $411.82 |

**Table A23: Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is not more than 50 kilometres per hour – Works (other than minor works) – not conducted on, or on any part of the roadway, shoulder or pathway**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Tasks | Band 7B hourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Time Allocation (hours) | Cost  |
| Review technical design standards, proposed location of the works / infrastructure within the road reserve (e.g whether the location of the proposed works / infrastructure is likely to create a roadside hazard), likely impacts on any road infrastructure for which another responsible road authority is responsible, and possible impacts on on-road public transport.Review works methodology and its impact on traffic operation/congestion or road user safety impacts, and the proposed timing of the work. Review potential environmental and heritage impacts associated with the works.  | $50.24 | $15.55 | $20.80 | $86.59 | 0.5 | $43.29 |
| Administrative | $38.28 | $11.85 | $20.80 | $70.93  | 0.5 | $35.46 |
| Total | 1.0 | $78.75 |

**Table A24: Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is not more than 50 kilometres per hour - Minor works – conducted on, or on any part of the roadway, shoulder or pathway**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Tasks | Band 7B hourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Time Allocation (hours) | Cost  |
| Review works methodology and its impact on traffic operation/congestion or road user safety impacts, and the proposed timing of the work. Review road reinstatement methodology to ensure compliance with local council reinstatement standards and specifications.Review potential environmental and heritage impacts associated with the works. | $50.24 | $15.55 | $20.80 | $86.59 | 1 | $86.59 |
| Post works inspection (reinstatement) | 50.24  | $15.55 | $20.80 | $86.59 | 1 | $86.59 |
| Vehicle Cost for inspection @0.75 cents per km \*20 km average  | - | $15.00 |
| Administrative | $38.28 | $11.85 | $20.80 | $70.93  | 0.5 | $35.46 |
| Total | 2.5 | $223.64 |

**Table A25: Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is not more than 50 kilometres per hour - Minor works – not conducted on, or on any part of the roadway, shoulder or pathway**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| Tasks | Band 7B hourly rate | Salary oncostshourly rate | Indirect Costs hourly rate | Total hourly rate | Time Allocation (hours) | Cost  |
| Review works methodology and its impact on traffic operation/congestion or road user safety impacts, and the proposed timing of the work. Review potential environmental and heritage impacts associated with the works. | $50.24 | $15.55 | $20.80 | $86.59 | 0.5 | $43.29 |
| Administrative | $38.28 | $11.85 | $20.80 | $70.93  | 0.5 | $35.46 |
| Total | 1.0 | $78.75 |

# Appendix 3: Glossary

***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;

examples

A footpath or bicycle path constructed on a road reserve by a responsible road authority for use by the general public would be a pathway.

A foot trodden track over roadside land or a path that connects from a roadway or footpath to privately owned land would not be a pathway.

**road** includes—

(a)  any public highway;

(b)  any ancillary area;

(c)  any land declared to be a road under section 11 or forming part of a public highway or ancillary area;

***road infrastructure*** means -
(a) the infrastructure which forms part of a

roadway, pathway or shoulder, including—

(i)  structures forming part of the roadway, pathway or shoulder;

(ii)  materials from which a roadway, pathway or shoulder is made;

(b) the road-related infrastructure— but does not include—

(c) if the irrigation channel, sewer or drain is ***works*** within the meaning of the ***Water Act 1989***, any bridge or culvert over an irrigation channel, sewer or drain, other than a bridge or culvert constructed by a road authority; or

(d) a bridge or culvert over a sewer or drain constructed under section 132 of the ***Melbourne and Metropolitan Board of Works Act 1958;***

examples

Materials such as asphalt, bitumen, gravel, lane markers and lines would be materials from which a roadway, pathway or shoulder is made.

***road-related infrastructure*** means infrastructure which is installed or constructed by the relevant road authority for road-related purposes to—

(a)  facilitate the operation or use of the roadway or pathway; or

(b)  support or protect the roadway or pathway;

examples

A traffic control sign, traffic light, street light, road drain or embankment would be road-related infrastructure. A noise wall, gate, post or board installed on the road reserve by the relevant road authority for road-related purposes would be road-related infrastructure.

***road reserve*** means all of the area of land that is within the boundaries of a road;

***roadside*** means any land that is within the boundaries of a road (other than the shoulders of the road) which is not a roadway or a pathway and includes the land on which any vehicle crossing or pathway which connects from a roadway or pathway on a road to other land has been constructed;

example

Any nature strip, forest, bushland, grassland or landscaped area within the road reserve would be roadside.

***roadway*** means—

(a)  in the case of a public road, the area of the public road that is open to or used by members of the public and is developed by a road authority for the driving or riding of motor vehicles;

(b)  in the case of any other road, the area of the road within the meaning of ***road*** in section 3(1) of the ***Road Safety Act 1986—***

but does not include a driveway providing access to the public road or other road from adjoining land;

***shoulder*** means the cleared area, whether or not constructed or sealed, next to a roadway that provides clearance between the roadway and the roadside but does not include any area that is not in the road reserve;

***utility*** means –

(a) an entity (whether publicly or privately owned) which provides, or intends to provide, water, sewerage, drainage, gas, electricity, telephone, telecommunication or other like services under the authority of an Act of Victoria or the Commonwealth;

(b) any person who under the ***Pipelines Act 2005*** is the holder of a licence to construct and operate a pipeline;

# APPENDIX 4: Proposed Regulations

**Road Management (Works and Infrastructure) Regulations**

**Exposure Draft**

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**Victoria**

**Road Management (Works and Infrastructure) Regulations**

**Exposure Draft**

Part 1—Preliminary

 1 Objectives

The objectives of these Regulations are—

 (a) to prescribe exemptions from the requirement to obtain consent under section 63(1) of the **Road Management Act 2004** before conducting certain works; and

 (b) to prescribe exemptions from the requirement to give notice as to the conduct or completion of certain works; and

 (c) to prescribe restrictions on the powers of a coordinating road authority to impose conditions on consents given under clause 16 of Schedule 7 to the **Road Management Act 2004**; and

 (d) to vary periods referred to in Schedule 7 to the **Road Management Act 2004** within which certain notices must be given or consent is to be taken to have been given; and

 (e) to prescribe particulars for the purpose of clause 16 of Schedule 7 to the **Road Management Act 2004**; and

 (f) to prescribe fees for applications under Schedule 7 to the **Road Management Act 2004** for written consent to the conduct of proposed works on a road.

 2 Authorising provision

These Regulations are made under section 132 of the **Road Management Act 2004**.

 3 Commencement

These Regulations come into operation on 20 June 2015.

 4 Revocation

The Road Management (Works and Infrastructure) Regulations 2005[[23]](#endnote-1) are **revoked**.

 5 Definitions

In these Regulations—

***agent***, in relation to a utility, a provider of public transport, a responsible road authority, the Metropolitan Fire and Emergency Services Board or the Country Fire Authority, means a person authorised in writing by one of these bodies to conduct works on its behalf;

***bus lane*** has the same meaning as in rule 154(2) of the Road Safety Road Rules 2009;

***children's crossing*** has the same meaning as in rule 80(6) of the Road Safety Road Rules 2009;

***clearway*** has the same meaning as in rule 176 of the Road Safety Road Rules 2009;

***driveway works*** means the installation, maintenance or repair of a physical means of entry or exit for vehicles from adjoining land to a roadway;

***minor works*** has the meaning given by regulation 6;

***peak hour traffic works*** has the meaning given by regulation 7;

***service extension works*** has the meaning given by regulation 8;

***service road*** has the same meaning as in the Road Safety Road Rules 2009;

***the Act***means the **Road Management Act 2004**;

***traffic impact works*** means—

 (a) works conducted—

 (i) on a freeway; or

 (ii) on an arterial road that require the deviation of vehicular traffic into an on-coming traffic lane; or

 (iii) in a clearway when it is in operation; or

 (iv) in a bus lane when it is in operation; or

 (v) on, or partly on, or that affect, a bridge or other structure; or

 (vi) on a roadway within 20 metres either side of a children's crossing when that crossing is in operation, unless parking is permitted within 20 metres either side of the crossing and the works are conducted on that parking area; or

 (vii) within a road reserve on, or in the vicinity of, a level crossing within the meaning of section 221U of the **Transport (Compliance and Miscellaneous) Act 1983**; or

 (b) peak hour traffic works; or

 (c) works that require a part of a roadway, other than a part on which parking is permitted, to be closed to vehicular traffic for—

 (i) a continuous period of more than 12 hours; or

 (ii) for a period of more than 24 hours in 7 days; or

 (d) works that require the cancellation, deviation to a different road or replacement, of a tram or bus operated by a provider of public transport; or

 (e) works conducted on a road in an urban area within metropolitan Melbourne, Geelong, Ballarat or Bendigo—

 (i) that are likely to have a duration of more than 15 minutes; and

 (ii) that are likely to cause a delay
to a bus or tram for more than 2 minutes between 6 a.m. and 9 a.m. or 3 p.m. and 7 p.m. on a weekday; or

 (f) works conducted on a road in an urban area within metropolitan Melbourne, Geelong, Ballarat or Bendigo—

 (i) that are likely to have a duration of more than 2 hours; and

 (ii) that are likely to cause a delay
to a bus or tram for more than 5 minutes between 9 a.m. and 3 p.m. on a weekday; or

 (g) works that cause the temporary closure or relocation of a bus stop or tram stop or prevent access to a bus stop or tram stop in an urban area for more than 15 minutes; or

 (h) works conducted in an urban area, between 6 a.m. and 8 p.m., on the roadway of an arterial road, within 100 metres of an intersection with traffic signals, which require the closure to vehicular traffic of one or more lanes on that roadway that are available to through traffic; or

 (i) works conducted in circumstances to which a declaration under regulation 9 applies.

 6 Meaning of minor works

 (1) ***Minor works*** are any of the following kinds of works undertaken by a utility, a provider of public transport, a road authority or an agent of any of these bodies—

 (a) the installation, repair or maintenance of aerial cables or other overhead non-road infrastructure;

 (b) works undertaken so as to enable a person to be provided a service by a utility;

 (c) the repair or maintenance of—

 (i) street lighting; or

 (ii) bus stop infrastructure, tram stop infrastructure or other public transport related non-road infrastructure located on the roadside; or

 (iii) tram tracks, including the roadway area between and on the outside of the tram tracks for which the relevant provider of public transport is responsible;

 (d) the excavation of—

 (i) any part of a road other than a roadway, pathway or shoulder; or

 (ii) an area of a roadway, pathway or shoulder;

**Note**

Regulation 6(2)(b) provides that if works under regulation 6(1)(d) also exceed 8·5 square metres, these works are not minor works.

 (e) the use of an access hole for the purpose of accessing, repairing or maintaining infrastructure under a road;

 (f) the installation, repair or maintenance of traffic control devices carried out in accordance with the **Road Safety Act 1986** or any regulations made under that Act;

 (g) the repair or maintenance of poles;

 (h) the replacement or relocation of a single pole in an urban area (unless those works are part of works to replace or relocate 2 or more consecutive poles);

 (i) the replacement or relocation of not more than 3 poles in an area other than an urban area (unless those works are part of works to replace or relocate more than 3 consecutive poles);

 (j) the pruning of a tree or other vegetation;

 (k) the removal of a tree or other vegetation in accordance with any Act other than the Act;

 (l) any other works conducted for the purpose of repairing, inspecting, operating or testing an asset or for the purpose of a survey.

 (2) If any of the works listed in subregulations (1)(a) to (l) also consist of, or include any of the following works, these works are not ***minor works***—

 (a) service extension works;

 (b) the excavation of an area of a roadway, pathway or shoulder exceeding 8·5 square metres;

 (c) works undertaken by a utility to decommission or remove, by excavating or filling any part of a road, non-road infrastructure (other than poles, aerial cables or other overhead non-road infrastructure)—

 (i) that is located longitudinally within a road reserve—

 (A) over a distance exceeding 100 metres in an urban area; or

 (B) over a distance exceeding 300 metres in any other area; or

 (ii) that is located under a roadway, pathway or shoulder and the works require the excavation of more than 8·5 square metres of that roadway, pathway or shoulder; or

 (iii) that affects road-related infrastructure.

 7 Meaning of peak hour traffic works

Works conducted on a roadway are ***peak hour traffic works*** if the works are conducted between 6 a.m. and 9 a.m. or between 3 p.m. and 7 p.m. on a weekday on a roadway of an arterial road in an urban area (other than a roadway that is a service road) and any of the following paragraphs apply—

 (a) the roadway has one lane for vehicular traffic to travel in each direction and the works are conducted in any lane and result in vehicular traffic in that lane during that time being continuously stopped for more than 5 minutes;

 (b) the roadway has more than one lane for vehicular traffic to travel in each direction and the works are conducted in one or more (but not all) of the lanes that are for travel in one direction and result in vehicular traffic in those lanes during that time being continuously stopped for more than 15 minutes;

 (c) the roadway has more than one lane for vehicular traffic to travel in each direction and the works are conducted in all of the lanes that are for travel in one direction and result in vehicular traffic in those lanes during that time being stopped for any period of time.

 8 Meaning of service extension works

***Service extension works*** are works specified in column 2 of the Table that are undertaken by a utility or an agent of a utility in the area specified in column 3 of that Table opposite those works for the purpose of—

 (a) extending non-road infrastructure owned, operated or controlled by that utility; or

 (b) enabling a person to be provided a service by a utility.

**Table**

|  |  |  |
| --- | --- | --- |
| *Column 1**Item* | *Column 2**Works* | *Column 3**Area* |
| 1 | Works involving the installation of non‑road infrastructure under an area of road that spans a distance exceeding 100 metres in length | an urban area |
| 2 | Works involving the installation of more than one additional pole | an urban area |
| 3 | Works involving the installation of non‑road infrastructure under an area of road that spans a distance exceeding 300 metres in length | any area other than an urban area |
| 4 | Works involving the installation of more than 3 additional poles | any area other than an urban area |

 9 Declared traffic impact works

 (1) A relevant Minister, after considering the advice of the Infrastructure Reference Panel, by notice published in the Government Gazette may declare that works conducted in circumstances set out in the declaration are traffic impact works, if that Minister is satisfied that works conducted in those circumstances may have a significant impact on road safety, traffic or other infrastructure.

**Note**

Declared ***traffic impact works*** are not exempt under regulation 10 from the need to obtain prior written consent for works from the relevant coordinating road authority.

 (2) A notice under subregulation (1) may apply—

 (a) to a specified road or class of roads; or

**Example**

A declaration may apply to—

* a named road, or a specified part of a named road; or
* roads which are public transport routes.

 (b) to a specified area or part of an area or a specified part of a road or class of roads; or

**Example**

A declaration may apply to the following types of areas—

* certain lanes of a multilane road;
* areas with a prevailing speed limit above or below a specified speed;
* areas within school zones.

 (c) at specified times; or

**Example**

A declaration may apply—

* between stated hours; or
* to specified days; or
* to periods during which bus lanes or other specified traffic controls are in operation.

 (d) in other specified circumstances relating to the impact of works on road safety, traffic or other infrastructure.

**Example**

A declaration may apply to—

* works which may affect road safety, such as works requiring the use of certain kinds of equipment; or
* works which may affect traffic, such as works involving the imposition of specified kinds of traffic control measures.

Part 2—Exemptions

 10 Exemption from requirement to obtain consent for, or give notice of completion of, minor works, other than traffic impact works

 (1) A person to whom this regulation applies—

 (a) is exempt from the requirement under section 63(1) of the Act to obtain the written consent of the relevant coordinating road authority for minor works that are not traffic impact works; and

 (b) is exempt from the requirement under clause 13(1) of Schedule 7 to the Act to give notice to the relevant coordinating road authority as to the completion of minor works that are not—

 (i) traffic impact works; or

 (ii) works that consist of, or include, the excavation of any part of a roadway, pathway or shoulder, other than an excavation conducted solely to repair, maintain, install or replace a single pole in an urban area or no more than 3 poles in any other area.

 (2) This regulation applies to—

 (a) a utility or an agent of a utility; or

 (b) a provider of public transport or an agent of a provider of public transport; or

 (c) a responsible road authority or an agent of a responsible road authority.

 11 Exemption for fire authorities from requirement to obtain consent

 (1) A person to whom this regulation applies is exempt from—

 (a) the requirement under section 63(1) of the Act to obtain the written consent of the relevant coordinating road authority for works consisting of the inspection or maintenance of water valves or fire hydrants, that are not traffic impact works; and

 (b) the requirement under clause 13(1) of Schedule 7 to the Act to give notice to the relevant coordinating road authority as to the completion of such works.

 (2) This regulation applies to—

 (a) the Metropolitan Fire and Emergency Services Board or an agent of the Board; or

 (b) the Country Fire Authority or an agent of the Authority; or

 (c) a water corporation established under section 85 of the **Water Act 1989** or an agent of that water corporation.

 12 Exemption from requirement to obtain consent in relation to pathway works

 (1) A person to whom this regulation applies—

 (a) is exempt from the requirement under section 63(1) of the Act to obtain the written consent of the relevant coordinating road authority for works consisting of the construction, repair or maintenance of a pathway that are not traffic impact works; and

 (b) is exempt from the requirement under clause 13(1) of Schedule 7 to the Act to give notice to the relevant coordinating road authority as to the completion of such works.

 (2) This regulation applies to a responsible road authority or an agent of a responsible road authority.

 13 Exemption from requirement to obtain consent in respect of certain agreed works

A person who undertakes works in accordance with an agreement or requirement under clause 18 of Schedule 7 to the Act is exempt from the requirement under section 63(1) of the Act to obtain the written consent of the relevant coordinating road authority for those works.

 14 Period within which utility or provider of public transport must give notice of completion of certain works

 (1) For the purposes of clause 13 of Schedule 7 to the Act, the period within which a person to whom this regulation applies must give notice of the completion of works is the period ending on the 14th day of the month next following the completion of the works.

 (2) This regulation applies to a utility, an agent of a utility, a provider of public transport or an agent of a provider of public transport that is exempt from the requirement under section 63(1) of the Act to obtain the written consent of the relevant coordinating road authority for the works but is not exempt from the requirement to give notice of the completion of the works.

 15 Coordinating road authority may give exemption from requirement to give notice of completion of works

If a coordinating road authority gives written consent under clause 16(5) of Schedule 7 to the Act to a person for the conduct of works, it may exempt that person from the requirement under clause 13(1) of Schedule 7 to the Act to give notice as to the completion of those works.

 16 Exemption from requirement to give notice under clause 7 of Schedule 7

 (1) A person to whom this regulation applies is exempt from the requirement under clause 7 of Schedule 7 to the Act to give notice to the relevant coordinating road authority of any proposed installation of non-road infrastructure or related works on the road reserve.

 (2) This regulation applies to—

 (a) a utility or an agent of a utility; or

 (b) a provider of public transport or an agent of a provider of public transport; or

 (c) a responsible road authority or an agent of a responsible road authority.

 17 Exemptions in respect of driveway works or mowing

A person is exempt from—

 (a) the requirement under section 63(1) of the Act to obtain the written consent of the coordinating road authority for the conduct of works that are not traffic impact works and that consist of—

 (i) driveway works giving access to an arterial road; or

 (ii) mowing any part of a roadside; and

 (b) the requirement under clause 13(1) of Schedule 7 to the Act to give notice to the relevant coordinating road authority as to the completion of such works.

Part 3—Consents

 18 Certain conditions not to be imposed on consents

 (1) A coordinating road authority must not impose on a consent it gives under clause 16(5) of Schedule 7 to the Act—

 (a) a condition relating to visual amenity or aesthetics unless the condition relates to road infrastructure; or

 (b) a condition relating to the technical design of, or the equipment or techniques used in the installation of, non-road infrastructure by a utility or a provider of public transport; or

 (c) a condition that is not reasonably relevant to the conduct of the proposed works; or

 (d) a condition requiring non-road infrastructure that would normally be placed above ground to be placed under a road; or

 (e) a condition relating to environmental impact considerations other than in relation to the matters referred to in clause 14 of Schedule 7 to the Act; or

**Note**

Authorised uses of road reserves must be managed to protect and preserve existing significant roadside vegetation and sites of biological significance. See clause 14(3)(g) of Schedule 7 to the Act.

 (f) a condition requiring an indemnity in respect of the conduct of the proposed works that extends beyond a 12-month warranty period.

 (2) A coordinating road authority must not impose on a consent it gives to a provider of public transport, a responsible road authority or utility or an agent of any of these bodies under clause 16 of Schedule 7 to the Act, a condition relating to financial security in respect of the conduct of the proposed works.

 19 Prescribed particulars—Schedule 7, clause 16(3)

For the purposes of clause 16(3) of Schedule 7 to the Act, the particulars that must be included in an application for written consent to the conduct of proposed works that may affect non-road infrastructure which is the responsibility of an infrastructure manager or works manager other than the applicant are—

 (a) particulars of notices given, or proposed to be given, to other infrastructure managers or works managers in accordance with clause 8 of that Schedule; and

 (b) particulars of consultations conducted in accordance with clause 10 of that Schedule.

Part 4—General

 20 Prescribed period—Schedule 7, clause 13

Subject to regulation 12, the period within which notice must be given under clause 13(1) of Schedule 7 to the Act is 7 business days.

 21 Prescribed period—Schedule 7, clause 17

The relevant period for the purposes of clause 17 of Schedule 7 to the Actin relation to an application by a utility or an agent of a utility for written consent to the conduct of works is—

 (a) in the case of service extension works, 15 business days; and

 (b) in the case of works undertaken by a utility to enable a person to be provided a service by a utility that are traffic impact works and are not service extension works, 3 business days.

Part 5—Fees

 22 Fees for applications for consent

 (1) The fee for an application under clause 16 of Schedule 7 to the Act for written consent to the conduct of proposed works on a road referred to in column 1 of the Table in Schedule 1 is the relevant fee specified in column 2 of that Table in relation to the proposed works.

 (2) A coordinating road authority may waive the whole or any part of a fee if it considers that the application and any certificates, endorsements or other documents accompanying the application provide sufficient confirmation that satisfactory preparatory arrangements have been made for the conduct of the works or part of them.

Schedule 1—Fees for applications for consent to the conduct of proposed works

Regulation 22(1)

**Table**

|  |  |
| --- | --- |
| *Column 1* | *Column 2* |
|  | *Works that are not minor works conducted by a person referred to in regulation 10(2) and are traffic impact works* | *Minor works conducted by a person referred to in regulation 10(2) that are traffic impact works* |
|  | *Conducted on, or on any part of, the roadway, pathway or shoulder* | *Not conducted on, or on any part of, the roadway, pathway or shoulder* | *Conducted on, or on any part of, the roadway, pathway or shoulder* | *Not conducted on, or on any part of, the roadway, pathway or shoulder* |
| Freeway | 43·2 fee units | 30·2 fee units | 16 fee units | 9·5 fee units |
| Arterial road | 43·2 fee units | 30·2 fee units | 16 fee units | 9·5 fee units |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles at any time is more than 50 kilometres per hour | 43·1 fee units | 23·5 fee units | 9·3 fee units | 6 fee units |

|  |  |
| --- | --- |
| *Column 1* | *Column 2* |
|  | *Works that are not minor works conducted by a person referred to in regulation 10(2) and are traffic impact works* | *Minor works conducted by a person referred to in regulation 10(2) that are traffic impact works* |
|  | *Conducted on, or on any part of, the roadway, pathway or shoulder* | *Not conducted on, or on any part of, the roadway, pathway or shoulder* | *Conducted on, or on any part of, the roadway, pathway or shoulder* | *Not conducted on, or on any part of, the roadway, pathway or shoulder* |
| Municipal road or non-arterial State road on which the maximum speed limit for vehicles is not more than 50 kilometres per hour | 23·5 fee units | 6 fee units | 9·3 fee units | 6 fee units |

**Note**

Fees are not payable in respect of works that do not require consent. See regulations 10, 11, 12, 13 and 17. The fees are expressed as fee units in accordance with the **Monetary Units Act 2004**.

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Endnotes

1. VicRoads, “Companion to A Guide to Working in the Road Reserve”, August 2006, p 28 [↑](#footnote-ref-1)
2. ibid, p 30 [↑](#footnote-ref-2)
3. A VicRoads compliance audit over 6 months in 2012 found about 20% of 839 worksites did not have a valid consent. Anecdotally, all of the 11 local councils consulted consider there is a relatively high level of works within a road reserve operating without consent. [↑](#footnote-ref-3)
4. 30/70 split is based on VicRoads data and estimations provided by local councils. [↑](#footnote-ref-4)
5. The average time taken for the preparation of a consent application (exempt minor works) is estimated at one hour. This is based on advice from VicRoads and consulted utilities. ABS 6302.0 Average Weekly Earnings, Australia, May 2014 showed the average weekly earnings for Victoria to be $1,380.10 or $39.78 per hour. With oncosts, the hourly rate becomes $69.51 multiplied by 109,196 exempt minor works = $7,590,214 [↑](#footnote-ref-5)
6. The estimation is based on 9,400 consents (30% of non-exempt works) @$327 consent application fee =$3,073,800 and 21,931 consents (70% of non-exempt works) @$327 consent application fee = $7,171,437. The $327 fee is the midpoint of the different fees for works ranging from $79 to $575. The midpoint is the $496 difference in the range divided by 2 = $248 + $79 = $327. The compliance cost methodology is the same as calculated in the aforementioned footnote. [↑](#footnote-ref-6)
7. Department of Treasury and Finance, “Cost Recovery Guidelines”, January 2013, Victorian State Government, p 8 [↑](#footnote-ref-7)
8. ibid, p 17 [↑](#footnote-ref-8)
9. VicRoads data shows that about 40% of consents are for works (other than minor works) conducted on a roadway etc, 20% of consents for works (other than minor works) not conducted on a roadway etc, 40% of consents for minor works conducted on a roadway etc and 20% of consents for minor works not conducted on a roadway etc. [↑](#footnote-ref-9)
10. In respect to this category of works, the consent application fee for works on a freeway is $423.70 and $331.00 for works on an arterial road. Due to the absence of data on the exact number of consents for each type of consent application fee, the mid-point of these two consent application fees has been used to calculate revenue. The mid-point calculation ($423.70 - $331.00 = $92.70/2 = $46.35 + $331.00 = $377.35. [↑](#footnote-ref-10)
11. In respect to this category of works, the consent application fee for works on a freeway is $331.00 and $152.30 for works on an arterial road. Due to the absence of data, the mid-point of these two consent application fees has been used to calculate revenue. The mid-point calculation ($331.00- $152.30 = $178.70/2 = $89.35 + $152.30 = $241.65. [↑](#footnote-ref-11)
12. Local council sampling provided estimations of about 8% of consents are for works (other than minor works) conducted on a roadway etc, 12% of consents for works (other than minor works) not conducted on a roadway etc, 32% of consents for minor works conducted on a roadway etc and 48% of consents for minor works not conducted on a roadway etc. [↑](#footnote-ref-12)
13. In respect to this category of works, the consent application fee for works on a municipal road or non-arterial State road >50 kms is $595.80 and $264.80 for works on municipal road or non-arterial State road <50 kms. Due to the absence of data on the exact number of consents for each type of consent application fee, the mid-point of these two consent application fees has been used to calculate revenue. The mid-point calculation ($595.80- $264.80 = $331.00/2 = $165.50+ $264.80 = $430.30. [↑](#footnote-ref-13)
14. In respect to this category of works, the consent application fee for works on a municipal road or non-arterial State road >50 kms is $331.00 and $66.20 for works on municipal road or non-arterial State road <50 kms. Due to the absence of data, the mid-point of these two consent application fees has been used to calculate revenue. The mid-point calculation ($331.00- $66.20 = $264.80/2 = $132.40+ $66.20 = $198.60. [↑](#footnote-ref-14)
15. In respect to this category of works, the estimated cost to administer consent applications for works on a municipal road or non-arterial State road >50 kms is $310.23 and $78.75 for works on municipal road or non-arterial State road <50 kms. Due to the absence of data, the mid-point of these two consent application costs has been used to calculate the cost mid-point. The mid-point calculation ($310.23- $78.75. = $231.48/2 = $115.74+ $78.75 = $194.49. [↑](#footnote-ref-15)
16. In respect to this category of works, the estimated cost to administer consent applications for works on a municipal road or non-arterial State road >50 kms is $671.59 and $411.82 for works on municipal road or non-arterial State road <50 kms. Due to the absence of data on the exact number of consents for each type of consent application fee, the mid-point of these two consent application costs has been used to calculate the cost mid-point. The mid-point calculation ($671.59- $411.82 = $259.77/2 = $129.88+ $411.82 = $541.70. [↑](#footnote-ref-16)
17. Department of Treasury and Finance, “Cost Recovery Guidelines”, January 2013, Victorian Government [↑](#footnote-ref-17)
18. ibid, p 6 [↑](#footnote-ref-18)
19. City of Greater Geelong, “Works within Road Reserve Manual – Standards and Requirements”, 28 June 2012, p 1 [↑](#footnote-ref-19)
20. Further information on the UK experience can be found at <https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/3429/dft-00089.pdf> [↑](#footnote-ref-20)
21. The 20 km allowance is based on consultations with VicRoads [↑](#footnote-ref-21)
22. The 20 km allowance is based on consultations with 11 local councils. This allowance does not cover road reserve works particularly in rural shires. In this instance, these shires would rely on road network audits conducted under their road management plan and use the 20 km vehicle allowance to recover the associated vehicle costs. [↑](#footnote-ref-22)
23. Reg. 4: S.R. No. 62/2005 as amended by S.R. Nos 154/2007 and 127/2009.

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**Fee Units**

These Regulations provide for fees by reference to fee units within the meaning of the **Monetary Units Act 2004**.

The amount of the fee is to be calculated, in accordance with section 7 of that Act, by multiplying the number of fee units applicable by the value of a fee unit.

The value of a fee unit for the financial year commencing 1 July 2014 is $13.24. The amount of the calculated fee may be rounded to the nearest 10 cents.

The value of a fee unit for future financial years is to be fixed by the Treasurer under section 5 of the **Monetary Units Act 2004**. The value of a fee unit for a financial year must be published in the Government Gazette and a Victorian newspaper before 1 June in the preceding financial year. [↑](#endnote-ref-1)