

1.4 FUTURE OF SCHOOL CROSSING SUPERVISION PROGRAM

Responsible Director: Peter Panagakos

RECOMMENDATION

That Council:

1. *Recognises that child safety is and remains the primary consideration associated with the School Crossing Supervision Program.*
2. *Notes that Council has written to the State Government and all Monash schools informing them that Council is seriously considering its future role in funding school crossing supervision as this is a service that relates to schools and the State Government's functions rather than local government functions, and outlining the reasons for this as per Council's resolution at its 30 November 2021 Council meeting, and invited feedback by 25 February 2022.*
3. *Notes that Council has written to the Mayors of all other Victorian councils and the Municipal Association of Victoria seeking their views on the question of the sustainability and appropriateness of local government funding for, and provision of, school crossing supervision services.*
4. *Notes the feedback received as detailed in this report and attachments 1 and 2.*
5. *Resolves that the Mayor, convene a meeting with:*
 - (a) *The MAV and Mayors and senior officers of the councils that provided a response to Council as well as an invitation to all other Mayors and senior officers from metropolitan councils (should they wish to attend) to explore:*
 - i. *the common ground on the School Crossings issue with a view to commencing an advocacy campaign to the State Government;*
 - ii. *a focus on full cost recovery (inclusive of on-costs) for the provision of the school crossing supervisor service;*
 - iii. *the opportunity (inclusive of cost) to investigate and, where appropriate, implement alternative traffic management arrangements at school crossings such as:*
 - *Wombat Crossing – raised pavement with line marking and signs;*
 - *Pedestrian crossing – Line marking with flashing lights; and*
 - *Pedestrian operated signals; and*
 - iv. *the opportunity appropriateness for schools to nominate and provide school crossing supervisors be they volunteers or otherwise.*
 - (b) *Relevant Ministers (at the appropriate time when the outcomes of the above points have been discussed amongst Councils and a way forward has been agreed) including the Minister for Roads and Road Safety and the Minister for Education, with a view to investigating alternative arrangements for the funding and provision of school crossing supervisors.*

6. *Makes available \$15,000 to give effect to paragraph 5 of this Resolution and provide for a facilitated session(s), understanding that Council will request a financial contribution from other participating councils to provide for any external advice and to facilitate any agreed outcomes.*
7. *Convenes a forum with schools within the Municipality to explore the opportunity for schools to nominate and provide school crossing supervisors at no cost to Council.*
8. *Notes that it will receive a report and update at the appropriate time regarding the progress and any outcomes of the discussions with other councils and the relevant Minister(s), any forum with schools within the Municipality and as needed.*
9. *Continues providing school crossing supervisors under the terms of School Crossing Supervision Contract No. 2022069 that has been awarded which provides for school crossing supervision services until 31 December 2022 with two six month extensions by which time the outcomes of the recommendations of this report will be better known.*

INTRODUCTION/BACKGROUND

At the 30 November 2021 Council meeting, Council amongst other matters resolved:

2. *That Council gives notice to the State Government and all Monash schools that:*
 - a. *it is seriously considering its future role in funding school crossing supervision as this is a service that relates to schools and the State Government's functions rather than local government functions.*
 - b. *with rate capping in place, it is difficult for Council to continue to simply provide the same level of services from year to year in circumstances where there is significant new emerging challenges which are deserving of Council funding consideration;*
 - c. *Council has a responsibility to its residents and ratepayers to regularly consider its spending priorities;*
 - d. *it views with concern that the share of funding contribution to school crossing supervision costs has increased by more than 50% for local councils since 1975 while the proportion of funding contributed by the State Government has almost halved;*
 - e. *it views the ongoing provision of school crossing supervision as an important service, but one that ought to be fully funded by the State Government as part of its responsibilities for funding education services in Victoria (a broad responsibility which should include getting children to and from school safely);*
 - f. *it is keen to work collaboratively with the State Government and all Monash schools to transition to a new operating and funding model for school crossing supervision which does not impose costs on ratepayers and residents for a service that is unrelated to core local government functions and services; and*

- g. it will not make any changes to the current funding model or operation of school crossing supervision services for the 2022 school year, however there should be no assumption of Council funding beyond 2022.*
3. *That Council invites the State Government, schools and other interested stakeholders to provide any feedback to Council by 25th February 2022.*
4. *That Council directs that officers provide further advice to Council by no later than the March Council meeting which should consider and include all feedback provided to Council and provide an officer recommendation on the future Council involvement and funding of school crossing supervision services in 2023 and beyond.*
5. *That Council writes to the mayors of all other Victorian councils and the Municipal Association of Victoria seeking the views of other councils on the question of the sustainability and appropriateness of local government funding for, and provision of, school crossing supervision services.*

This report provides a summary of the feedback received to date and makes recommendations to Council as to how it should proceed with the school crossing supervisor program.

DISCUSSION

Response from the Ministers

In response to Council's resolution, Council wrote letters to the Minister for Roads and Road Safety, Minister for Education, Minister for Local Government, all Victorian councils, all primary and secondary schools within the Municipality, as well as the MAV and LGV.

At the time of writing this report, responses had been received from the Secretary of the Department of Transport (on behalf of Minister for Roads and Road Safety) and the Secretary of the Department of Education and Training. Responses were also received from 23 councils and 3 schools.

The responses from the Secretary of the Department of Transport (on behalf of Minister for Roads and Road Safety) and the Secretary of the Department of Education and Training are attached (**Attachment 2**).

In summary, the Secretaries said:

- School crossing supervision is a shared responsibility of state and local government;
- Road safety is a joint accountability of state and local government under the *Road Management Act 2004* (RMA). Under the RMA and the *Transport Integration Act 2010*, state and local government must provide for the safe use of roads, ensuring these meet the needs and priorities of our communities. This includes taking reasonable precautions in response to foreseeable road safety risks;
- The expertise of municipal councils, as one of the responsible road authorities, is critical in both determining if and when a crossing should be established near a school and whether such a crossing should be operated by a school crossing

supervisor. They are also of the view that the local municipal council, again as one of the responsible road authorities, is best placed to maintain responsibility for staffing a school crossing.

Officer Response:

Council's statutory powers and functions in relation to roads are generally outlined in:

1. Local Government Act 1989 (LGA 1989):

- a) There is nothing in the LGA 1989 which specifically addresses children's crossings, or Council's management of them, and there is no statutory obligation for the provision of school crossing supervisors.

2. Road Management Act 2004 (RM Act) and the Road Management (Works and Infrastructure) Regulations 2015 (Works Regulations) made under the RM Act:

- a) Council's obligations as the responsible road authority with respect to children's crossings are set out in the RM Act, the RS Act and the associated regulations.
- b) Council is generally the responsible road authority for municipal roads within its municipal district. Council's functions include road maintenance, traffic management and infrastructure installation. Council's functions and duties as the responsible road authority include an obligation to inspect, repair and maintain the public roads for which it is the responsible road authority.
- c) On arterial roads, the RM Act allocates responsibility between Council and Head, Transport for Victoria (TFV). Council is generally responsible for any part of an arterial road outside of the part of the road used by through traffic, i.e. all areas outside of the 'kerb to kerb' area of the road.
- d) Guidance on Council's responsibilities with respect to road management is provided by the 'Code of Practice for Operational Responsibility for Public Roads' dated 30 May 2017 (Code). The purpose of the Code is to clearly define the allocation of responsibilities for public roads between TFV and municipal councils. Council is required to have regard to the Code of Practice when exercising its powers and functions over roads.
- e) The Code provides, at cl 10(3)(m), that Council is required to perform the functions of a responsible road authority with respect to:
 - children's crossings, including advance warning signs and crossing signs, road markings and pedestrian fencing located on the roadside (but excluding the roadway pavement). Council is the road authority with respect to school crossings on arterial roads; and

- infrastructure that comprises a school crossing is 'road infrastructure' under the RM Act, so Council has a duty of inspection, repair and maintenance in respect of it.
- f) Accordingly, in relation to children's crossings on public roads for which Council is the responsible road authority, Council must inspect, maintain and repair the children's crossings.
- g) Council's obligation under the RM Act to maintain school crossing infrastructure does not create an obligation on Council to provide school crossing supervisors. The RM Act does not address the supervision of school crossings at all – it is only concerned with road infrastructure, not with human resources.

3. *Traffic offences under the Road Safety Act 1986 (RS Act) and the Road Safety Road Rules 2017 (Road Rules):*

- a) The RS Act and supporting regulations define the key attributes that a crossing must have to constitute a 'children's crossing' and establish the traffic offences for failing to properly observe children's crossings. The RS Act provides important guidance with respect to Council's role in the management and administration of school crossings but does not go so far as to require Council to supply school crossing supervisors.
- b) The term 'children's crossing' is defined in r 80(6) of the Road Rules as an area of a road:
- a) at a place with stop lines marked on the road, and—
 - (i) children crossing flags; or
 - (ii) children's crossing signs and twin yellow lights; and
 - b) indicated by—
 - (i) 2 red and white posts erected on each side of the road; or
 - (ii) 2 parallel continuous or broken lines on the road surface from one side of the road completely or partly across the road; and
 - c) extending across the road between the posts or lines.
 - d) Rule 80 also illustrates the flags and signs that may be used to identify a children's crossing.
- c) There is nothing in the Road Rules or elsewhere that addresses the presence or otherwise of school crossing supervisors. It is clear that children's crossings may be operational even if there is no one to supervise them, provided that the necessary flags and signs are in place. So, on the face of the definition of 'children's crossing', a crossing is not required to be supervised for it to be validly established and operational.

- d) Even though there is no reference to a children's crossing being supervised, r 80 creates offences for failing to obey a 'hand-held stop sign' or the directions of the 'holder of the sign' at a children's crossing. However, there are also other offences in r 80 that can be committed at a children's crossing without requiring the crossing to be supervised. Such as:
- driving at a speed at which the driver could not, if necessary, stop safely before the children's crossing;
 - failing to stop if a pedestrian is on, or entering, the children's crossing; and
 - proceeding before all pedestrians have left the children's crossing.
- e) The Road Rules also make provision for other offences in connection with a children's crossing, none of which require the presence of a school crossing supervisor to be committed.
- f) So, while the RS Act and the Road Rules contemplate that a school crossing supervisor may be present, there is no obligation on Council to provide supervisors at school crossings, or to ensure that a crossing is supervised.

4. *Operational considerations under the Road Safety (Traffic Management) Regulations 2019 (Traffic Management Regulations) made under the RS Act*

- a) In addition to the offence provisions relating to school crossings, other statutory requirements apply to certain operational matters associated with the installation and administration of school crossings.
- b) While it is unlikely that Council has an obligation to supply school crossing supervisors, it appears that Council is the only public body that can engage or authorise a person to discharge the role of a school crossing supervisor. This is because 'school crossing supervisor' is defined in the Traffic Management Regulations as:
- a person who is employed by a Council to supervise school crossings or who is authorised by a Council for the purposes of regulation 14.
- c) Regulation 14 of the Traffic Management Regulations provides that a 'school crossing supervisor' – i.e. a person employed or authorised by Council as such – can display or remove a children crossing flag or hand-held stop sign. Children's crossing flags and 'lollipop' stop signs are the traditional identifiers of a school crossing and are two of the features of a 'children's crossing' identified in r 80 of the Road Rules (see para 3.a) and d) above).
- d) In addition, r 9(2) of the Traffic Management Regulations provides that TFV is not permitted to erect, display, place, remove or alter a traffic control
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device that is associated with a children's crossing in respect of children's crossings on an arterial road. Instead, this power is expressly given to Council under r 11(2)(b).

- e) So, only Council is permitted to erect, display, place, remove or alter traffic control devices associated with children's crossings, and display or remove a children crossing flag or hand-held stop signs.
- f) Similarly, while the Traffic Management Regulations create a traffic control regime under which only Council, and persons authorised by Council, could effectively discharge the role of a school crossing supervisor, they do not impose an obligation on Council to actually appoint and supply school crossing supervisors.
- g) Finally, r 234(2) of the Road Rules creates an offence for staying on a road for longer than is necessary to cross the road safely. Regulation 234(3) exempts certain people from this offence, including people:
 - employed by Council as a children's crossing supervisor and is acting in the course of their duty;
 - a uniformed municipal traffic officer engaged in the supervision of a crossing; and
 - permitted to do so under r 14 of the Traffic Management Regulations.
- h) All of the people referred to above are people engaged, or authorised, by Council.
- i) So, it is clear that Council is the only authority permitted to authorise school crossing supervisors to discharge the role as it has been traditionally performed, i.e. by installing and removing 'children crossing' flags and standing in the middle of a crossing while operating a hand-held stop sign.
- j) Again, there does not appear to be an obligation on Council to provide school crossing supervisors.

In summary, looking at the statutory framework as a whole:

- there is no express requirement that children's crossings are supervised to be operational and enforced;
- there is no obligation on Council to fund or supply school crossing supervisors; and
- Council can discharge its obligations, without providing or funding school crossing supervisors.

Response from local schools

Council received three (3) responses from schools that it wrote to.

In summary they said:

- school crossings are a community service and local councils should continue to fund this important service;
- the matter to remain is that of safety and wellbeing of children and not that of money; and
- the role should be given high priority in any Council funding.

Officer Response:

- There is a longstanding understanding and perception that the role of school crossing supervisors is a Council responsibility. However, in reality, it is a shared responsibility of state and local government for which an increasingly disproportionate share has been passed through to Council as a result of diminishing State funding.
- Schools, and it is felt the community at large, are not concerned with the funding model for school crossings. Instead, they are ultimately concerned with the safety of school children traveling to and from school and they have an expectation that the status quo is maintained and that Council will continue to provide this service as it has always done.
- It is agreed that the safety of school children is the paramount consideration, but Council has been left to bear disproportionate responsibility for the school crossing supervisor program. If the status quo remains, the key safety objectives of the program cannot be achieved.
- Without cooperation and collaboration from State Government agencies, Council cannot resource and implement a viable alternative.

Response from other councils

At the time of writing, Council has received 23 responses from councils that it wrote to. These were Moyne Shire Council, City of Casey, East Gippsland Shire Council, Campaspe Shire Council, City of Kingston, City of Whitehorse, City of Knox, City of Greater Dandenong, Mitchell Shire Council, City of Whittlesea, Cardinia Shire Council, Murrindindi Shire Council, Pyrenees Shire Council, City of Wodonga, Bayside City Council, Yarra Ranges Shire Council, Loddon Shire Council, Nillumbik Shire Council Moorabool Shire Council, Wellington Shire Council, Benalla City Council, Buloke Shire Council and Mornington Peninsula Shire council.

In summary, the majority of councils:

- acknowledge that school crossing supervisors are a critical service, but consider that it is not a core function of local government;
 - are concerned about the financial sustainability of the school crossing supervisor program and would welcome additional financial support, if not full funding, of the service from the State Government;
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- consider that the funding from the State Government should, at a minimum, take into account the hidden costs (operating costs, infrastructure, HR, payroll, uniforms and equipment) associated with the provision of school crossing supervisors; and
- welcome Council taking the lead for advocacy and support a sector wide approach, including engagement and advocacy through MAV.

Officer Response:

- Many councils share the concerns of Council with regard to cost shifting and the increasing cost of school crossing supervision.
- The ability to attract and retain staff is also a common issue. The lack of an available workforce has the potential to compromise the sustainability of the program regardless of the level of funding provided.
- Councils generally support the ongoing provision of school crossing supervisors by councils with greater State Government support and funding.

Other considerations

Whilst, as detailed above, there is no express statutory requirement for Council to provide school crossing supervisors, there are a number of compelling reasons why the service should continue, and Council's position should be that of advocating and seeking to have the State Government provide additional funding to the program. In summary, if Council ceases to provide school crossing supervisors, the following risks may arise:

- Reputational risk:
 - parents and schools will likely be vocal about their dissatisfaction with a decision to stop funding school crossing supervisors, particularly as they generally perceive the provision of school crossing supervisors as a Council service; and
 - there may be a perception that Council has motivations for raising this issue, to the extent that Council wishes to publicly advocate for additional funding from the State Government, which has generally appeared reluctant to increase its share of the responsibility for the service; and
- Public safety:
 - there are real risks to public safety for school goes and road users, particularly between 8-9.30am and 2.30-4pm on school days, which may result in Council incurring liability or other new costs, including:
 - if traffic control devices are not removed from existing crossings that Council no longer wishes to supervise, there may be confusion about the road rules that apply in respect of the crossing and who has the right of way;

- in relation to the sites of existing crossings that are currently supervised, even if the traffic control devices are removed, the site may be heavily trafficked by habitual pedestrians, which could create a new traffic management problem for Council that must be addressed;
- children may end up taking alternative routes to school, instead of being funnelled to school crossings, which could result in changed traffic conditions and new risks to pedestrians and road users; and
- children may continue using previously existing school crossings, creating the risk of a collision.

With these risks in mind, in addition to arranging a meeting with Mayors and Senior Officers of the councils that provided a response to Council (and representatives from other metropolitan Councils should they choose to attend) on the issue, and seeking meetings with relevant Minister(s), particularly the Minister for Roads and Road Safety and the Minister for Education, to create an advocacy platform, it is recommended that Council also explore the opportunity to:

- implement alternative arrangements at school crossings (in particular where a crossing services only high school children), such as:
 - Wombat Crossing – raised pavement with line marking and signs;
 - Pedestrian Crossing – Line marking with flashing lights;
 - Pedestrian Operated Signals; and
- organise a forum with schools to discuss the issue and explore the opportunity for schools to nominate and provide school crossing supervisors (whether they are paid for by the school, they are members of school staff or volunteers) who, after receiving the appropriate training, could be authorised by Council to undertake duties as a school crossing supervisor, inclusive of the necessary cover.

There are a number of avenues open for Council to explore so as to lessen its financial burden with regard to the provision of school crossing supervisors. These will take some time to explore and for Council to consider its further position on this issue. The report recommends that the provision of the service continue under the provisions of the current contract until such time as Council resolves otherwise.

FINANCIAL IMPLICATIONS

The report recommends that Council makes available an initial \$15,000 to give effect to the recommendations in this report. It is likely that there will be additional cost likely in collaboration with other participating councils to facilitate any agreed outcomes.

Further reports and updates on this issue will detail any additional financial considerations that may be necessary.

SOCIAL IMPLICATIONS

These have been detailed within the report.

CONCLUSION

It is clear that there is no simple solution to the issue of school crossing supervision. In particular, it is necessary to balance, among other things, the following matters in connection with this issue:

- the historical shared arrangements for the service and the budget and political complications inherent in inter-governmental delivery;
- the community, parent and school perception of school crossing supervision as a local government service and the expectation that the status quo, and current service levels, will be maintained; and
- the complex legislative system that regulates school crossings supervisors as detailed earlier in this report, and the lack of clarity regarding the extent of Council's role.

What is clear is that Council is more than an incidental party in this service and it must play an active role in taking steps to ensure that the service can be provided in a way that ensures ongoing public safety and is financially sustainable.

There are a number of avenues that are open to Council, and the other relevant stakeholders, to explore to improve the service and ensure that it is delivered in a reasonable and responsible way. These avenues should be further investigated by Council, in consultation and collaboration with the other stakeholders, before Council reaches any final position on the future of this service.