

Moorabool Shire Council

Local Law Community Impact Statement – April 2019

Proposed: Local Law

Moorabool Shire Council

Local Law Community Impact Statement

Moorabool Shire Council Community Local Law No. 1 2019

Council provides the following information to the community in respect of the proposed Local Law.

PART A – General comments

All Councils in Victoria have a form of local regulation called local laws. Councils' local law-making powers come from the Local Government Act 1989 (*the Act*). The original intention underpinning the capacity of Councils to make local laws was to provide the ability for each council to have controls that reflected the different circumstances and objectives of each council and to provide a capacity for councils to individually tailor requirements in response to how things were happening in their municipalities.

The current local law in Moorabool is the Moorabool Shire General Local Law 2010, which expires in 2020 (*the current Local Law*). Council has determined that the current Local Law should be reviewed prior to the 2020 expiry date to ensure that it remains relevant to Council's growing area and changing population.

The review commenced in 2017 and has involved officers working together to discuss the issues that they see as ones that need managing into the future to ensure that Moorabool Shire is maintained as a desirable place to live, work and visit.

The proposed Local Law has been reviewed by a solicitor.

Part B – Overview of proposed Local Law

The proposed Local Law is being made under section 111(1) of the Act and will operate throughout Council's municipal district.

The proposed Local Law, to be known as the Moorabool Shire Council Community Local Law No. 1 2019, will commence on the day following notice of its making being published in the Victoria Government Gazette and, unless it is revoked earlier, will expire 10 years after commencement.

On commencement of the proposed Local Law, the current Local Law will be revoked.

The objectives of the proposed Local Law remain essentially the same as those of the current Local Law. The objectives provide for the peace, order and good government of the Municipal District by managing, regulating and controlling activities and uses on any Land to:

- (a) Promote a physical and social environment free from hazards to health or public safety, in which the residents of the Municipal District can enjoy a quality of life that meets the general expectations of the community;

- (b) Prohibit, regulate and control activities or behaviour which may be dangerous, or detrimental to the quality of life and the environment of the Municipal District or which could compromise public safety, Council Land or assets;
- (c) Preserve and enhance amenity, neighbourhood character, health and public safety within the Municipal District by regulating certain activities within the Shire;
- (d) Protect assets vested in, controlled or owned by Council;
- (e) Protect the safety of Road users and the amenity of the Municipal District and provide for the fair and equitable use of Council Land;
- (f) Control the consumption and possession of Alcohol in a Public Place, where such consumption or possession may interfere with the amenity and enjoyment of the Public Place by the community;
- (g) Control the impact of the keeping of Animals on the community and the environment; and
- (h) Regulate the impact of business activities on the environment, public health and amenity.

Proposed changes brought about by the proposed Local Law are not substantial and do not impact on the general purpose and purport of the current Local Law. The opportunity has been taken to improve clarity and remove clauses which might encroach on the field covered by other legislation, such as the Road Safety Road Rules 2017 and the Environment Protection Act 1970.

Under section 223 of the Act, Council is required to give public notice of the proposed Local Law and invite submissions for a period of at least 28 days.

The statutory consultation period will run from 21 June 2018 for 45 days and close on 5 August 2018.

Anyone who makes a written submission can request to be heard in support of their submission at the Ordinary Council Meeting which considers the making of the proposed Local Law, details of which will be provided.

Part C – Main changes to the Local Law

All provisions of the current Local Law have been reviewed. Substantive changes are outlined in the following paragraphs. When reference is made to a clause being amended or otherwise modified, reference is being made to the substantive change to a clause in the current Local Law brought about by the proposed Local Law.¹ All references to clauses below are references to clauses of the proposed Local Law.

Numbering

The proposed Local Law adopts a new numbering system based on the Part in which a clause appears instead of being continuous. The order of clauses has been rearranged but the grouping of clauses remains essentially the same.

¹ Strictly speaking the current Local Law is being revoked rather than amended. For the sake of convenience, clauses in the current Local Law are being referenced as if they are changing rather than being replaced.

Definitions

Various definitions have been amended. Terms which have been amended are as follows:

- 'authorised officer';
- 'asset protection permit bond';
- 'building work';
- 'Council Land';
- 'footpath';
- 'graffiti';
- 'hard waste';
- 'itinerant trading';
- 'municipal place';
- 'public place';
- 'recycle bin';
- 'recreational device';
- 'waste'; and
- 'wheeled toy'.

Offences

Clause 2.5.1 of the proposed Local Law has been simplified when compared to clause 87 of the current Local Law but its overall effect remains unchanged.

Notices to Comply

Clause 2.5.2 of the proposed Local Law has been simplified when compared to clause 90 of the current Local Law to remove unnecessary information but its overall effect remains unchanged.

Appeals

Clause 2.5.4 of the proposed Local Law omits any reference to internal reviews of infringements to avoid any encroachment onto the field covered by the Infringements Act 2006. It has otherwise been simplified when compared to clause 94 of the current Local Law but its overall effect remains unchanged.

Council policies

Clause 95 of the current Local Law is not replicated in the proposed Local Law because it addresses matters of policy and is therefore unnecessary.

Delegations

Clause 98 of the current Local Law is not replicated in the proposed Local Law because it replicates Council's power of delegation under the Act and is therefore unnecessary.

Maintenance of Nature Strips

A new clause 3.2 has been inserted which requires an Owner or Occupier of Land to maintain the Nature Strip adjacent to that land as a means of maintaining the amenity of the Municipal District.

Asset Protection Permits

A new clause 3.3 has been inserted requiring a person who proposes to undertake Building Work to obtain an Asset Protection Permit, except in certain circumstances. This ensures that Council assets are protected during Building Work and are reinstated in the event of damage at the cost of the persons causing that damage.

Discharge into Stormwater

A new clause 3.4 has been added which makes it an offence to allow any substance other than stormwater to be discharged into Council's stormwater drainage network. This protects Council's assets and also reduces the risk of damage to private property.

Vehicle Crossings

Clause 3.5 of the proposed Local Law has been simplified when compared to clauses 71 to 74 of the current Local Law to remove unnecessary information but its overall effect remains unchanged.

Building Sites

The clauses of the current Local Law addressing the management of Building Sites have been consolidated into Part 4 of the proposed Local Law for ease of reference and interpretation. Some new obligations have been added and some existing obligations have been removed. In particular:

- a new clause 4.1 of the proposed Local Law requires the manager of a Building Site to ensure that the risk of stormwater runoff
- a new clause 4.7 of the proposed Local Law expands on current requirements for a toilet to be provided on a Building Site
- a new clause 4.8 regulating the hours of activity on a building site.
- clause 68 of the current Local Law is not replicated in the proposed Local Law because it encroaches on the field occupied by the Environment Protection Act 1970 as it relates to the control of noise

Activities and Behaviour on Roads, Council Land, Municipal Places and Public Places

The clauses of the current Local Law addressing activities and behaviour on Roads, Council Land, Municipal Places and Public Places have been consolidated into Part 5 of the proposed Local Law for ease of reference and interpretation. Some new obligations have been added, in particular:

- a new clause 5.6 of the proposed Local Law prevents a person from riding or driving a vehicle or a horse in a Municipal Place except in certain circumstances
- a new clause 5.8(c) of the proposed Local Law prohibits a retailer from making shopping trolleys available for use unless they are fitted with a locking mechanism
- a new clause 5.9 of the proposed Local Law regulates the designation and issuing of residential and commercial parking permits
- a new clause 5.10 of the proposed Local Law prevents a person from collecting, cutting or removing firewood from a Road or Council Land

Land Use and Amenity

The clauses of the current Local Law addressing Land use and amenity have been consolidated into Part 6 of the proposed Local Law for ease of reference and interpretation with some new clauses and changes, in particular:

- a guidance note added to clause 6.2 of the proposed Local Law replaces clause 17.2 of the current Local Law to provide greater flexibility to Council when determining whether Land is considered Unightly
- a new clause 6.3 of the proposed Local Law prohibits the Owner of any vacant Land from allowing it to become unsafe. There is no longer a requirement for owners of dilapidated buildings to ensure the dilapidation is rectified so as to not affect either the visual amenity of the premises or the appearance of the building as is required under clause 18 of the current Local Law
- a new clause 6.4 of the proposed Local Law requires the Owner and the Occupier of Land to ensure that private drains and stormwater systems are fit for purpose
- clause 6.6 increases the height at which vegetation on private Land may overhang a Road Footpath or Nature Strip from 3 metres to 2.5 metres
- a new clause 6.7 of the proposed Local Law regulates the placement of shipping containers on Land in a Residential Area
- a new clause 6.9 of the proposed Local Law replaces clause 70 of the current Local Law and simplifies it
- a new clause 6.10 places additional controls on Camping on private Land and restricts the length of time that Camping can be undertaken without a Permit when compared to clause 13 of the current Local Law
- a new clause 6.11 provides more clarity as to when a Permit is needed for use of Recreational Vehicles and where Recreational Vehicles can be used without a Permit when compared to clause 14 of the current Local Law
- Clause 15 of the current Local Law relating to cigarette butt receptacles is not replicated in the proposed Local Law because it encroaches on the field occupied by the Tobacco Act 1987 and Environment Protection Act 1970.

Mosquito breeding

Clause 65 of the current Local Law relating to mosquito breeding is not replicated in the proposed Local Law because it encroaches on the field occupied by the Public Health and Wellbeing Act 2008.

Noise from residential and commercial properties

Clauses 67, 68, 69 and 70 have been not been replicated in the proposed Local Law because it encroaches on the field occupied by the Environment Protection Act 1970.

Septic Tank Systems

A new clause 7.1 has been added to the proposed Local Law which requires the Owner of Land on which a Septic System is installed which is not the subject of a permit under the Environment Protection 1970 to empty and maintain it regularly and to report to Council on those activities.

Waste Collection and Disposal

A new clause 7.4 has been added to the proposed Local Law which regulates the manner in which the Owner and Occupier of Land must present Mobile Waste Bins, Green Organics Bins and Recyclables Bins for collection.

Hard Waste Collection

A new clause 7.5 has been added to the proposed Local Law which prohibits a person from placing Hard Waste on a Road, Nature Strip or Public Place unless Council has accepted a booking for collection.

Maintenance of Waste, Organic and Recyclables Bins

A new clause 7.7 has been added to the proposed Local Law which requires the Owner and Occupier of Land to maintain Mobile Waste Bins, Green Organics Bins and Recyclables Bins to a specified standard.

Number of Animals

A new clause 8.1 of the proposed Local Law:

- consolidates the categories of Land to which Animal numbers apply to:
 - 'Residential Area'
 - 'Rural Area up to 2 Hectares'
 - Rural area 2 to 4 Hectares
 - 'Rural Area over 4 Hectares'
- varies the number of Animals that may be kept on each category of Land from that contained in clause 38.1 of the current Local Law
- replaces the exemption for Animals kept and used for, or in connection with, farming purposes under clause 38.2 of the current Local Law with a broader exemption in clause 8.1(b) of the proposed Local Law for Animals kept in accordance with the Scheme

Animal Enclosures

A new clause 8.5(a) prohibits a person from constructing an enclosure in which poultry is kept within 10 metres of a dwelling.

Stables

Clause 8.6 of the proposed Local Law reduces the restrictions on the construction of stables that appear in clause 40 of the current Local Law.

Fires and Fire Hazards

Clauses 21.4 and 21.5 of the current Local Law have not been replicated in the proposed Local Law to the extent that they relate to an officer of Victoria Police or a member of the Country Fire Authority to avoid duplication of offences created by the Summary Offences Act 1966 and the Country Fire Authority Act 1958.

PART D – Comments on proposed Local Law overall

<p>Measures of success of proposed Local Law</p>	<p>The measure of success of these proposed Local laws will be</p> <ul style="list-style-type: none"> • The success they have in improving the areas that are currently highlighted as of concern • The level of community satisfaction with community safety resulting from the local laws • The ability to deal effectively with justified complaints from the public that cannot be dealt with under other legislation. <p>Council will measure that success as follows:</p> <ul style="list-style-type: none"> • Recording levels of compliance/non-compliance using inspection data • Review of enforcement actions taken, including official warnings, notices to comply, infringements and direct prosecutions • Volume of complaints.
<p>Existing legislation which might be used instead</p>	<p>The proposed Local Law will supplement existing State legislation administered and enforced by Council. Council will continue to rely on the provisions of the:</p> <ul style="list-style-type: none"> • Environment Protection Act 1970 with regard to commercial and industrial noise • Public Health and Wellbeing Act 2008 for the control of nuisances where an activity does not require a permit.
<p>State legislation more appropriate</p>	<p>In circumstances where Council has considered State legislation is more appropriate to deal with particular issues, clauses of the existing Local Law have not been replicated in the proposed Local Law in favour of relying on the State legislation.</p>
<p>Overlap of existing legislation</p>	<p>Existing State legislation deals with the following issues which are also dealt with in some general circumstances by the proposed Local Law:</p> <ul style="list-style-type: none"> • dust and noise – Environment Protection Act 1970 • Public Places, Roads and Council Land – Works and/or Usage – Road Management Act 2004 • Septic Systems – Environment Protection Act 1970. <p>Council is satisfied that the provisions of the proposed Local Law supplement the State legislation without duplicating, overlapping or creating any inconsistency.</p>
<p>Overlap of Planning Scheme</p>	<p>Council does not believe that the Local law overlaps, contradicts, duplicates or causes any inconsistency with the Moorabool Planning Scheme.</p>
<p>Risk assessment</p>	<p>Council adopted a general risk based approach to the review and development of the proposed Local Law.</p>

<p>Legislative approach adopted</p>	<p>Council believes in the minimum imposition on the community through the proposed Local Law.</p> <p>The proposed Local Law reflects this approach by providing for:</p> <ul style="list-style-type: none"> • Reasonable penalties • A minimal number of provisions which create offences • Where possible, provision for permits rather than prohibition of activities. <p>Council has ensured that the proposed Local Law:</p> <ul style="list-style-type: none"> • Is expressed plainly and unambiguously and in a manner which is consistent with the language of the enabling Act and in accordance with modern standards of drafting applying in the State of Victoria • Is not inconsistent with the principles, objectives or intent of the Act • Does not make unusual or unexpected use of the powers conferred by the enabling Act under which the proposed Local Law is made having regard to the general objectives, intention or principles of that Act • Does not embody principles of major substance or controversy or constrain any matter which principles or matter should properly be dealt with by an Act and not by subordinate legislation • Does not unduly trespass on rights and liberties of the person previously established by law • Does not unduly make rights and liberties of the person dependent upon administrative and not upon judicial decisions • Is not inconsistent with principles of justice and fairness • Does not overlap or conflict with other statutory rules or legislation.
<p>Restriction of competition</p>	<p>Council has conducted a review of the proposed Local Law in accordance with the National Competition Principles and believes that, because of the nature and content of the proposed Local Law, and particularly the ability to obtain permits to conduct activities that would otherwise be prohibited, there is no restriction of competition.</p> <p>Even if competition is restricted in some instances, the benefits of the restriction to the community as a whole outweigh the costs.</p> <p>The objectives of the proposed Local Law cannot be achieved in any other way.</p>

<p>Penalties</p>	<p>All offences created under the proposed Local Law attract a maximum penalty of:</p> <p>20 penalty units for an offence 2 penalty units for a continuing offence,</p> <p>with varying infringement penalties prescribed in Schedule 3 to the proposed Local Law.</p> <p>Council has compared the general level of penalties provided for in the proposed Local Law with the Local Laws of other like and neighbouring councils.</p> <p>Council is satisfied that penalties are similar in nature and amount to like and neighbouring councils and are sufficient to act as a deterrent for most offences while also reflecting the seriousness of those offences.</p>
<p>Permits</p>	<p>A number of provisions in the proposed Local Law require Permits to be obtained for a variety of different activities. The Permits are for a variety of reasons including the protection of Council Assets, the management of Council Land and the protection of the local amenity.</p>
<p>Fees</p>	<p>The proposed Local Law allows Council to set fees annually and this will be done as part of the budget process.</p>
<p>Performance standards or prescriptive</p>	<p>Council has adopted a mix of both prescriptive and performance standards in its approach to the proposed Local Law. Within the permit process the ability to demonstrate compliance through performance standards exists as does the ability to obtain one by meeting set standards.</p>
<p>Comparison with neighbouring and like councils</p>	<p>In drafting the proposed Local Law, Council examined the Local Laws of the neighbouring councils.</p> <p>The purpose of conducting this exercise was to assess the similarities and differences between the councils to ensure a best practice approach was adopted in the drafting of the proposed Local Law</p>
<p>Charter of Human Rights</p>	<p>Council considered the relevant provisions of the Victorian Charter of Human Rights and Responsibilities Act 2006 in the development of the Proposed Local Law to ensure that it does not encroach upon a person's basic human rights, freedoms and responsibilities.</p> <p>As a public authority, Council appreciates its obligation to ensure that Local Laws are interpreted and applied consistently with human rights. Council has assessed the proposed Local Law for compatibility with the Charter and has found no inconsistencies.</p> <p>The limitations are legitimate, reasonable and proportionate to the objectives and values of a free and democratic society.</p>
<p>Consultation meetings</p>	<p>Initial consultation has already been undertaken through a 'have your say' campaign.</p> <p>Further direct consultation will occur with residents, stakeholders and local businesses to ensure that they are able to have input into the review process.</p>

<p>Submissions</p>	<p>A submission process will be conducted in accordance with the legislative requirements prescribed under Section 223 of the Act.</p> <p>In summary, that process requires Council to publish a public notice calling for written submissions in relation to the proposed Local Law. Those submissions must then be considered by Council before it decides whether to make the proposed Local Law.</p>
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