

Rural City of Wangaratta

Local Law Community Impact Statement

for the

Local Law No.1 of 2014 (Community Amenity)

PART A - Background

The Rural City of Wangaratta (RCoW) has undertaken a review of its Community Amenity Local Law No. 1 of 2008 as a key initiative of the 2009-2013 Council Plan.

In 2010, the State Government, through Local Government Victoria, released „*Guidelines for Local Laws Manual*“, listing new best practice guidelines for the creation and enforcement of Local Laws. The key features of these best practice guidelines are summarised as follows:

- the key aim is to improve accessibility, accountability, compliance, consistency, currency, efficiency, enforceability, necessity, and transparency;
- regulation should be viewed as a last resort, because it imposes a burden of compliance on the community and a burden of enforcement on the council;
- the community should be involved from the commencement of the law-making process, not just at the final formal submissions stage under section 223 of the *Local Government Act 1989*;
- Local Laws should not allow discretions on the part of those administering/enforcing them without clear guidelines being in place.
- Where Local Laws rely on other documents such as Council policies or permit conditions, those documents should be as accessible to the public as the Local Laws and, if necessary, incorporated into the Local Laws.

Councils are also required to produce a Local Law Community Impact Statement (LLCIS) for all new or materially altered local laws.

Internal and external user groups and community representatives were involved in the review process through the formation of a Local Laws Focus Group (LLFG) consisting of general community members plus community representatives from Wangaratta Unlimited, the Agriculture and Agribusiness Advisory Committee, the Dog Obedience Club, the Country Fire Authority and the Wangaratta Access & Inclusion Group.

A facilitated workshop was conducted in which the focus group provided ideas and feedback regarding the existing local law as well as providing suggestions for improvement. The draft local law was then updated to reflect LLFG feedback and the updated draft distributed for subsequent review by the group. The outcomes of the LLFG consultation and review process has helped shape the development of the draft Rural City of Wangaratta “Local Law No.1 (Community Amenity)” and the draft “Community Amenity Local Law No. 1 - Local Laws Policies” which are the two key documents referred to within this impact statement.

To assist the review process, issues raised by council staff, the LLFG and the wider community in relation to the 2008 gazetted local law were collated into the attached “Local Laws Issues Table” to ensure that issues were addressed in subsequent drafts.

The issues addressed include:

- introducing the ability for Council to designate an area as being “smoke free”;
- introduction of a permit requirement for conducting exercise classes in public parks;
- The introduction of provisions for managing vehicles advertised for sale on roadsides;
- updated provisions regarding the management of unsightly land;
- the application of an “exclusion zone” for itinerant trading permits;
- the introduction of a “cat at large” infringement;
- inclusion of the requirement that all dogs must be secured by chain, cord or leash unless in a designated Off-Leash area;
- clear guidelines for residents regarding the number of animals allowed on a property;
- updating provisions for the construction of vehicular access to a building site; and
- the introduction of an Asset Protection Permit, detailing provisions for the protection of Council assets and regulation of activities within a building site.
- have the animal secured by chain, cord or leash unless in a designated Off-Leash area

Objectives

The purposes of this Local Law are to provide for the peace order and good government of the municipality by:

(1) regulating and controlling uses and activities on Council land and roads so that the Council is aware of uses or activities which may:

- (a) be detrimental to the amenity of the area or the enjoyment of facilities on land or roads;
- (b) cause damage to Council and community assets;
- (c) create a danger or expose others to risk;
- (d) interfere with the safety and convenience of people travelling on or using Council land or roads; or
- (e) impede free and safe access for people, in particular those with sight and movement impairment or disabilities.

(2) managing, regulating and controlling activities and uses on any land which:

- (a) may be dangerous, cause a nuisance or be detrimental to the amenity of the area or the environment;

(b) are directed at maintaining a healthy and safe environment for residents and visitors;

(c) promotes community expectations and demands about their desired lifestyle and the availability of goods and services provided to them;

(3) identifying activities and uses that are not permitted so as to achieve the purposes in subclauses (1) and (2); and

(4) providing for the administration of the Council's powers and functions.

The draft Rural City of Wangaratta Local Law No.1 (Community Amenity) will be/was presented to Council for endorsement on DD MMM YYYY to enable it to be released for public exhibition for at least 28 days during which affected members of the community were invited to make written submissions as per the requirements of Section 119 and Section 223 of the *Local Government Act* 1989.

Those submitters who indicate that they wish to talk to their submissions in relation to the draft local law are/were invited to address Council at its Council meeting on DD MMM YYYY.

Following consideration of any submissions the Rural City of Wangaratta Local Law No.1 (Community Amenity) is being presented to Council on DD MMM YYYY for adoption.

PART B – Comments on the proposed Local Law overall

<p>Measures of success of the proposed Local Law</p>	<p>Council will measure the success of the Local Law 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 that may be used instead</p>	<p>There are many pieces of existing legislation that deal with some issues covered by the draft Local Law No.1, such as the <i>Road Management Act 2004</i>, the <i>Environment Protection Act 1970</i>, the <i>Tobacco Act 1987</i>, and the <i>Road Safety Act 1989</i>.</p> <p>The Rural City of Wangaratta will use this legislation instead of Local Laws when appropriate.</p> <p>However it has been identified that the <i>Road Management Act 2004</i> does not adequately cover occupation of roads for extended periods of time, such as may be required for a large construction activity.</p> <p>In a similar situation, it has been identified that the <i>Environment Protection Act 1970</i> is an inadequate tool to deal with some of the noise issues that can occur within the municipality. One such issue is noise that may be caused by recreational vehicles operating in rural areas.</p> <p>In the same light issues surrounding the ability of Council to declare an area to be “smoke free” have been examined as part of this review, and any potential conflict with the applicable State legislation (<i>Tobacco Act 1987</i>) has been examined.</p> <p>This has resulted in a new clause being proposed in the draft Local Law which will enable Council to designate an area as being “smoke free”, once it has considered several factors prior to it making that designation.</p> <p>Accordingly, the proposed Local Law has a number of provisions which complement existing legislation and provide a more appropriate local response whilst not overlapping, duplicating or conflicting with existing State legislation.</p>
<p>State legislation more appropriate</p>	<p>State wide regulations would be better and more efficient in controlling 90% of the issues covered in this Local Law because they appear to be the same issues and penalties across most Local Government areas.</p> <p>However, given that that avenue is not available at the present time, Council is of the view that each of the problems identified in relation to the proposed Local Law is a Council problem and that, accordingly, the provisions of the proposed Local Law are an appropriate solution.</p>

Overlap of existing legislation	<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"> • Noise : Environment Protection Act 1970 • Works in Roads : Road Management Act 2004 • Graffiti : Graffiti Prevention Act 2007 <p>Council believes the provisions of the proposed Local Law supplement the State legislation without duplicating, overlapping or creating any inconsistency.</p>
Overlap of planning scheme	<p>Council does not believe any provision of the proposed Local Law overlaps, duplicates or creates any inconsistency with any planning scheme. In some instances the Local Law provides a much easier process to be followed for a permit than via the Planning Scheme eg. short term occupation of a caravan</p>
Risk assessment	<p>Council has adopted a risk management approach to the review and development of the Local Law. All clauses have been reviewed using a risk matrix, in accordance with the Council Risk Management guidelines to ensure a Local Law provision is relevant and will be effective.</p>
Legislative approach adopted	<p>The Local Law should have a minimal impact on the community and Council, as the making of a local law imposes the burden of compliance on the community and the burden of enforcement onto Council. The proposed Local Law provides for:</p> <ul style="list-style-type: none"> • reasonable penalties; • a minimal number of offence provisions; • where possible, inclusion of permits rather than prohibition of activities; • clear and transparent permit application, review processes and general conditions; and • clear and transparent enforcement procedures.
Restriction of competition	<p>Council has conducted a review of this proposed Local Law in accordance with National Competition Principles and believes that because of the nature and content of this Local Law that there is no restriction of competition in any way.</p>
Penalties	<p>Council has compared the general level of penalties provided for in this proposed Local Law with those included in the Local Laws of other similar sized Councils and also its neighbouring Councils. All penalties are of a similar nature and amount.</p> <p>Council feels that the penalties imposed are sufficient to act as a deterrent for most offences and also reflect the seriousness of the offences</p>

Permits	<p>There are numerous permits issued under the Local Law by a number of work areas of Council.</p> <p>Delegations have also been updated as part of the review process to clearly identify those council officers who have accountability for the issuing of permits.</p>
Fees	<p>Council will continue to set fees annually as part of the budget process.</p>
Performance standards or prescriptive	<p>Where appropriate and possible, Council has adopted a non prescriptive approach to Local Law provisions.</p> <p>For example, detailed prescriptive requirements regarding the housing of poultry and livestock have been replaced with requirements designed to ensure clean, healthy and secure environments.</p> <p>Non compliance or more complex conditions for an activity will require the issue of a Permit. For example if a local community organisation wishes to conduct an authorised raffle at a street location they may do so if they comply with the base conditions. If they wish to deviate from those base conditions they will be required to obtain a permit.</p>
Comparison with neighbouring and like Councils	<p>Council has compared this local law with the existing local laws of the following Councils and found it to be consistent with the intent of their Local Laws: Benalla Rural City, City of Wodonga, Mansfield Shire and Alpine Shire.</p>
Charter of Human Rights and Responsibilities	<p>Council has assessed this proposed Local Law for compatibility with the Charter of Human Rights and Responsibilities and has not found any occurrences where the rights of any individual are impacted upon.</p> <p>In summary, Council has found that the few provisions that engaged human rights, mainly to do with restricting movement of people or their actions, were justified by the need to maintain safety for the community at large.</p> <p>An example of this is the restriction on consumption of alcohol in public places where the Council believes that there are ample opportunities and locations (ie restaurants, hotels, and their own homes) for the public consumption of alcohol which ably controlled by liquor licensing provisions.</p> <p>As a result, it is not appropriate to provide people with the opportunity to consume alcohol without the Council needing to allow consumption in public areas such streets and parks.</p>

<p>Consultation</p>	<p>In developing this Local Law the Council has either undertaken or will undertake the following processes:</p> <ul style="list-style-type: none"> • a review of changes in legislation that might impact on the content of the Local Law was also undertaken and appropriate amendments made; • various Council staff reviewed the existing document as to any issues with the current Local Laws; • a community focus group was formed to review the existing document, provide suggestions for improvement and review updated drafts before they were passed to Council; • Council will consider a formal draft of the Local Laws at an Ordinary Council meeting and will be required to adopt the proposed Local Laws in order that the formal public submission process can occur; • Submissions on the adopted proposed Local Laws will be called for in public advertisements with a 28 day submission period available for the public to make any comments, suggestions and objections on the proposals; • Council will hear any person making a submission if a person so requests at a meeting with Council or representatives of Council; • Council will then formally consider a report on the submissions and any proposed changes to the proposed Local Laws; • The Local Laws will then be submitted to Council's Legal Advisers for a final check; • Council will then adopt the Local Laws and place advertisements in local papers and the Government Gazette after which time the Local Law comes into force.
<p>Submissions</p>	<p>Council welcomes submissions and comments at any time during the above processes.</p> <p>However, Council will undertake a formal submission process under Section 223 of the Act once Council has completed its initial research and community consultation and has adopted a draft for the formal public comment required.</p> <p>There is no set format for submissions but they need to be in written form where possible. Persons not able to make a submission in written form need to contact the Council Office to make alternative arrangements.</p> <p>Persons making submissions may make a request to be heard at a meeting with Council or representatives of Council to discuss their submission. Council will set a time and place for such submitters to be heard.</p>