

Rural City of Wangaratta

Local Law Community Impact Statement

Local Law No.1 of 2018 (Community Amenity)

PART A - Background

At its 26 June 2016 Ordinary Meeting, Council resolved to commence the making of a revised local law to replace existing local law No 1 Community Amenity and Local Law No 3 Murray to Mountains Rail Trail.

The intention is to revoke Local Law No 3, and incorporate the required continuing provisions into an amended Local Law No 1, and to modernise the local law provisions to reflect current best practise by Victorian local governments for regulations to achieve good community amenity.

The draft local law also includes a number of provisions made necessary by changing activities in society and amendments to reflect changes in legislation since the existing local laws were made.

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

The proposed Local Law has been legally reviewed to confirm that it complies with all regulatory requirements.

The draft has been developed using the State Government best practice guidelines for the creation and enforcement of Local Laws, and the key features applicable are summarised as:

- 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.

Objectives

The objectives of the Local Law are set out in the draft of the Local Law under clause 2. The purposes are listed as:

- revoke Local Law No. 1 of 2014 – Community Amenity (Amendment) and Local Law No. 3 of 2009 – Murray to the Mountains Rail Trail made by Council;
- provide for and assure equitable, orderly and enjoyable use by people of community facilities, including roads;
- protect Council Property and other community assets from loss or unnecessary or avoidable damage;
- support provision by Council of a safe, clean and healthy environment in areas under its control and management; and

- provide generally for the peace, order and good government of the Municipal District.

Summary of changes to Existing Local Law No 1 – Community Amendment

The following major changes to the content of the draft Local Law are detailed as follows:

1. the draft Local Law contains a definition of ‘Municipal Building’ and a new ‘Part B’ – Municipal Buildings’ has been added. This new Part B:
 - 1.1 specifically regulates behaviour in and around Municipal Buildings;
 - 1.2 permits Council the ability to fix conditions of use; and
 - 1.3 enables an authorised Officer to direct a person to leave a Municipal Building under certain circumstances.
2. The draft Local Law now contains ‘Part C – Municipal Reserves’, which:
 - 2.1 is specifically concerned with Council’s control of, and people’s behaviour on Municipal Reserves;
 - 2.2 provides that Municipal Reserves are open to the public every day, free of charge, unless otherwise determined by Council; and
 - 2.3 permits Council to fix entry fees for entry into Municipal Reserves.
3. The draft local law has moved any reference to ‘movement of livestock’ to Clause 6 Definitions rather than in a separate clause. Clauses 17 and 18 of the draft Local Law continues to require permits to be obtained before a person undertakes Droving of Livestock or Grazing of Livestock (as defined) on any Council Land or Road. Movement of livestock that complies with the definition continues to be permitted without a permit.
4. A new definition of ‘Home Delivery’ has been added so that the Itinerant Trading provisions do not apply to the Home Delivery of goods and services where the transaction is completed on the land of the person receiving the goods or services.
5. Clause 21.4 of the draft Local Law exempts a person from the need to obtain a permit for the placement of Advertising Signs where the placement is permitted by the Wangaratta Planning Scheme or any State or Commonwealth legislation.
6. Clause 25 of the draft Local Law, concerning floodlighting, now incorporates the requirements set out in the relevant part of Council’s Local Law No 1 (Policies).
7. Clause 26 of the draft Local Law, concerning Scare Guns, now incorporates the requirements set out in the relevant part of the Policies.
8. A new clause, Clause 35, has been added to the draft Local Law, concerning bicycles, scooters, skateboards, in-line and roller skates providing for Council to designate parts of the municipal district in which these items can be used (e.g. skate parks and the like).
9. Clause 39 of the draft Local Law addresses unsightly land however the definition of ‘unsightly land’ has been removed. This ‘condition of land’ clause provides Council with greater flexibility when determining whether land ought to be considered ‘unsightly’ in the particular circumstances of each case.
10. A new clause, Clause 40, has been added to the draft Local Law, which requires people to maintain vacant buildings to an appropriate standard.
11. A new clause, Clause 44, has been added to the draft Local Law, regulating intruder alarms.
12. Part G – Animal Management now:
 - 12.1 incorporates the limits on animal numbers that was previously included in the relevant part of the Policies; and
 - 12.2 excludes the ‘Control of Cats’ and ‘Control of Dogs’ provisions because they

address matters that cannot, under s 42 of the *Domestic Animals Act 1994*, be the subject of a local law. Such matters should instead be addressed by Council in orders made under s 26 of that Act.

13. Part H – Building Site Management provides greater detail and clarity about building site requirements than provided under the current Local Law but essentially covers the same matters as previously.
14. Part I – Waste Management incorporates the matters currently addressed in the relevant part of the Policies.
15. Local Law No 3 of 2009 – Murray to Mountains Rail Trail has been incorporated as Part J of the draft Local Law.

The following general changes have also been made to the draft Local Law:

16. Overall the structure of the draft Local Law has been set out to follow a logical order, enabling its provisions to be more easily located and understood.
17. The administrative provisions of the draft Local Law, including the issuing of permits and the enforcement of the draft Local Law, have been reviewed and centralised. Those administrative provisions are now set out in Parts K and L of the draft Local Law and so are easy to locate and follow.
18. The draft Local Law now incorporates in its text many of the substantive matters addressed by the existing Local Law Policies (aside from those expressly noted below). Those Policies still required operate as guidelines to assist members of Council staff in their administration of the draft Local Law. Existing Local Law Policies on Grazing, Droving, and on Using Footpaths have been incorporated by Clause 96. They are incorporated because the level of detail in these previously exhibited policies made inclusion as clauses into the local law cumbersome but the guidelines on making local laws provides that as they contain permit conditions and will be heavily relied on in decision making, for transparency they should be incorporated into the local law and permit conditions will retain their validity.
19. The draft Local Law is more comprehensive than the current Local Law. It has been necessary for Council's Authorised officers to carefully review each clause to ensure that it does not create offences that Council otherwise does not wish to enforce.
20. Provision has been made for additional infringement offences where considered necessary and for variable infringement penalties. These have been carefully reviewed to ensure that they reflect Council's requirements and are generally consistent with similar local laws in Victoria.
21. There has been an increase in the maximum penalty for offences against the draft Local Law to 20 penalty units, although most of the infringement amounts are consistent with the current Local Law.
22. Due to submissions received during exhibition in 2017 and again in 2018, a small number of changes have been made. Most are minor housekeeping matters, however the provisions that allow permission to be granted for an excess number of some types of animals in Part G – Animal Management, has required reformatting resulted in re-exhibition of the local law to ensure no one has been prevented from making a submission on this matter. In particular submissions from pigeon racing members have been acknowledged in the 2018 version as the transfer of the provisions of the previous local law policy into the local law table as exhibited in 2017 did inadvertently prohibit being able to grant a permit when this was previously allowed.
23. Clause 97 was inserted to make explicit that various permissions, leases, licences and exceptions for activities granted by Council outside the local law did not require a permit under the local law.

Exhibition and Submissions

The draft Rural City of Wangaratta Local Law No.1 (Community Amenity) was exhibited by Council in March 2017 and after some amendments were made in response to submissions was re-exhibited in May/June 2018. Both the periods of public exhibition were for at least 28 days during which affected members of the community were invited to make written submissions and invited to request to be heard as per the requirements of Section 119 and Section 223 of the Local Government Act 1989.

The Council has considered all submissions and proposed changes to Local Law No.1 (Community Amenity) prior to considering to adopt the local law. At its meeting on 17 July 2018 Council adopted the local law with one additional change to include the Country Fire Authority personnel in a definition of 'class of persons'. The Local Law comes into effect at the beginning of the day of 3 August 2018.

PART B – Comments on the proposed Local Law overall

<p>Measures of success of the proposed Local Law</p>	<p>The success of the proposed Local Law will be best measured by the extent to which it achieves the objective of providing for the peace, order and good government of the municipality by:</p> <p>(1) regulating and controlling uses and activities on Council land and roads so that the Council is aware of uses or activities which may:</p> <ul style="list-style-type: none"> (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. <p>(2) managing, regulating and controlling activities and uses on any land which:</p> <ul style="list-style-type: none"> (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; <p>(3) identifying activities and uses that are not permitted so as to achieve the purposes in subclauses (1) and (2); and</p> <p>(4) providing for the administration of the Council's powers and functions.</p>
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<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</i> 2004, the <i>Environment Protection Act</i> 1970, the <i>Tobacco Act</i> 1987, and the <i>Road Safety Act</i> 1989.</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</i> 2004 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</i> 1970 is inadequate 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</i> 1987) 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>Many of the matters covered in this Local Law share the same issues and penalties across most Local Government areas but while State wide regulations do not exist at present to control these matters, the proposed Local Law is an appropriate solution.</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"> • 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>
<p>Overlap of planning scheme</p>	<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>
<p>Risk assessment</p>	<p>Council has adopted a risk management approach to the review of the Local Laws and the development of the changes to these laws. Council's approach has involved an examination of the impacts of undesirable behaviour on community safety and amenity; and</p> <p>An examination of existing laws that have the ability to effectively manage and reduce risk to community members, property and safety in public areas.</p> <p>The proposed Local Law enhances community input into Council decision making by requiring Council to follow a consultation process in the re-making of Local Law No. 1 Community Amenity.</p> <p>This approach addresses the risk that the community becomes disaffected by a perception that Council does not consult when making decisions about important matters that materially impact their lives, jobs and future or change the way the municipality is governed.</p> <p>The approach is consistent with the existing consultation provisions of the Act. Consequently, the approach has been tested and is familiar to Council.</p>
<p>Legislative approach adopted</p>	<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.

<p>Restriction of competition</p>	<p>The review and additions to the existing local law are effectively and legally the making of a new law under the Act and accordingly all provisions must be considered for possible restriction of competition.</p> <p>Council has conducted a review of this proposed Local Law in accordance with National Competition Principles and believes that with the exception of the matters listed below there is no restriction of competition.</p> <p>Itinerant trading – the requirements imposed could restrict competition, by requiring a separation distance where similar products are offered for sale, however allowing itinerant trading within the road reserve adjacent to a fixed business premises may allow unfair competition, so the proposed local law strikes a balance between the benefits of greater convenience and choice to customers with the risk that allowing unfair competition may hurt an established business premises with higher overheads and a fixed commitment to a locality.</p> <p>Use of municipal reserves is supplying land that is not available from private enterprise in the form required. Exercise in parks for example is a different offering to exercise in a gym.</p> <p>Regulating activities on road reserves including footpaths may have an effect on businesses but is required to satisfy obligations to provide a safe environment and reasonable standard of amenity for the public including equality of access for disabled or impaired people using footpaths, which is a requirement under Federal legislation.</p> <p>The balancing of achieving safety and amenity by the restriction of activity that might be associated with businesses, is evident with controls on signs, street activities, shopping trolleys, charity donation bins, floodlighting, scare guns, vehicles on land, consumption of liquor in public places, animal management, building site management, intruder alarms, shipping containers and temporary structures. These controls are the same for all, and do not favour one business over another, and are not considered to impose a restriction on competition.</p> <p>Council considers that the provisions of the Local Law does not restrict competition however in the event that the provisions could restrict competition in limited circumstances, then Council believes the proposed local laws pass the competition test by the benefits outweighing the costs and that there is no other way of reasonably achieving the objectives.</p>
<p>Penalties</p>	<p>Council has compared the general level of penalties provided for in this proposed Local Law with those included in the Local Laws of a range of other Councils. All penalties are of a similar nature and amount and are reasonable by comparison and for this municipality.</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 are continually up to date 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, however many of the local laws must by their nature be prescriptive. Where possible a performance based approach is used.</p> <p>Non compliance or more complex conditions for an activity will require the issue of a Permit.</p>
Comparison with other Councils with same legal representation	<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: City of Yarra, City of Monash, City of Greater Geelong, City of Bayside, City of Booroondara.</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>Consultation</p>	<p>In developing this Local Law the Council has undertaken to follow these 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; • Submissions on the proposed Local Laws were called for in a public consultation period in 2017. As a result of submissions a small number of changes were made and vetted by Council's Legal Advisors, and it was decided that the amended proposal should be re-exhibited in May 2018. • Submissions on the proposed Local Laws 2018 were again called for in public advertisements with a minimum 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 should changes be required; • Council will then adopt the Local Laws and give notice in the local paper and the Government Gazette that the Local Law comes into force.
<p>Submissions</p>	<p>Council will undertake a formal submission process under Section 223 of the Act.</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>