

Explanatory document

Community Local Law 2011 is due to expire in December 2021.

The proposed replacement, Community Local Law 2021, is for the protection fair use and enjoyment of Council land and waterways managed by Council, safe and fair use of roads and road related areas, the protection and improvement of amenity, and to regulate the keeping and control of animals.

The community engagement process that applies in respect of the making of Community Local Law 2021 conforms to HRCC Policy No: C04/095 – Council’s Community Engagement Policy.

Main changes

The local law has been re-arranged into 3 parts. Part one is about the local law being a legal document and includes the special words and phrases used in the local law. The second part is about permits waiver and exemptions, impounding and other ways of enforcing the local law. The third part sets out the rules – what has to be done, what is prohibited and when to ask Council for permission.

The third part of proposed Community Local Law 2021 is about roads, protection and improvement of amenity, land controlled or managed by Council, and animals.

Roads

Council has to manage–

- traffic on Council roads in a manner that enhances the safe and efficient operation of roads
- other uses in a manner which minimises any adverse effect on the safe and efficient operation of the road and on the environment.

The current local law says do not obstruct or cause a hazard to users of the road. The proposed local law says this more plainly by giving examples of things that are adverse to the safe and efficient operation of the road and footpath for vehicles and pedestrians.

The current local law requires permits for certain activities that may affect the safe and efficient operation of the road. The proposed local law includes a new activity - mobile billboard. A mobile billboard is an advertising sign that is not an integral part of the motor vehicle on which it is displayed and this includes an advertising sign on a trailer.

Protection and improvement of amenity

The current local law has several clauses about: nuisance noise; dust, grit, ashes, fumes and smoke that are dangerous to health or offensive; and things that must not be burnt. This has been simplified in the proposed local law by using a concise new definition of local nuisance. The shorter and simpler approach is about more efficient and effective management of nuisances so as to protect and improve the amenity of the municipal district.

New noise laws apply across Victoria from 1 July 2021. Because Council is a waterway manager for–

- Green Lake
- Lake Natimuk
- Lake Toolondo
- the Wimmera River within the boundaries of Horsham Rural City,

the proposed local law regulates noise from activities on vessels so everyone can enjoy these places.

New environmental laws apply across Victoria from 1 July 2021. The new laws apply to the municipal waste and the stormwater management functions of Council. The new laws also apply to air quality. This means the proposed local law–

- incorporates a document called the Solid Waste Code, to be amended from time to time so that Council can comply with the municipal waste laws
- protects kerb and channel, other Council drains and stormwater quality
- prohibits incinerators in the urban area (the urban area has either or both buildings/ street lights, not over 100 metres apart, for 500 metres or the length of the whole road).

To address community expectations of neighbourhood amenity the proposed local law says–

- vehicles in excess of 4.5 tonnes cannot be garaged, serviced or repaired on land in the residential zones (this includes the Low Density Residential Zone)
- freight containers that are not covered by building permit or planning approvals cannot be kept in the urban area and require a permit outside of the urban area.

Land controlled or managed by Council

Government land is an important asset for all Victorians. It supports the delivery of essential government services, protects sites of environmental and cultural value and provides opportunities for community and recreational uses. Council is a manager of government land so the proposed local law includes an objective for protection, fair use and enjoyment of this land.

The current local law requires permits for various activities. This does not change in the proposed local law. The permit process is about the information Council needs to prevent damage to and sharing of community assets. New activities for which a permit may be required under the proposed local law include commercial filming, commercial photography and privately run fitness classes in parks. The proposed local law like the current local law provides for waivers and exemptions from the requirement to have a permit or to pay a fee. Fees are set in the annual budget process of Council, a process that includes community engagement.

So we can all continue to enjoy public open space without damage to natural areas the proposed local law says motor vehicles are to stay on the track. Also, the fair use and enjoyment objective of the proposed local law allows for places for quiet and places free from intrusion. This means the proposed local law says a recreational vehicle with an auxiliary motor and model aeroplanes (including drones) need their own spaces away from the general public.

The proposed local law has not changed the current local law so Council will continue to regulate liquor in unsealed containers in parts of the municipal district. This means Council officers and police can ask for containers to be resealed or disposed of.

Horsham Aerodrome is under the control of Council. To comply with the requirements of the Civil Aviation Safety Authority, the proposed local law does not change the current local law requirements for the aerodrome movement area.

Animals

The current local law limits on the keeping of animals have been simplified in the proposed local law.

The current local law limits lists dogs, cats, livestock, rodents or reptiles, domestic bird, poultry but not roosters, rooster, and pigeon. The current local law uses land sizes, land uses and planning scheme zones to say how many animals you can keep.

The proposed local law says in the urban area you can keep 4 pets and 5 chickens (not roosters) provided you comply with the square metre area provided in the codes for these animals under the *Prevention of Cruelty to Animals Act 1986* or the *Domestic Animals Act 1994* (or any replacements). For example one cat, two dogs, 2 caged birds up to 30cm in length and 5 chickens in the urban area. The urban area has either or both buildings or street lights, not over 100 metres apart, for 500 metres or the length of the whole road.

Unless you already have some other type of animal keeping approval or authority, the proposed local law says in the urban area you need a permit to keep–

- more than 2 cats
- more than 2 dogs
- more than 5 chickens
- more than 2 caged birds up to 30cm in length
- more than 4 pets and 5 chickens.

A pet is a dog or cat over 3 months and anything like: caged birds up to 30cm length; guinea pigs; mice; rabbits or reptiles, usually sold in a pet shop. The Code of Practice for the Housing of Caged Birds is published by the Victorian Government. 2 caged birds up to 30cm in length is counted as one pet. You can have more of the smaller birds and the Code of Practice tells you how to calculate this by cage size.

You cannot keep free flying pigeons in the urban area.

The current local law says you cannot keep livestock (including a horse) on 0.4 hectares or less. To protect and improve the amenity of the municipal district the proposed local law says–

- you cannot keep livestock (including a horse) in the urban area
- unless otherwise approved or authorised (for example in the Farming Zone under the Horsham Planning Scheme) outside the urban area you can keep 2 horses on 4 hectares.

Definitions

To comply with the Office of Chief Parliamentary Counsel Victoria (2017) *Notes for Guidance on the Preparation of Statutory Rules*

- Definitions in the current local law that do not appear in the proposed local law or only appear once or twice have been removed.

Example

Act, advertising sign, aerodrome movement area, agent of the owner or builder, bin, bulk rubbish container, car park, Council sewer or drain, domestic bird, Executive Managers, festival, flat, municipal place, municipality, owner, poultry, private land, procession, public car park, public place, rodent, sell, shopping trolley, toy vehicle

- Expressions used in the proposed local law have the same meaning as they have in the Act conferring power to make the proposed local law and do not need to be defined – see section 23 of the *Interpretation of Legislation Act 1984*.

Example

Authorised officer, sewers and drains vested in Council, municipal district, penalty unit

- Definitions are consistent with the language of related legislation.

Example

Liquor not alcohol, urban area not built-up area and not residential area, farm land, footpath, freight container, incorporated document, livestock, Council land not municipal place, nature strip, construction activity and construction work not prescribed building work, road and road related area, vehicle, wheeled recreational device

Measures of success

Proposed Community Local Law 2021 can be evaluated for any compliance policy or program and at any review of the local law using–

- ✓ The number of Merits (or other customer response system) items for any clause or group of clauses
- ✓ The number of notices to comply that require more than three follow up steps to be taken
- ✓ The number of items of a particular type impounded
- ✓ The number of internal reviews resolved in favour of the member of the public
- ✓ Feedback from police about unsafe consumption of liquor after 8pm by persons in motor vehicles parked in the vicinity of licensed premises and about unsafe consumption of liquor during daylight hours by persons on park and street benches.

Other laws

Proposed Community Local Law 2021 complements other laws so as to respond to conditions in the municipal district without duplicating, overlapping or creating any inconsistency.

Existing legislation reviewed in developing a local response includes–

Country Fire Authority Act 1958 for the clause in Community Local Law 2021 about fires in the open air–

- ✓ on Council land (any land or building owned, occupied, vested in, managed by or under the control of Council)
- ✓ in the urban area (that part of the municipal district where there is 500 metres of overhead street lighting or buildings not more than 100 metres apart for 500 metres).

Domestic Animals Act 1994, Impounding of Livestock Act 1994, Livestock Disease Control Act 1994, Livestock Management Act 2010, Codes for the keeping, husbandry or management of animals under the *Prevention of Cruelty to Animals Act 1986* and the *Horsham Planning Scheme* for the group of clauses in Community Local Law 2021–

- ✓ regulating the number of dogs or cats which may be kept
- ✓ requiring the removal and disposal of faeces from public places
- ✓ regulating the type and number of animals that can be kept in the urban area
- ✓ about impounding animals including livestock.

Environmental Protection Act 1970, Environmental Protection Act 2017, Environmental Protection (Residential Noise) Regulations 2018, Environmental Protection Act 2018 and the *Environmental Protection Regulations 2021* for the group of clauses in Community Local Law 2021–

- ✓ for stormwater management
- ✓ about noise from activities on a vessel on a waterway managed by Council

- ✓ about local nuisance
- ✓ to prohibit incinerators in the urban area (where there is 500 metres of overhead street lighting or buildings not more than 100 metres apart for 500 metres)
- ✓ about municipal waste requirements of Council.

Heavy Vehicle National Law Application Act 2013, Road Management Act 2004, Road Safety Act 1986 and the Road Safety Road Rules 2017 for the group of clauses in Community Local Law 2021–

- ✓ to protect sight lines for traffic (vehicles and pedestrians) and to prevent street lighting being obscured
- ✓ to prevent damage to footpaths, nature strips, roadside drainage and road surfaces
- ✓ for the road management principle that roads are provided primarily for the movement of persons and goods, to reflect the priorities of different modes of transport, and to protect the function of different parts of the road / road network.

Crown Land Acts (the Crown Land (Reserves) Act 1978, Forests Act 1958 and Land Act 1958), Civil Aviation Act 1988, Civil Aviation Safety Regulations 1988 and the Filming Approval Act 2014 for the group of clauses in Community Local Law 2021–

- ✓ to require a permit for activities on (Council land)
- ✓ to prevent damage to Council land and things on Council land
- ✓ to regulate certain activities on Council land such as camping, model aeroplanes including drones, and motorised wheeled or tracked devices ordinarily used for recreation or play (recreational vehicle)
- ✓ for the Horsham Aerodrome
- ✓ for the impounding of shopping trolleys.

Dangerous Goods (Explosives) Interim Regulations 2021 for the clause in Community Local Law 2021–

- ✓ requiring a person to give Council notice of an intention to discharge fireworks.

Liquor Control Reform Act 1998 and the Public Health and Wellbeing Act 2004 for the clause in Community Local Law 2021–

- ✓ to regulate unsafe consumption of liquor and with police to provide collaborative enforcement of public conduct laws
- ✓ to provide alcohol free areas to help ensure public safety and amenity.

Local Government Act 2020, Infringements Act 2006, Sentencing Act 1991 and the Summary Offences Act 1966 for the group of clauses in Community Local Law 2021–

- ✓ about offences which may be the subject of an infringement notice under the local law
- ✓ about penalty units (the penalty is the number of penalty units multiplied by \$100)

- ✓ about good order and activities on road related areas and Council land.

Risk assessment

A formal risk assessment has not been undertaken for each clauses or group of clauses in proposed Community Local Law 2021 beyond the identification of problems and existing records about the frequency and consequence for some matters.

For example liquor in unsealed containers. This problem is most recently described in–

- parts 2.3 and 2.4 of the Victorian Commission for Gambling and Liquor Reform (March 2020) *Regulatory Impact Statement for five Designated Area Orders* about the impacts of alcohol-related violence or disorder in a public place where alcohol is available and the geographical concentration of crime
- Priority 1: Improving Community Safety and Amenity in the National Alcohol Strategy 2019-2018 which says–

...Australians can be affected by reduced amenity and anti-social behaviour (such as street noise, having to avoid public parks, or petty costs from damaged property)
- The 2019 Victorian Population Health Survey which says–

The proportion of adults who were at increased lifetime risk of alcohol-related harm, either weekly, monthly or yearly, was 59.6%, overall. This proportion was significantly higher in men (68.9%), compared with women (51.4%)

The problem is a continuing problem and Council has a role to support–

- The National Alcohol Strategy 2019-2028 Priority 1: Improving Community Safety and Amenity Objective 2 Safer drinking settings

Provide and enforce alcohol free areas to help ensure public safety and amenity
- The Victorian Public Health and Wellbeing Plan 2019–2023 and Victorian public health and wellbeing outcomes framework which says reducing harmful alcohol use is one of 10 priorities and sets a 10% decrease consumption target including by delivering environments that support low-risk drinking.

Proposed Community Local Law 2021 says Council can prescribe the times and places, case or class of case for a person in which a person must not have liquor in an open container on a road, road related area or Council land. This means Council can provide alcohol free areas to help ensure public safety and amenity and Council can prescribe times and places, case or class of case where resourcing allows for closer management of behaviour, noise, litter or drinking that otherwise deters the general public from using parks etc.

Legislative approach adopted

Proposed Community Local Law 2021 uses a medium impact regulatory approach—

- for listed activities within the municipal district so the potential impacts can be assessed and if necessary managed by conditions of permits
- so that enforcement processes include the giving of warnings and directions and so that affected members of the public can apply for review of permit and enforcement decisions.

Restriction of competition

The proposed Community Local Law 2021 does require permits for 4 new activities: mobile billboards; commercial filming; commercial photography; and private fitness classes in parks.

Council is required to comply with the eight film friendly principles of the *Filming Approval Act 2014*. The objectives of the proposed Community Local Law 2021 are consistent with Principle 1 allowing Council to consider public amenity, safety and environmental impacts and the operational requirements for maintenance of land and facilities. For this reason it is considered that proposed Community Local Law 2021 does not create any barrier to entry beyond that already established by the *Filming Approval Act 2014*.

Under the *Road Management Act 2004* Council is to manage the use of roads having regard to the principle that the primary purpose of a road is to be used by members of the public and that other uses are to be managed in a manner which minimises any adverse effect on the safe and efficient operation of the road and on the environment. For this reason it is considered that the benefits outweigh the costs of the permit requirement for a mobile billboard under proposed Community Local Law 2021 and there is no other way of reasonably achieving a proper assessment of a non-road use (advertising).

The Victorian government has committed to renew Victoria's public land legislation in response to an independent, state-wide investigation of public land. The investigation report by the Victorian Environmental Assessment Council (May 2017) *Statewide Assessment of Public Land: Final Report* says the effectiveness of public land management could be improved. Consistent with the Final Report, the Victorian government proposes new legislation to support communities to realise the value of public land, for example through the appropriate use of public land and recognising that public land has to be managed effectively for the benefit of the whole community into the future. The fair use and enjoyment objective of proposed Community Local Law 2021 for land under the control of or managed by Council means the benefits outweigh the costs of the permit requirement and there is no other way of reasonably achieving the objective.

Penalties

Council has compared penalties in proposed Community Local Law 2021 with local laws made since 2017 of like and neighbouring councils. The penalties are similar in nature and not so high as to encourage election for expensive and time consuming court proceedings.

Performance standards or prescriptive

A mix of both prescriptive and performance standards is used in proposed Community Local Law 2021. The permit process and use of incorporated documents allows for changes in the information required over the life of the proposed local law to assess any risk to Council assets, detriment to amenity in the municipal district and impact on the effective management of public land for the benefit of the whole community.

Comparison with neighbouring and like Councils

Local laws made since 2017 were reviewed to identify any likely change in the nature of activities on roads and land under the control or management of Council and to identify potential adverse impact on the amenity of the municipal district. Also the definitions used for similar concepts in other municipal districts have been used or adapted in proposed Community Local Law 2021.

Charter of Human Rights

Proposed Community Local Law 2021 has been developed to be compatible with the *Charter of Human Rights and Responsibilities Act 2006 (Charter)*. Any limitations, such as limits on legitimate recreation in public spaces are considered to be reasonable and take into account all relevant factors for s7(2) of the Charter and the purpose of the limitation for the safe and fair use and enjoyment by the public of land under the control of or managed by Council.