

# LOCAL LAW REVIEW

Nillumbik Shire Council

Discussion Paper

Amenity Local Law and Infrastructure Assets Local Law

## Introduction

Every municipality in Victoria has a number of Local Laws, created by Council, to govern and protect the amenity of the local area, and to regulate the use of Council land and assets.

Local laws are designed to respond to issues and community needs within a municipality. These local laws complement their responsibilities and powers under state law.

Any local laws passed by Council must be designed to ensure that the actions of an individual or group do not have an adverse impact on the rest of the community, and only apply within the municipality in which they are passed, though many councils share similar laws.

A local law, once adopted, has a maximum 10-year life. This ensures that local laws remain current and suitable to the purpose for which they were originally made, as well as ensuring that they respond to new issues or shifting community expectations.

Pursuant to the Local Government Act 2020, section 71, Councils can create local laws with respect to any act, matter or thing in respect of which the Council has a function or power under the Local Government Act 2020 or any other Act.

Section 72 of the Local Government Act 2020 also clearly states that a local law created by a Council must:

*(a) a local law must not be inconsistent with any Act (including the Charter of Human Rights and Responsibilities Act 2006) or regulations;*

*(b) a local law must not duplicate or be inconsistent with a planning scheme that is in force in the municipal district;*

*(c) a local law for or with respect to the issuing of film permits must not be inconsistent with the film friendly principles;*

*(d) a local law must not exceed the power to make local laws conferred by this Act or any other authorising Act;*

*(e) a local law must be consistent with the objectives of this Act or any other authorising Act;*

*(f) a local law must be expressed as clearly and unambiguously as is reasonably possible;*

*(g) unless there is clear and express power to do so under this Act or any other authorizing Act, a local law must not—*

*(i) seek to have a retrospective effect; or*

*(ii) impose any tax, fee, fine, imprisonment or other penalty; or*

*(iii) authorise the sub-delegation of powers delegated under the local law;*

*(h) a local law must comply with any details prescribed in the regulations relating to the preparation and content of local laws.*

Nillumbik will only introduce Local Laws which conform to the following standards:

- necessary
- consistent (in language and effect)

- compliant (with the legislation under which they are made and other legislative requirements)
- enforceable
- accessible
- efficient
- accountable
- transparent
- current

The intention of this discussion paper is to inform the public on the key changes to the current Local Laws being investigated by Council, provide background on the current local laws and to provide context and information regarding the process of replacing the Local Laws.

## Nillumbik's Local Laws

Nillumbik currently has the following four local laws:

Name	Date created	Objectives
Amenity Local Law	October 2013	<p>The objectives of this Local Law are to provide for the:</p> <ul style="list-style-type: none"> <li>a) safe and fair use and enjoyment of public places;</li> <li>b) safe and fair use of roads;</li> <li>c) regulation of street activities;</li> <li>d) keeping and control of animals;</li> <li>e) fair and reasonable use and enjoyment of private land;</li> <li>f) uniform and fair administration of this Local Law;</li> <li>g) peace, order and good government of the municipality.</li> </ul>
Infrastructure Assets Local Law	November 2013	<p>The purposes of this Local Law are to:</p> <ul style="list-style-type: none"> <li>a) provide for the peace, order and good government of the Municipal District;</li> <li>b) protect public assets vested in Council from damage, accelerated deterioration or abuse during the building works process;</li> <li>c) providing a physical environment which aims to minimise hazards to the health and safety of persons attending building sites and those adjacent, opposite or passing building sites;</li> <li>d) prohibiting, regulating and controlling the presence and disposal of refuse, rubbish and soil on and from building sites within the municipal district to reduce hazards to the environment and promote an environment where residents can enjoy a quality of life that meets the general expectation of the community;</li> <li>e) defining the standards to which persons engaged in building works should adhere; and</li> </ul>

Name	Date created	Objectives
		f) educating and inducing persons involved in building works to act responsibly to reduce the extent and cost of infrastructure damage for the benefit of the wider community.
Fireworks Local Law	October 2019	<p>The objective of this Local Law is to prohibit the discharge of fireworks in certain parts of the municipality:</p> <ul style="list-style-type: none"> <li>a) to restrict activities in a bushfire prone rural environment that can impact on the health and wellbeing of residents, specifically those who have experienced catastrophic bushfires;</li> <li>b) to reduce the risk of danger and injury to animals and wildlife arising from the discharge of fireworks;</li> <li>c) to address nuisance, amenity and environmental impacts of fireworks activities;</li> <li>d) apply standards that address safety matters directed at reducing risk to the community.</li> </ul>
Meeting Procedure Local Law	July 2017 Partially Revoked August 2020	Clauses 1-14 of this Local Law ceased to be in operation from 25 August 2020 having been superseded by Council's Governance Rule - Meeting Procedure adopted 25 August 2020. Clause 15 governs the use of the Common Seal of Council.

The Nillumbik *Amenity Local Law* and *Infrastructure Assets Local Law* are set to expire in 2023.

The review of the *Amenity Local Law* and *Infrastructure Assets Local Law* represent an opportunity for Council to ensure the provisions within these local laws are appropriate, lawful, meet the needs of the Nillumbik Community and are easy to understand and use.

Many of the provisions within both of these local laws have been largely unchanged in content since 2003, with a minor review carried out in 2013.

The review of these two local laws also represents an opportunity to modernise the structure of Council's local laws, combining them into a single document.

The existing *Amenity Local Law* and *Infrastructure Assets Local Law* have been in place since 2013. More recently Council adopted the *Fireworks Local Law* in October 2019, to prohibit the display of fireworks within the rural areas of the Shire. Council also revoked the majority of the *Meeting Procedure Local Law* in August 2020 as that content is now in the Governance Rules.

The *Amenity Local Law* currently regulates:

- Behaviour in Public Places
- Consume Liquor in Public Places
- Specific Activities

- Advertising Signage
- Clothing Bins
- Collections, Busking and Solicitation
- Shopping Trolleys
- Trading
- Actions to Council Land
- Scare Guns
- Animals
  - Dog Excrement
  - Confining livestock
  - Number of animals on land
  - Livestock noise
  - Dogs prohibited in markets
- Amenity
  - Alarm Systems
  - Chimneys
  - Incinerators
  - Waste Collection
  - Trade Waste
  - Motorised Toy Vehicles
  - Identification of Premises
  - Camping
  - Unsightly land
  - Encroaching/Overhanging Vegetation
  - Open Air Burning
  - Waste Containers
  - Parking of Vehicles
  - Repair and Sale of Vehicles on Roads
  - Caravans
  - Circuses, Carnivals and Festivals

The Infrastructure Assets Local Law currently regulates:

- Asset Protection
- Inspections
- Equipment and Materials Delivery
- Fencing
  - Site fencing
  - Site Identification sign
- Stormwater
  - Stormwater protection
  - Drains and water courses
  - Stormwater drainage connections
- Vehicle Crossings

- Construction of a Vehicle Crossing
- Control of Builders refuse
  - Containment of refuse
  - Disposal of builders refuse
  - Removal of builders refuse
- Sanitary Facilities Building Sites
  - Sanitary Facilities

Council are seeking feedback on the provisions within the current local laws, their effectiveness, and whether they are still fit for purpose for the Nillumbik community in 2021 and beyond.

## Discussion Points

Council have carried out an initial review of the Amenity Local Law and the Infrastructure Assets Local Law in order to identify any shortcomings, or areas for improvement within the existing provisions of these local laws. It is evident that the local laws in general require some modernisation in order to best reflect the Nillumbik Community of 2021 and beyond. In addition to modernising both the Amenity Local Law and the Infrastructure Assets Local Law, Council is seeking community feedback on a raft of additional measures Council are considering incorporating into a new local law.

The table below provides some detail on issues within the community that could be addressed through new local laws provisions. Each of these issues is presented in order to engage the community in a discussion about the intent of any future provisions, and whether there is community support for the inclusion of new provisions within a future Nillumbik Local Law.

Issue	Context	Potential Local Law provision, if determined to be required
Use of drone's over public or private land	<p>Drones have the potential to be dangerous to users of Council land, they can also impact on the peaceful enjoyment of both public and private spaces. Drones can also be used to film public/private places without consent.</p> <p>The Civil Aviation Safety Authority (CASA) currently regulates drone use, but does not have restrictions on flying drones over private land.  <a href="https://www.casa.gov.au/drones">https://www.casa.gov.au/drones</a></p> <p>Over and above the existing regulation, Council would have the power to control the launch or use of drones from Council controlled land.</p>	<p>Consider a permit trigger on the use of drones being launched from Council controlled land.</p> <p>Consider a prohibition on drones flying and or recording over private property without the express permission of the land owner.</p>
Use of fencing that could be harmful to wildlife	<p>Barbed, ring lock and other animal proof fencing in a rural context is known to have a significant impact on the welfare of wildlife, often inflicting injury on animals when they come into contact with this type of fencing.</p> <p>The impacts of 'animal proof' fencing is a complex issue, however restrictions on the use of this type of fencing would have a beneficial impact on wildlife, reducing injuries, and enabling migratory patterns to continue.</p>	<p>Consider a provision prohibiting the use of 'animal proof' fencing in the municipality.</p> <p>Council could regulate, but could not be made retrospective i.e. this would only apply to new fences constructed, which adds to the complexity of enforcing this provision.</p>

Issue	Context	Potential Local Law provision, if determined to be required
Helicopter landing	<p>The landing of helicopters within the Shire can have a considerable impact on the amenity of the surrounding area, particularly in rural locations. The <a href="#">Victorian Planning Provisions</a> incorporate controls relating to the creation of permanent helicopter landing sites, however a local law could look to restrict the ad hoc landing of helicopters throughout the Shire.</p> <p>Such provision would need to compliment planning scheme controls.</p>	Consider a provision that restricts the landing of helicopters away from existing approved landing sites.
Single Use Plastics	<p>The Victorian Government has introduced a ban on the use of single use plastics (Single-use straws, cutlery, plates, drink-stirrers, expanded polystyrene food and drink containers, and cotton bud sticks) which will take effect by February 2023.</p> <p>Council are considering a further restriction on the use of single use plastics, and plastic bags at events run on Council land, or events that are supported by Council.</p>	Consider a prohibition on single use plastics at Council endorsed events – markets, festivals ect
Political Signage on Council buildings/land	<p>No signage can be displayed on Council land whether it is election signage, political signage or advertising signage. 'Council land' also includes all roads or streets within the municipality. This prohibition also applies to signs and banners attached to a verandah or awning which may overhang Council land.</p> <p>However, this restriction is not explicit within the current Local Law, and should be investigated in order to provide greater control. This restriction could also form part of a lease agreement for Council buildings.</p>	Consider a restriction on placing election signage on Council buildings or land



Issue	Context	Potential Local Law provision, if determined to be required
Barking Dogs	<p>Barking Dogs can cause a significant impact on the amenity of surrounding properties. The Domestic Animals Act currently includes provisions aimed at controlling nuisances caused by domestic pets, however it sets an extremely high burden in proving a nuisance exists from a barking dog.</p> <p>The lack of clear provisions in relation to animal nuisances hampers Councils ability to effectively control nuisance complaints such as barking dogs.</p> <p>Council receives a large number of complaints regarding barking dogs (and to a lesser extent, animal noise generally) and there is a need to regulate this area.</p>	Consider better and more robust Barking Dog controls, as the existing provisions in the Domestic Animals Act are lacking
Shopping Trolleys	<p>Council receives multiple complaints in relation to abandoned shopping trolleys weekly. Current provisions in relation to abandoned trolleys hold the customer responsible, making it extremely difficult to ensure that large retailers take responsibility for the management of their trolleys. An effective tool to ensure trolleys are managed properly, could be a provision requiring the installation of coin locks, or magnetic wheel locks on all trolleys within the Shire, which would incentivise customers to ensure that they do not take trolleys away from the retail shop.</p>	Consider a provision to introduce a coin mechanism or wheel lock requirement for supermarkets/traders who provide trolleys

Issue	Context	Potential Local Law provision, if determined to be required
Spray can sales	<p>Nillumbik has a highly proactive and successful graffiti management and removal program, backed up by Councils Graffiti Management Plan.</p> <p>An additional tool to further reduce the opportunity for graffiti and tagging to occur would be the introduction of a local law requiring all cans of spray paint to be kept secured by a lock at the point of sale. This would further restrict access to spray paint over and above the current state government ban on the sale of spray paint to minors.</p>	Consider a requirement to lock away spray cans and/or stop displaying them at point of sale to assist in the theft of cans and require people to ask for cans
Smoking in Public	<p>Both Federal and State levels of government have introduced legislation that controls the sale and/or consumption of tobacco related products. Current controls include a restriction on the sale of tobacco products, the implementation of taxes on all tobacco products, and limitations aimed at controlling where tobacco can be smoked. Specifically, smoking is banned in any enclosed public space, in any area where food is consumed, and within 20m of any existing playground or entrance to a public building.</p> <p>It is intended that Council investigate the introduction of additional smoking controls aimed at broadening the range of areas that smoking is banned.</p>	Consider a prohibition on smoking around Council buildings

Issue	Context	Potential Local Law provision, if determined to be required
Use of Glyphosates	<p>Glyphosates are a herbicide commonly used as a weedkiller. The Australian Pesticides and Veterinary Medicines Authority (APVMA) the regulatory agency for pesticides in Australia, decided not to change regulations on the use of glyphosates. This decision was following a 2015 IARC report, which was affiliated with the World Health Organisation (WHO) This report classified glyphosate as a cancer-causing agent.</p> <p><a href="https://apvma.gov.au/node/13891#IARC">https://apvma.gov.au/node/13891#IARC</a></p> <p>It is intended that Council investigate the introduction of restrictions on the sale or use of Glyphosates and other harmful chemicals within Nillumbik.</p>	Consider a restriction on the use of Glyphosates and other harmful chemicals and/or prohibit the sale of Glyphosates within the municipality

## Process

Council Officers have been through an exhaustive internal review process including Councillor workshops in order to develop this discussion paper.

This discussion paper seeks community feedback on new areas of focus, as well as feedback on the existing provisions within the Amenity Local Law and Infrastructure Assets Local Law.

Feedback received in response to this discussion paper will be used to inform the development of a draft local law and a matrix of proposed changes against the current local laws.

It is anticipated that a further round of consultation and the formal exhibition of the draft local law will take place in late 2021.