

Local Law Community Impact Statement

City of Bayside Neighbourhood Amenity Local Law 2021

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

1. INTRODUCTION

Council is proposing to update its Neighbourhood Amenity Local Law, adopted in 2012 (**current Local Law**).

The proposed new Neighbourhood Amenity Local Law (**proposed Local Law**) will supersede and replace the current Local Law.

This Community Impact Statement has been prepared to inform the community about the proposed Local Law and to assist any member of the public who may wish to make a submission to Council during the public consultation process required under the *Local Government Act 1989* (**Act**).

2. BACKGROUND

Local Laws are a form of local regulation that enable councils to make legislative controls reflecting the different circumstances of each municipality. The Local Law-making power attributed to councils comes from the Act.

The current Local Law was made by Council resolution on 10 April 2012.

The current Local Law regulates various conduct and behaviour throughout the municipality.

The current Local Law is due to expire in 2022 and needs to be renewed and updated to incorporate changes in legislation and to reflect current issues within the municipality.

3. 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 Neighbourhood Amenity Local Law 2021, will commence on the day following notice of its making being published in the Victoria Government Gazette and, unless revoked earlier, will expire 10 years after commencement.

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

The purposes of the proposed Local Law are to:

1. protect community safety and neighbourhood amenity;
2. protect public assets and infrastructure, and the built and natural environment;

3. entrance the use, access and enjoyment of public places for the community's benefit;
4. provide for the administration of Council's powers and functions; and
5. revoke the current Local Law.

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 1 February 2021 to 5 March 2021.

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

The proposed Local Law has been reviewed by Council's lawyers who confirm that it complies with all relevant regulatory requirements.

A copy of the proposed Local Law is attached (**Attachment 1**) to this Community Impact Statement.

4. MAIN CHANGES INTRODUCED BY THE LOCAL LAW

All provisions of the current Local Law have been reviewed. Substantive changes are outlined in the following paragraphs.

Definitions

Various definitions have been added, amended and removed, including the addition of the following definitions:

- 'Asset Protection Permit';
- 'bike share scheme';
- 'builder';
- 'building site';
- 'e-scooter';
- 'Local Law Guidelines'
- 'model aeroplane'; and
- 'prescribed'.

Some definitions in the current Local Law (eg 'Traffic Control Device' and 'Unlawful Game') have been deleted and others have been amended (eg 'advertising sign' and 'municipal reserve').

Prescription by Council

Various provisions in the proposed Local Law enable Council to prescribe something. For example, Council will be given the power to prescribe smoke free areas and restrictions on the consumption of alcohol in particular municipal reserves.

The prescription will begin with a Council Resolution. The effect of the Resolution will be published on Council's website and in a newspaper generally circulating within the municipal district. In this way, the community can learn what has been prescribed and understand the effect of the prescription.

Local Law Guidelines As An Incorporated Document

Some provisions in the proposed Local Law require a person to comply with the Local Law Guidelines. Others envisage the Local Law Guidelines providing an exemption from an obligation that would otherwise exist or setting out considerations which Council will take into account in deciding whether to issue a permit under the proposed Local Law.

A copy of the proposed Local Law Guidelines is attached (**Attachment 2**) to this Community Impact Statement.

Once finalised, the proposed Local Law Guidelines will form part of the Local Law made by Council.

Bike Share Schemes

The proposed Local Law seeks to regulate the operation of bike share schemes. It:

- prohibits a person who owns or operates a bike share scheme from allowing any of their bicycles to be operated in Council's municipal district without a permit;
- prohibits the operation of bicycles that are not fitted with a device requiring the bicycles to be returned to a designated place without a permit;
- creates an offence for a person who owns or operates a bike share scheme where a bicycle is:
 - left or placed in a way that unreasonably interferes with the use of any road, footpath or other place; or
 - left or placed in a place that detrimentally affects the amenity of that place;
- requires a person who owns or operates a bike share scheme to:
 - remove within 24 hours of notification any bicycle left in contravention of the proposed Local Law;
 - remove within 24 hours of notification any bicycle that is damaged or missing any part; and
 - comply with the conditions of a permit.

E-scooter Share Schemes

The proposed Local Law also seeks to regulate the operation of e-scooter share schemes. It:

- prohibits a person who owns or operates an e-scooter share scheme from allowing any of their e-scooters to be operated in Council's municipal district without a permit;
- prohibits the operation of e-scooters that are not fitted with a device requiring the e-scooters to be returned to a designated place without a permit;

- creates an offence for a person who owns or operates a e-scooter share scheme where an e-scooter is:
 - left or placed in a way that unreasonably interferes with the use of any road, footpath or other place; or
 - left or placed in a place that detrimentally affects the amenity of that place;
- requires a person who owns or operates a e-scooter share scheme to:
 - remove within 24 hours of notification any bicycle left in contravention of the proposed Local Law;
 - remove within 24 hours of notification any bicycle that is damaged or missing any part; and
 - comply with the conditions of a permit.

Vegetation on Nature Strips

The proposed Local Law provides that a person planting (or allowing to be planted) any seedling, commencing to cultivate (or allow to be commenced to be cultivated) or maintaining any vegetation (or an associated area) on a nature strip must comply with the Local Law Guidelines.

Storing Vehicles

The proposed Local Law is aimed at addressing the storage of boats, trailers, caravans and campervans on roads. The presence of such vehicles on a road can detract from the amenity of the area, and compromise safety.

So, under the proposed Local Law a person will require a permit to occupy a road by storing on it any boat, trailer, caravan or campervan for a continuous period of 14 days or more or for more than 28 days in a period of three consecutive months.

Shopping Trolleys

Under the proposed Local Law the proprietor of any business that makes a shopping trolley available for use will be obliged to ensure that none of the business' shopping trolleys is left on any road or Council Land. No offence will be committed if the shopping trolley is in an area on the footpath or Council Land which Council has set aside for that purpose.

Discharging Groundwater into Drains or Onto Other Council Land

The proposed Local Law requires a person to obtain a permit in order to discharge groundwater into any Council drain or onto any road or Council Land.

Managing Building Sites

Extensive provision is made in the proposed Local Law for managing amenity on building sites.

The proposed Local Law:

- regulates the hours during which building works can be carried out (by requiring a permit to be obtained if the builder wishes to carry out building works other than between 7am and 6pm Monday to Friday and 9am to 3pm on Saturday);

- prohibits a builder from carrying out building works on a public holiday;
- creates an offence if unreasonable noise is made as the result of the carrying out of building works;
- enables Council to inspect a building site for specified purposes;
- requires a builder to ensure that a building site is developed and managed to minimise the risks of stormwater pollution, through the contamination of run-off by chemicals, sediments, animal wastes or gross pollutants;
- requires a builder to adopt various measures to ensure that refuse is collected within the building site;
- regulates the hours during which owners and occupiers of private property can themselves carry out building works; and
- requires a builder to repair any assets damaged by building works.

Occupation of Roads

If a consent under the *Road Management Act 2004* has not been given or is inapplicable, the proposed Local Law will require a permit to be obtained in order to carry out certain works on a road.

Consumption and Possession of Liquor

The consumption and possession of liquor in public places will be regulated by the proposed Local Law.

Specifically:

- the possession and consumption of liquor will be prohibited on a road;
- the possession and consumption of liquor within a municipal reserve will be prohibited between sunset (on one day) and sunrise (on the following day); and
- the possession and consumption of liquor may be prohibited within some or all municipal reserves at other times.

Smoking

The proposed Local Law contemplates that Council may prescribe not only municipal place (or part of a municipal place) but also a Foreshore Reserve (or part of a Foreshore Reserve) as a smoke free area.

Model Aeroplanes

The proposed Local Law will regulate the use of model aeroplanes on Council Land. The definition of 'model aeroplane' includes a drone.

Impounding

The proposed Local Law will contain a broad power to impound any thing that is found being used or possessed in contravention of the proposed Local Law. This removes the need for a power to impound items being included within individual clauses of the proposed Local Law.

5. EVALUATION OF LOCAL LAW

In accordance with Guidelines issued by the Minister for Local Government in relation to the making of local laws, Council has conducted an evaluation of the proposed Local Law. The evaluation is outlined in the following Table.

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Issue	Evaluation
Purposes	<p>The purposes of the proposed Local Law are to:</p> <ul style="list-style-type: none"> • protect community safety and neighbourhood amenity; • protect public assets and infrastructure, and the built and natural environment; • enhance the use, access and enjoyment of public places for the community's benefit. • provide for the administration of Council's powers and functions; and • revoke Council's Neighbourhood Amenity Local Law (as amended), made in April 2012.
Legislative Framework	<p>The Act gives councils broad powers to make local laws with respect to any function or power of the council.</p> <p>The proposed Local Law addresses matters within Council's broad functions and powers.</p>
State legislation more appropriate	<p>State legislation allows Council to make Local Laws to address issues within its municipality. In developing the proposed Local Law, Council has not sought to address any issues which it feels are best addressed at the State or Federal level.</p>
Overlap with 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 – <i>Environment Protection Act 1970</i> and <i>Environment Protection Act 2017</i>; and • Dangerous and Unsightly Land and Nuisances – <i>Graffiti – Graffiti Prevention Act 2007</i>. <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>The operation of drones is regulated by part 101 of the <i>Civil Aviation Safety Regulations 1998</i> (Cth). Whereas that legislation is concerned with safety the proposed Local Law's clause 65 is concerned only with flying a drone above Council Land, and is aimed at protecting the peace and enjoyment of those using the Council Land.</p>
Planning Scheme	<p>Council does not believe that any clause of the proposed Local Law overlaps with, duplicates or creates any inconsistency with the Bayside Planning Scheme.</p>

Issue	Evaluation
Legislative Approach	<p>The proposed Local Law adopts a medium impact regulatory approach, in as much as it prescribes with a level of detail the conduct and behaviour of members of the public within Council's municipality.</p> <p>This approach is considered appropriate to:</p> <ul style="list-style-type: none"> • facilitate the orderly and efficient access to and use of municipal places and roads; and • provide for the protection of Council assets under specified circumstances. <p>All provisions of the proposed Local Law are open to public scrutiny and comment.</p>
Performance Standards or Prescriptive Details	<p>Council has, where appropriate and possible, adopted a performance-based approach to the proposed Local Law.</p>
Risk Assessment	<p>No formal risk assessment has been undertaken.</p> <p>Council does not consider that there are any risks associated with the proposed Local Law.</p>
Measures of Success	<p>Council will measure the success of the proposed 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; and • volume of complaints.
Permits and Fees	<p>The proposed Local Law makes provision for:</p> <ul style="list-style-type: none"> • the issue of permits – the proposed Local Law requires permits to be obtained for various activities; and • Council to prescribe fees from time to time by resolution – it is expected that fees will be set annually as part of Council's Budget process.
Penalties	<p>All offences created under the proposed Local Law attract a maximum penalty of 20 penalty units, with varying infringement penalties prescribed in Schedule 1 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>

Issue	Evaluation
Restriction of competition	Council has conducted a review of the proposed Local Law in accordance with 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 or that if a restriction exists it is in the public interest that the restriction is imposed.
Comparison with other Councils	In drafting the proposed Local Law, Council examined Local Laws from a number of like and neighbouring councils to assess similarities and differences and ensure a reasonable degree of consistency in content, approach and penalties.
Charter of Human Rights	<p>The <i>Charter of Human Rights and Responsibilities Act 2006 (Charter)</i> contains twenty basic rights that promote and protect the values of freedom, respect, equality and dignity. Councils must not knowingly be in breach of these rights and must always consider them when they create laws, develop policies and deliver services.</p> <p>The proposed Local Law has been reviewed for compatibility with the Charter and is considered to be compatible with the Charter. Some provisions engage rights set out in the Charter. Where this occurs and a provision restricts a right it is considered that the provision can be justified under section 7(2) of the Charter.</p>
Community Consultation	<p>The proposed Local Law has been reviewed in consultation with Councillors, members of Council staff and Council's legal advisers.</p> <p>A community consultation process will be conducted in accordance with sections 119(2) and 223 of the Act.</p> <p>This will require Council to give public notice of its intention to make the proposed Local Law and provide members of the public with an opportunity to make a written submission to Council in relation to the proposed Local Law. Council will consider submissions received before making a final decision on the proposed Local Law.</p> <p>A person who makes a written submission is entitled to request (in the submission) to be heard by Council in support of his/her submission. When Council makes a final decision on the proposed Local Law, it must notify in writing each submitter of the decision and the reasons for the decision.</p> <p>This Community Impact Statement has been prepared to inform the community about the proposed Local Law and to assist any member of the public who may wish to make a submission to Council.</p>

6. ATTACHMENTS

- **Attachment 1** – Proposed Local Law
- **Attachment 2** – Proposed Local Law Guidelines