

Community Local Law 2019

Community Impact Statement



Contents

1	Community Local Law 2019	3
1.1	Introduction.....	3
1.2	Background	3
1.3	Objectives.....	3
2	Regulation, Requirements and Changes.....	4
2.1	Consideration of State Government Guidelines	4
2.2	Explanatory notes on the Changes	4
2.3	Measures of success of proposed Local Law.....	5
3	Consultation	6
3.1.1	Murrindindi Shire Council (internal consultation):	6
3.1.2	Formal exhibition and submissions:	6
3.1.3	Making a submission	6
3.1.4	Council adoption.....	7
4	State Government and other requirements.....	7
4.1.1	State Legislation and the Local Laws.....	7
4.1.2	Overlap with Murrindindi Planning Scheme	7
4.1.3	Risk assessment	7
4.1.4	Restriction of competition – National Competition Policy	7
4.1.5	Penalties.....	7
4.1.6	Permits	8
4.1.7	Fees	8
4.1.8	Charter of Human Rights	8
4.1.9	Environmental impacts	8
4.1.10	Social impacts	8

1 Community Local Law 2019

1.1 Introduction

This document summarises the proposed new Draft Community Local Law 2019 outlining key changes with the outgoing Community Local Law 2012. It also details opportunities and methods for giving feedback to Council concerning any changes in the draft law.

The goal of Council's Draft Community Local Law 2019 is not simply "compliance". It is to sustain the natural, built and social environment harmoniously shared by residents and visitors alike, and to have mutual respect and regard for the community's high amenity values. Council is committed to upholding community values and expectations in regards to its Local Laws.

Council seek to develop "active compliance" in the community – where people are aware of the rules and see their benefit for the greater good of the community. However, enforcement as a last resort is built into the law where there are issues of risk to the general community caused by a person's behaviour, actions or lack thereof.

1.2 Background

Murrindindi Shire Council commenced the last review of its Local laws in early 2012. Detailed feedback was provided by the community in the shaping of that law. This current 2019 review has refined laws created at that time and is designed to build upon the processes undertaken in the 2012 review.

The new law contains all of Council's Local Law requirements except those relating to meeting procedures and use of the common seal. Those requirements are contained in the Governance Local Law No 3, 2011 that is due to expire in 2021.

Council's existing Local Laws follow a generic model that was jointly developed by Victorian local governments in the late 1990s, after council amalgamations took place. This model was then modified by each municipality to suit local conditions.

In 2010, the State Government, through Local Government Victoria, released the '*Guidelines for Local Laws Manual*', listing new best practice guidelines for the creation and enforcement of Local Laws. The majority of the suggested changes were incorporated into the 2012 local law.

1.3 Objectives

The objectives of the Draft Community Local Law 2019 are to provide regulation for:

- (a) the peace, order and good government of the municipality;
- (b) a safe and healthy environment so that the community within the municipality can enjoy a quality of life that meets its expectations;
- (c) the safe and fair use and enjoyment of public places;
- (d) the protection and enhancement of the amenity and environment of the municipality;
- (e) a fair and reasonable use and enjoyment of private land; and
- (f) a uniform and fair administration of this Local Law.

2 Regulation, Requirements and Changes

2.1 Consideration of State Government Guidelines

Murrindindi Shire Council's Local Laws review process has addressed and included the key features of the state government best practice guidelines for the creation and enforcement of its local laws.

While the previous local law adopted a traditional legal structure based on permits, conditional behaviour and prohibitions, the new Community Local Law has been structured to improve community accessibility, consistency and be more user-friendly.

While the issues covered in the proposed *Community Local Law 2019* are substantially the same as the former *Community Local Law 2012*, the format has been simplified and a number of unnecessary provision removed.

There has also been a few deletions of laws no longer needed and minor changes in the wording in certain laws.

2.2 Explanatory notes on the Changes

A number of specific changes have occurred the Draft Community Local Law 2019 further refining laws made previously. They include the following key components:

Title	Explanation of Change
Camping on Private Property without a dwelling	<p>Under the Murrindindi Planning Scheme, camping on a rural or farm property without a dwelling is not permitted. The new Draft Local Law aims to rectify that by allowing camping for up to 20 nights per year before a permit is required.</p> <p>Once a permit is required, Council will need to be satisfied that sewage and fire safety requirements are being adequately considered on the property.</p> <p>Please note that camping on private land in townships without a dwelling will still not be allowed under the new law.</p>
Asset Protection Permits	<p>When a building permit, working in the roadside permit or permit for a temporary vehicle crossing is required, applicants may also be required to apply for an Asset Protection Permit. This permit will hold permit holders to account for any damages they create as a part of the works process. A bond may be required for some works. The requirement for a bond will be determined by the scale and type of works.</p> <p>An example where a permit is required would be ensuring no damage occurs to Council gutters and drainage pits whilst a concrete truck access a building site.</p>
Open air burning and Council's Fire Restriction Period	<p>In the new law, Council will remove of the arbitrary Council fire restriction period from 15 October until the start of the CFA Fire Danger Period each year. This will simplify things for people wishing to burn off excess dry vegetation piles on their properties.</p> <p>The new law includes two new schedules for burning off and are based on land size. It is designed so that if you comply requirements listed in the schedules, you don't need to get a permit. This is to reduce unnecessary red tape for land owners trying to do the right thing.</p> <p>Enforcement action is still possible in the new law for those burning illegal substances such as mattresses or oil or for doing the wrong thing.</p>
Motorised Recreational Vehicle Use	<p>The new law has refined requirements for the use of motorised recreational vehicles (e.g.: motorcycles or motorised buggies but does not include mobility scooters) use on private property.</p> <p>The definition of creating a "nuisance" has been updated and is now more</p>

Title	Explanation of Change
	enforceable if required.
Discretion Guidelines	<p>Are new stand-alone guidelines accompanying the law that are used whenever “officer discretion” may be required. Officer discretion may be used for things such as granting permits or issuing certain fines. The idea is to clearly spell out the process for making officer decisions so community members are aware why and how decisions are made or arrived at.</p> <p>Note that officer discretion is not applicable to every application of the law.</p>
Enforcement Penalties	<p>Enforcement penalties have been reviewed to align with current practice in other rural municipalities of similar size. Maximum penalties have been introduced for offences involving high risk to public safety or to Council assets, enforceable by a Court of Law.</p> <p>The maximum penalty as defined in each relevant local law can only be imposed by a Magistrates Court. The infringement penalty amount is defined by the Penalty Infringement Act and does not allow ‘on the spot’ fines to exceed the prescribed amount.</p> <p>Fines are now included in a calculated penalties table</p>

The following clauses have been removed from the law:

Title	Explanation of Removal
Works in Roadside/Road occupation for works	Permit requirements are a duplication of the <i>Road Management Act 2004</i> , the <i>Road Management (Guidelines) Regulations 2016</i> and the <i>Local Government Act 1989</i> , and have therefore been removed.
Public behaviour laws	Removed as these are a duplication of laws in the <i>Summary Offences Act 1966</i>
Advertising, bill posting and junk mail laws	Removed as duplications exist with provisions in the <i>Summary Offences act 1966</i> , the <i>Environment Protection Act 1970</i> and the <i>Road Management Act 2004</i> .
Swimming Pool Laws	Removed due to overlap with sections of the <i>Summary Offences Act 1966</i> .
Parking offence laws	Removed as considerable overlap and potential conflict with powers in the <i>Road Safety Act 1986</i> , the <i>Road Safety Road Rules 2017</i> and Schedule 11 of the <i>Local Government Act 1989</i> .

General changes with the draft law are summarized in the table below:

Title	Explanation of General Change
Simplification	Long and complex existing local laws have been redrafted to be simpler, more easily understood and outcome focused. Where detail is unavoidable, it has been mostly relegated to schedules where it may be reviewed and revised for changing circumstances by the more simple process of Council resolution.
Red tape reductions	<p>Permits that are administrative in nature only have been largely removed.</p> <p>An example is permits to burn – if people comply with the new schedules, no permit is required.</p>
A Fairer and More Practical Local Law	A number of laws have had technical changes to render them fairer, more practical and enforceable. For example, new nuisance provisions aim for compromise – they are designed to allow people to both use motorized recreational vehicles but also allow for the quiet enjoyment of properties by including schedules for use. Schedules have decent length breaks in them where no motorized vehicle use is permitted.

2.3 Measures of success of proposed Local Law

The goal of Council’s *Community Local Law 2019* is active compliance. Whilst the laws discuss and allow for enforcement, active compliance which includes community education is preferable.

In circumstances where enforcement is necessary, the Local Laws provide a framework for compliance. The laws aim to reduce the complexity of “measuring compliance” through some detailed schedules

The success of the Community Local Law will be subject to the levels of community satisfaction (survey ratings) and any public complaints relating to the administration of Council’s local laws.

3 Consultation

3.1.1 Murrindindi Shire Council (internal consultation):

Extensive internal consultation has occurred within Council across the organization. This consultation has focused on ensuring no overlap with other relevant acts, the Murrindindi Shire Planning Scheme and that the law is viewed as enforceable and appropriate.

Councilors were briefed on a number of separate occasions, which provided an opportunity to raise and discuss relevant issues regarding the renewal of the laws.

3.1.2 Formal exhibition and submissions:

Council’s formal exhibition of the Community Local Law under section 223 of the *Local Government Act 1989* (the Act) will occur from 28 November 2019 to 30 January 2019.

Council understands that this is over the Christmas and New Year period and wish to use the opportunity to engage with visitors and non-resident rate payers over that period.

Council is required to advertise its intention to make a local Law which commences a section 223 process seeking submissions from the public. Once the section 223 process has been conducted and Council makes the Local law by resolution, it must then advertise the Community Local Law in the Government Gazette and local papers.

The following public information sessions will be held:

1. Alexandra - Council Offices, Perkins St – Tuesday 10 December 2019 at 6pm
2. Yea - Council Chambers – The Semi Circle, Yea – Thursday 12 December, 7pm
3. Marysville - MiRA, Murchison St – Monday 20 January at 6pm.
4. Kinglake – Council Officers, Kinglake –Wednesday 22 January 2020 at 6.00pm

3.1.3 Making a submission

Submissions are able to be made by any person at any time during the formal exhibition period.

Council will receive formal written submissions addressed to:

Murrindindi Shire Council
Community Local Law 2019 - Submissions
Po Box 138
Alexandra, 3714

Or via email at msc@murrindindi.vic.gov.au

It is important to note that any person who has made a written submission and has requested to be heard in support of the written submission, is entitled to appear in person, or by a person acting on his or her behalf, before a Special meeting of the Council.

Members of the public that make submissions will be able (if they so choose) to address Council directly at a special council meeting which will be called for that purpose. All submitters will be made aware of the time, date and location of the meeting. During this meeting submitters are invited to speak on their comments with a limit of 5 minutes each submitter.

In addition to Council's statutory obligations under Section 223, four public information sessions are to be held to assist the public and seek their views.

3.1.4 Council adoption

After considering all submissions and providing feedback to submitters on minor changes, a report will be presented to Council for Council adoption of the revised local law.

Once the revised Community Local Law 2019 is adopted by Council, notification will be published in the Government Gazette.

4 State Government and other requirements

4.1.1 State Legislation and the Local Laws

Council's Community Local Law is fully compliant with the *Local Government Act 1989*, the *Charter of Human Rights and Responsibilities Act 2006* as well as other matters covered by OH&S industry code of practice and the *Road Safety Rules 2009*.

4.1.2 Overlap with Murrindindi Planning Scheme

The revised local law ensures that there is no prohibition or permit requirement that will change the intent of the municipal Planning Scheme.

Where there may be a competing interest or conflict, the Murrindindi Planning Scheme will take priority.

4.1.3 Risk assessment

Council's risk management approach normally varies according to the extent of perceived risk, the perceived extent of non-compliance and available enforcement resources.

Council uses a three tier notification and inspection regime based on high impact (e.g. asset protection), medium impact (e.g. an enforced permit system for driving/regular movement and roadside grazing of stock) and low impact (e.g. response to a complaint for complying with council signs). Other municipalities use similar approaches, although their enforcement resources are allocated according to local issues and conditions.

The revised local law includes general protection of a person's right not to experience unreasonable interference through 'adverse amenity impacts' from neighbouring properties or activities.

4.1.4 Restriction of competition – National Competition Policy

The application of National Competition Policy (NCP) to local government in Victoria flows from the Competition Principles Agreement, signed by the Commonwealth, State and Territory Governments in 1995.

NCP principles require the removal of legislative restrictions on competition (unless there is a net public benefit) and the adoption of competitive neutrality policies and processes to recognise and offset advantages enjoyed by government businesses.

An analysis of the proposed changes in the proposed new consolidated Community Local Law indicates that there are no issues adversely impacting the NCP.

4.1.5 Penalties

Murrindindi Shire Council Local Law uses 'penalty units' (rather than dollar amounts), which has been changed as part of this review. The dollar amount for each penalty unit is controlled by State Legislation (*the Sentencing Act 1991*) and are currently set at \$100 per penalty unit for laws (pursuant to the *Local Government Act 1989*), which is subject to adjustment by the State Government.

As part of this review, there have been some increases to maximum penalties and reconciling of infringement notice penalties with maximum penalties reserved for offences involving higher risk to

public safety. An example is open air burning in rural/residential areas.

4.1.6 Permits

Discretionary guidelines and permit requirements have been incorporated into the schedules of the revised local law, satisfying the transparency and accountability principles of best practice local laws. Proposed schedules include standardised permit conditions.

Officer's issuing local law permits must be delegated by Council. Some permit activities require multiple permits from Council, e.g.: a planning permit or food permit in addition to a local law permit.

4.1.7 Fees

While some local laws regulate for the provision of a number of fees and charges, most permit fees and related charges are a budgetary matter decided independently by Council through its annual budget review process. Consequently, while a local law review consultation process may inevitably give rise to comment on fees, fees and charges are generally an independent, separate matter.

The annual budget review process is subject to community consultation and exhibition, which provides an avenue for community engagement in relation to fees and charges.

4.1.8 Charter of Human Rights

The Charter of Human Rights and Responsibilities Act 2006 (Vic) (the Charter) applies to all subordinate legislation (local laws). Schedule 8 of *the Local Government Act 1989* also applies a number of the principles of *the Charter* to the making of local laws, especially the requirement for local laws to be consistent with principles of justice and fairness.

The draft local law has been carefully drafted to conform to human rights principles - for example avoidance of strict liability for property owners whenever possible and an offender's right to be heard.

4.1.9 Environmental impacts

Council's Local Laws take into consideration protection of environmental amenity and provide a guide for permitted activities where environmental protection needs to be considered. Examples are open air burning and trees on road reserves.

4.1.10 Social impacts

Local laws have both broad and specific impacts on social wellbeing. The perception of a fair and safe community is an essential part of a sense of health and well-being. The new local law includes a number of minor procedural changes to better reflect Council's respect for community rights under the law, such as the right to quietly enjoy the amenity of both private and public places without unreasonable interference by inappropriate activity of others.

The new law also provides for greater consistency of enforcement and greater transparency and accountability for Council procedures and processes.

The revised local law will assist municipal businesses through increased clarity, compliance and flexibility of laws surrounding asset protection and footpath trading.