



Northern Grampians Shire Council Local Law Explanatory Document

Proposed General Local Law 2022

June 2022





Northern Grampians Shire Council
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CONTACT US

-  ngshire@ngshire.vic.gov.au
-  www.ngshire.vic.gov.au
-  (03) 5358 8700
-  PO Box 580 Stawell VIC 3380

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1. INTRODUCTION

The Northern Grampians Shire Council (Council) General Local Law 2012 commenced on 7 September 2012 and sunsets in September 2022.

To ensure that the Local Law remains current and meets the needs of Council and the Community an extensive review of the Local Law has been undertaken. The review has considered issues that have been identified since the commencement of the General Local Law 2012 and with the current local law expiring, a major review of the Local Law is required.

The proposed Local Law is ultimately aimed to protect the amenity of the municipality and the health and safety of the community. This is not simply about compliance but about creating an environment that is equitable and fair where residents, businesses and visitors alike can participate in the community with mutual respect and enjoyment.

On behalf of the community, Council has a significant amount of assets vested in, controlled or owned by Council that need to be protected. The proposed Local Law provides protection of these assets so that Council and the community do not unreasonably bear the cost of repairing damage to these assets caused by others.

The General Local Law 2012 will be revoked at the time of adoption of the new General Local Law 2022.

Under Section 71 of the *Local Government Act 2020*, Council has the power to make local laws for, or with respect to, any act, matter or thing for which the Council has a function or power, subject to:

- a local law must not be inconsistent with any Act (including the **Charter of Human Rights and Responsibilities Act 2006**) or regulations;
- a local law must not duplicate or be inconsistent with a planning scheme that is in force in the municipal district;
- a local law for or with respect to the issuing of film permits must not be inconsistent with the film friendly principles;
- a local law must not exceed the power to make local laws conferred by this Act or any other authorising Act;
- a local law must be consistent with the objectives of the Local Government Act or any other authorising Act;
- a local law must be expressed as clearly and unambiguously as is reasonably possible;
- unless there is clear and express power to do so under the Local Government Act or any other authorising Act, a local law must not—
 - seek to have a retrospective effect; or
 - impose any tax, fee, fine, imprisonment or other penalties; or
 - authorise the sub-delegation of powers delegated under the local law;
- a local law must comply with any details prescribed in the regulations relating to the preparation and content of local laws.

This explanatory document is intended to provide information to 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.

2. OBJECTIVES

The objectives of the proposed General Local Law 2022 are to provide:

- a) the peace, order and good governance of the municipality;
- b) a safe and healthy environment so that the community within the municipality can enjoy a quality life that meets 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) the fair and reasonable use and enjoyment of private land;
- f) the protection of assets vested in Council; and
- g) the uniform and fair administration of the General Local Law 2022.

3. COMMUNITY ENGAGEMENT

In accordance with Council's Community Engagement Policy, Council commenced engagement with the community regarding the proposed General Local Law in February 2022. The community were provided an opportunity to raise any concerns or issues they have with the current local law and were provided the opportunity to raise any new issues that should be considered as part of the new local law.

Council's Have Your Say page was used as a source for the consultation with information posted on Council's Social Media and Community Updates in the local newspapers. In April 2022, Council undertook community Info Expos in Stawell and St Arnaud where the Local Law review was available for discussion.

A detailed brief is included within the Council report from the June 2022 Council meeting explaining the reasons for or against the inclusion of recommended issues.

Section 73 of the Local Government Act 2020 states the process to be undertaken before Council makes a local law. Council must comply with its own community engagement policy and is required to give public notice of its intention to create a Local Law stating:

- the objectives of the proposed local law;
- the intended effect of the proposed local law;
- that a copy of the proposed Local Law may be obtained from the Council office and website;
- the community engagement process that applies in respect of the making of the local law.

4. MAIN CHANGES

Council has undertaken an extensive review of the General Local Law to ensure it is consistent with other legislation and manages current and/or emerging issues. Changes to the local law from the General Local Law 2012 vary from minor to major with a large amount of minor changes including:

- Definition updates
- Formatting
- Deletion of unnecessary content
- Removal of clauses managed by other laws, including:
 - Aerodrome and obstacle limitation surfaces (managed by CASA legislation)
 - Abandoned Vehicles (managed by the Local Government Act)
 - Dogs on Leash and Animal Excrement (managed by the Domestic Animals Act)

Major changes to the local law include:

<i>Inclusion of overgrown vegetation in unsightly land</i>	Overgrown vegetation is a common complaint received by Council outside of the fire season. If left unmanaged, it can create risks leading into the fire season but also assist in harbouring vermin and snakes.
<i>Removal of the need to obtain an open-air burn permit in certain circumstances</i>	This change reduces the cost to the community and the administrative burden on Council. The risk of uncontrolled fires continues to be managed with conditions of burning noted in the local law, including burning in piles less than 1 cubic metre
<i>Camping on Private Property</i>	Limitations have been placed on the length of time permitted to camp on private land outside of a registered caravan park.
<i>No smoking in municipal places</i>	Smoking, including passive smoking is a well-known public health risk. Smoking permitted in municipal places results in littering where cigarette butts are not lawfully disposed of. The no smoking provisions in the proposed local law, which operate alongside the no smoking provisions in the <i>Tobacco Act 1987</i> have been updated to reflect current trends with the use of e-cigarettes in addition to the smoking of tobacco products.
<i>Development of Local Law Guidelines incorporated into the General Local Law</i>	Administrative sections of the local law have been removed and placed into guidelines as incorporated documents under the local law. These guidelines can be reviewed from time to time by Council to ensure of their currency and consistency. These guidelines assist in informing the community regarding the processes needed to be taken as part of the local law. They do not affect and purpose of the local law.
<i>Development Waste Services Guidelines incorporated into the General Local Law</i>	Most waste sections of the local law have been removed. With legislative changes coming through State legislation, it is expected that many sections within the local law would be affected. To ensure Council's law remains current in line with these changes, the guidelines have been developed. This document outlines the guidelines and processes relating to Council's kerbside service, waste service compulsory areas and waste management.

5. MEASURES OF SUCCESS

Whilst enforcement of the Local Law is important, measures of success must have regard to the impact of local law related actions, whether that is information or enforcement against those objectives.

Council will measure the success of the Local Law through;

- The number and subject of infringement notices and notices to comply issued;
- The number, subject and outcome of appeals received;
- The number, subject and outcome of prosecutions undertaken;
- The number, subject and outcome of public complaints received, relating to the Local Law;
- The qualitative assessment by Council Officers or in consultations regarding community compliance.

6. EXISTING LEGISLATION

Council believes that 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 Victorian State legislation.

There are many pieces of existing legislation that deal with issues covered by the proposed Local Law, such as:

- Country Fire Authority Act 1958;
- Domestic Animals Act 1994;
- Environment Protection Act 2017;
- Public Health and Wellbeing Act 2008;
- Road Management Act 2004;
- Road Safety Act 1986 and the Road Safety Road Rules 2017;
- Summary Offences Act 1966;
- Impounding of Livestock Act 1994
- Tobacco Act 1987; and
- Liquor Control Reform Act 1998.

The objectives of the Country Fire Authority Act 1958 are supported by the controls proposed in the Local Law in relation to incinerators and burning off.

The Domestic Animals Act 1994 encourages councils to make resolutions on the control of dogs and cats within the municipality. The local law complements this Act and the Impounding Livestock Act 1994 by regulating the number of dogs and cats which may be kept, the types of animals that can be kept and the ability to graze livestock with a permit.

The Public Health and Wellbeing Act 2008 does not provide the ability to intervene promptly to support immediate abatement of situations, such as nuisance issues, where there may be risks to public health. Provisions of the local law can intervene prior to the nuisance occurring.

The no smoking provisions in the proposed Local Law operate alongside the no smoking provisions contained in the *Tobacco Act 1987*. The proposed Local Law allows Council to designate a municipal place or part of a municipal place to be a no smoking area, where that place or part of a place is not already a no smoking area under the *Tobacco Act 1987*.

Council believes that the proposed Local Law does not contain any clauses where it is considered that Victorian State legislation alone would provide a more appropriate response to issues concerned. To the extent that there may be overlap, it is considered that the Local Law provides a more timely and flexible response appropriate to the issues concerned.

Council believes that items dealt with in the Local Law are not dealt with within the planning scheme.

The Local Law is inoperative to the extent of any inconsistency with any Act, Regulation or Planning Scheme and the Local Law does not apply where an act or thing is authorised by any Act, Regulation or the Planning Scheme in force in the municipality.

7. RISK ASSESSMENT

Council undertakes risk assessments formally across many factors of the organisation and the local law is considered as part of the risk considerations. A formal risk assessment has not been undertaken for each clause beyond the identification of problems and existing records.

RISK	Method in which Council plans to manage exposure
<i>Community not aware of the Local Law obligations (if adopted)</i>	<p>Community consultation will occur before adoption and will comply the mandatory requirements of the Act.</p> <p>After adoption the Local Law will be available on Council's website and Customer Service Centres. Local Laws and other Council Officers will serve an educational role in their day-to-day interactions with the community.</p> <p>Specific items within the Local Law requiring a more focused education campaign/targeted information will be identified and a program commenced.</p>
<i>Overlap with other legislation</i>	<p>No overlapping legislation identified. If legislation is identified or created during the operational period of this Local Law, the legislation takes precedence over the Local Law.</p>
<i>Failure to request and/or hear public submissions on proposed Local Law</i>	<p>Submissions will be called for and heard in accordance with the Local Government Act and Council's community engagement policy..</p>
<i>Other agencies not aware of new provisions within Local Law</i>	<p>Other relevant agencies will be consulted before the proposed Local Law is presented for adoption.</p> <p>These include Victorian Police, Country Fire Authority and Animal Welfare Groups.</p>
<i>Legislative approach adopted</i>	<p>Council is of the view that the proposed Local Law is necessary to protect the amenity of the municipality and the health and safety of the community.</p> <p>The overall approach for the development of the proposed Local Law is to be consistent with the existing Local Law. The decision regarding which regulatory approach to take varied according to the extent of risk, the perceived extent of non-compliance and the enforcement resources available.</p> <p>Northern Grampians Shire Council's existing General Local Law 2012 was considered to be low impact and generally consistent with neighbouring and like councils.</p> <p>The proposed Local Law features:</p> <ul style="list-style-type: none"> • Clear guidance and/or standards for specific activities; • The provision of permits to undertake certain activities rather than prohibition; • reasonable enforcement procedures including warnings, the issuing of infringement notices, impounding items if required and an internal review process for infringement notices; and • an appropriate level of penalty units to be applied for breaches of the provisions of the law.

8. RESTRICTION OF COMPETITION

National Competition Policy does not automatically demand greater exposure to competition, although it does require an assessment of how the government conducts business activities that compete, or potentially compete, in the market.

Local laws must not restrict competition unless Council can demonstrate:

- that the benefits outweigh the costs
- there is no other way of achieving the objective.

The proposed Local Law defines behavioural requirements and usage standards for municipal places which include Council run activities/businesses. These requirements and standards do not restrict competition.

9. PENALTIES

The proposed Local Law sets out penalties for infringement notices which may be issued as an alternative to prosecution in respect of offences against the Local Law.

Council feels that a base level of 1 penalty unit is sufficient to act as a deterrent for most offences if there is appropriate enforcement vigilance. 1 penalty unit is currently set at \$181.74 as per the *Monetary Units Act 2004*

According to the Attorney-General's guidelines to the Infringement Act 2006, "An infringement penalty should generally be approximately no more than 20-25% of the maximum penalty for the offence and be demonstrated to be lower than the average of any related fines previously imposed by the courts".

20 penalty units are the maximum penalty that may be applied for all offences if the matter is prosecuted in the Magistrates Court.

10. PERMITS

The permit process aims to achieve the orderly use of Council and community assets and ensures Council is aware of or may prepare for, activities that may impact the wider community.

To satisfy the transparency and accountability principles of best practice local law making, permit applications and consideration of permits are detailed in the Local Law Guidelines which is a document incorporated under the local law.

11. FEES

In accordance with section 77 of the *Local Government Act 2020*, Council may impose fees and charges applicable to the Local Law.

The purpose of fees chargeable under the Local Law will generally be to recover costs or charge a fair market rate for use of community assets. The fees are not intended to make a profit or subsidise other forms of activity. The proposed Local Law allows Council to set fees from time to time and this will be done as part of the Council's annual budget process.

12. COMPARISON WITH NEIGHBOURING AND LIKE COUNCILS

As part of this review project, the provisions within the proposed Local Law have been compared with the local laws of neighbouring councils and other councils with similar local laws, including:

- Ararat Rural City
- Pyrenees Council
- Southern Grampians Shire
- Hepburn Shire
- Central Goldfields Shire
- Buloke Shire Council
- Yarriambiack Shire Council

Council does not believe that any clauses within the proposed local law greatly differ from other local governments within Victoria.

13. CHARTER OF HUMAN RIGHTS

Council has assessed the proposed Local Law for compatibility with the Charter of Human Rights and Responsibilities. Council is of the opinion that the provisions of the proposed Local Law do not impact on human rights as detailed in the Charter.

The proposed Local Law does engage Property Rights. A person must not be deprived of his or her property other than in accordance with law. Provisions in the proposed Local Law regarding impounding are justifiable as due processes are followed to remedy situations before impounding occurs.

Any property impounded will be done so in accordance with the proposed Local Law and therefore the right is engaged but not limited.