

Part A - Introduction

Colac Otway Shire Council provides the following information in respect to the review of the current Local Laws.

Colac Otway Shire Council currently has three local laws that cover: consumption of alcohol in a public place, a range of matters related to livestock and a general local law that provides for peace, order and good government as well as promoting a physical and social environment free from hazards to health. A summary of these Local Laws is as follows:

- Local Law No 1 – Consumption of Alcohol in a public Place commenced on 28 August 2013
- Local Law No 2 – General Local Law commenced on 24 September 2013
- Local Law No 3 – Livestock commenced on 28 August 2013.

Local Law No 1 and Local Law No 3 will cease to operate on 27 August 2023 and Local Law No 2 will cease to operate on 23 September 2023.

The Local Laws Review project seeks to review Council's existing Local Laws 1, 2 and 3 with a view to integrate the three local laws into a single contemporary local law designed to improve and protect the amenity of the shire.

The above Local Laws have been reviewed and streamlined into a new single local law called *Colac Otway Shire Council Local Law No. 1 – General Local Law 2023* (referred to hereafter as 'Proposed General Local Law 2023'). Proposed General Local Law 2023 is now in draft form and community comment is being sought.

The Proposed General Local Law 2023 addresses all aspects of community amenity that were covered by the previous local laws. The new Local Law has removed unnecessary duplications, administrative matters and has refined Council's requirements, creating a user-friendly, 'plain English' document which does not compromise Council's enforcement powers and functions.

In order to inform the preparation of the Proposed General Local Law 2023, Council engaged in extensive discussions as to how a new Local Law could meaningfully address municipal changes, regulatory concerns and emerging issues.

The process for preparing this Proposed General Local Law 2023 to date has included:

- Review of issues raised in administering the current Local Laws;
- Review of complaints and other feedback received by Council;
- An internal consultation process was then undertaken where all Council departments were invited to provide written feedback. Engagement comprised the following activities undertaken from May to August 2021 – staff workshops, and ongoing collection of insights from Council officers and Councillors;
- Extensive community consultation, including an online survey during April and May 2023; and
- Initial legal review of the existing Local Law.

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Proposed Local Law No. 1 – General Local Law 2023

The purpose and intended effect of the Proposed General Local Law 2023 are to:

- (1) provide for the peace, order and good government of the *municipal district*;
- (2) promote a physical and social environment free from hazards to health and assets, in which the residents of the municipal district can enjoy a quality of life that meets the general expectations of the community;
- (3) Provide for the management of domestic and farm animals in a manner that promotes welfare and reduces nuisance, harm or environmental damage to residents and property.
- (4) Provide for the appropriate management of Council buildings and reserves.
- (5) Prevent and suppress nuisances which may adversely affect the enjoyment of life within the municipal district or the health, safety and welfare of persons and animals within the municipal district, by:
 - a. regulating and controlling activities which may be dangerous, unsafe or cause detrimental impact on quality of life or the environment within the municipal district;
 - b. providing standards and conditions for specified activities in order to reduce risk and increase safety.

This review and creation of the Proposed General Local Law 2023 was conducted in accordance with the Better Practice Guidelines 2010, published by Local Government Victoria. Adoption of the Local Law will ensure compliance with the *Local Government Act 2020* and that Council's penalty and infringement regime remains current, relevant and reflects community expectations.

Comments on the Proposed General Local Law 2023 overall are summarised in Part B. A more specific clause by clause summary of the proposed Local Law changes is presented in a table in Part C.

Part B – Comments on proposed Local Law overall

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| <p>Measures of Success of the Local Law</p> | <p>Council will measure the success of the Local Law by:</p> <ul style="list-style-type: none"> - Monitoring the level of compliance; - Comparing the level of compliance with the previous year’s monitoring; and - Assessing the resources required to administer and enforce the Local Law. |
| <p>Existing legislation which might be used instead</p> | <p>The Proposed General Local Law 2023 will supplement existing State legislation administered and enforced by Council.</p> |
| <p>State legislation more appropriate</p> | <p>Council is of the view that each responsibility or problem identified in the Proposed General Local Law 2023 is a Council responsibility or problem to remedy.</p> <p>Accordingly, the requirements and provisions of the Proposed General Local Law 2023 are an appropriate solution to manage and effectively deal with the responsibility or problem.</p> <p>Where Council has considered State Legislation to be more appropriate to deal with the particular issue, these clauses have been removed from the Proposed General Local Law 2023 as part of its review.</p> <p>Council will continue to administer its responsibilities under relevant state legislation, with the Local Law having a number of provisions to complement its responsibilities.</p> |
| <p>Overlap of existing legislation</p> | <p>Council does not consider that any provision of the proposed General Local Law 2023 overlaps with existing State legislation.</p> |
| <p>Overlap of Planning Scheme</p> | <p>Council does not consider any provision of the proposed General Local Law 2023 overlaps, duplicates or creates an inconsistency with Council’s Planning Scheme.</p> |
| <p>Risk Assessment</p> | <p>Council has adopted a risk management approach to the review and development of the draft General Local Law.</p> <p>The proposed General Local Law 2023 seeks to manage risks through balancing the safety and amenity of the community with an individual’s rights.</p> |
| <p>Legislative approach adopted</p> | <p>Council believes in the minimum imposition on the community with Local Laws.</p> <p>The proposed General Local Law 2023 reflects this approach by providing for:</p> <ul style="list-style-type: none"> - Reasonable penalties; - Minimum possible number of provisions which create offences; |

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| | <ul style="list-style-type: none"> - Where possible, provision for permits rather than prohibition of activities; - Reasonable and appropriate permit conditions which will be relied on if a decision is made to issue a permit under the General Local Law; and - Reasonable enforcement procedures including provision for the giving of warnings where appropriate, provision of an internal review process for infringement notices and refusal of permit applications. <p>Council has ensured that the proposed General Local Law 2023:</p> <ul style="list-style-type: none"> - Is expressed plainly and unambiguously and in a manner which is consistent with the language of the enabling Act and in accordance with modern standards of drafting applying in the State of Victoria; - Is not inconsistent with the principles, objectives or intent of the enabling <i>Local Government Act 1989 & 2020</i>; - Does not make unusual or unexpected use of powers conferred by the Act under which the Local Law is made having regard to the general objectives, intention or principles of that Act; - Does not embody principles of major substance or controversy or contain any matter which principles or matter should properly be dealt with by an Act and not by subordinate legislation; - Does not unduly trespass on rights and liberties of the person previously established by law; - Does not unduly make rights and liberties of the person dependent upon administrative and not upon judicial decisions; - Is not inconsistent with principles of justice and fairness; and - Does not duplicate, overlap or conflict with other statutory rules or legislation. |
| <p>Restriction of competition</p> | <p>Council has conducted a review of the proposed General Local Law 2023 in accordance with National Competition Principles.</p> <p>Competition will be restricted in some instance because:</p> <ul style="list-style-type: none"> - The benefits of the restriction to the community outweigh the costs; and - The objectives of the proposed General Local Law 2023 can only be achieved by restricting competition. |

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Proposed Local Law No. 1 – General Local Law 2023

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| Penalties | The penalty amounts stated in the proposed General Local Law 2023 are designed as a deterrent and considered appropriate. They are in line with the State Government's penalty regime, will be reviewed annually and are scaled to reflect the impact of the offence on the community. |
| Permits | <p>There are a number of provisions in the proposed General Local Law 2023 that require permits for activities to be obtained.</p> <p>Council has standardised its requirements for applications for permits and the conditions on which permits are issued or refused.</p> <p>Some permit applications require supporting information to be provided. This may include consent from others who may be affected, appropriate public liability insurance cover or sketches/plans of what is proposed.</p> |
| Fees | <p>The proposed General Local Law 2023 allows Council to set fees annually and this will be undertaken as part of the annual budget process.</p> <p>The fees cover part of Council's costs in processing applications in accordance with Council's relevant rating strategies.</p> |
| Performance standards or prescriptive | Where appropriate and possible, Council has adopted a performance based approach to local law provisions. |
| Comparison with neighbouring and like Councils | In drafting the proposed General Local Law 2023, Council examined the local laws of the following Councils: Surf Coast Shire, Southern Grampians Shire, Mitchell Shire, Nillumbik Shire, Loddon Shire. |
| Charter of Human Rights | <p>Council regards the Victorian Charter of Human Rights and Responsibilities as an important reference in the development of local laws to ensure that such laws do not encroach upon a person's basic human rights, freedoms and responsibilities.</p> <p>As a public authority, Council appreciates its obligation to ensure that local laws are interpreted and applied consistently with human rights.</p> <p>No part of the proposed General Local Law 2023 has been found to compromise rights as outlined in the Charter of Human Rights.</p> |
| Submissions | A submission process will be conducted in accordance with the legislative requirements prescribed under Section 55 of the Local Government Act 2020. |
| Consultation | <p>Council's consultation process to inform the development of the proposed General Local Law 2023 was as follows:</p> <ul style="list-style-type: none"> - Review of issues raised in administering the Local Laws; - Community survey with over 200 responses |

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Proposed Local Law No. 1 – General Local Law 2023

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| | <ul style="list-style-type: none"> - Stakeholder discussions - Consultation with Councillors; - Engagement with staff having responsibilities under the Local Laws; - Benchmarking with other Councils' Local Laws; - Legal review of a first draft of the General Local Law. |
| <p>Community Engagement Policy</p> | <p>Section 73(2) of the <i>Local Government Act 2020</i> provides that Council must make a local law in accordance with its community engagement policy. The community engagement process undertaken to support the review of Council's Local Laws and the proposed General Local Law 2023, has been in accordance with Council's Community Engagement Policy 2022.</p> |

Part C – Comments on specific parts or provisions of the proposed Local Law

Major and minor content issues have been addressed in the proposed General Local Law 2023. A major change is the consolidation of the three (3) Local Laws into one.

Changes have been broken down in the following table:

| Proposed General Local Law 2023 | Changes from arrangements under current Local Laws |
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| Part 1 | <ul style="list-style-type: none"> • Consolidate the objectives and the heading changed to purpose • Clause 1.3 heading was changed from Authoring Provisions to Power to make this Local Law • Clause 1.4 Heading changed deleted Area of Operation • Inserted a new heading Clause 1.5 Area of operation • Clause 1.6 heading changed from Revocation to Previous local Laws • Added a clause (b) to allow notices and consent given under previous local laws to continue to be in force • New clause 1.8 incorporated documents, Code and Policies clause was added • New Clause – Charter of human Rights and Responsibilities <p>New Definitions added</p> <ul style="list-style-type: none"> • Aircraft • Birds • Camping • Council control stand pipe • Infringement Review Panel • Offence • Commercial Waste • Nature Strip • Prescribed area • Occupier • Permit fee • Person • Vehicle Crossing • Unsightly /or dangerous land • Consolidated definition from the Livestock and Alcohol Local Laws <p>A key change to current arrangements is the incorporation of a Procedure Guidelines document to assist the community in understanding how Authorised Officers will approach their work and what matters will considered when permits are required or issued.</p> |
| Part 2 | <ul style="list-style-type: none"> • Changed the word Municipal to Council • Clause 2.3 added the word activities in the heading • Clause 2.4 added the word behaviour in the heading and added dot point 10 • Clause 2.6 changed the word allowed to permitted then added dot point 10 • Clause 2.6 changed the word allowed to permitted |

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Proposed Local Law No. 1 – General Local Law 2023

| Proposed General Local Law 2023 | Changes from arrangements under current Local Laws |
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| Part 3 | <ul style="list-style-type: none"> Deleted the Local law No 1 – Consumption of Alcohol in public places and inserted a new part to address the consumption of alcohol The impact of the proposed local law is that it allows opportunities for small groups to consume alcohol in public places where prescribed by Council or with a permit from Council. This balances the contemporary expectations of alcohol consumption with the need to maintain reasonable controls with conditions that avoid nuisance or risk to others. |
| Part 4 | <ul style="list-style-type: none"> Added standpipes and watercourse in the introduction Clause 4.1 changed the heading to Protection of drains Clause 4.2 inserted a new heading Clause 4.3 reviewed the clause to read better Clause 4.4 reviewed the clause to read better NB most of the clauses were moved into the new Part in the new Local Laws The proposed local law proposed some exemptions for works in nature strips or in road reserves to enable the community to undertake street tree planting or nature strip landscaping in a manner that is consistent with Council policy and mitigates risk to subsurface infrastructure. |
| Part 5 | <ul style="list-style-type: none"> A new part was created to deal with issues associated with Building Sites New clause 5.2 – Fencing of Building Sites Clause 5.3 new heading and review of the wording Clause 5.4 new heading Clause 5.6 new clause Clause 5.7 new clause |
| Part 6 | <ul style="list-style-type: none"> A new part New introduction was inserted Clause 6.1 (a) and (b) new clause Clause 6.2 new clause to deal with camping on Council land and in Public Places Clause 6.3 new clause to deal with camping on privately owned land Clause 6.4 new clause to deal with camping on a vacant privately owned land A notable impact of the proposed provisions of Clauses 6.3 and 6.4 is that there is greater capacity for private land to be used for longer periods without the need for a permit. This enables communities to access ore accommodation for key workers and others while maintaining protections for neighbours and the environment. |
| Part 7 | <ul style="list-style-type: none"> No major changes. Removed the camping provision and the Fire Hazard from this part |
| Part 8 | <ul style="list-style-type: none"> New part created to cover the Fire Hazard The proposed clauses simplify the understanding of when fires in open air or incinerators can occur without a permit. |
| Part 9 | <ul style="list-style-type: none"> Most clauses were relocated to other parts, i.e. Dog excrement was included into the Animals Section |

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Proposed Local Law No. 1 – General Local Law 2023

| Proposed General Local Law 2023 | Changes from arrangements under current Local Laws |
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| | <ul style="list-style-type: none"> • Sign and goods included in Part 10 Sale of Goods and Services, Street Collections and distribution • Obstruction on Road or Council Land was included in Part 12 Waste • Clause 9.3 was reviewed to only deal with Repair of Vehicles • New Clause 9.4 was inserted – Sale of Vehicles • New Clause 9.6 Storage of Vehicles was inserted |
| Part 10 | <ul style="list-style-type: none"> • No major changes. • Clause 10.1 was rewritten |
| Part 11 | <ul style="list-style-type: none"> • Insert new clause 11.4 – Control of Cats. The impact of the clause will be that owners of cats will have greater responsibility to confidence cats overnight for the protection of wildlife. • Inserted new clause 11.6 – Feeding of Wild Animals • Inserted Clause 11.7 – Shelter for Animals • Inserted new Clause 11.11 – Bees and Wasps |
| Part 12 | <ul style="list-style-type: none"> • Replaced the word garbage with the word household • Clause 12.2 – new heading – prohibited waste i.e. provision were taken from Clause 12.1 • Clause 12.3 – new heading – placement of mobile bins, provisions were taken from Clause 12.1 • Inserted 12.15 – Commercial Waste |
| Part 13 | <ul style="list-style-type: none"> • New part created after taking out enforcement provisions • New Clause 13.9 Delegation was included • New Clause 13.10 Exemption from this requirement • The procedure guideline demonstrates that officers will take a reasonable approach to enforcement, particular with respect to timeframes where there are other compliance matters to be addressed. |
| Part 14 | <ul style="list-style-type: none"> • New Part – Enforcing this Local Law • No major changes • 14.6 – new clause – Warning to Offenders – has been included |