

# Community Impact Statement

## PART A: INTRODUCTION

### Background

Local laws are regulatory instruments which enable local government councils to fulfil their functions and exercise their powers under State and Federal legislation within their respective municipalities. The *Local Government Act 1989* (Vic) (**'Act'**) grants the power to councils to make local laws for or with respect to any act, matter or thing in respect of which the Council has a function or power under that or any other Act.

The Act includes matters with which a local law must ensure compliance. A local law must, importantly, not duplicate or be inconsistent with any other Act or regulation, or the planning scheme of the municipality, and becomes inoperative to the extent of any duplication or inconsistency. It must also be directed towards its objectives and not go beyond them, and adopt the means of achieving those objects which appear likely to involve the least burden or the greatest advantage on the community.

The Guidelines for Local Laws Manual, released by the Minister for Local Government Victoria, aims to assist councils in achieving better practice when making, reviewing, and amending local laws.

Yarra City Council currently has three local laws:

1. General Local Law (2016);
2. Consumption of Liquor in Public Places Local Law (2009); and
3. Meeting Procedure Local Law (2011).

Pursuant to the Act, local laws are revoked 10 years after the day they come into operation. The current Consumption of Liquor in Public Places Local Law (**Local Law**) will be revoked on 19 October 2019.

### Objectives of the Local Law

Objectives of the proposed Local Law are:

- (a) controlling the consumption and possession of Liquor in Public Places within the Municipal District, including where such consumption or possession may interfere with the amenity and enjoyment of Public Places or of land in the vicinity of Public Places.
- (b) promoting the minimisation of alcohol-related harm by restricting the opportunity for unregulated public drinking within the Municipal District;
- (c) supporting the effective governance of the Municipal District by promoting improved amenity of public spaces and discouraging anti-social behaviour;
- (d) providing an effective means for Police to deal with unregulated public drinking;
- (e) improving the management of festivals and events to reduce risk to attendees, organisers, and Council; and
- (f) the peace, order and good government of the Municipal District.

## **Process**

Consultations have been undertaken with internal stakeholders across various areas of Council and with Councillors in creating this draft. Following Council's approval of the Local Law for consultation purposes, submissions will be sought from residents, Council Advisory Groups, neighbouring Councils, key external stakeholders and government bodies, including Victoria Police and the Victorian Commission for Gambling and Liquor Regulation.

The consultation period was conducted from 6 June 2019 to 4 July 2019 and in addition a formal consultation period as per the requirements of section 223 of the Local Government Act between 21 August 2019 and 19 September 2019. The community will be able to obtain information, provide feedback, and make submissions, which will then be considered by Council in preparing a final draft.

This Community Impact Statement will also be available to the community during this period. It is intended that this Statement will improve clarity and transparency for those affected by the current Local Laws and the proposed Local Law.

The final draft of the Local Law will be presented to Council in 8 October 2019 for adoption and gazettal. Following gazettal, the current Local Law will cease to operate and the new Local Law will come into effect.

## **Application and summary**

Local laws apply throughout the whole of the municipal district.

The structure of the proposed Local Law is as follows:

- Part 1: Introduction
- Part 2: General Conditions
- Part 3: Festivals
- Part 4: Prescribed Areas
- Part 5: Administration and Enforcement
- Schedule 1: Penalties

## **PART B: EXAMINATION OF THE LOCAL LAW**

### **Measures of success**

Council will measure the success of the proposed General Local Law by:

- (a) monitoring the level of compliance and comparing levels with those of previous years;
- (b) measuring efficiency and effectiveness in administering and enforcing the Local Law and success in responding to issues;
- (c) assessing the resources required to administer and enforce the Local Law;
- (d) assessing and measuring the adequacy of the Local Law in achieving its objectives.

Performance-measuring is undertaken and reported by Council in its Quarterly and Annual Reports and Annual Customer Satisfaction Survey. Performance is measured against Yarra's strategic objectives, being the following:

- 1) A healthy Yarra: Community health, safety and wellbeing are a focus in everything we do;
- 2) An inclusive Yarra: Inclusion, diversity and uniqueness are welcomed, respected and celebrated;
- 3) A sustainable Yarra: Council leads on sustainability and protects and enhances its natural environment;
- 4) A liveable Yarra: Development and growth are managed to maintain and enhance the character and heritage of the city;
- 5) A prosperous Yarra: Local businesses prosper and creative and knowledge industries thrive;
- 6) A connected Yarra: Connectivity and travel options are environmentally sustainable, integrated and well-designed; and
- 7) A leading Yarra: Transparency, performance and community participation drive the way we operate.

### **Existing legislation**

Council has examined the provisions of the Act and the other Acts and Regulations and considers the proposed Local Law to be supplementary to existing legislation. Council is unaware of any provision of the proposed Local Law which unduly overlaps, duplicates or is inconsistent with existing legislation. The Local Law does not regulate anything already regulated by the Yarra Planning Scheme.

### **State legislation more appropriate**

State legislation empowers Council to make Local Laws to address issues within its municipality. Council is of the view that each of the issues identified in relation to the proposed Local Law are those over which Council is delegated responsibility and has functions and powers.

### **Risk Assessment**

Council has adopted a risk management approach to the review and development of the proposed Local Law. This approach has involved consideration of the following:

- (a) impacts on community safety and amenity;
- (b) existing laws; and
- (c) long term solutions.

### **Legislative approach adopted**

Council maintains the position that its local laws should not impose itself unduly or unreasonably on the community. The proposed Local Law reflects this approach by implementing reasonable enforcement procedures, including the giving of directions instead

of direct infringements. In consideration of the least burden/greatest advantage test, where possible and appropriate, Council has created provisions for permissions rather than prohibiting certain activities.

Council has ensured that the proposed Local Law:

- (a) is expressed plainly and unambiguously, consistently with the language of the enabling Act and in accordance with modern standards of drafting applying in the State of Victoria;
- (b) does not exceed the powers conferred by the Act;
- (c) is not inconsistent with the principles, objectives or intent of the enabling Act;
- (d) does not make unusual or unexpected use of the powers conferred by the Act under which the Local Law is made;
- (e) does not unduly trespass on rights and liberties of the person previously established by law;
- (f) does not unduly make rights and liberties of the person dependent upon administrative and not upon judicial decisions;
- (g) does not purport to shift the onus of proof to a person accused of an offence; and
- (h) does not unduly restrict competition.

## **Penalties**

The Act provides that a local law may prescribe a penalty for a contravention of a local law and sets a maximum penalty of 20 penalty units. Under the *Sentencing Act* 1991, the penalty unit for local laws is set at \$100.00.

Council has compared the level of penalties provided for in the proposed General Local Law with those of its neighbouring Councils. The proposed penalties are not inconsistent with those neighbouring Councils.

## **Fees**

The proposed Local Law does not provide for the determination of any fees for the purposes of the Local Law.

## **Performance standards rather than prescriptive requirements**

Where appropriate, Council has adopted a performance-based approach rather than a prescriptive approach to the proposed Local Law.

## **Comparison with neighbouring and like Councils**

In drafting the proposed Local Law, Council examined the Local Laws of its neighbouring and comparable municipalities. This allowed Council to assess the similarities and differences between like municipalities and ensure that a best-practice approach was taken in the drafting process.

## **Charter of Human Rights and Responsibilities**

The *Charter of Human Rights and Responsibilities Act* 2006 applies to all subordinate legislation, including local laws. Council is satisfied that the proposed Local Law is compatible with the Charter and consistent with the principles of justice and fairness.

## Consultation meetings

Internal consultations with Council departments, Councillors and stakeholders have been conducted throughout the review process.

## Submissions

A submission process will be conducted in accordance with the legislative requirements under the Local Government Act 1989. All submissions will be considered by Council.

## PART C: ASSESSMENT OF MAJOR CHANGES

### 1. Definition of 'Public Place'

Part(s) or clause(s)	8
Issue(s) local law intends to address	The definition of a 'public place' for the purposes of the Local Law.
Action / change	Amendment of definition to: (a) a Road (as defined in the <i>Local Government Act</i> ); (b) any land that is owned, managed or otherwise controlled by Council; but does not include any Authorised Premises or Licensed Premises within the meaning of the <i>Liquor Control Reform Act 1998</i> .
Perceived benefit(s)	Improves clarity as to what is a 'public place' for the purposes of the Local Law, replaces undefined and potentially ambiguous terms with defined terms.
Perceived disadvantage(s)	None found.
Applicable strategic objective(s)	A healthy and liveable Yarra

### 2. 'Possession or control of Liquor'

Part(s) or clause(s)	9, 14 and 19
Issue(s) local law intends to address	Regulation of possession, consumption and control of liquor in public places within the municipality.
Action / change	Addition of 'or control', that is, "a person must not in a public place... be in possession <i>or control</i> of liquor in an open container."
Perceived benefit(s)	Allows Council regulate the control of liquor in open containers in addition to mere 'possession' and allow greater protection of safety and amenity by widening clause.
Perceived disadvantage(s)	Creates slightly more onerous prohibition on liquor in open containers.
Applicable strategic objective(s)	A healthy and liveable Yarra

### 3. Delegation of powers, discretions, authorities and considerations

Part(s) or clause(s)	21
Issue(s) local law intends to address	Ability of the CEO to carry out functions of Council.
Action / change	Delegates powers and functions of Council to the CEO.
Perceived benefit(s)	Eases burden on Council and allows the CEO to undertake functions and powers of Council. This will increase the efficiency of Council and ensure that the Local Law is able to be administered and enforced practicably with the least.
Perceived disadvantage(s)	None perceived.
Applicable strategic objective(s)	A liveable and leading Yarra

### 4. Consideration of applications

Part(s) or clause(s)	22
Issue(s) local law intends to address	Potential for perceived lack of understanding as to when and why an application for a declaration for a Festival made be granted or refused.
Action / change	Addition of clause which allows for considerations of Council to be specified in the incorporated Procedures and Protocols Manual.
Perceived benefit(s)	Enables persons applying for a declaration of a Festival by Council to address considerations and/or criteria, allows for greater transparency.
Perceived disadvantage(s)	None perceived.
Applicable strategic objective(s)	A liveable and leading Yarra

### 5. Infringement notices

Part(s) or clause(s)	24
Issue(s) local law intends to address	Ability to address contraventions and failures to comply with the Local Law.
Action / change	Addition of definitive and express power to issue infringement notices by Authorised Officers.
Perceived benefit(s)	Enables infringement notices to be issues as an alternative to the more serious action of prosecution in court
Perceived disadvantage(s)	None perceived.
Applicable strategic objective(s)	A leading Yarra