

Local Law No 3 - 2011

Municipal Places



Community Impact Statement



WELLINGTON
SHIRE COUNCIL

The Heart of Gippsland

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PART A – GENERAL COMMENTS

1. Background

In accordance with the *Wellington 2030 Strategic Vision* (Wellbeing and Safety and Development Themes) and the *Council Plan 2010-2014* (Development objective), Council has commenced a review of Local Law No. 3 – 2005 Municipal Places.

The *Local Government Act* 1989 dictates that the current Local Law will sunset in December 2014. However, an assessment of the current local law reveal that such a review was required before this date to ensure that the laws are meeting Council and Community needs.

This review is ultimately aimed to achieve higher standards of community safety and amenity through a revised Local Law No. 3 Municipal Places.

The most significant change to this Local Law is the removal of specific provisions relating to Libraries and Recreational Facilities/ Pools with many of the provisions relating to behaviour in these places now included in an expanded Behaviour in Municipal Places section. In addition, several provisions relating to caravan parks have been removed due to these now being part of normal park operations under the control of caravan park managers.

Minor amendment, including formatting changes, have been made throughout the document to clarify or enhance the application of the provisions contained within the Local Law.

As an outcome of this review, Council now proposes to make Local Law No. 3 2011 Municipal Places.

2. Objective

The objectives of this Local Law are to:

- a) Provide for those matters that require a local law under the *Local Government Act 1989* and any other Act
- b) Allow and protect the quiet enjoyment by people of municipal places within the Municipal District;
- c) Enable people in the Municipal District to carry out their day to day activities and to enjoy their recreational pursuits without having their peace and enjoyment interfered with or destroyed;
- d) Recognise and respond to community expectations relating to the quality of life they expect and require and are capable of influencing;
- e) Control and prevent behaviour which is a nuisance, or which may be detrimental to health and safety or which affects the enjoyment of recreational or other facilities;

- f) Protect Council and community assets and facilities on or in municipal places;
- g) Prohibit, regulate and control:
 - i. behaviour in municipal places which is harmful or intimidating;
 - ii. behaviour in municipal places which is offensive, dangerous or threatening or which, for other reasons, is inappropriate in a municipal place;
 - iii. the consumption of alcohol in designated areas and smoking in specified places;
- h) Provide for the administration and exercise of Council powers and functions;
- i) Provide for the peace, order and good government of the Municipal District; and
- j) Repeal any redundant local laws.

PART B – COMMENTS ON PROPOSED LOCAL LAW NO. 3 – 2011 MUNICIPAL PLACES

Measures of success of proposed Local Law	<p>Council will measure the success of Local Law through:</p> <ul style="list-style-type: none"> - the number of notices to comply issued - the number of infringement notices issued <p>Council will review the operation and effectiveness of this Local Law annually with a report being prepared identifying any issues of significance and highlighting the measures of success. This report may contain details of any other Local Law as made by Council.</p>
Existing legislation that might be used instead	The proposed Local Law has been carefully prepared and Council believes that all items dealt with within the law are not dealt with in other legislation.
State legislation more appropriate	The proposed Local Law has been carefully prepared and Council believes that all items dealt with within the law are not dealt with in other Victorian State legislation.
Overlap of planning scheme	The proposed Local Law has been carefully prepared and Council believes that items dealt with in the law are not dealt with within the planning scheme.

1. Risk Assessment

Risk	Method in which Council plans to manage exposure
Community not aware of the Local Law obligations (if adopted)	Community consultation will occur before adoption. After adoption the Local Law will be available on Council's website and service centres. Local Laws and other Council Officers will serve an educational role in their day-to-day interactions with the community. Specific items within the law requiring a more focused education campaign/targeted information will be identified and a program commenced.
Overlap with other legislation	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.
Failure to request and/or hear public submissions on proposed Local Law.	Submissions will be called for and heard in accordance with the <i>Local Government Act 1989</i> .
Other agencies not aware of new provisions within Local Law.	Other relevant agencies will be consulted before the proposed Local Law is presented for adoption.
Legislative approach adopted	<p>Council is of the view that Local Law No. 3 2011: Municipal Places is necessary to provide enhanced amenity and safety to the community.</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

Risk	Method in which Council plans to manage exposure
	the provisions of the law.
Restriction of competition	<p>National Competitions Policy does not automatically demand greater exposure to competition, although it does require an assessment of how government conducts business activities that compete, or potentially compete, in the market.</p> <p>Laws must not restrict competition unless Council can demonstrate:</p> <ul style="list-style-type: none"> • the benefits outweigh the costs • there is no other way of achieving the objective. <p>The proposed Local Law No. 3 - 2011 defines behavioral requirements and usage standards for municipal places and facilities which include Council run activities/businesses. These requirements and standards do not restrict competition. An assessment on each Council business activity in regards to National Competition Policy is outside the scope and dealings of this Local Law.</p>
Penalties	<p>Schedule 6 of this Local Law sets out penalties for infringement notices which may be issued as an alternative to prosecution in respect of offences against this Local Law where the Council or its Authorised Officers determine to proceed by infringement notice.</p> <p>Two (2) penalty units apply for all breaches of the provisions in this Local Law. Council feels that a base level of 2 penalty units is sufficient to act as a deterrent for most offences if there is appropriate enforcement vigilance.</p> <p>20 penalty units is the maximum penalty that may be applied for all offences if the matter is prosecuted in the Magistrates Court.</p>

Risk	Method in which Council plans to manage exposure
Permits	<p>The proposed Local Law has removed requirement for permits for: camping at a designated camping site within a caravan park in excess of six weeks and for a person to bring an animal into or allow an animal to remain with the person in a caravan park. These are operational matters that no longer require this level of regulation.</p> <p>The proposed Local Law retains the requirement for a permit to be obtained to consume or possess liquor between sunset and sunrise in any public reserve</p> <p>The permit process aims to achieve the orderly use of Council and community assets and ensures Council is aware of may prepare for activities that may impact the wider community.</p>
Fees	<p>In accordance with Section 113(2) of the <i>Local Government Act 1989</i>, Council may impose fees and charges applicable to the Local Law.</p> <p>The purpose of fees chargeable under this 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.</p> <p>The Local Law allows Council to set fees annually and this will be done as part of the budget process.</p>
Performance standards or prescriptive	<p>The proposed Local Law is in the main, based on performance standards. This means that, the provisions describe a standard that needs to be met by members of the public to be considered to be compliant with the law. However, exactly how to comply has not been dictated. For example, the prohibition on consumption and possession of alcohol on public reserves requires that a person must not consume or have in possession or control liquor other than in a sealed container between sunrise</p>

Risk	Method in which Council plans to manage exposure
	<p>and sunset. To comply with this provisions a person may decide to not purchase any liquor, plan consumption during allowed times, engage in the activity on private land, etc.</p> <p>The provisions regarding Behaviour in Public places generally describe certain activities that may be deemed detrimental to the community. There is not a defined standard of behaviour that indicates compliance. This allows people to comply in a number of different ways in different situations and places to comply with the Local Law. Application of these Local Law provisions requires an Authorised Officer to form an opinion that a breach has occurred.</p>
Comparison with neighbouring and like Councils	<p>The provisions within the proposed Local Law have been compared with the Local Laws of other Gippsland Councils and several metropolitan Councils.</p> <p>The provisions in these Local Laws have been found to be similar in most cases to the proposed Local Law.</p>
Charter of Human Rights	<p>Council has assessed the proposed Local Law for compatibility with the <i>Charter of Human Rights and Responsibilities</i>. Council is of the opinion that the provisions of the proposed Local Law do not impact on human rights as detailed in the Charter.</p> <p>The Local Law does engage two human rights, these being: the right of freedom of expression and Property rights.</p> <p>The Charter of Human Rights (the Charter) and Responsibilities defines the right of freedom of expression as:</p> <ol style="list-style-type: none"> 1) Every person has the right to hold an opinion without interference. 2) Every person has the right to freedom of expression which

Risk	Method in which Council plans to manage exposure
	<p>includes the freedom to seek, receive and impart information and ideas of all kinds, whether within or outside Victoria and whether—</p> <ul style="list-style-type: none"> a) orally; or b) in writing; or c) in print; or d) by way of art; or e) in another medium chosen by him or her. <p>The Local Law's provisions on Behaviour in Public Places, specifically clauses 5.1(1), 5.1(2) and 5.1(5), may possibly limit the freedom of expression if that expression is deemed harmful, disruptive to the quiet enjoyment by any person using the municipal place, is indecent, offensive, abusive, or damages public assets or puts the public at risk of harm. These limitations are allowed under the Charter:</p> <p><i>Special duties and responsibilities are attached to the right of freedom of expression and the right may be subject to lawful restrictions reasonably necessary—</i></p> <p><i>to respect the rights and reputation of other persons; or</i></p> <p><i>for the protection of national security, public order, public health or public morality.</i></p> <p>In light of these allowances, the Local Law is compatible with the Charter.</p> <p>In regards to property rights (A person must not be deprived of his or her property other than in accordance with law) provisions in the Local Law regarding impounding are justifiable as due processes are followed to remedy situations before impounding occurs.</p>

Risk	Method in which Council plans to manage exposure
	Any property impounded will be done so in accordance with the Local Law and therefore the right is engaged but not limited.
Consultation	<p>The following consultation was undertaken during the review of this Local Law:</p> <ul style="list-style-type: none"> - Invitation to public to comment on upcoming review of Local Laws placed on Council's website, Wellington News, and in a media release published in Gippsland Times during January 2011; - The media release was distributed via email to the organizers of the Community Newsletters within the shire; - The review of Local Laws was promoted and discussed as part of the recent Business Roundtables in Maffra, Stratford, Rosedale and Heyfield; - A Local Laws Review Group consisting of three Councillors and Council staff reviewed the law at meetings held during January and February 2011; - Internal departments within Council have been involved where the Local Laws are relevant to their operations; - In accordance with Section 223 of the <i>Local Government Act 1989</i> public notices inviting submissions on the proposed Local Law will be placed in local newspapers and Victorian Government Gazette; - Wellington Matters will feature an article advising that the Local Laws will be available for public comment.
Submissions	Submissions in regards to the proposed Local Law No. 3- 2011 were invited in accordance with Section 223 of the

<i>Risk</i>	<i>Method in which Council plans to manage exposure</i>
	Local Government Act 1989. Council did not receive any submissions.

PART C - COMMENTS ON SPECIFIC PARTS OR PROVISIONS OF THE PROPOSED LOCAL LAW NO 3: 2011 MUNICIPAL PLACES.

1. Objectives for the Proposed Local Law No 3 2011 Municipal Places

Council objective

Council's objective in adopting the proposed Local Laws is to achieve higher standards of community safety and amenity.

Where is Council's objective set out?

Council's objectives are set out in the Wellbeing and Development themes of the Wellington 2030 Strategic Vision and the Development strategic objective in the Council Plan 2010-2014.

Clause(s), section or Part of the Local Law	Part 5 – Behaviour
Description or headings	Behaviour in public places Fees and access Prohibition of entry Use of dressing rooms, showers or toilets Motor vehicles on public reserves Trees or plants not to interfere with a municipal place
The problem the provision is intended to address	Behaviour in public places that interferes with the quiet enjoyment of a municipal place and/or facility.
Description of the problem	Behaviour in public places that interferes with the quiet enjoyment of a municipal place, is detrimental to public places or public assets, or causes damage to or interferes with a municipal place/facility.
Council objective	To achieve higher standards of community safety and amenity.
Where is Council's objective set out?	<i>Wellington 2030 Strategic Vision:</i> Wellbeing and Safety and Development themes. <i>Council Plan 2010-2014:</i> Development strategic objective

Clause(s), section or Part of the Local Law	Part 5 – Behaviour
How does the proposed Local Law Provision help achieve the objectives of community safety and amenity?	<p>The proposed Local Law requires that behaviour in a municipal place is not harmful; does not cause interference with any other person's quiet enjoyment of the place and does not cause damage or detriment to public assets.</p> <p>Certain behaviours such as creating a nuisance, endangering others, destroying Council property, using life saving/safety devices (outside of an emergency), acting contrary to signage, etc. create health and safety hazards and impact the quiet enjoyment of municipal places.</p> <p>The Local Law also empowers the effective management of municipal places/facilities through defining the authority of Authorised Officers and Managers to restrict entry to such places to a person(s) that has breached the behavioural standards.</p>

Clause(s), section or Part of the Local Law	Part 6 – Smoking
Description or headings	Smoking in municipal places
The problem the provision is intended to address	Smoking in municipal places that might not otherwise be banned through State legislation.
Description of the problem	Smoking in certain municipal places may cause inconvenience and health risks to place users. Although smoking is banned in many areas by State legislation, there are still many public areas that smoking is allowed. Examples may include a public park used for an event, doorways outside a Council facility (such as a recreation/leisure centre).
Council objective	To achieve higher standards of community safety and amenity.
Where is Council's objective set out?	<i>Wellington 2030 Strategic Vision: Wellbeing and Safety and Development</i>

Clause(s), section or Part of the Local Law	Part 6 – Smoking
	<p>themes.</p> <p><i>Council Plan 2010-2014: Development strategic objective</i></p>
How does the proposed Local Law Provision help achieve community safety and amenity objectives?	The proposed Local Law allows for Council to declare a municipal place to be a smoke free area. This allows additional flexibility outside of State legislation to ban smoking in certain areas where, when it occurs, reduces community amenity and safety.

Clause(s), section or Part of the Local Law	Part 7 Consumption of Liquor
Description or headings	<p>Licensed premises or authorised premises</p> <p>Consumption and possession on roads</p> <p>Exemption on roads</p> <p>Consumption and possession on public reserves</p>
The problem the provision is intended to address	Unrestricted consumption of liquor on roads and on public reserves.
Description of the problem	The consumption of liquor on roads is a risk to the consumer and to other road users. Such activity is prohibited unless a permit has been granted for a street party or an endorsement for the consumption of alcohol in an alfresco dining area. Consumption of liquor on public reserves between sunset and sunrise has in the past lead to anti-social behaviour, damage to assets and requires additional enforcement resources to be applied.
Council objective	To achieve higher standards of community safety and amenity.
Where is Council's objective set out?	<i>Wellington 2030 Strategic Vision: Wellbeing and Safety and Development themes.</i>

Clause(s), section or Part of the Local Law	Part 7 Consumption of Liquor
	<i>Council Plan 2010-2014: Development strategic objective</i>
How does the proposed Local Law Provision help achieve community safety and amenity objectives?	By placing reasonable limitations on the consumption of liquor on roads and public reserves the Local Law enhances community safety and amenity.

Clause(s), section or Part of the Local Law	Part 8: Management and Control of Caravan Parks
Description or headings	Camping areas
The problem the provision is intended to address	Unregulated camping.
Description of the problem	Unregulated camping in caravan parks may lead to damage to community assets and may present a health and safety hazard.
Council objective	To achieve higher standards of community safety and amenity.
Where is Council's objective set out?	<i>Wellington 2030 Strategic Vision: Wellbeing and Development themes</i> <i>Council Plan 2010-2014: Development strategic objective</i>
How does the proposed Local Law Provision help achieve community safety and amenity objectives?	The Local Law allows for Council to designate specific camping sites within caravan parks.

Clause(s), section or Part of the Local Law	Part 8: Recreation Services; Division 3 Boat Launching Ramps
Description or headings	Boat launching ramps
The problem the provision is intended to address	Undefined authority for designating a boat launching ramp in a reserve and charging for the use of the boat launching ramp.
Description of the problem	Existing legislation does not clearly define Council's ability to designate an area as a boat launching ramp and

Clause(s), section or Part of the Local Law	Part 8: Recreation Services; Division 3 Boat Launching Ramps
	charge a fee for usage of the ramp.
Council objective	To achieve higher standards of community safety and amenity.
Where is Council's objective set out?	<i>Wellington 2030 Strategic Vision:</i> Wellbeing and Safety and Development themes. <i>Council Plan 2010-2014:</i> Development strategic objective
How does the proposed Local Law Provision help achieve community safety and amenity objectives?	The Local Law provides for community amenity and safety by allowing boat launching ramps to be designated by Council and for a usage fee to be charged to recover costs for the provision of such.

PART D – SUBMISSIONS RECEIVED AND RESPONSES

No submissions received

The proposed Municipal Services Local Law no 3 – 2011 was adopted at the Ordinary Council meeting of Tuesday 19 July 2011.
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