

Local Law No 5 - 2011

Livestock



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. 5 – 2005 Livestock.

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. 5 – Livestock.

The most significant change to this Local Law is the clearer identification of penalties that are applicable for breaches of the Law.

Minor amendments, including formatting, 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.5 2011 – Livestock.

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) Regulate the movement and driving of Livestock through and within the Municipal District and the grazing of Livestock within the municipal district;
- c) Minimise any damage to Road pavements, formations, drainage, vegetation and surrounding areas arising from Livestock;
- d) Minimise the spread of Livestock disease and noxious weeds in the municipal district;
- e) Provide for the welfare of Livestock when being driven, grazed or moved;
- f) Alert other Road users to the presence on Roads of Livestock in the Municipal District in the interests of safe use of Roads;
- g) Regulate the adequacy of fencing of Livestock;
- h) Put in place mechanisms for rectifying inadequate fencing;

- i) Fix fees or charges relating to the impounding of Livestock and all other costs incidental thereto and for Road use by Livestock within the municipal district;
- j) Provide for the administration and exercise of Council powers and functions;
- k) Provide for the peace, order and good government of the Municipal District of the Wellington Shire; and
- l) Repeal any redundant local laws.

PART B – COMMENTS ON PROPOSED LOCAL LAW NO. 5 2011 LIVESTOCK

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 permit applications received to undertake activities that require such a permit - 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.5 2011 - Livestock 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 the provisions of the law.
Restriction of competition	<p>National Competition 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

	<p>objective.</p> <p>The proposed Local Law contains requirements for the safe use of roads and road reserves for the purpose of moving livestock and does not restrict competition.</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>In the Local Law 5, 2005 the penalties were identified in most cases at \$1000 for the first offence and \$2000 for further offences. These were in fact the maximum penalties that may be applied if the matter was prosecuted in the Magistrates Court.</p> <p>Penalty units applicable for prosecution have been standardised to 20 penalty units.</p>
Permits	<p>The proposed Local Law retains the requirement for permits to be granted for droving, grazing and moving livestock on roads. The permit process aims to achieve the safe and orderly use of Council and community assets, the protection of interests through indemnity and insurance arrangements, fair compensation to Council for use of certain 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 <i>the 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</p>

	<p>intended to make a profit or subsidise other forms of activity. In this Local Law fees apply for permit applications and impounding costs.</p> <p>The Local Law allows Council to set fees annually and this will be done as part of the budget process.</p> <p>Bond – The Local Law allows Council to charge a bond of \$1000 for droving of livestock. The bond would normally be refunded except where there are costs associated with repairing the roads or property which has occurred as a result of the droving of livestock.</p>
Performance standards or prescriptive	The proposed Local Law is prescriptive, meaning that its provisions set out specifications for compliance.
Comparison with neighbouring and like Councils	The provisions within the proposed Local Law have been compared with the Local Laws of other Gippsland Councils. The provisions in these Local Laws have been found to be similar in most cases to the proposed Local Law.
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 one of the detailed human rights, these being: Property rights.</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. Any property impounded will be done so in accordance with the Local Law and therefore the right is engaged but not limited.</p>
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

	<p>upcoming review of Local Laws placed on Council's website, Wellington News, and in a media release published in Gippsland Times during January 2011;</p> <ul style="list-style-type: none"> - 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 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 regarding the proposed Local Law will be considered by the Local Laws Review Group on 16 May 2011.
Submissions	<p>Submissions in regards to the proposed Local Law No. 5 - 2011 were invited in accordance with Section 223 of the Local Government Act 1989.</p> <p>Council did not receive any submissions.</p>

PART C - COMMENTS ON SPECIFIC PARTS OR PROVISIONS OF THE PROPOSED LOCAL LAW NO 5: 2011 LIVESTOCK

1. Objectives for the Proposed Local Law No 5 – 2011 Livestock

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 – Livestock on Roads
Description or headings	Fencing of land containing livestock
The problem the provision is intended to address	Uncontrolled livestock on roads.
Description of the problem	Uncontrolled livestock on roads is a major hazard that may cause property damage, injury or death to road users and the livestock itself. Inadequate fencing leads to livestock escaping to prevent the escape of the livestock kept on that land.
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 objectives?	The proposed Local Law requires that an owner and occupier of land must ensure that fencing of that land is adequate to prevent the escape of the livestock kept on that land. When, in the opinion of Council the fencing is inadequate, a notice to comply may be served require the owner or occupier to install, repair, or modify fencing, gates or grids.

Clause(s), section or Part of the Local Law	Part 5 – Livestock on Roads
Description or headings	Offence concerning livestock on roads
The problem the provision is intended to address	Intentional placement of livestock on roads for movement from one place to another or grazing without effective controls/restrictions in place.
Description of the problem	The placement of livestock on roads for movement from one place to another or for grazing in an unregulated manner is an activity that introduces hazards for all road users and has potential to damage assets and destroy areas of high conservation value.
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 proposed Local Law requires that permits be applied for and granted before livestock is driven, grazed or moved on a road. This protects community amenity and safety by ensuring that the required standards for undertaking these activities are known by the permit applicant, that the activities may Council may assess for appropriateness before the activity is permitted to occur.

Clause(s), section or Part of the Local Law	Part 5 – Livestock on Roads
Description or headings	Droving of livestock
The problem the provision is intended to address	Unregulated droving of livestock on roads.
Description of the problem	Unregulated droving of livestock on roads presents a high risk to road users and may result in significant damage to Council assets.
Council objective	To achieve higher standards of

Clause(s), section or Part of the Local Law	Part 5 – Livestock on Roads
	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?	<p>The proposed Local Law allows the droving of livestock in a controlled manner dependant on specified requirements and/or thresholds being met. These requirements enhance community amenity and safety by ensuring the number of livestock to be moved will not significantly interfere with the normal use of the road, that the livestock to be moved are capable of making the journey in a healthy state, that assets are protected and that appropriate insurance arrangements are in place.</p> <p>In determining whether to grant a permit for the droving of livestock, the Council must take into account:</p> <ul style="list-style-type: none"> a) whether an indemnity and evidence of public liability insurance has been provided to the Council; and b) any Council guidelines and; c) Council's Roadside Vegetation Management Plan and Grazing and Stock Movement Policy and; d) any other matter relevant to the circumstances of the application. <p>The Local Law contains prescriptive descriptions of when a droving permit must not be issued.</p>

Clause(s), section or Part of the Local Law	Part 5 – Livestock on Roads
Description or headings	Grazing of livestock
The problem the provision is intended to	Occupation of roads/road reserves for

Clause(s), section or Part of the Local Law	Part 5 – Livestock on Roads
address	the purpose of grazing livestock.
Description of the problem	The occupation of roads/road reserves for the purpose of grazing livestock introduces hazards to road users and may damage Council assets and destroy areas of medium or high conservation value.
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?	<p>The proposed Local Law requires that a permit be applied for and granted before grazing on a road may occur. The Local Law sets out standards that must be met before a permit may be granted. The law details that Council will take into account considerations of the appropriateness of the area proposed to be grazed from a road safety and conversation perspective. In addition, the law sets out requirements for the person who is in charge of the livestock being grazed on a road.</p> <p>In determining whether to grant a permit for the droving of livestock, the Council must take into account:</p> <ul style="list-style-type: none"> a) whether an indemnity and evidence of public liability insurance has been provided to the Council; and b) any Council guidelines and; c) Council's Roadside Vegetation Management Plan and Grazing and Stock Movement Policy and; d) d) any other matter relevant to the circumstances of the application.

Clause(s), section or Part of the Local Law	Part 5 – Livestock on Roads
Description or headings	Livestock Movement
The problem the provision is intended to address	Unregulated movement of livestock on roads
Description of the problem	Unregulated movement of livestock on roads presents a high risk to road users and may result in significant damage to Council assets.
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 proposed Local Law requires that a permit be applied for and granted before livestock may be moved on roads. In determining whether to grant a permit for the droving of livestock, the Council must take into account: <ul style="list-style-type: none"> a) whether an indemnity and evidence of public liability insurance has been provided to the Council; and b) any Council guidelines c) Council's Roadside Vegetation Management Plan and Grazing and Stock Movement Policy and; d) any other matter relevant to the circumstances of the application.

Clause(s), section or Part of the Local Law	Part 5 – Livestock on Roads
Description or headings	Warning signs
The problem the provision is intended to address	Road users being unaware of hazard arising from use of road for droving, grazing or movement of livestock.
Description of the problem	The droving, grazing or movement of livestock on roads is a hazardous activity

Clause(s), section or Part of the Local Law	Part 5 – Livestock on Roads
	that presents hazards to other road users. Road users unaware of the activity being undertaken may not be able to travel according to the conditions and are at a higher risk of having an accident, suffering personal injury or damaging a third party's property.
Council objective	To achieve higher standards of community safety and amenity.
Where is Council's objective set out?	<p><i>Wellington 2030 Strategic Vision:</i> Wellbeing and Safety and Development themes.</p> <p><i>Council Plan 2010-2014:</i> Development strategic objective</p>
How does the proposed Local Law Provision help achieve community safety and amenity objectives??	To enhance community safety the proposed Local Law requires that a person engaged in driving, grazing or moving livestock on a road must ensure that adequate warning of the presence of livestock on the road is given other road users. The Local Law details the requirement for such signage.

PART D – SUBMISSIONS RECEIVED AND RESPONSES

No submissions received.

The proposed Livestock Local Law no 5 – 2011 was adopted at the Ordinary Council meeting of Tuesday 19 July 2011.