

STRATEGY AND POLICY REVIEW COMMITTEE
7 JULY 2008 **GOVERNANCE AND COMPLIANCE**

A14	REVIEW OF LOCAL LAW NO. 3 – CONSIDERATION OF SUBMISSIONS IN RESPONSE TO ADVERTISING
LOCATION/ADDRESS:	
RESPONSIBLE EXECUTIVE DIRECTOR:	GEOFF OULTON, EXECUTIVE DIRECTOR, COMMUNITY DEVELOPMENT AND PLANNING
AUTHOR:	KIRSTEN HUGHES, COORDINATOR LOCAL LAWS
FILE NO.:	
ATTACHMENTS:	1. PROPOSED COMMUNITY AMENITY (AMENDMENT) LOCAL LAW NO 1 OF 2008 2. PROPOSED AMENDED PROCEDURES AND PROTOCOLS MANUAL 3. SUBMISSION RECEIVED 4. PUBLIC NOTICE ADVERTISING CREATION OF NEW LOCAL LAW

1. EXECUTIVE SUMMARY

- 1.1. The Community Amenity Local Law No 3 has been reviewed. As a result of this review a number of changes are proposed to the Local Law and Procedures and Protocols Manual. These will be put into effect by making a local law as proposed in this report.
- 1.2. Notice of the intention to create a Local Law was published in the Government Gazette on 15 May 2008 and in the Emerald Hill Weekly and Port Phillip Leader on 13 and 14 May, respectively. As a result one submission was received in relation to the definition of significant tree and in relation to clause 29 (1) (c) of the proposed Local Law.
- 1.3. The submission is addressed in this report and it is recommended that the proposal be adopted.

2. BACKGROUND AND CONTEXT

- 2.1. In the proposed Local Law, as advertised, the definition of 'significant tree' was broadened so that the circumference measurement could be taken at its base, rather than at a height of 1m. The purpose of the change was to account for circumstances where the tree had been removed completely and it was not possible to measure the height at 1m. The penalty for this offence has been increased to \$2000.

- 2.1.1. The submission received suggested that “the definition of significant tree should be extended to include narrow palm trees, eg. Bungalow, that may be very old and tall.” It was suggested that such trees are “significant, but fail the circumference test.”
- 2.1.2. Consideration was given to this submission, however the problem would be that it would result in too many trees falling under the significant tree category, which would prove a problem for enforcement and for the issuing of permits. While the circumference test is not perfect, it does cover a majority of significant trees, and is the most common method of measure that other Council’s use.
- 2.2. The amendment to Clause 29 (1) is basically inserting the requirements relating to the domestic waste collections (that had previously been in the Procedures and Protocols Manual) into the main Local Law.
 - 2.2.1. A submission was received suggesting the following was changed in Clause 29 (1) (c): add the line “...and not more than 24 hours prior to the time of 6am”. And further change the clause to read: “the owner of any flats or units or the relevant owners’ corporation must provide a clearly defined storage area for the storage of bins that does not affect the amenity of residents and neighbours in terms of noise, odour or damage to public or private infrastructure. Every occupier must keep the bin allocated to the flat or unit in the defined storage area”.
 - 2.2.2. The submission with respect to Clause 29 was given consideration. Firstly, putting restrictions on when bins may be placed out could provide significant barriers to the collection of waste from anyone who may be away for short periods of time, which could, in turn have health implications. The majority of complaints with respect to bins are post waste collection. Changing the local law further could be seen as being unreasonable.
 - 2.2.3. The second issue with respect to Clause 29 – there is already a requirement that bins be kept in a neat and tidy manner and so that they are not offensive. There is also provision to require the owners of flats or units to provide a clearly defined area for the storage of their bins (Procedures and Protocols Manual, Part 13, subsections 10 and 11 respectively). Other alternatives for enforcement available under the Local Law include unsightly premises (clause 48) and damage to Council assets (clause 42). Altering the clause as suggested would merely duplicate existing provisions.

3. RECOMMENDED OPTION

3.1. Criterion for recommendation

It is a statutory requirement to consider submissions in relation to the proposed Local Law amendments. The basis of the recommendation is essentially around the ability of Council to actually enforce the Local Law, and to ensure that the Local Law is not excessive.

It is recommended that the proposed amendments to the Local Law are adopted without further alteration, having given consideration to the submission.

4. SUSTAINABILITY ASSESSMENT

SOCIAL EQUITY

Social Pillar	Proceeding with the Local Law amendments in their current form, without any alterations as suggested in the submission, provide a useful and practical suite of amendments that make the Local Law more useable, without being excessive.
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ECONOMIC VIABILITY

Economic Pillar	The proposed amendments to the Local Law, without alteration, strike a balance that promotes the protection of Council's assets without making unreasonable and unnecessary restrictions on users.
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ENVIRONMENTAL RESPONSIBILITY

Environmental Pillar	The proposed amendments to the Local Law provide a stronger ability to protect aspects of the environment, such as significantly increasing the penalty for breaching the Significant Tree clause. The Local Law will also provide greater capability to enforce the provisions of the Local Law.
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CULTURAL VITALITY

Cultural Pillar	There are minimal cultural impacts.
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4.1. Policy and legislative implications

- 4.1.1. It was necessary to advertise changes to the Local Law and then to consider submissions as required under s223 of the Local Government Act 1989. These provisions have been complied with.
- 4.1.2. There is no obligation under these provisions to make further amendments. Adoption of any proposal that is not subject of public advertising could be subject to legal challenge, therefore the options available to council are to adopt or to not adopt the proposal.

4.2. Risk implications

- 4.2.1. The proposed amendments address some risk concerns, by allowing a more consistent use of the Local Law.

4.3. Resource implications

- 4.3.1. There are no significant resource implications by adopting the Local Law amendments.

5. ALTERNATIVE OPTIONS

- 5.1. Adoption of any proposal that is not subject of public advertising could be subject to legal challenge. Therefore, as described above, the options available to council are to adopt or to not adopt.

6. PARTICIPATION AND ENGAGEMENT

6.1. Internal

- 6.1.1. The officers consulted in relation to this issue are:
- Coordinator Parks Services
 - Manager Health and Amenity
 - Local Laws Officers
- 6.1.2. Advice from the Coordinator Parks Services was that increasing the definition of significant trees, as suggested by the submission, would only cause significant problems for Council due to a subsequent increase in permit applications. The circumference system, while not necessarily perfect, provided a balanced approach to tree management.
- Consultation within Local Laws, including the Manager Health and Amenity, confirmed that the majority of bin complaints relate to bins after collection, not prior. There also exists:-
- capacity to enforce if there are issues with respect to smell or noise nuisance; and
 - provision to require flats or units to provide storage areas for their bins.

7. IMPLEMENTATION

7.1. Implementation will be subject to the following timetable:-

DATE	ACTION	PURPOSE
7 July 2007	Report to Council	To consider submission received pursuant to s223 LGA and adopt Local Law.
August 2008	Public Notice in Government Gazette, Emerald Hill Times, Port Phillip Leader	Statutory requirement to advertise making of the Local Law
August 2008	Letter and Copy of Local Law to Office of Local Government	Requirement to send copy of any new Local Law to the Minister
18 August 2008	Commencement of Local Law	Enable implementation

8. COMMUNICATION

8.1. The statutory process of advertising the making of the Local Law will be supplemented by communication via press release, Council's web site and the Divercity Weekly column in the Emerald Hill Times.

9. RECOMMENDATION

That the Strategy and Policy Review Committee recommend that Council resolve to:

- 9.1. That the Council in accordance with Section 119 of the Local Government Act 1989 ("the Act"), give notice in the Government Gazette and a public notice to advise of the making of a Local Law, the Community Amenity (Amendment) Local Law No 1 of 2008 and of alterations to the Procedures and Protocols Manual.
- 9.2. That the notices in 8.1 be in the general form of the attached notice (attachment 4).
- 9.3. That pursuant to Section 119 of the Act a letter is sent to the relevant Minister, with a copy of the new Local Law.