

City of Port Phillip Local Law Community Impact Statement for City of Port Phillip Community Amenity (Amendment) Local Law Number 1 of 2017.

A. Background

Port Phillip City Council undertook a major review of its Community Amenity Local Law (Local Law No. 3) and Footpath Activities Local Law (Local Law No. 7) in 2012 and 2013. This resulted in the creation of the City of Port Phillip Local Law Number 1 (Community Amenity), which commenced on 1 September 2013.

As a result of several years working with the new Local Law, a further review has been undertaken to provide amendments and clarification for some clauses in the local law.

This current review and creation of the amending local law have been conducted using the Better Practice Guidelines for the creation and enforcement of local laws which were released in 2010.

This review, while following the same process of the review conducted in 2012 and 2013, is of much smaller scale but has included internal and external consultations to ensure that the Local Law remains relevant and enforceable.

A section 223 of the Local government Act 1989 process must be undertaken and a Special Committee of Council must be established to hear all submissions received in relation to new or amended clauses to be incorporated into the Principal Local Law No. 1 (Neighbourhood Amenity). As part of this process community consultation must be undertaken for a minimum of 28 days.

The changes proposed, which are included in Part C of this document, include improving definitions; inclusion of a penalty clause for Grand Prix parking; inclusion of a new clause to enable an Authorised Officer to require fencing of a property in certain circumstances; inclusion of a ban on taking glass onto Port Phillip beaches; and minor amendments to other clauses to improve accessibility and understanding.

Objectives

The overall objectives for the proposed City of Port Phillip Amending Local Law Number 1 of 2017 are set out in the draft Local Law.

B. Comments on the proposed amending Local Law Overall

Council has followed the Better Practice Guidelines for Local Laws in conducting the Local Law review.

Measures of success of the proposed Local Law	Council will measure the success of the Local Law as follows: <ol style="list-style-type: none">1. Recording levels of non-compliance/compliance using inspection data;2. Review of enforcement actions taken, including official warnings, notices to comply, infringements and direct prosecutions; and3. Volume of complaints.
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Existing legislation that might be used instead	<p>There is existing legislation that covers some or part of the proposed amendments, including the <i>Environment Protection Act 1970</i> and <i>Public Health and Wellbeing Act 2008</i>.</p> <p>The Local Law intends to complement existing legislation and provide an appropriate local response, whilst not overlapping, duplicating or conflicting with existing legislation.</p>
State legislation more appropriate	<p>Council sought to investigate two potential new clauses during this review:</p> <ol style="list-style-type: none"> 1. Providing authorised officers with a power to require demolition of dilapidated or unsightly premises; and 2. Banning single use plastic on beaches. <p>Demolition of buildings is controlled by the Planning Scheme and the requirements of the <i>Building Act 1993</i>. The <i>Building Act 1993</i> provides extensive controls with respect to safety of buildings and there are powers in that Act to order demolition, if required. A local law would be inappropriate, given the broad nature of the <i>Building Act 1993</i>.</p> <p>Similarly proposed amendments to the <i>Environment Protection Act 1970</i> have been put forward to Parliament in a Bill entitled "Environment Protection Amendment (Banning Plastic Bags, Packaging and Microbeads) Bill 2016" and intends to ban the use of single use plastics, including plastic bags, in Victoria. Given this matter is currently before Parliament, and includes transitional arrangements for such a ban, as well as penalty arrangements, any proposal for a Local Law is inappropriate at this time.</p>
Overlap of existing legislation	Council does not believe that any provision of the draft City of Port Phillip Amending Local Law Number 1 of 2017 overlaps, duplicates or causes inconsistency with existing legislation.
Overlap of Planning Scheme	Council does not believe that any provision of the draft City of Port Phillip Amending Local Law Number 1 of 2017 overlaps, duplicates or causes inconsistency with any planning scheme.
Risk Assessment	Council has adopted a risk management approach to the review and development of the Local Law. New clauses have been reviewed using a risk matrix, in accordance with the Council risk management guidelines to ensure a Local Law is relevant and will be effective. The Risk Assessment can be found at Appendix 1.
Legislative approach adopted	<p>It is anticipated that the proposed Local Law will have minimal impact on the community and Council, while providing:</p> <ol style="list-style-type: none"> 1. Reasonable penalties; 2. A minimal number of offences clauses; 3. Clear and transparent processes; and 4. Clear and transparent enforcement procedures.

Restriction of competition	<p>The application of National Competition Policy (NCP) to Local Government in Victoria is a result of the Competition Principles Agreement which was signed by the Commonwealth, State and Territory Governments in 1995.</p> <p>NCP principles require, among other matters:</p> <ul style="list-style-type: none"> - the removal of legislative restrictions on competition, unless there is a net public benefit; and - the adoption of competitive neutrality policies and processes to recognise and offset advantages enjoyed by government businesses. <p>The NCP principles are applied to local laws, in the Local Government Act 1989 at Schedule 8.2 as follows:</p> <p><i>A local law must not-</i></p> <p><i>(j) restrict competition unless it can be demonstrated that-</i></p> <ul style="list-style-type: none"> <i>(i) the benefits of the restriction to the community as a whole outweigh the costs; and</i> <i>(ii) the objectives of the local law can only be achieved by restricting competition.</i> <p>Council has reviewed the proposed Local Law in accordance with the National Competition Principles (Appendix 2). Council does not believe the proposed Local Law restricts competition or that, if it does, considers that the public benefit from the restriction on competition outweighs any costs arising from the restrictions.</p>
Penalties	<p>In the major local law review of 2013, it was noted that penalty units under the <i>Local Government Act 1989</i> have been fixed at the current unit value of \$100 since 1989.</p> <p>In order that the new clauses are effective, they have been set at levels that are considered to a deterrent.</p> <p>It is noted that the <i>Local Government Act 1989</i> is currently being reviewed and the consultation phase in 2016 included specific consultation about the value of the penalty unit for local laws.</p> <p>Accordingly, with the current fixed penalty unit, the infringement penalty in some cases is more than that recommended by the Victorian Attorney General (20-25% of the maximum penalty) however this is necessary to achieve deterrence by the use of an infringement.</p>
Permits	<p>This review has ensured that incorporated documents have been made up to date for all permit conditions and processes, as well as updating delegations.</p>
Fees	<p>Council will continue to set fees annually as part of the budget process.</p>
Performance standards or prescriptive	<p>Where possible drafting of the Local Law has adopted a performance based approach, rather than using prescriptive measures. The Procedures and Protocols manual has been</p>

	updated further to provide additional detail and guidance in achieving compliance.
Comparison with neighbouring and like Councils	<p>With respect to clauses that have had minor amendments to improve efficacy, these have already been considered in light of neighbouring Councils when reviewed in 2013 and would not be inconsistent with neighbouring and like Councils.</p> <p>With respect to the new clause for managing groundwater, this is currently a local issue and is a factor in major developments along the foreshore and at Fishermen's Bend. A consideration of other local laws has not been able to find any similar local law.</p>
Charter of Human Rights	Council has reviewed the proposed Local Law against the <i>Charter of Human Rights and Responsibilities Act 2006</i> . Details of this review can be found at Appendix 3.
Consultation meetings	<p>Internal consultation with respect to the current Local Law commenced in late 2016, with the following key internal stakeholders engaged in the process:</p> <ul style="list-style-type: none"> - compliance and parking - city strategy - city development - sustainability - operations - assets - parks and open space - community development - culture and leisure - community and councillor support - councillors <p>As a result of internal consultations the proposed draft was created and approved for public consultation by Council at its meeting on 19 July 2017.</p>
Submissions	<p>A community consultation and submission process was conducted in accordance with s223 of the Local Government Act 1989 from 25 August to 8 September 2017. (The timeline for submissions must be a minimum of 28 days). Public notice of the exhibition of the draft clauses and amendments proposed to be incorporated into the Principal Local Law No 1 (Community Amenity) was made via the Government Gazette and public advertisement, and written submissions were invited to be considered by Council.</p> <p>A total of twelve submission from 10 respondents have been received by Council following an extensive community engagement process conducted in accordance with s223 of the Local Government Act. At its meeting on 4 October 2017, Council heard and considered submissions. Two submitters spoke to their submission at the Council Meeting.</p>

C. Comments on specific parts or provisions of the proposed amending Local Law

1. Specific clauses amended from Local Law Number 1 (Community Amenity) of 2013

Clause	Problem the Local Law seeks to address	What change is required? How does the proposed local law objective help achieve objectives?	Proposed by	Benefit
6 - definitions	Some clarity required for some definitions	Minor changes to definitions	various	clarity
11 - advertising	Issue with new technology and the use of projected images for advertising.	Amend definition to cover this advertising method	Local laws team	Clarity accountability
12 – itinerant trading	Current issues with lack of control of community services groups providing soup kitchens and other services	Amend to expand itinerant trading to include this activity	Events team	Clarity accountability
15- special events	Inconsistency between permit names and local law	No change required. See advice.	Events team	Clarity accountability
19- Busking, Fund Raising and Promotional Activities and Street Stalls	Inconsistency in heading	Amend heading	Events team	Clarity
24(4) – asset protection bond	There is a lack of clarity in what Council can do with the bond if it is not reclaimed. This does happen from time to time and is not currently addressed.	Amend clause 24(4) to include reference to the <i>Unclaimed Money Act 2008</i>	Local laws team	Clarity Transparency accountability
25 – clothing recycle bins	Managing the placement of clothing recycling bins on Council land.	Issues with collections on public holidays, holiday periods Amend schedule 1 to clarify offences – add an offence for breaching	Local laws team	Clarity Transparency Accountability Amenity

		conditions of a permit.		
28 – Inflatable displays	Managing displays on Council land	Inflatable displays need to be anchored for safety reasons and clause to be amended to reflect this.	Local laws team	Amenity Accountability Safety
Clause 31A	Inability of officers to require fencing around certain sites, with gaps in other legislation.	Inclusion of new clause that provides further powers for officers to require land to be fenced.	Local laws team	Amenity Safety Accountability
Clause 33	Protecting Council assets	Ensuring consistency between asset protection clauses	Manager	Accountability Clarity
Clause 36 – domestic waste	Managing the storage of domestic waste bins.	Amend the clause to enable an offence only if bin placement is an obstruction.	Local laws team	Accountability Safety Amenity Transparency
Clause 37A – noise	Currently gaps relating to enforcement of residential noise under <i>Environment Protection Act 1970</i> and <i>Public Health and Wellbeing Act 2008</i>	Proposed new clause, similar to neighbouring Councils, Frankston and Stonnington, which has similar amenity issues	Health, Planning Compliance	Accountability Safety Amenity
Clause 42	Grand Prix parking is managed by the local law but currently has no infringement offence.	Add an infringement clause to schedule 1 Max offence 5 penalty units, inf offence 2.5 penalty units. This was not proposed following the s223 process.	Local Laws team	Accountability amenity
Clause 43(4),(5),(6)	The inclusion of a clause concerning leaving vehicles for extended periods, more than 28 days, is	Remove this sub-clause. The <i>Local Government Act 1989</i> has adequate	Local laws team	Accountability Consistency Clarity

	<p>supposed to assist in identifying derelict/abandoned vehicles.</p> <p>In reality this clause creates an additional and unnecessary burden on council officers for enforcement, without adequate reason.</p>	<p>provisions to deal with abandoned or derelict vehicles.</p> <p>This clause is not required and is likely contrary to the <i>Local Government Act 1989</i>.</p>		
Clause 46	Damage to footpath and assets due to stormwater drainage collapsing via legal point of discharge	Inclusion of a new clause to regulate this in the local law.	Local Law team	Accountability amenity
Clause 46A – ground table water management	Many developments have occurred that have installed pumps and filtration systems to manage ground water in basements. However there is no control of maintenance requirement in many existing developments.	While new developments may have additional control in their planning permits, the addition of a new clause will assist managing this potentially environmentally damaging problem.	Asset management	Accountability amenity
Clause 53	Under sub-clause (2) – review of exemptions to camping	Clarification of definition of homeless and clarity of exemptions	Local law team	Accountability Amenity
Clause 56	Currently no exemption for Elwood and Port Melbourne sailing clubs, as well as lifesaving clubs	Amend to include exemption for those activities	Foreshore coordinator	Accountability Clarity
Clause 57	There is an issue, from time to time, with dilapidated or derelict buildings, which may contribute to a property being unsightly.	Inclusion of a new sub-clause to consider structures or buildings on a property that may be considered to be unsightly, due to neglect or by being derelict	CEO/Executive	Accountability Amenity
60 – shopping trolleys	Managing the problem of dumped shopping trolleys.	Proposed to require a proprietor of any	Local laws team	Accountability Amenity

		premises with greater than 25 shopping trolleys for use to have coin operated lock or perimeter constraint system from 1 July 2018 onwards. This amendment aims to better manage the problem of dumped shopping trolleys on Council land.		
62A – Glass and sharp objects on beach	There is a major issue with glass waste on beaches within CoPP. Glass bottles cannot easily be cleaned by the beach cleaning machinery and resulting broken glass poses a safety risk to the tens of thousands of people who utilise the beach during summer, in particular, and expect a safe environment.	The current clause, which was added in 2013, as part of the major local law review, has not been able to adequately address the problem. New clause 62A is proposed to prohibit the possession of carrying of glass onto beach areas. Beach is defined.	Council/CEO	Accountability Safety Amenity
Clause 76	Notice to Comply provides authorised offices with a tool to provide written directions to cease non-compliance.	Simplify this clause to ensure clarity	Local laws team	Accountability Clarity
Clause 79	Power of authorised officers to impound	Clarification of the requirement of the notice. Require content, not format of the procedures manual	Local laws officer	Clarity accountability
Schedule 1	Infringement offences	Amend to include items identified above: Clause 25; clause 42; new clauses	Local laws officer	Clarity accountability

<p>Proposed ban of single use plastic on beaches</p>	<p>Issue with plastic waste on beaches</p>	<p>This proposal conflicts with a current proposed amendment to the <i>Environment Protection Act 1970</i> which would address this issue. As such this proposal cannot be supported.</p>	<p>Councillors</p>	<p>Accountability</p>
<p>Proposed clause providing power to demolish unsightly buildings</p>	<p>Issue with unsightly properties</p>	<p>This proposal conflicts with the <i>Building Act 1993</i> and <i>Planning and Environment Act 1987</i>, which have clear control of permit and control requirements for ordering demolitions.</p>	<p>Councillors</p>	<p>Accountability</p>

Appendix 1 – Risk Management Assessment

Below is the risk analysis performed on the current Local Law and on the proposed amending Local Laws. This analysis does not cover procedural or administrative functions but concentrates on those areas which can or may have impact on others.

The risk assessment has been conducted using the following risk analysis templates shown in the following three tables

Table 1: Risk Consequence Descriptors

Consequence	Category	Business Interruption	Environmental	Financial	Human	Public Image and Reputation
Catastrophic	5	Essential service failure, or key revenue generating service removed	Irreversible damage	Above five million dollars	Death(s) many critical injuries	National and international concern/exposure
Major	4	Service or provider needs to be replaced	Harm requiring restorative work	Up to five million dollars	Single death, multiple long term or critical injuries	State-wide concern/exposure
Moderate	3	Temporary, recoverable service failure	Residual pollution requiring clean-up work	Up to five hundred thousand dollars	Single minor disablement/ multiple temporary disablement	Local community concern
Minor	2	Brief service interruption	Remote, temporary pollution	Up to one hundred thousand dollars	Injury	Customer complaint
Negligible	1	Negligible impact brief reduction/loss of service	Brief, nonhazardous transient pollution	Up to ten thousand dollars	Minor first aid	Resolved in day to day management

Table 2: Likelihood Ratings

Likelihood	Category	Description
Almost certain	A	The incident is expected to occur in most circumstances
Likely	B	The incident will probably occur in most circumstances
Possible	C	The incident should occur at sometime
Unlikely	D	The incident could occur at sometime
Rare	E	The incident may only occur in exceptional circumstances

Table 3: Risk Matrix

Likelihood	Consequence				
	1 Negligible	2 Minor	3 Moderate	4 Major	5 Catastrophic
A. Almost certain	Moderate	Moderate	High	High	Extreme
B. Likely	Low	Moderate	Moderate	High	Extreme
C. Possible	Low	Low	Moderate	High	High
D. Unlikely	Low	Low	Moderate	Moderate	High
E. Rare	Low	Low	Low	Moderate	Moderate

Risk Assessment of Proposed New Clauses for Inclusion

Local Law Issue	Risk Description and Consequences	Impact/Risk	Likelihood	Inherent Risk	Local Law Control	Inclusion in Local Law Y/N
Requirement to fence sites or unsightly premises	Significant amenity and health and safety risks associated with not fencing some properties.	MODERATE	ALMOST CERTAIN	HIGH	Capacity to issue Notice to Comply requiring fencing	Y
Glass on beaches	Significant health and safety risk associated with broken glass on beaches.	MODERATE	ALMOST CERTAIN	HIGH	Prohibit glass on beaches, without a permit	Y
Noise	Significant amenity issues associated with unreasonable noise, with gaps in current state legislation.	MODERATE	ALMOST CERTAIN	HIGH	Inclusion of new clause, consistent with neighbouring Council Stonnington	Y
Management of groundwater	A number of developments have pump and filtration systems pumping filtered water back into stormwater. Risk associated with poorly	MAJOR	POSSIBLE	HIGH	Inclusion of new clause to address properties that do not have planning permit controls for maintenance requirements of pumps/filters	Y

	maintained filters/pumps.					
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Appendix 2 – National Competition Policy Assessment

The application of National Competition Policy (NCP) to Local Government in Victoria is a result of the Competition Principles Agreement which was signed by the Commonwealth, State and Territory Governments in 1995.

NCP principles require, among other matters:

- the removal of legislative restrictions on competition, unless there is a net public benefit; and
- the adoption of competitive neutrality policies and processes to recognise and offset advantages enjoyed by government businesses.

The NCP principles are applied to local laws, in the Local Government Act 1989 at Schedule 8.2 as follows:

A local law must not-

(j) restrict competition unless it can be demonstrated that-

*(i) the benefits of the restriction to the community as a whole outweigh the costs;
and*

(ii) the objectives of the local law can only be achieved by restricting competition.

Appendix 3 – Human Rights Charter Assessment

The *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Charter) applies to all subordinate legislation (local laws). The Charter does not, however, apply to the making of a local law (see *Kerrison v Melbourne City Council* [2014] FCAC 130). Accordingly, a detailed assessment of the application of the Charter has not been undertaken.

Council will comply with the Charter in its administration and enforcement of the Local Law.