

Local Law Community impact statement

Proposed Local Law 20 – Open Air Fires Local Law

16 August 2021

Version 1.0

Part A

Background

Cardinia Shire Council commenced a review of Local Law 17 – Part 5A in 2019 after it was recognised that the existing laws in relation to open air burning were insufficient and did not meet community and Council expectations.

An extensive review of Council's existing Open Air Burning Local Law was undertaken, focusing on simplifying and strengthening the local law that provides the community with the means to prepare their property to reduce risk of fire, through burning off for genuine fuel reduction, while discouraging the inappropriate or undesirable burning of waste.

The local law review included extensive community consultation and consultation with the Municipal Fire Management Planning Committee, agency partners and internal Council business units.

The review included a benchmarking against Baw Baw and Yarra Ranges shires, given their similarity to Cardinia Shire's geographical blend of urban, semi-rural and rural townships, while also incorporating large areas of national and state parks.

Due to the COVID19 pandemic the local law review was put on hold throughout 2020.

The *Proposed Local Law 20 – Open Air Fires Local Law (version 2.0)* was prepared in line with the requirements of the Local Government Act 2020. Council has confirmed that the *Proposed Local Law 20 – Open Air Fires* complies with the 'local law requirements set out in Section 72 of the Local Government Act 2020, including the development of this community impact statement.

The purpose of the community impact statement is to ensure:

- regulation is only implemented when there is a justified need
- only the most efficient forms of regulation are adopted
- there is an adequate level of public consultation in the development of regulatory measures.

Council has used *The Guideline for Local Laws Manual* (published by Local Government Victoria) to inform the development of the community impact statement, as the explanatory document for the community, and integrated its components into Council's processes of better practice local law making.

Pursuant to Section 73 of the Act, Council is required to give public notice of the proposed local law and invite submissions for a period of at least 28 days.

The consultation period will run from 20 August to 17 September.

Anyone who makes a written submission can request to be heard in support of their submission at the Ordinary Council Meeting which considers the making of the proposed local law.

Objectives

The objectives of the local law are to:

- provide for the peace, order and good government of Cardinia Shire
- promote a physical and social environment free from hazards to health, in which the residents of the municipal district can enjoy a quality of life that meets the general expectations of the community
- protect the amenity of the municipal district

- prevent and suppress nuisances connected with open air fires and smoke in the environment, which may adversely affect the enjoyment of life or the health, safety and welfare of persons
- prohibit, regulate and control open air fires (and related behaviours) which may be dangerous or unsafe or detrimental to the quality of life and the environment
- provide for the consistent application and enforcement of this local law.

Part B

Measures of success of proposed local law

The primary objectives of local laws are to protect the amenity of the municipality and the health and safety of the community. These objectives are not simply about compliance but are also about creating an environment that is equitable and fair where residents, business and visitors alike can participate in the community with mutual respect and enjoyment.

While enforcement of local laws is important, measures of success must have regard to impact of local law related actions, whether that is information or enforcement, against the stated objectives.

To measure the success of the local law, Council will:

1. record levels of compliance/non-compliance, including the level of reporting of resident complaints and proactive detection of non-compliance
2. review enforcement actions taken, including official warnings, infringements and prosecutions
3. monitor how the local law contributes to supporting community safety
4. undertake inspections to ensure compliance with the local law and permit conditions
5. record and monitor the volume and nature of applications for permits under the Local Law, and the reasons that individual residents need exemption from the general local law provisions.

Existing legislation that might be used instead

Council has considered whether there are alternatives to the local law that might better suit the needs of the community. Council does not believe that there is an alternative that is better suited to address the issues, and as such is satisfied that the creation of the proposed local law is the correct and preferable approach.

Overlap of existing legislation

Council is satisfied that the proposed local law that the proposed Local Law does not 'duplicate, overlap or conflict with other statutory rules or legislation'. To the extent that any duplication or overlap is found to exist, the proposed local law will be ineffective.

The existing Acts listed below also include provisions that are related to the subject matter of the proposed local law.

- *Fire Rescue Victoria Act 1958*, and *Country Fire Authority Act 1958* – both of these Acts include provision for fire danger periods and measures to address fire hazard when it is detected on private land
- *Cardinia Shire Local Law 17* – includes a number of restrictions relating to fire hazard and dangerous land.
- *Public Health and Wellbeing Act* – this Act includes significant powers to prohibit (or to order the improvement) when a person allows a nuisance to emanate from their land and to cause a public health risk. Persistent and severe smoke nuisance may fall into this category.
- *Environment Protection Act 2017* – this Act covers a wide range of issues for the purpose of protecting the environment. This includes specific regulations relating to the handling and disposal of industrial and commercial waste.
- *Summary Offences Act 1966* – this Act includes criminal offences relating to the lighting of fires that cause damage to other structures.
- *Road Management Act 2004* – Council and Vicroads are the road management authorities for most of the roads adjacent to residential properties. To the extent that nature strips are used as the location for open air fires, Council and Vicroads permission may be required.
- *Infringements Act 2006* – this Act sets out the processes when infringements are issued and enforced.

The provisions of the proposed local law are consistent with state legislation without duplicating, overlapping, or creating any inconsistency.

The objectives of the *Country Fire Authority Act 1958* and the *Fire Rescue Victoria Act 1958* are supported by the controls proposed in the proposed local law in relation to incinerators and burning-off.

Overlap of planning scheme

The provisions of this local law do not overlap, duplicate or create inconsistency with the *Cardinia Planning Scheme*.

Risk assessment

Many clauses in the proposed local law reflect the current policy or are unchanged from *Local Law 17 – Part 5A*. Where open air fires are more restricted under the proposed local law, the practices that are restricted do not meaningfully contribute to effective fuel reduction, or can be addressed by other means. The capacity to issue permits at a property level also allows Council and property owners to respond to the specific attributes of the land in question, and such conditions are in effect ‘treatments’ to minimise risk from use of or activity.

Legislative approach adopted

Council has carefully consider the approach to this proposed local law. In the case of open air fires there is a wide range of views within the community, and the proposed local law attempts to balance these needs. As such, Council has adopted a moderately prescriptive approach, to promote clarity and consistency across the zones in the municipality.

An example of this approach is in the prescribed times when burning off is, and is not permitted. On the one hand, residents desire the freedom to conduct fires at their convenience. However, this needs to be balanced with the health and amenity impacts, and the cumulative effects of wood-fire smoke in the environment. It is therefore considered necessary to identify specific days of the week where burning off may occur, in order to maximise the community benefit of days with decreased smoke.

Council recognises that all laws seek to make general regulations that can be applied efficiently and consistently across a large number of people. In order to achieve this, it has been necessary to create specific rules. This has resulted in the minimum possible number of provisions which create offences. In this context, Council recognises that:

- a. the municipality comprises an area of 1,283 square kilometres
- b. the municipality has over 47 suburbs, townships and villages
- c. the municipal population is approximately 112,159
- d. the area is one of the most diverse in Victoria
- e. around 65% of the population live in the ‘urban areas’ which in area comprise 6% of the municipality

The level of prescription is offset by the capacity for people to apply for, and for Council to issue, individualised permits which allow for relaxation of the prescriptions at an individual property level.

Restriction of competition

The proposed local law does not restrict competition and is not inconsistent with any National Competition Policy provisions.

Penalties

Council has compared the general level of penalties provided for in the local law with those of three comparable councils (Baw Baw, Casey and Yarra Ranges). The infringement penalty amounts are similar to (or within the range of) infringement penalties imposed by the equivalent laws of neighbouring municipal districts.

Infringement notice penalties are used to simplify the process of enforcing less serious breaches of local laws. Infringement notices avoid the complex process of court prosecution.

Maximum penalties may be imposed by a court when:

1. Council or an authorised officer chooses to prosecute an offence, rather than issue an infringement notice
2. a person receiving an infringement notice chooses to have the matter heard in court.

Under the proposed local law, infringement penalty amounts will be higher than previously applied under the former local law. This is as a result of two factors:

1. Section 110 (2) of the *Sentencing Act 1991* was repealed, effective from 1 July 2021, and as such the method of calculating penalty units in respect of local law offences has changed, and
2. Cardinia Shire Local Law 17 penalty units are generally lower than neighbouring Councils.

Taking into account the effect of the repeal of Section 110 (2), Council is satisfied that the infringement penalties under the proposed local law are consistent (and in some cases significantly lower than) equivalent penalties in neighbouring Councils, and are appropriate to ensure that penalties act as an efficient and clear deterrent to wrongdoing.

Under the proposed local law, the maximum penalty for each offence will still be 20 penalty units (now equal to \$3635). The majority of infringement penalties will be 2 penalty units (\$363) and the aggravated offence of burning industrial and commercial waste will attract an infringement penalty of 4 penalty units (\$727).

Permits

As far as possible, Council has removed the requirement for permits for those who most need to undertake open air burning for genuine fuel-reduction purposes.

Permit applications are still an option for all residents should they not be able to undertake open air burning within the scope of the proposed local law and will be assessed on a case-by-case basis.

Fees

The proposed local law allows Council to set fees annually and this will be done as part of the budget process. Determining the fees and charges is not within the scope of the local law review, and no fee is currently associated with applying for or receiving an open air fire permits.

Comparison with neighbouring or like councils

Benchmarking of new clauses and amendments was undertaken against other local laws from a range of councils, including Yarra Ranges, Casey, Baw Baw and Knox.

The benchmarking undertaken with Casey and Yarra Ranges was based on a like-for-like basis as Cardinia Shire shares a similar geographical blend of urban, peri-urban and rural townships, as well as significant areas of state and national parks.

The benchmarking undertaken with Casey and Baw Baw was undertaken given our shared municipal boundaries.

The purpose of conducting this benchmarking was to assess the similarities and differences between councils to ensure a best practice approach was adopted in developing the local law and a broad consistency across the wider south-east metropolitan and South Gippsland districts.

The proposed local law more closely resembles the open air fire laws in Yarra Ranges Council, in that it differentiates between 3 zones, with different levels of restriction, and which reflect the geographic diversity of the municipal district.

The proposed local law can be contrasted with the current law prevailing in the City of Casey, which has adopted a model which prohibits all open air fires, unless a permit has been issued. Council is satisfied that a similar approach should not be adopted in Cardinia Shire at this time, and believes that the proposed local law is the appropriate balance between consistency and diversity.

Charter of human rights

The *Charter of Human Rights and Responsibilities Act 2006* (Charter) contains 20 basic rights that promote and protect the values of freedom, respect, equality and dignity. Public authorities must not knowingly be in breach of these rights and must always consider them when creating laws, developing policies and delivering services.

Cardinia Shire Council, as a public authority under the Charter, must ensure that a proposed local law is not incompatible with a human right or, in making a decision, fail to give proper consideration to a relevant human right.

If a provision under the local law interferes with or restricts a right, consideration must be given to determine whether the provision is reasonable and justified under the Charter.

The proposed local law has been reviewed for compatibility with the Charter and is considered to be compatible. To the extent that the proposed local law limits the freedoms of residents, it is justified by a legitimate public interest in controlling certain behaviours. To the extent that residents may become subject to prosecution, the requirements of the law are unambiguous, and clearly communicated to those who are effected.

Consultation meetings

In 2019, Council invited the community to provide open feedback on the existing local law in relation to open air burning. Council sought feedback on all aspects of the local law from the community, government agencies and internal and external stakeholders.

Council undertook pop-up sessions across the shire, held meetings with emergency service organisations, and held a general community drop-in session at Council.

Council's *Creating Cardinia* web page had a 'Register to receive updates' page for this consultation from the start of October 2019, to build a mailing list of people interested in contributing to the discussion and being informed about the process. Community members were able to make written submissions from this page when the consultation period opened.

Analysis of this feedback identified key areas for improvement based on the large volume of comments on these provisions from various community members and stakeholders. Council has highlighted these key areas and listed a response to each of these items.

The top 5 themes from the community feedback were:

- days allowed to burn-off
- smoke
- size of fires
- property size allowed to burn-off
- enforcement.

The proposed local law has been developed and reviewed in consultation with Councillors, members of Council staff and legal practitioners.

In accordance with the Cardinia Shire Community Engagement policy, a further period of consultation will be conducted, prior to the making of the proposed local law (as required by Section 73 of the *Local Government Act 2020*).

Submissions

Council has given public notice of its intention to make the proposed local law and provide members of the public with an opportunity to make a written submissions to Council in relation to the proposed local law. Council will consider submissions received before making a final decision on the proposed local law.

A person who makes a written submission is entitled to request (in the submission) to be heard by Council in support of their submission. When Council makes a final decision on the proposed local law, it must notify in writing each submitter of the decision and the reasons for the decision.

This community impact statement has been prepared to inform the community about the proposed local law and to assist any member of the public who may wish to make a submission to Council.

The proposed local law will be available to view during the consultation period.

To view the proposed Local Law 20 – Open Air Fires Local Law, visit www.cardinia.vic.gov.au/haveyoursay

All submissions must be made in writing to Cardinia Shire Council, PO Box 7, Pakenham, 3810 or emailed to mail@cardinia.vic.gov.au and must include the following details:

- name and address of the submitter
- reasons for the submission
- advice as to whether they wish to be heard at a meeting of Council or a committee appointed for the purpose in support of their submission.

All submissions must be submitted to Council prior to **17 September 2021**.