

WEST WIMMERA SHIRE COUNCIL

PROPOSED COMMUNITY LOCAL LAW NO 9 2023

LOCAL LAW COMMUNITY IMPACT STATEMENT

INTRODUCTION

Council's Community Local Law No 6 of 2012 came into operation on 1 October 2012 and in accordance with the *Local Government Act 2020* (LGA 2020) which "sunset" on 30 September 2022.

Accordingly, Council has commenced a process of preparing a new local law.

A PROFILE OF WEST WIMMERA

The West Wimmera Shire is situated along the Victorian - South Australian border, covers 9,200 square kilometres and includes the townships of Apsley, Edenhope and Harrow in the southern half of the shire through to Goroke, Kaniva and Serviceton in the north. A map of the municipal district is attached.

Home to approximately 3,810 people, the area prides itself for its welcoming communities and a wide diversity of industry and environment. Consisting of untouched desert parks, vast wetlands and fertile plains, West Wimmera is equally known for its acres of wheat and legumes, and as a home to the famous Malleefowl, Red-tailed Black Cockatoo and a unique abundance of wildflowers.

THE COUNCIL'S VISION AND VALUES

Our vision

West Wimmera Shire delivers the very best experience and opportunity that rural living has to offer.

Our values

The Council's values are:

- a) Council values its resident population and its wellbeing. This will be demonstrated through promotion of viable and sustainable communities, the retention of the current population and support to grow communities;
- b) Council values good governance and transparent decision making. Supporting community groups and advocating on their behalf will enable open dialogue to occur with residents;
- c) representing the whole of West Wimmera is highly valued by Councillors;

- d) a connected community, both via transport infrastructure and modern digital technology that enables us to be connected to the world for business and education; and
- e) partnerships (locally, regionally, and with government) are valued as a way of ensuring sustainable service delivery.

THE COUNCIL PLAN

Goal 2 of the Council Plan 2021-2025 - A Diverse and Prosperous Economy - provides that in 2021/22, Council will:

“Review the existing local law to assist business opportunities in the Shire and ensure the safety and amenity of our towns are preserved”.

THE CURRENT LOCAL LAW

The current Local Law is an “omnibus’ local law which deals with a wide range of matters including, but not limited to:

- a) activities requiring a permit;
- b) storage of vehicles;
- c) keeping of excess animals;
- d) temporary dwellings;
- e) camping in townships;
- f) movement of livestock;
- g) roadside grazing;
- h) prohibited activities;
- i) pest animals;
- j) noxious weeds;
- k) enforcement; and
- l) penalties.

The current local law does have provisions that should be retained, however:

- a) the current definitions are inadequate;
- b) administrative provisions in relation to permit applications, issuing of permits, advertising and appeal rights are lengthy and can be simplified or clarified;
- c) there are no provisions, or inadequate provisions, relating (for example) to:
 - i. storage of vehicles and machinery;
 - ii. excess animals;
 - iii. temporary dwellings;
 - iv. camping
 - v. behaviour on Council land;
 - vi. protection of Council assets;
 - vii. open air burning;
 - viii. parking of heavy and long vehicles; and
 - ix. advertising signs.

THE PROPOSED LOCAL LAW

Objectives

The objectives of the proposed Local Law are to:

- a) provide for the peace, order and good government of the municipal district;
- b) protect Council's assets and land and to regulate their use;
- c) promote 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;
- d) provide for those matters which require a Local Law under the LGA 2020 and any other Act; and
- e) provide for the administration of Council powers and functions.

Accordingly, the proposed local law has been prepared on the following basis:

- a) to ensure the local law is contemporary, that is, that it meets the requirements of the community and the Council for the present and the foreseeable future;
- b) to ensure the local law is written in “plain English” and is easily understood;
- c) to ensure the local law reflects the diversity of the municipal district, particularly in relation to:
 - i. townships and rural areas;
 - ii. property sizes;
- d) to introduce provisions not included in the current local law;
- e) to ensure that the local law does not include provisions which are excessively onerous;
- f) to propose penalties which are reasonable;
- g) to simplify the procedures in relation to permit applications and the issuing of permits;
- h) to give greater powers to authorised officers in relation to operational matters;
- i) to make use of incorporated documents which can be amended by Council as required without the need for a statutory process; and
- j) to minimise the risk of having to review the local law within ten years.

Council believes in the minimum imposition on the community with local laws. The proposed local law reflects this approach by providing for:

- a) penalties which are both a deterrent in relation to potential offences and which are set at a level consistent with the seriousness of the offence;
- b) the minimum possible number of provisions which create offences. In this context, Council recognises that:
 - i. the municipality comprises an area of 9,108 square kilometres;
 - ii. the shire has six townships;
 - iii. the municipal population is approximately 3,810;
 - iv. in terms of employment, the most significant occupations are related to sheep farming, beef cattle farming and grain growing;
 - v. of the 815 businesses in the municipal district: ¹
 - 417 have no employees;

¹ Statistical data is derived from the 2016 Census.

- 282 employ one to four people
 - only six employ more than 20 staff;
- vi. of the 815 business in the area:
- 140 had a turnover of less than \$50,000;
 - 217 had a turnover between \$50,000 and \$200,000;
 - 396 ² had turnover between \$200,000 and \$2m;
- vii. what is relevant in one area (eg: urban or rural) is not necessarily relevant in another;
- c) where possible, provision for permits rather than prohibition of activities;
- d) revising the requirement for permits; and
- e) reasonable enforcement procedures including provision for the giving of official warnings where appropriate, provision of an internal review process (required pursuant to the *Infringements Act 2006*) for appeals against infringement notices and the refusal of applications for permits.

Preparation and Process

Preparing the proposed local law is a significant exercise which has involved, or will involve:

- a) a review of the existing local law;
 - b) “benchmarking” (ie: comparing) the proposed local law with those of three comparable municipalities;
 - c) several drafts of the proposed local law;
 - d) compliance with Local Government Victoria’s Local Law Best Practice Guidelines;
 - e) drafting this Local Law Community Impact Statement (LLCIS);
 - f) consultation with relevant staff;
 - g) legal advice;
 - h) briefing of Councillors;
 - i) a Council report;
 - j) community consultation including:
 - i. advertising the proposed local law;
 - ii. release of the LLCIS;
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- iii. inviting submissions;
- iv. hearing submissions;
- k) a further Councillor briefing;
- l) legal certification;
- m) a further Council report to adopt the new local law;
- n) revised administrative processes relating to:
 - i. permit applications;
 - ii. issuing permits;
 - iii. enforcement;
 - iv. website information; and
 - v. fees.

Incorporated documents

Section 76(1) of the LGA 2020 provides that:

“A local law may apply, adopt or incorporate any matter contained in any document, code, standard, rule, specification or method as formulated, issued, prescribed or published by any authority or body whether:

- a) wholly or partially or as amended by the local law; or*
- b) as formulated, issued, prescribed or published at the time the local law is made or at any time before then; or*
- c) as formulated, issued, prescribed or published from time to time”.*

Accordingly, Council can, at any time, resolve that other documents, such as Guidelines, Policies or Codes can be incorporated documents.

Some current issues

Enforcement

While the current local law includes many provisions relating to permits, fees, notices to comply and infringements, enforcement has, in recent years, been minimal, for example:

- a) the Council’s 2019/20 Annual Report says:

“During the 2019/20 the Local Laws and Animal Control team was busy with the following:

- i. Attendance at two stock vehicle rollovers (February and March) to provide site control and assist with the clean up;*

- ii. *Responding to five incidents of cattle being at large—whilst no infringements were issued, a number of Notices to Comply were issued to improve fencing*
- iii. *Six dogs and two cats were impounded. Both cats were subsequently returned to their owner whilst two of the impounded dogs were re-homed.*
- iv. *Fourteen puppies and two adult dogs were surrendered to Council. These were rehomed with the assistance of Phoenix Animal Welfare*
- v. *There were three barking dog complaints investigated. Over the year Council had 615 dogs and 130 cats registered. Other items which kept the Local Laws team busy included issuing fire permits to burn off, undertaking inspections and issuing Fire Prevention Notices to reduce vegetation, and inspecting and issuing Notices to Comply to clean up unsightly properties”.*

b) the Council’s 2020/21 Annual Report says:

“Council’s Local Laws Department has been consistently busy over the reporting period. Council’s Ranger/Local Laws Officer provided several services to the West Wimmera community including:

- i. responding to stock on roads;*
- ii. issuing Notices to Comply for unsightly properties;*
- iii. issuing Notices to Comply for fencing;*
- iv. issuing Fire Prevention Notices;*
- v. rehoming animals with Phoenix Animal Welfare; and*
- vi. managing an increasing number of cats at large (feral, domestic and abandoned)”.*

Fees

While the local law includes multiple references to fees, the income collected from fees is minimal and the 2022/23 Council Budget refers only to local law fees as:

- a) a fee of \$65.00 for droving livestock;
- b) excess animal numbers – a fee of \$65,00; and
- c) a fee for the consumption of alcohol outside licensed premises – the only cases where this occurs are outside the Lake Wallace Hotel, the Kaniva Club Hotel and the Hermitage Hotel at Harrow. The permits are issued annually;

There is no reference to the fees for other permits.

In terms of local law related income and expenditure, details are provided in *Table 1*.

Item	2020/21 (Actual) \$	2021/22 (Est) \$	2022/23 (Est) \$
Income (*)	37,000	32,000	30,000
Less expenditure (**)	104,000	112,000	118,000
Surplus/(Deficit)	(67,000)	(80,000)	(88,000)

Table 1

Notes:

(*) - *The figure relates solely to animal registration fees which are not a local law item.*

(**) - *The figure relates solely to the salary of one EFT Local Laws Officer.*

Accordingly:

- a) animal registration fees are the only “local law income” and are trending downwards;
- b) income from local law permit fees is either non-existent or minimal; and
- c) expenditure is increasing.

The result is that in recent years, the local law operation has been fully “subsidised” by the ratepayers with no income from permit fees or infringement income.

Environmental Implications

The proposed local law recognises the importance of environmental issues and makes reference to:

- a) the objective of managing, regulating and controlling activities and uses on any land which:
 - i. may be dangerous, cause a nuisance or be detrimental to the amenity of the area or the environment;

- ii. are directed at maintaining a healthy and safe environment for residents and visitors;
- b) control of animals;
- c) open air burning;
- d) noise;
- e) noxious weeds;
- f) disposal of infectious waste; and
- g) pest animals.

A comparison of the provisions of the current local law and the proposed local law is included as Attachment to the proposed local law.

MEASURES OF SUCCESS

To achieve the objectives set out in the proposed Local Law, Council will:

- a) regulate and control activities, events practices or behavior in public places;
- b) monitor the surveyed level of community satisfaction with community safety resulting from the Local Law;
- c) conduct inspections to ensure compliance with conditions set out in permits;
- d) provide conditions for specified activities to protect the safety of the community; and
- e) deliver proactive programs that educate community members on how to comply with the local law.

COMPATIBILITY WITH EXISTING LEGISLATION

Council is conscious of section 72 of the LGA 2020 which includes, but is not limited to, provisions relating to:

- a) consistency with other Acts;
- b) Council's Planning Scheme;
- c) limitations; and
- d) sub-delegation of powers.

The existing state legislation listed below deals with issues which are also dealt with by the proposed local law:

- a) *Building Act 1993*;
- b) *Country Fire Authority Act 1958*;
- c) *Domestic Animals Act 1994*;
- d) *Environment Protection Act 2017*;
- e) *Flora and Fauna Guarantee Act 1988*;
- f) *Impounding of Livestock Act 1994*;
- g) *Infringements Act 2006*;
- h) *Local Government Act 2020*;
- i) *Planning and Environment Act 1987*;
- j) *Public Health and Wellbeing Act 2008*;
- k) *Road Management Act 2004*;
- l) *Summary Offences Act 1966*; and
- m) *Tobacco Act 1987*.

However, Council believes the provisions of the proposed Local Law complement the state legislation without duplicating, overlapping or creating any inconsistency.

The Planning Scheme

Council does not believe any provision of the proposed local law overlaps, duplicates or creates any inconsistency with the Planning Scheme.

Charter of Human Rights

Council has assessed the proposed local law for compatibility with the Charter of Human Rights and Responsibilities. Council found that the few provisions that engaged human rights were justified by the need to maintain safety for the whole community.

Restriction of competition

Council does not consider the proposed Local Law restricts competition or is inconsistent with any National Competition Policy provisions.

PENALTIES

Council has compared the general level of penalties provided for in the proposed local law with those of comparable Councils (Hindmarsh and Yarriambiack).

Penalties are expressed in “penalty units” as defined in the *Sentencing Act 1991*.

The penalties for offences under the proposed local law range from one to 20 penalty units depending on the seriousness of the offence and whether the offence is a first offence or involves multiple offences.

Infringement notice penalties are used to simplify the process of enforcing less serious breaches of the law. Infringement notices avoid the complex process of Court prosecution.

When infringement notices are paid on time, no conviction is recorded by a Court. The amount of an infringement penalty is normally significantly less than the potential maximum penalty a Court might impose for the same offence.

Maximum penalties may be imposed by a Court when:

- a) Council or an authorised officer chooses to prosecute an offence, rather than issue an infringement notice; or
- b) a person receiving an infringement notice chooses to have the matter heard in Court.

PERMITS

The proposed local law provides that permits must be obtained for a range of activities, including, but not limited to:

- a) storing vehicles and machinery;
- b) keeping animals in excess of the number permitted;
- c) camping on land;
- d) use of bulk rubbish containers; and
- e) use of clothing bins.

SUBMISSIONS

Council has approved the proposed Local Law to be made available for public submissions

and public notice of the proposed Local Law been given as required under *the Community Engagement Policy*.

The opportunity for public review and lodgement of submissions regarding the Local Law is 28 days. Accordingly, submissions close at 4:00 pm on 22 December 2022.

A Council meeting will be held to consider the submissions made. Each person who makes a submission will be given an opportunity to speak to their submission.

RELATED DOCUMENTS

The following Council policies relate to the proposed Local Law and this LLCIS:

- a) Community Engagement Policy;
- b) Domestic Firewood Collection Policy;
- c) Environmental Policy; and
- d) Risk Management Policy.

CHANGES TO THE CURRENT LOCAL LAW

Attachment 1 provides a summary outlining the changes proposed compared with the current local law
