

BOROONDARA CITY COUNCIL

Proposed Protection of Council assets and Control of Building Sites

Local Law 2021

Community Impact Statement

Introduction

Council is proposing to update its Protection of Council Assets and Control of Building Sites Local Law, adopted in 2011 (**current Local Law**).

The proposed new Protection of Council Assets and Control of Building Sites Local Law (**proposed Local Law**) will supersede and replace the current Local Law.

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 during the public consultation process required under the *Local Government Act 1989 (Act)*.

PART A

Background

Local laws are regulatory instruments which enable councils to fulfil their functions and exercise their powers under State and Commonwealth legislation within their respective municipal districts. The Act grants the power to Council to make local laws for or with respect to any act, matter, or thing in respect of which it has a function or power under that or any other Act.

The current Local Law was made by Council resolution of 22 August 2011. Pursuant to the Act, local laws are revoked 10 years after the day they come into operation. The current Local Law is due to expire on 1 September 2021 and needs to be renewed and updated to incorporate changes in legislation and to reflect the current issues within the municipal district.

Local laws must comply with the requirements set out in the Act. Importantly, a local law is inoperative to the extent that it duplicates, or is inconsistent with, any other Act or regulation, or the Boroondara Planning Scheme. A local law must also be directed towards, and not go beyond, its specified objectives, and adopt means of achieving those objectives which involve the least burden or the greatest advantage to the community.

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Objectives of the Local Law

The proposed Local Law is being made under section 111(1) of the Act and will have operation throughout Council's municipal district.

The proposed Local Law, to be known as the Protection of Council Assets and Control of Building Sites Local Law (2021), will commence operation on 1 September 2021 and, unless it is revoked earlier, will expire 10 years after commencement. The objectives of the proposed Local Law are to provide for the following:

- (a) Protect public infrastructure assets from damage cause by building work;
- (b) Protect the health and safety of person who work or enter building sites;
- (c) Protect the health and safety of person who reside near or pass by building sites;
- (d) Protect the amenity of person who reside near and pass by building sites;
- (e) Provide for the administration and enforcement of this Local Law; and
- (f) Provide for the peace, order and good governance of the municipality.

Process

The proposed Local Law has been drafted following a comprehensive review and analysis of the current Local Law. Consultations have been undertaken with internal stakeholders across various areas of Council, most importantly with the officers responsible for the management of building sites.

Pursuant to sections 119(2)(c) and 223 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.

Following Council's approval of the proposed Local Law for consultation purposes, submissions will be sought from the community.

The consultation period will run from 1 July 2021 to 28 July 2021. During this time, the community will be able to obtain information, provide feedback and make submissions, which will then be considered by Council in preparation for adoption of the final Local Law.

Anyone who makes a written submission can request to be heard in support of their submission at the Ordinary Council Meeting which considers the adoption of the proposed Local Law. Details of the meeting will be provided to submitters.

This Community Impact Statement is intended to provide clarity and transparency for those affected by the current Local Law and who will be affected by the proposed Local Law.

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PART B

In accordance with Guidelines issued by the Minister for Local Government in relation to the making of local laws, Council has conducted an evaluation of the proposed Local Law. The evaluation is outlined below.

Measures of success

Council will measure the success of the proposed Local Law by:

- (a) Monitoring the level of compliance and comparing levels with those of previous years;
- (b) Measuring efficiency in administering the proposed Local Law and success in responding to issues and complaints;
- (c) Assessing the resources required to administer and enforce the proposed Local Law; and
- (d) Assessing and measuring the adequacy of the proposed Local Law in achieving the objectives.

Additional information and criteria will be incorporated to assess the operation of the proposed Local Law.

Existing legislation and the Boroondara Planning Scheme

Council has examined the provisions of the Act, the *Environmental Protection Act 1970* (EPA) and the other Acts and Regulations that it has the power to administer and enforce and considers the proposed Local Law is supplementary to the existing legislation.

Existing State legislation deals with certain issues which are also dealt with in some general circumstances by the proposed Local Law, including:

- (a) *Environment Protection Act 1970* and *Environment Protection Act 2017*;
- (b) *Road Management Act 2004*; and
- (c) *Public Health and Wellbeing Act 2008*.

Council is unaware of any provision of the proposed Local Law which unduly overlaps, duplicates or is inconsistent with the existing legislation specified above, any other existing legislation or the Boroondara Planning Scheme.

State legislation

State legislation empowers Council to make Local Laws to address issues within its municipal district. In developing the proposed Local Law, Council has not sought to address any issues which it feels are best addressed at the State or Commonwealth level.

Council is of the view that each of the issues identified in relation to the proposed Local Law are issues over which Council is delegated responsibility and has functions and powers.

Risk Assessment

Council has adopted a risk management approach to the review and development of the proposed Local Law. This approach has involved consideration of the following:

- (a) Impacts on community safety and amenity;

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- (b) Existing laws; and
- (c) Long-term solutions.

Legislative approach adopted

Council maintains the position that its local laws should not impose unduly or unreasonably on the community. The proposed Local Law reflects this approach by implementing reasonable enforcement procedures, including the giving of notices instead of infringements where appropriate, and allowing a permit holder the opportunity to comment prior to Council cancelling a permit. In consideration of the least burden/greatest advantage test, where possible and appropriate, Council has created provisions for permits rather than prohibiting certain activities, and reasonable and appropriate permit conditions have been set. Council has ensured that the proposed Local Law:

- (a) Is expressed plainly and unambiguously, consistently with the language of the enabling Act and in accordance with modern standards of drafting applying in the State of Victoria;
- (b) Does not exceed the powers conferred by the Act;
- (c) Is not inconsistent with the principles, objectives or intent of the enabling Act;
- (d) Does not make unusual or unexpected use of the powers conferred by the Act under which the Local Law is made;
- (e) Does not unduly trespass on rights and liberties of the person previously established by law;
- (f) Does not unduly make rights and liberties of the person dependent upon administrative and not upon judicial decisions;
- (g) Does not purport to shift the onus of proof to a person accused of an offence; and
- (h) Does not unduly restrict competition.

Penalties

The Act provides that a local law may prescribe a penalty for a contravention of a local law. The Act sets a maximum penalty of 20 penalty units. Under the *Sentencing Act 1991*, the penalty unit is set at \$100.00.

Council has compared the level of penalties provided for in the proposed Local Law with those of its neighbouring Councils. The proposed penalties are not inconsistent with those neighbouring Councils.

Amendments to the prescribed penalties for some offences have been made to ensure consistency with the Attorney-General's requirements that 'an infringement penalty should generally be approximately no more than 20 – 25% of the maximum penalty for the offence. However, a proportion of up to 50% can be considered where there are strong and justifiable public interest grounds.

Fees

The proposed Local Law allows Council to determine fees for the purposes of the proposed Local Law. Such determination will be made annually as part of Council's budget process.

Performance standards rather than prescriptive requirements

Where appropriate, Council has adopted a performance-based approach rather than a

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prescriptive approach to the proposed Local Law.

Comparison with neighbouring and like Councils

In drafting the proposed Local Law, Council examined the local laws of its neighbouring and comparable municipalities. This allowed Council to assess the similarities and differences between like municipalities and ensure that a best practice approach was taken in the drafting process.

Charter of Humans Rights

The *Charter of Human Rights and Responsibilities Act 2006* (**Charter**) applies to all subordinate legislation, including local laws. The Charter contains twenty basic rights that promote and protect the values of:

- Freedom;
- Respect;
- Equality; and
- Dignity

The proposed Local Law has been reviewed for compatibility with the Charter and Council is satisfied that the proposed Local Law is compatible with the Charter and consistent with the principles of justice and fairness.

Community Consultation

The proposed Local Law has been reviewed in consultation with Councillors, members of Council staff and Council's legal advisors.

A community consultation process will be conducted in accordance with ss 119(2) and 223 of the Act. This will require Council to give public notice of its intention to make the proposed Local Law and provide members of the community an opportunity to make a written submission to Council in relation to the proposed Local Law. Council will consider submissions received before making a final decision on whether it will adopt the proposed Local Law.

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.

PART C

Assessment of significant changes

All provisions of the current Local Law have been reviewed. Substantive changes are outlined in the following paragraphs. When reference is made to a clause being amended or otherwise modified, reference is being made to the substantive change to a clause in the current Local Law brought about by the proposed Local Law.¹

¹ Strictly speaking the current Local Law is being revoked rather than amended. For the sake of convenience, clauses in the current Local Law are being referenced as if they are changing rather than being replaced.

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1. Definitions

Clause(s), section or part	All Parts
Issue Local Law intends to address	The current Local Law includes disused definitions and other definitions that are overly complicated or otherwise unnecessary.
Action/Change	<p>Various definitions have been added, amended, and removed, including:</p> <ul style="list-style-type: none"> • Act; • appointed agent; • builder; • building work; • builders refuse; • building site; • Council; • Council controlled land; • Council policy; • Owner; • permit; • penalty unit; • public infrastructure asset; • security bond.
Perceived benefits	Definitions have been revised, removed or added to ensure that the proposed Local Law is as clear as possible and that the list of definitions is concise and only defines terms that have a particular meaning or that otherwise depart from their natural and ordinary meaning.
Perceived disadvantages	Definitions provide absolute meanings to words which may limit the operation of the Local law. Conversely, relying on the ordinary meaning of words may lead to varying views as to the meaning of a particular word.
Applicable strategic objectives	The intention is to provide a Local Law that is concise, easy to read and understand and enables Council to perform its functions in relation to building sites and building work. The mix of defined terms and ordinary words achieves that objective.

2. Asset Protection

Clause(s), section or part	All Parts
Issue Local Law intends to address	<p>The requirement for a permit in the current Local Law is predicated on the owner of land giving notice to Council of building work. Further, once notice is given, the current Local Law requires Council to consider whether a permit is required. This process is inefficient and inadequate.</p> <p>In addition, the current Local Law does not include machinery provisions enabling the grant of a permit, granting exemptions, the suspension or cancellation of a permit, setting of fees and charges, making delegations, issuing notices to comply, rectification in urgent circumstances, impounding or appeals.</p>
Action/Change	<p><u>Permit processes</u></p> <p>Under the proposed Local Law, a permit will be required whenever a building permit is required to carry out building work, unless an exemption applies.</p> <p>Clause 19 of the proposed Local Law allows Council to grant</p>

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Clause(s), section or part	All Parts
	<p>individual exemptions and to make policy decisions to exempt certain classes of persons or building work from the requirement to obtain a permit.</p> <p>Additionally, clause 9 provides for new machinery provisions to support smooth facilitation of the permit application, granting, amendment and cancellation processes.</p> <p><u>Security bonds</u> Clause 17, which makes provision for security bonds, substantially simplifies when a security bond is required, when recourse may be had to the security bond and the circumstances in which it will be returned to the payer.</p> <p><u>General permit provisions</u> Clause 10.2 creates a new offence for providing false, misleading or incomplete information as part of a permit application process. This will deter applicants from seeking to obtain a favourable permit outcome by dishonest means.</p> <p>Further, clause 10.3 provides that permits expire 3 years after they are issued, unless Council specifies otherwise. This reduces the administrative burden on applicants, who will no longer have to reapply annually.</p> <p><u>Impounding</u> The new clause 15 authorises Council to seize and impound any thing which is, has been or is being used, possessed, placed, or left in contravention of or by a failure to comply with the proposed Local Law. This enhances Council's powers to take direct action to enforce the Local law.</p> <p><u>Appealing notices to comply</u> Clause 16 allows a person served with a notice to comply to request a review of the decision to issue the notice to comply. This protects the rights of persons affected by the Local Law against being wrongfully required to take actions directed by Council.</p>
Perceived benefits	<p>The new enforcement and administration provisions set out in the proposed Local Law will enhance Council's control over building activities generally and therefore enable Council to better protect Council assets against damage, obstruction or other interference. Further, it will expand the circumstances in which Council can take coercive compliance actions relating to Council assets and the recover the costs incurred in doing so.</p> <p>The proposed Local Law also gives Council greater control and flexibility to issue permits, suspend permits, cancel permits and improve the enforceability of the permits. The new permit processes ensure that Council has sufficient discretion to enable it to administer the permit scheme to best respond to community needs.</p>

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Clause(s), section or part	All Parts
Perceived disadvantages	The requirements of the proposed Local Law are more prescriptive and are likely to be attended by increased administrative and compliance obligations for applicants and other persons affected by the proposed Local Law.
Applicable strategic objectives	The intention is to create a local law that is effective in the protection of Council assets from building work undertaken throughout the municipal district. To this end, the proposed Local Law will apply whenever building work requiring the grant of a building permit is proposed to be carried out, unless an exemption applies.
	The Local Law is consistent with the Council Plan.

3. Control of Building Sites

Clause(s), section or part	All Parts
Issue Local Law intends to address	The current Local Law contained one clause which regulated building sites. This clause was inadequate to ensure that building sites did not unduly impact on the amenity of the area, cause environmental impacts or damage Council assets.
Action/Change	<p>The proposed Local Law now includes the new Part C – Control of Building Sites which regulates all aspects of building sites and building work.</p> <p><u>Control of building sites</u> A range of new provisions have been included in the proposed Local Law to regulate the use of and access to building sites within the municipal district, including:</p> <ul style="list-style-type: none"> • restrictions on the hours within which building work may be carried out; • new specific offences for occupying or obstructing a road or Council land without a permit, including in relation to hoarding; • a requirement to obtain a permit to install a temporary vehicle crossover; • more detailed refuse and run off management obligations; • provisions relating to the entry to and departure from building sites eg mud trailing on the road; and • a positive obligation to maintain a safe working environment to avoid damaging a person, Council assets, private assets or neighbourhood amenity. <p>The proposed Local Law sets out a range of new provisions to regulate the use of and access to building sites within the municipal district, including</p> <ul style="list-style-type: none"> • restrictions on the hours within which building work may be carried out; • new specific offences for occupying or obstructing a road or Council land without a permit, including in relation to hoarding; • a requirement to obtain a permit to install a temporary vehicle crossover; • more detailed refuse and run off management obligations;

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Clause(s), section or part	All Parts
	<ul style="list-style-type: none"> provisions relating to the entry to and departure from building sites; and a positive obligation to maintain a safe working environment to avoid damaging a person, Council assets, private assets or neighbourhood amenity.
Perceived benefits	<p>The new powers, processes and offences set out in the proposed Local Law will ensure that building work and building sites are regulated responsibly and consistently. Ensuring building work does not have disproportionate adverse effects on Council assets, including roads, and neighbourhood amenity will confer benefits on the broader community. The proposed Local Law will preserve neighbourhood amenity and equitable access to roads and Council assets and ensure that building work does not have disproportionate adverse effects on the local community.</p> <p>The proposed Local Law ensures authorised officers have the necessary coercive tools to take action when needed to resolve complaints relating to unreasonable noise or other impacts from building sites.</p>
Perceived disadvantages	<p>The proposed Local Law imposes a full regime of prescriptive controls on building sites and building work within the municipal district. The increased regulation may impose a greater compliance burden and administrative constraints on building work and builders.</p> <p>These constraints and controls have been balanced against the objectives sought to be achieved.</p>
Applicable strategic objectives	<p>The intention is to provide a local law which balances the amenity expectations of the community against the regulation of building work and building sites, which is necessary for the continued growth and enhancement of the municipal district.</p> <p>The proposed Local Law imposes obligations on builders to ensure that impacts on amenity are avoided and mitigated and, importantly, that public assets are protected. If public assets are damaged, the builder or person responsible for that damage can be required to take rectification actions or to pay for the completion of rectification works completed by Council.</p>
	<p>The proposed Local Law is consistent with the Council Plan and ensures the public assets for which Council has care and management, are protected from damage by building work.</p>