



Ordinary Meeting of Council Attachments

10 April 2012

Attachments

Part 5

Item No.	Item Name
10.12	Proposed adoption of Local Law No: 2 – Neighbourhood Amenity



**CONSOLIDATED
LOCAL LAW NO. 2
'Neighbourhood Amenity'**

April 2012

NOTES ON DRAFT CONSOLIDATED LOCAL LAW

@ 31 January 2012

Please note the following limitations to this Draft Local Law.

1. This is a completed draft document –.
 - The draft has not yet been endorsed by Council for Exhibition.
 - The draft has not yet been subject to Public Exhibition and Submissions.
 - There may be changes from the Submission process
 - There may be other minor technical or legal corrections.
 - The draft has not yet been adopted by Council.
2. This document is a consolidation and re-structure of previous Local Laws.
The new structure can be seen in the Table below.

NEW SECTION TITLES *

- a) Your Property, Trees & Pets**
- b) Vehicles & Roads**
- c) Business & Builders**
- d) Smoking & Alcohol**
- e) Public Places, Parks & Foreshore and Council Buildings**

*** It should be noted that this structure is for convenience of use only. Laws affecting a specific situation may not be limited to any one section.**

CONSOLIDATED LOCAL LAW NO. 2

‘Neighbourhood Amenity’

April 2012

PREAMBLE

Bayside City Council’s Local Laws are designed to secure community safety, protect public assets and enhance neighbourhood amenity. They embrace best practice local law making by embodying the principles of accessibility, accountability, compliance, consistency, currency, efficiency, enforceability, necessity and transparency. They are also consistent with principles of justice and fairness. Extensive community consultation has been undertaken in the preparation of this consolidation of Council (non-meeting) Local Laws.

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PART 1 – PRELIMINARY, OBJECTIVES, DEFINITIONS

1. TITLE

This Local Law is the BAYSIDE CITY COUNCIL Consolidated Local Law No. 2 – ‘Neighbourhood Amenity’ and is referred to below as ‘this Local Law’.

2. OBJECTIVES OF THIS LOCAL LAW

The objectives of this Local Law are to:

- (1) secure community safety;
- (2) protect public assets;
- (3) enhance neighbourhood amenity;
- (4) embrace best practice local law making principles of accessibility, accountability, compliance, consistency, currency, efficiency, enforceability, necessity and transparency;
- (5) be consistent with the Council’s overall objectives and policies, in particular:
 - (a) to maintain neighbourhood character;
 - (b) to preserve our built and natural heritage;
 - (c) to provide equitable access to services and facilities;
 - (d) to provide equity in access to our open space and foreshore;
 - (e) to maintain suitable infrastructure; and
 - (f) to provide a sense of community in our villages and activity centres;
- (6) provide for the administration of the Council’s powers and functions;
- (7) consolidate the Council’s previous Local Laws 2, 3 and 4; and
- (8) revoke any redundant Local Laws.

3. AUTHORISING PROVISIONS

The Council’s authority to make this Local Law is contained in section 111 of the *Local Government Act 1989*, section 87(4) of the *Road Safety Act 1986* and section 42 of the *Domestic Animals Act 1994*.

4. COMMENCEMENT

This Local Law operates from the day following its making.

5. DATE THIS LOCAL LAW CEASES OPERATION

Unless this Local Law is revoked sooner, its operation will cease on the tenth anniversary of its making.

6. REVOCATION OF OTHER LOCAL LAWS

The following Local Laws of the Council are revoked:

Local Law 2 ‘Environment’ 2007

Local Law 3 ‘Streets and Roads’ 2007

Local Law 4 ‘Municipal Places’ 2007

Local Law 5 ‘Spray Cans’ 2006

Local Law 6 ‘Amending Local Law 2’ 2007

Local Law 7 ‘Amending Local Law 3’ 2007

Local Law 8 ‘Amending Local Law 4’ 2007

Local Law 10 ‘Responsible Ownership of Pets’ 2009

7. SCOPE OF THIS LOCAL LAW

- (1) This Local Law applies to the whole of the Municipal District, except where it is apparent from its wording that a clause or schedule applies to a specific area.
- (2) Where it applies to a Road, it includes all parts of the Road.
- (3) Its provisions apply to the extent that they are not inconsistent with any Act or Regulation applicable to the Council or its Municipal District.
- (4) Where this Local Law prohibits any activity or other thing or provides that such activity can only take place or other thing can only be done or exist with a Permit, that prohibition or provision will not apply if the activity can lawfully take place or the other thing can be done or can exist by reason of the express permission of the Planning Scheme.

8. HOW TO READ THIS LOCAL LAW, GUIDELINES AND INCORPORATED DOCUMENTS

Parts 1 to 10 of this Local Law set out the provisions for meeting the objectives of this Local Law; Part 11 - Schedule 1 sets out Incorporated Discretion Guidelines (to which the Council and its staff must have regard to in exercising discretions under this Local Law); Part 12 - Schedule 2 sets out Incorporated Council Policies and other documents; Part 13 – Schedule 3 sets out Incorporated Permit Conditions; Part 14 - Schedule 4 sets out Council Forms; and Part 15 - Schedule 5 sets out a Penalties Summary of Maximum and Infringement Notice penalties.

Reference is also made to the following documents, as amended from time to time:

- (1) Australian Standard 4373-2007: *Pruning Amenity Trees (2007)*;
- (2) Australian Standard 4970-2009: *Protection of Trees on Development Sites (2009)*;
- (3) Australian Standard 2980.5.1993: *On Street Parking (1993)*;
- (4) *the Building Act 1993*;
- (5) *the Catchment and Land Protection Act 1994*;
- (6) *the Catchment and Land Protection Regulations 2002*;
- (7) *the Country Fire Authority Act 1958*;
- (8) *the Crown Land (Reserves) Act 1978*;

- (9) *the Disability Discrimination Act 1992;*
- (10) *the Domestic Animals Act 1994;*
- (11) *the Firearms Act 1996;*
- (12) *the Food Act 1984;*
- (13) *the Gambling Regulation Act 2004;*
- (14) *the Geographic Place Names Act 1998;*
- (15) *the Infringements Act 2006;*
- (16) *the Land Act 1958;*
- (17) *the Liquor Control Reform Act 1998;*
- (18) *the Local Government Act 1989;*
- (19) *the Monetary Units Act 2004;*
- (20) *the Planning and Environment Act 1987;*
- (21) *the Public Health and Wellbeing Act 2008;*
- (22) *the Road Management Act 2004;*
- (23) *the Road Safety Act 1986;*
- (24) *the Road Safety Rules 2009;*
- (25) *the Sentencing Act 1991;*
- (26) *the Summary Offences Act 1966;*
- (27) *Vic Roads Code of Practice for Placement of Waste Bins on Roadsides (Vic Roads Publication No. 00623) 2001;* and
- (28) *the Victoria Government Gazette.*

If a provision of any document incorporated by, or referred to in this Local Law, excepting only State or Commonwealth legislation and regulations and any relevant Planning Scheme, is inconsistent with any provision in this Local Law, the provision in the Local Law prevails.

9. DEFINITIONS

In this Local Law, unless the context or subject-matter indicates otherwise, definitions are as in the *Local Government Act 1989*, indicated by ‘*as in the Act*’. Other words and phrases have the respective meanings assigned:

WORDS AND PHRASES	MEANING OR EXTENDED MEANING
Act	Means the <i>Local Government Act 1989</i> .
Abandoned Vehicle	A Vehicle left on Council Land that has, in the opinion of an Authorised or Delegated Officer, been abandoned.

Advertising Sign	Means any board, notice, structure, banner or other similar device used for the purpose of soliciting sales or notifying people of the presence of an adjacent property or other address, whether real, internet-based or otherwise electronic, where goods or services may be obtained.
Animals	Excludes persons but includes although is not limited to any of the species or groups listed in the first column of the table in Clause 39, Keeping Animals.
Applicant	Means a person who applies for a Permit under this Local Law.
Appropriate Fee	Means the fee determined by the Council in accordance with Clause 22, Setting Fees and Charges.
Arterial Road	Means any Road declared as an ‘Arterial Road’ under s.14 of the <i>Road Management Act 2004</i> , the main function of which is to provide for through traffic movements and is controlled and managed by Vic Roads.
Audible Intruder Alarm	Means a device, installed or retained in a property by the owner or occupier of that property or at the direction of the owner or occupier of the property, which is designed to be (or which has the effect when switched on of being) activated by an intruder to the property so as to emit noise capable of being heard beyond the boundary of the property in which it is installed.
Authorised Officer	Means an Authorised Officer appointed under section 224 of the Act.
Barbecue	Means a device used for the cooking of food outdoors whether constructed or manufactured and whether powered by gas, electricity, liquid or solid fuel or any combination of them, and includes a device for spit roasting when used outdoors.
Bathing Box	Means a building on a Foreshore Reserve vested in, owned or managed by the Council and subject to an annual licence, used primarily or substantially as a bathing box.

Building Works	Means work for or in connection with the construction, demolition or removal of a building in respect of which a building permit is required under the <i>Building Act</i> 1993.
Bulk Rubbish Container	Means a bin, container or other structure designed or used for holding a substantial quantity of rubbish and which is unlikely to be lifted without mechanical assistance but excludes a container used in connection with the Council's regular waste collections.
Campervan	Means any campervan, mobile home or similar vehicle incorporating sleeping and/or living facilities, whether manufactured to luxury standard or privately converted from a standard vehicle, and includes a caravan, camper trailer and other similar towed living/sleeping trailer facility.
Camping Area	Means land that has been declared by the Council to be a 'camping area' for the purposes of this Local Law.
Chief Executive Officer	Means the person appointed by the Council to be its Chief Executive Officer or any person acting in that position (<i>as in the Act</i>).
Child	Any person under the age of 18 years (<i>as in Public Health and Wellbeing Act 2008</i>).
Combined Trunk Circumference	Means the aggregate circumference of two, three or four Trunks of a Tree.
Council	Means BAYSIDE CITY COUNCIL.
Council Land	Means any land either vested in or under the control of the Council including Roads, reserves, watercourses, reservations and the like.
Delegated Officer	Means a staff member of Council delegated by the Council to perform a duty or function or exercise a power conferred by this Local Law, whether by direct delegation or by delegation from the Chief Executive Officer.
Domestic Birds	Means small birds such as canaries, finches, budgerigars and the like but excludes noisy birds capable of causing disturbance and discomfort to neighbours.

Dwelling	Means any structure that is designed to be used for human habitation and that is capable of being so used.
Filming	Means the recording of a single image or series of images for any commercial purpose and/or television broadcasting purpose by a camera or other device equipped with a one or more light sensitive lenses, capable of capturing and/or transmitting those images to any form of recording media and/or to any commercial and/or television broadcasting equipment, including any form of digital storage media in any location, but excludes TV news and any private non-commercial community and/or social media purposes.
Fire Ban or Code Red (Catastrophic) Fire Danger Rating Day	Means a day declared as either a partial or Total Fire Ban Day in accordance with the <i>Country Fire Authority Act 1958</i> and/or a declared Code Red (Catastrophic) Fire Danger Rating Day (declared by the Bureau of Meteorology in consultation with the Country Fire Authority, the Metropolitan Fire Brigade and the relevant Victorian Government department).
Footpath	Means an area open to the public that is designated for, or has as one of its main uses, use by pedestrians.
Footpath Trading Permit	Means a permit issued under Clause 54 (1), 55 (1) or 57 (1) of this Local Law.
Foreshore Reserve	Means all land whether owned or managed by the Council adjacent to the waters of Port Phillip Bay extending to the low water mark but excluding any road reserve.
Ground Level	Means, in relation to tree protection, the highest point where a Tree meets the soil.
GVM	<p>Gross Vehicle Mass of a Vehicle means the maximum loaded mass of the Vehicle –</p> <ul style="list-style-type: none"> (a) as specified by the Vehicle’s manufacturer; or (b) as specified by Vic Roads if – <ul style="list-style-type: none"> (i) the manufacturer has not specified a maximum loaded mass; or (ii) the manufacturer cannot be identified; or (iii) the Vehicle has been modified to the extent that the manufacturer’s specification is no longer appropriate (<i>as in the Road Safety Act 1986</i>).

Heavy Vehicle	Means a motor vehicle or trailer that has a GVM greater than 4.5 tonnes, and includes: <ul style="list-style-type: none">(a) any other Vehicle that is physically connected to the heavy vehicle (even if that other Vehicle is not a heavy vehicle); and(b) a bus that is used, or that is intended to be used, to carry passengers for reward or in the course of a business (<i>as in the Road Safety Act 1986</i>).
Incinerator	Means a structure, device or contraption (not enclosed in a building) which is - <ul style="list-style-type: none">(a) used or intended, adapted or designed to be used or capable of being used for the purpose of burning any matter, material or substance;(b) not licensed or otherwise subject to control under the provisions of any other Act; and(c) not a Barbecue.
Infringement Notice	Means an Infringement Notice issued by the Council or an Authorised or Delegated Officer under this Local Law.
Large and/or Noisy Birds	Means, in relation to keeping Animals, any large and/or noisy birds capable of causing disturbance and discomfort to neighbours particularly by noise, such as cockatoos, geese, macaws, peacocks, other parrots, pheasants, roosters, turkeys, other similar sized birds and any other noisy birds regardless of size, but does not include poultry, pigeons or small non-noisy birds.
Licensed Premises	Means premises licensed under the <i>Liquor Control Reform Act 1998</i> to sell or serve alcohol, including a BYO permit.
Litter Device	Means, in relation to animal excrement, an apparatus designed for the purpose of removing Animal excrement and includes a paper or plastic bag.
Liquor	Means a beverage intended for human consumption with an alcoholic content greater than 0.5 per cent by volume at a temperature of 20 degrees Celsius (as in the <i>Liquor Control Reform Act 1998</i>).
Long Vehicle	Means a Vehicle that, together with any load or projection, is 7.5 metres long or longer.
Manager	Means the person or persons from time to time appointed by the Council to manage any Municipal Building, Municipal Reserve or other Municipal Place.

Motor Bike, or other Motorised Recreational Vehicle	<p>Means a motor vehicle, whether registered or unregistered, used for recreational purposes on Private Property or Council Land but not Roads, including but not limited to the following Vehicles:</p> <ul style="list-style-type: none">(a) a 2-wheeled motor vehicle with or without a sidecar attached that is supported by a third wheel;(b) a motor vehicle with three (3) wheels that is ridden in the same way as a motor vehicle with two (2) wheels; and(c) any other motorised recreational vehicle, such as, but not limited to, trail bikes, motorised scooters, motorised go-carts and quad bikes.
Municipal Building	<p>Means any Building (and its grounds) owned, occupied, controlled and/or managed by the Council which has some or all areas designated for public or community access but may also have some or all areas designated for employee or staff only access.</p>
Municipal District	<p>Means the district under the local government of the Council (<i>as in the Act</i>).</p>
Municipal Environmental Health Officer	<p>Means any Municipal Environmental Health Officer appointed by the Council from time to time.</p>
Municipal Place	<p>Means any place within the Municipal District which is owned or occupied by the Council or in respect of which the Council has the control or management, to which the public may or may not have access (whether an admittance fee is required or not), and includes a Municipal Reserve, library, Municipal Building, Footpath and Road.</p>
Municipal Planning Scheme	<p>Means a planning scheme approved under the <i>Planning and Environment Act 1987</i> that operates within the Municipal District.</p>
Municipal Reserve	<p>Means any land owned, controlled and/or managed by the Council and used as a reserve but excludes Roads and any areas leased to other parties.</p>
Municipal Transfer Station	<p>Means an area approved by the Council for the depositing of waste which may be under the day to day operational control (including the setting of fees) of a fully contracted operator.</p>

Notice to Comply	Means a Notice to Comply issued by the Council or an Authorised or Delegated Officer under this Local Law.
Noxious Weed	<p>Has the meaning ascribed to it by section 3 of the <i>Catchment and Land Protection Act 1994</i>:</p> <p>(a) a State prohibited weed; or (b) a regionally prohibited weed; or (c) a regionally controlled weed; or (d) a restricted weed,</p> <p>and are listed, as determined from time to time, in the Schedule to the <i>Catchment and Land Protection Regulations 2002</i> and incorporated in Schedule 2 to this Local Law.</p>
Outdoor Eating Facility	Means any tables and/or chairs located out of doors at which food or drinks are served and may be consumed.
Penalty Unit	Means a penalty unit under <i>the Sentencing Act 1991</i> , currently fixed at \$100 but includes any amendments to that amount as determined from time to time.
Permit	Means a permit issued by the Council under this Local Law.
Permit Holder	Is a person to whom a Permit has been issued under this Local Law.
Person	Has the meaning ascribed to it in section 3 of the Act, except that it also includes any other legal entity, whether a corporation, incorporated association or otherwise.
Poultry	Means fowls, bantams and ducks but does not include roosters, geese or turkeys.
Private Property	Means land other than Council Land.
Procession	Means an organised group of people proceeding along a Road or gathering for a ceremony or function and includes a fun run and bicycle event.
Recyclable Material	Means any recyclable material or hard waste in respect of which a separate Council or Council authorised or approved collection service applies.

Road	<p>Has the meaning ascribed to it in section 3 of the Act and includes a Public Highway (<i>as in the Act</i>):</p> <ul style="list-style-type: none">(a) <i>a street; and</i>(b) <i>a right of way; and</i>(c) <i>any land reserved or proclaimed as a street or road under the Crown Land (Reserves) Act 1978 or the Land Act 1958; and</i>(ca) <i>a public road under the Road Management Act 2004; and</i>(d) <i>a passage; and</i>(e) <i>a cul de sac; and</i>(f) <i>a by-pass; and</i>(g) <i>a bridge or ford; and</i>(h) <i>a footpath, bicycle path or nature strip; and</i>(i) <i>any culvert or kerbing or other land or works forming part of the road.</i>
Senior Officer	<p>Has the meaning ascribed to it in section 3 of the Act including the Chief Executive Officer (<i>As in the Act</i>).</p>
Service Authority	<p>Means an entity (whether publicly or privately owned) which provides, or intends to provide, water, sewerage, drainage, gas, electricity, telephone, telecommunications or like services under the authority of an Act of Victoria or the Commonwealth.</p>
Significant Tree	<p>Means a Tree that is recorded on the Council's significant tree register.</p>
Single Trunk Circumference	<p>Means the measurement of the Trunk circumference at one metre above ground level.</p>
Smog Alert Day	<p>Means a day declared by the Environment Protection Authority as a Smog Alert Day which applies to the Municipal District.</p>
Smoke Free Area	<p>Means an area of or in any Municipal Place which has been declared by the Council as a "smoke free" or "no smoking" area and has Smoke Free Area signage erected and maintained.</p>
Street Festival	<p>Means an organised recreational, cultural, commercial or social gathering of people that is held on a Road.</p>
Street Party	<p>Means an organised social gathering of people from one or several adjacent Roads that is held on a Road.</p>

Tree	Means any perennial plant having one or more permanent, woody, self-supporting Trunks and with branches forming a crown, and includes all parts of the plant whether above or below ground.
Trunk	Means, in relation to tree protection, the main structural member of a Tree that is supported by and directly attached to the roots, and which, in turn, supports the branches.
Traffic	Means the movement of people by foot or in or on Vehicles along, across or within a Road.
Traffic Control Device	<p>Means a traffic control device, within the meaning of the <i>Road Safety Road Rules 2009</i> as amended from time to time:</p> <p><i>a traffic sign, road marking, traffic signals, or other device, to direct or warn traffic on, entering or leaving a road.</i></p>
Unlawful Game	<p>Has the meaning ascribed to it in section 2.3.1 of the <i>Gambling Regulation Act 2004</i> as amended from time to time, which is:</p> <p><i>(1) Each of the following games is declared to be an unlawful game—</i></p> <ul style="list-style-type: none"><i>(a) the Chinese game of fan-tan or any similar game;</i><i>(b) the game known as two-up or any similar game;</i><i>(c) the game known as hazard or any similar game;</i><i>(d) the game known as baccarat or any similar game;</i><i>(e) the game known as dinah-minah or minahdinah or any similar game;</i><i>(f) the game known as faro or any similar game;</i><i>(g) the game known as roulette or any similar game;</i><i>(h) the game known as skill-ball or any similar game;</i><i>(i) any game in which the chances are not equally favourable to all the players, including among the players the banker or other person by whom the game is managed or against whom the other players stake play or bet;</i><i>(j) any game with cards or other instruments of gaming wherefrom any person derives a percentage or share of the amount or amounts wagered;</i><i>(k) the using or conducting of a totalisator.</i> <p><i>(2) A game referred to in subsection (1) is not an unlawful game to the extent that it is authorised by a gaming Act or any other Act.</i></p>

Vehicle	<p>Means a conveyance that is designed to be propelled or drawn by any means, whether or not capable of being so propelled or drawn, and includes –</p> <ul style="list-style-type: none">- a motor vehicle, trailer or tram;- a bicycle; and- an air-cushion vehicle – <p>but does not include a train.</p> <p>However, a reference in <i>the Road Safety Rules 2009</i> (Victoria) and this Local Law to a Vehicle –</p> <ul style="list-style-type: none">(a) includes a reference to –<ul style="list-style-type: none">(i) an animal that is being ridden or is drawing a vehicle; and(ii) a group of vehicles consisting of a motor vehicle connected to one or more vehicles; and(iii) a motor bike or motorised recreational vehicle;(b) but does not include a reference to –<ul style="list-style-type: none">(i) a wheelchair other than a motorised wheelchair capable of a speed of 10 kilometres per hour or more;(ii) a Wheeled Non-Motorised Recreational Device; or(iii) a Wheeled Child’s Toy.
Wheeled Non-Motorised Recreational Device	<p>Means a wheeled device, built to transport a person propelled by human power or gravity, and ordinarily used for recreation or play and –</p> <ul style="list-style-type: none">(a) includes in-line wheeled skates, roller-skates, skateboards, and similar wheeled devices; but(b) excludes a golf buggy, pram, stroller or trolley, or a bicycle, wheelchair or Wheeled Child’s Toy.
Wheeled Child’s Toy	<p>Means a Child’s pedal car, scooter or tricycle or similar toy, but only when it is being used solely by a Child who is under 12 years old.</p>

PART 2 - ADMINISTRATION OF THIS LOCAL LAW

10. EXERCISE OF DISCRETIONS

- (1) In exercising any discretion contained in this Local Law, the Council and Authorised and Delegated Officers must have regard to:
 - (a) the objectives of this Local Law;
 - (b) the guidelines, as appropriate, as determined from time to time and incorporated in this Local Law in Schedule 1;
 - (c) Council Policies as determined from time to time and incorporated in this Local Law in Schedule 2;
 - (d) the Permit conditions, as determined from time to time and incorporated in this Local Law in Schedule 3; and
 - (e) any other policies adopted by the Council from time to time, provided such policies are not inconsistent with this Local Law.
- (2) The Council may from time to time prepare policies for use by the Council, Council staff and other persons for the purposes of the Local Law.
- (3) Policies adopted by the Council must not be inconsistent with the objectives of this Local Law or with the guidelines or any other documents as determined from time to time and incorporated in this Local Law in Schedules 1, 2 and 3.
- (4) Council may, by Resolution from time to time, amend any item in Schedules 1, 2 and 3 to this Local Law but any such change shall have no force or effect until formal notification has been given through *the Victoria Government Gazette*. To this extent, such Schedules do not form part of this Local Law.
- (5) In preparing guidelines the Council must have regard to the objectives of this Local Law.

11. REGISTER OF DETERMINATIONS

- (1) Any determinations resolved by the Council for the purposes of this Local Law and any policies or amendments to Schedules adopted by the Council as in clause 10 (4) must be maintained by the Council in a register kept for that purpose.
- (2) The register kept for the purposes of this clause must be made available for inspection at the office of the Council during normal office hours.

12. POWER OF AUTHORISED OR DELEGATED OFFICER TO DIRECT – NOTICE TO COMPLY

Any Authorised or Delegated Officer may, by serving a Notice to Comply, direct any owner, occupier or other relevant Person to remedy any situation that constitutes a breach of this Local Law.

Guidelines for issuing Notice to Comply, as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

The form of a Notice to Comply is included in Schedule 4 to this Local Law.

13. FAILURE TO ADHERE TO A NOTICE TO COMPLY

A Person who fails to remedy a situation in accordance with a Notice to Comply served on that Person under this Local Law is guilty of an offence.

Penalty: 20 Penalty Units

14. POWER OF AUTHORISED OFFICERS TO ACT IN URGENT CIRCUMSTANCES

In urgent circumstances arising as a result of a failure to comply with this Local Law, an Authorised or Delegated Officer may take action to remove, remedy or rectify the failure without the necessity to serve a written warning, Notice to Comply, or take other action, provided he or she applies the Guidelines for Urgent Circumstances .

Guidelines for Urgent Circumstances, as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

15. POWER OF AUTHORISED OR DELEGATED OFFICER TO IMPOUND

- (1) If an Authorised or Delegated Officer detects an Animal, item or thing in breach of or being used contrary to the provisions of this Local Law, and, in the opinion of that Authorised or Delegated Officer, the continuation of that breach or use presents a potential hazard or risk to any Person or property, the Authorised or Delegated Officer may impound that Animal, item or thing.
- (2) If an Authorised or Delegated Officer has impounded an Animal, item or thing in accordance with this Local Law, the Council may refuse to release it until the appropriate fee or charge for its release has been paid to the Council.

Guidelines for the exercise of the Power to Impound, as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

The form of a Notice of Impounding is included in Schedule 4 to this Local Law.

16. APPEALS

- (1) Any Person who is aggrieved by any notice served on him or her under this Local Law or by any decision to reject his or her application for a Permit, licence or like approval under this Local Law may make a written submission for consideration by the Council within twenty-eight (28) days of the date on which the notice was served or the date on which the application was rejected (as the case may be) but the making of any submission will not in any way remove that Person's obligation to act in accordance with any obligations, directions or notices which are applicable under this Local Law.
- (2) Sub-clause (1) does not confer a right for a Person to make a submission under section 223 of the Act.
- (3) Details regarding submissions and appeal processes relating to Infringement Notices issued under this Local Law are found in Part 11 of this Local Law.

- (4) Any submission or appeal under this Local Law will be determined by an Appeals Officer separate and independent from any Authorised or Delegated Officer who may have issued an Infringement Notice or other notice or exercised any other power under this Local Law.
- (5) On any submission on any matter under this Local Law (other than an appeal from an Infringement Notice) the Council's decision is final, excepting only review on legal grounds to the Supreme Court of Victoria.

PART 3 - PERMITS

17. PERMITS

- (1) The form of an application for a Permit is set out in Schedule 4 – Forms.
- (2) Despite sub-clause (1), a written application contrary to the form in Schedule 4 may be accepted by the Council or the Authorised or Delegated Officer if it is considered that the appropriate information has been supplied.
- (3) When receiving and processing Permit applications and when imposing conditions making corrections or considering cancellations of Permits, the Council or an Authorised or Delegated Officer must have regard to the Guidelines relating to Permits as amended by the Council from time to time and incorporated in Schedule 1, Council Policies as determined from time to time and incorporated in Schedule 2 and the Standard Permit Conditions as amended by the Council from time to time and incorporated in Schedule 3.

18. POWER TO OBTAIN NECESSARY AND ADDITIONAL INFORMATION

The Council or an Authorised or Delegated Officer may require any applicant to provide additional information before dealing with an application for a Permit or an exemption and for the purposes of administering and enforcing the provisions of this Local Law.

19. RECORD OF PERMITS

- (1) A record of any Permits issued by the Council for the purposes of this Local Law must be maintained by the Council.
- (2) Any cancellations or corrections of Permits which have been issued under this Local Law are also to be recorded.

20. EXEMPTION FROM PERMIT OR PERMIT FEE

- (1) The Council may by written notice exempt any Person or class of Person from the need to obtain a Permit, and such exemption may be conditional, may be altered and may be cancelled.
- (2) The Council may by written notice exempt any Person or class of Person from the need to pay any Permit fee.
- (3) An exemption from the requirement to pay a Permit fee may be cancelled or corrected in the same way as a Permit.
- (4) A Service Authority or a Person employed by or acting on behalf of a Service Authority is exempt from this Local Law and is not required to obtain a Permit in respect of activity to be undertaken for the purposes of the Service Authority but must notify the Council of the activity prior to its commencement.

Guidelines for determining whether to recommend or grant a Permit Exemption or Permit Fee Waiver, as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

21. OFFENCE TO FALSIFY APPLICATION

A Person who makes any false representation or declaration (whether oral or in writing) in, or who omits any relevant information from, an application for a Permit or exemption is guilty of an offence.

Penalty: 20 Penalty Units

PART 4 - FEES, CHARGES AND COSTS

22. SETTING FEES AND CHARGES

- (1) The Council may from time to time by resolution determine the fees and charges to apply under this Local Law and may include an administration or processing fee or charge. The Council must give public notice of its resolution to set or alter fees and charges.
- (2) Where a Permit is issued part way through the financial year and is to operate for the balance of that financial year, the Council may vary the normal annual fee or charge by applying a fee or charge which is proportionate to the period for which the Permit will apply corrected to the next higher quarter of that year.

23. DIFFERENTIAL OR STRUCTURED FEES AND CHARGES

In determining any fees and charges the Council may establish a system or structure of fees and charges, including a minimum or maximum fee or charge, if it considers it is appropriate to do so.

24. WAIVER ALTERATION TO FEES AND CHARGES

The Council may waive, reduce or alter any fee or charge with or without conditions upon receipt of a written submission from the applicant stating reasons why any such fee or charge should be reconsidered.

[As stated at s.20 above, Guidelines for determining whether to recommend or grant a Permit Exemption or Permit Fee Waiver, as determined by the Council from time to time, are incorporated in Schedule 1 this Local Law.]

The Council's Fees and Charges are determined annually by the Council in its budgeting process and are available from the Council's website or by enquiry direct to the Council.

PART 5 – YOUR PROPERTY, TREES & PETS

YOUR PROPERTY

25. COUNCIL TO APPROVE ROAD NAMES

- (1) A Person must not apply a name to a Road without the consent of the Council.

Penalty: 10 Penalty Units

- (2) When considering the allocation of a name for a Road, the Council or an Authorised or Delegated Officer is to have regard to Council's Naming of Streets and Reserves Policy incorporated in Schedule 2 and the guidelines incorporated in Schedule 1.
- (3) Nothing in sub-clause (1) applies to Vic Roads in relation to any Road which is a State road within the meaning of the Road Management Act 2004.

Guidelines for the Naming of Roads, as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

The Council's Naming of Streets and Reserves Policy, as determined by the Council from time to time, is incorporated in Schedule 2.

26. PROPERTY NUMBERS

- (1) The Council or an Authorised or Delegated Officer may allocate a property number to each property in the Municipal District and, from time to time, may make changes to property numbers.
- (2) For each property that has been allocated a property number under this clause, the owner of the property must mark the property with the number allocated and that number must be of sufficient size, in such a position, made of such material and kept in such state of repair as to be clearly readable from the nearest Road under all normal lighting conditions.

Penalty: 10 Penalty Units

Guidelines for determining the sufficiency of size location and visibility of property numbers, as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

27. UNSIGHTLY LAND

- (1) An owner or occupier of land must not cause or allow the land to be kept in a manner which is unsightly or detrimental to the general amenity of the neighbourhood in which it is located, including land which:
 - (a) harbours unconstrained rubbish;
 - (b) contains disused excavation or waste material; or

- (c) has undergrowth exceeding 300mm in height but excluding the natural height of native Australian grasses cultivated in a planned or landscaped garden and excluding Municipal Reserves maintained under an approved management plan.

Penalty: 20 Penalty Units

- (2) An owner or occupier of Private Property must not allow any graffiti to remain on any building, wall, fence, post or other structure or object erected on that property.

Penalty: 10 Penalty Units

- (3) A Person who owns or has vested in him, her or it, or who has the control and management of, any building, wall, fence, post or other structure or object, or any asset, located on Council Land must not allow any graffiti to remain on that building, wall, fence, post or other structure or object, or asset.

Penalty: 10 Penalty Units

- (4) No offence will be committed under sub-clause (2) or sub-clause (3) until a Notice to Comply has been issued and the owner, occupier or Person (as the case may be) has failed to comply with the Notice to Comply within the required time, which time shall be reasonable in the circumstances.

28. DANGEROUS LAND

An owner or occupier of land must not cause or allow the land to be kept in a manner which is dangerous or likely to cause danger to life or property, including but not limited to land which is:

- (1) a haven for vermin or Noxious Weeds;
- (2) used without a Permit for the storage of any substance which is dangerous or is likely to cause danger to life or property; or
- (3) occupied by an unsecured hole or excavation.

Penalty: 20 Penalty Units

29. DOMESTIC WASTE INCLUDING RECYCLABLE AND HARD RUBBISH COLLECTION

The occupier of every dwelling or other land to which the Council provides a waste collection service (including a recyclable material and hard rubbish collection) must comply with the Guidelines for domestic waste, recyclable and hard rubbish services incorporated in Schedule 1 to this Local Law.

Penalty: 10 Penalty Units

Guidelines for domestic waste, recyclable and hard rubbish collection services, as determined by the Council from time to time, are incorporated in in Schedule 1 of this Local Law.

30. REMOVING RECYCLABLE MATERIAL & HARD RUBBISH

- (1) A Person must not remove or interfere with any Recyclable Material or hard rubbish left on a Road, or at any other collection point, for collection in accordance with any instructions determined by the Council and published on the Council's website.

Penalty: 10 Penalty Units

- (2) Sub-clause (1) does not apply to a Person authorised by the Council to remove such Recyclable Material or hard rubbish or any employee of such a Person in the course of his or her employment, the Person placing the Recyclable Material or hard rubbish for collection or an Authorised Officer in the course of his or her employment.

31. BURNING OF MATERIALS

<i>Clean air is a part of the amenity of our neighbourhoods and all Persons need to avoid creating unreasonably offensive emissions of smoke and odour that may invade neighbouring properties from burning materials in the open.</i>
--

- (1) A Person must not burn or cause to be burnt in the open in any part of the Municipal District:
- (a) any offensive materials; or
 - (b) any materials that cause offensive emissions of smoke and odour to enter any neighbouring property.

Penalty: 20 Penalty Units

- (2) A Person must not, without a Permit, burn or cause to be burnt outside any materials other than offensive materials, whether in the open air or in any built or manufactured Incinerator or similar device, except that a permanent or portable Barbeque, or a manufactured fireplace for the purpose of outdoor heating do not require a Permit.

Penalty: 20 Penalty Units

- (3) Council staff members and Persons contracted or authorised by the Council for the purpose may, without a Permit, undertake controlled burning-off as part of normal scheduled parks maintenance on any Council.

Guidelines, as determined by the Council from time to time, for determining whether an offence has been committed and for the issue of a permit in relation to the burning of materials under this local law are incorporated in Schedule 1 this Local Law.

32. FIRE HAZARDS

Each owner and occupier of land must ensure that:

- (1) all necessary steps are taken to prevent fires on that land and minimise the possibility of the spread of fire from that land; and

- (2) the land is kept free of undergrowth, scrub, bracken, ferns, weeds, stubble and grass, whether alive or dead, exceeding 300mm in height and whether standing or not standing (but excluding the natural height of native Australian grasses cultivated in a planned or landscaped garden and excluding Municipal Reserves maintained under an approved management plan) and any other material or substance likely to assist in the spread of fire, whether of a similar kind to that mentioned or not.

Penalty: 20 Penalty Units

33. CAMPING ON PRIVATE PROPERTY

- (1) A Person, must not, without a Permit, camp on Private Property in a tent, campervan, caravan or other temporary or makeshift structure unless such Person is within a licensed caravan park or an area determined to be available for camping purposes by the Council.

Penalty: 10 Penalty Units.

- (2) Sub-clause (1) does not apply to occupation of a tent, campervan, or caravan on Private Property for a period of up to twenty-eight (28) days in any year provided that sanitation and laundry facilities of a Dwelling on the property are available to the occupants of the caravan.
- (3) In determining whether to grant a Permit, the Council or an Authorised or Delegated Officer must have regard to the guidelines as determined by the Council from time to time and incorporated in Schedule 1 to this Local Law.

Guidelines for the camping on private property, as determined by the Council from time to time, are incorporated in Schedule 1.

34. AUDIBLE INTRUDER ALARMS

Audible intruder alarms correctly installed and adjusted enhance personal safety and property security but inappropriate or malfunctioning alarms can adversely impact the quiet enjoyment of neighbouring residents and the community.

An owner or occupier of any property must not install or allow to be installed or cause to be retained and active on that property any Audible Intruder Alarm which breaches the operating guidelines in Schedule 1 to this Local Law.

Penalty: 10 Penalty Units

Guidelines for audible intruder alarms, as determined by the Council from time to time, are incorporated in Schedule 1.

35. SHIPPING CONTAINERS

A Person must not:

- (1) keep, store, repair or in any other manner use any shipping container upon any Council Land except that Council may do so; or
- (2) keep, store, repair or in any other manner use any shipping container upon any Private Property, except in accordance with a Permit.

Penalty: 20 Penalty Units

Guidelines for Shipping Containers on Private Property, as determined by the Council from time to time, are incorporated in Schedule 1.

Permit Conditions for Shipping Containers on Private Property, as determined by the Council from time to time, are incorporated in Schedule 3.

YOUR TREES

Note: Some trees incur a higher level of protection under Bayside City Council's Planning Scheme than under this Local Law.

36. TREE PROTECTION

Protecting and expanding the tree canopy of the entire municipality is an integral part of neighbourhood amenity, natural beauty and a sustainable environment and is recognised in the Council's Tree Protection Policy set out in Schedule 2 to this Local Law.

(1) A Person must not, without a Permit:

- (a) destroy, damage or remove or allow to be destroyed, damaged or removed on any Private Property; or
- (b) cut, trim, lop or prune or allow to be cut, trimmed, lopped or pruned on any Private Property

any Significant Tree or any other protected Tree.

Penalty for contravention of clause 36(1)(a): 20 Penalty Units

Penalty for contravention of clause 36(1)(b): 10 Penalty Units

(2) For the purposes of sub-clause (1) a protected Tree is a Tree with a Single Trunk Circumference or Combined Trunk Circumference greater than 155 centimetres measured at one metre above ground level but excluding species which are declared Noxious Weeds.

(3) If a Permit has been granted and contains a condition requiring the planting of one or more replacement Trees, a Person must not, except in accordance with another Permit granted by the Council or an Authorised or Delegated Officer:

- (a) destroy, damage or remove or allow to be destroyed, damaged or removed; or
- (b) cut, trim, lop or prune or allow to be cut, trimmed, lopped or pruned,

any Tree planted under that condition.

Penalty for contravention of clause 36(3)(a): 20 Penalty Units

Penalty for contravention of clause 36(3)(b): 10 Penalty Units

(4) The Council must maintain a significant tree register recording all Significant Trees within the Municipal District, and ensure that such register can be inspected at the Council's principal office during normal business hours.

Guidelines for the protection, removal or pruning of Trees, as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

The Council's Management of Tree Protection on Private Property Policy, as determined by the Council from time to time, is incorporated in Schedule 2.

37. TREES AND PLANTS NOT TO OBSTRUCT OR OBSCURE

A Person must not, without a Permit, allow any Tree or plant in, or growing on, land owned or occupied by him or her, to obstruct or interfere with the passage of Traffic by:

- (a) overhanging any Footpath at a height lower than 2.4 metres, or
- (b) extend, obstruct or obscure in any other way described in the Guidelines for Trees and Plants not to Obstruct or Obscure as determined by the Council from time to time and incorporated in Schedule 1.

Penalty: 10 Penalty Units

Guidelines for the Removal of Overhanging Tree Obstructions, as determined by Council from time to time, are incorporated in Schedule to this Local Law.

38. TREES OR PLANTS CAUSING DAMAGE TO A MUNICIPAL PLACE

- (1) A Person must not allow any Tree or plant on his or her land to cause damage to or interference with any fixture or other erection in a Municipal Place or drain vested in or under the control of the Council.

Penalty: 20 Penalty Units

- (2) No offence will be committed under sub-clause (1) until a Notice to Comply has been issued and the Person has failed to comply with the Notice within the required time, which time shall be reasonable in the circumstances.

YOUR PETS

39. KEEPING ANIMALS

- (1) An owner or occupier of land must not, without a Permit, keep or allow to be kept more than six (6) different types of Animals on any one parcel of land at any time and must not keep or allow to be kept any more in number for each type of Animal than is set out in the following table:

Cats.....	2
Cattle	Zero
Dogs	2
Domestic Birds (excluding Noisy Birds)	20
Domestic Fish	No maximum limit
Domestic Mice	20
Domestic Rabbits	4
Domestic Turtles, Tortoises, Frogs and the like	No maximum limit
Goats	Zero
Guinea Pigs	4
Horses/Donkeys and the like.....	Zero
Large Birds and/or Noisy Birds	Zero
Pigeons	Zero
Pigs.....	Zero
Poultry.....	10
Sheep	Zero
Any other agricultural animals.....	Zero

Penalty: 10 Penalty Units

- (2) Unless contrary to other State or Commonwealth legislation, a Permit is also required to keep or allow to be kept any exotic, wild, dangerous or large Animal not listed in sub-clause (1).
- (3) For the purpose of calculating the numbers of Animals kept under sub-clause (1), the progeny of any dog or cat lawfully kept will be counted from 12 weeks after their birth.

Guidelines for the Keeping of Animals, as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

40. ANIMAL ACCOMMODATION

The owner or occupier of any land on which Animals are kept must provide accommodation in accordance with the guidelines in Schedule 1 to this Local Law.

Penalty: 10 Penalty Units

Guidelines for Animal Accommodation as determined by Council from time to time are incorporated in Schedule 1

41. ANIMAL EXCREMENT

- (1) A Person in charge of any Animal must not allow any part of the Animal's excrement to remain on any Council Land.

Penalty: 10 Penalty Units

- (2) A Person in charge of any Animal on Council Land must carry a Litter Device suitable to clean up any excrement left by his or her Animal and must produce such Litter Device upon request of any Authorised Officer.

Penalty: 10 Penalty Units

42. WASP NEST(S) TO BE REMOVED

An owner or occupier of land must, within seven (7) days upon becoming aware of the existence of a wasp's nest or nests on the land, take steps to cause that nest or those nests to be removed.

Penalty: 10 Penalty Units

PART 6 - VEHICLES & ROADS

43. PLACING BULK RUBBISH CONTAINERS

- (1) A Person must not, without a Permit, place or cause or allow another Person to place a Bulk Rubbish Container on a Road.

Penalty: 10 Penalty Units

- (2) Any Bulk Rubbish Container placed on any part of a Road contrary to this clause or in contravention of any conditions of a Permit may be removed by an Authorised or Delegated Officer and impounded.
- (3) Where a Bulk Rubbish Container has been impounded, there must be compliance with the provisions of clause 15.

Guidelines for Bulk Rubbish Containers, as determined by the Council from time to time, are incorporated in Schedule 1.

See also the following clauses in this Local Law:

- *Part 7 Business and Building: 59. Trade Waste and Waste Hoppers;*
- *Part 9 Council Buildings Places: 72. Obstructions on Council Land.*

44. MOTOR BIKES AND MOTORISED RECREATIONAL VEHICLES

- (1) A Person must not, without a Permit, use a Motor Bike or other Motorised Recreational Vehicle on any part of Council Land other than a Road, unless the part of Council Land has been designated for that purpose.

Penalty: 10 Penalty Units

- (2) A Person must not, without a Permit, use a Motor Bike or other Motorised Recreational Vehicle on any Private Property other than for the purpose of directly accessing or leaving that Private Property.

Penalty: 10 Penalty Units

- (3) In determining whether to grant a Permit, the Council or an Authorised or Delegated Officer must have regard to any guidelines in Schedule 1 to this Local Law.

- (4) A Person must not use any Motor Bike or other Motorised Recreational Vehicle on Council Land other than a Road on any Smog Alert Day or Fire Ban Day or Code Red (Catastrophic) Fire Danger Rating Day.

Penalty: 10 Penalty Units

Guidelines for Motor Bikes and Motorised Recreational Vehicles, as determined by the Council from time to time, are incorporated in Schedule 1.

45. REPAIR OF VEHICLES IS PROHIBITED

A Person must not dismantle, paint, carry out maintenance on or repair a Vehicle on a Road, or allow or authorise another Person to do so, except for the purpose of removing it.

Penalty: 10 Penalty Units

46. DERELICT AND ABANDONED VEHICLES

- (1) A Person must not, without a Permit, leave any derelict, abandoned or unregistered Vehicle on any Council Land, whether temporarily or permanently.

Penalty: 20 Penalty Units

- (2) Any Vehicle found on Council Land and considered by an Authorised Officer to be derelict, abandoned or unregistered may be dealt with under the provisions of Schedule 11 to the Act.

Clause 3 of Schedule 11 to the Local Government Act 1989 (relating to the power to remove Derelict and Abandoned Vehicles) as amended from time to time is incorporated in Schedule 2 to this Local Law.

47. HEAVY OR LONG VEHICLES: PARKING ON A ROAD OR PRIVATE PROPERTY

- (1) A Person must not, without a Permit, park or authorise the parking of any Heavy Vehicle or Long Vehicle on any Road for which the Council is the Responsible Road Authority for the purposes of the *Road Management Act 2004*, or on any other land (whether Private Property or Council Land), for more than one hour, unless otherwise indicated by approved road signage or unless the Person or another Person on his or her behalf is actively engaged in loading or unloading.

Penalty: 10 Penalty Units

- (2) In determining whether to grant a Permit for the purposes of sub-clause (1), the Council or an Authorised or Delegated Officer must have regard to any guidelines in Schedule 1 to this Local Law.

Guidelines for Parking Heavy or Long Vehicles, as determined by the Council from time to time, are incorporated in Schedule 1.

48. HEAVY OR LONG VEHICLE/S: STORING

- (1) A Person must not, without a Permit, keep or store any Heavy Vehicle or Long Vehicle(s) upon any Road for which the Council is the Responsible Road Authority for the purposes of the *Road Management Act 2004*, or on any other land (whether Private Property or Council Land).

Penalty: 10 Penalty Units

- (2) In determining whether to grant a Permit, the Council or an Authorised or Delegated Officer must have regard to any guidelines set out in Schedule 1 to this Local Law.

Guidelines and Permit Conditions for Storing Heavy or Long Vehicles, as determined by the Council from time to time, are incorporated in Schedule 1.

49. HEAVY VEHICLES: PERMITS FOR USE ON RESTRICTED USE ROADS

- (1) If the Council is of the opinion that a Road or part of a Road is likely to be damaged by a particular class of Vehicle and it resolves to prohibit owners and drivers of such Vehicles to use, or cause to be used, these Vehicles on the Road or part of the Road, it must erect a sign or signs at the entry to the Road or part of the Road advising of the prohibition.
- (2) A Person must not, without a Permit, use a Road or part of a Road contrary to any sign erected with reference to it under sub-clause (1).

Penalty: 10 Penalty Units

- (3) In determining whether to grant a Permit, the Council may have regard to any guidelines in Schedule 1 to this Local Law.

Guidelines for Heavy Vehicles on Restricted Use Roads as determined by the Council from time to time, are incorporated in Schedule 1.

50. STREET PARTIES & STREET FESTIVALS: PERMITS

- (1) A Person must not, without a Permit, hold a Street Party, Street Festival or Procession on a Road.

Penalty: 20 Penalty Units

- (2) An application to conduct an event on any Road must be made 21 days before the event is to take place.

Guidelines for a Street Party, Street Festival or Procession, as determined by the Council from time to time, are incorporated in Schedule 1.

PART 7- BUSINESS & BUILDERS

BUSINESS

51. ROADSIDE TRADING OR PERFORMING

- (1) A Person must not, without a Permit, erect or place on any Road or Council Land a Vehicle, caravan, trailer, table, stall or other similar structure for the purpose of selling or offering for sale any goods or services.

Penalty: 20 Penalty Units

- (2) A Person must not, without a Permit, on any Road or Council Land sing to the public or play any musical instrument or use any sound amplification equipment.

Penalty: 10 Penalty Units

- (3) Sub-clauses (1) and (2) do not include short-term outdoor community events on Council Land, although such events may be subject to a Permit under clause 73 of this Local Law.
- (4) Sub-clause (2) does not apply to any sounds within a motor vehicle which cannot be heard outside that motor vehicle or any sound or noise conveyed through any headphones which sound or noise is not audible to a Person other than the wearer of the headphones.

Guidelines for Roadside Trading or Performing (busking), as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

52. REGULATION OF TRADING SITES

- (1) If the Council has entered into an agreement (by way of permit, lease, licence or otherwise) in relation to trading from a particular site, a second Person other than the Person with whom the Council has the agreement must not trade from that site whether or not that second Person has a Permit for another site or no particular site.

Penalty: 20 Penalty Units

- (2) In addition to any other power which it has, the Council may, by resolution, determine a fee, charge, fare or rent in relation to the selling or offering for sale of any goods or services from any Private Property or Council Land adjacent to a Road or to any Person who is on that Road or adjacent Private Property or Council Land.

53. IMPOUNDING OF GOODS AND EQUIPMENT

- (1) Where the use of a site or the contravention of any conditions on a Permit issued under clause 51 continues after a Notice to Comply has been served on a Person, any goods and associated equipment used by that Person may be removed from the site by an Authorised or Delegated Officer and impounded.

- (2) Where any goods and equipment have been impounded, there must be compliance with the provisions of clause 15.

54. DISPLAYING GOODS FOR SALE

- (1) A Person must not, without a Permit, place or display any goods for sale or cause or allow another Person under his or her control to do so on any Council Land.

Penalty: 20 Penalty Units

- (2) In determining whether to grant a Permit, an Authorised or Delegated Officer must have regard to the Council's *Footpath Trading Policy* as amended by the Council from time to time and incorporated in this Local Law in Schedule 2.
- (3) Any goods left or displayed on any part of a Road contrary to this clause or displayed in contravention of any conditions of a Permit may be removed by an Authorised or Delegated Officer and impounded.
- (4) Where any goods have been impounded, there must be compliance with the provisions of clause 15.

In determining whether to grant a Permit for displaying goods, the Council or an Authorised or Delegated Officer must follow the Council's Footpath Trading Policy, as determined by the Council from time to time, as incorporated in Schedule 2 to this Local Law.

55. USING COUNCIL LAND FOR OUTDOOR EATING FACILITIES

- (1) A Person must not, without a Permit, use Council Land for the purposes of commercial outside dining, whether or not alcohol consumption is intended.

Penalty: 20 Penalty Units

- (2) Use of Council Land for alcohol consumption on any Footpath or other part of a Road is only permitted when a Permit has been issued and a variation is endorsed on the trader's liquor licence by the Victorian Liquor Licencing Authority to allow consumption outside the premises.
- (3) Any tables, chairs, umbrellas or other equipment in an Outdoor Eating Facility used in contravention of this clause or of any conditions of a Permit may be removed by an Authorised or Delegated Officer and impounded.
- (4) Where any tables, chairs, umbrellas or other equipment have been impounded, there must be compliance with the provisions of clause 15.

In determining whether to grant a permit for use of Council Land for outdoor dining, the Council or an Authorised or Delegated Officer must follow the Council's Footpath Trading Policy, as determined by the Council from time to time, as incorporated in Schedule 2 to this Local Law.

56. REMOVING THE FACILITY

The Permit Holder must move or remove the Outdoor Eating Facility to which the Permit relates when requested to do so for the purposes of public safety by an Authorised or Delegated Officer or a member of the Victoria Police or an emergency service.

Penalty: 20 Penalty Units

57. ADVERTISING SIGNS: ERECTING OR PLACING

- (1) A Person must not, except in accordance with a Permit, erect or place an Advertising Sign on any part of a Road or Council Land, or cause or in any way authorise another Person to do so.

Penalty: 20 Penalty Units

- (2) An advertising sign under this clause excludes signage within Municipal Reserves, which may be subject to a Permit under clause 74.
- (3) Where any Advertising Sign is erected or placed in any location contrary to this clause or in contravention of any Permit conditions, it may be removed by an Authorised Officer and impounded provided the Authorised Officer has first issued a Notice to Comply to the Person who owns or who has placed the Advertising Sign on any part of a Road, unless, in the Authorised Officer's reasonable opinion, an emergency situation occurs, in which case the sign may be impounded immediately and, if practicable, notices served as soon as possible on the owner after impoundment.
- (4) Where an Advertising Sign has been impounded, there must be compliance with the provisions of clause 15.

In determining whether to grant a Permit for Advertising Signs placed on a Road or Council Land, the Council or an Authorised or Delegated Officer must follow both:

- *the Council's Footpath Trading Policy, as determined by the Council from time to time and incorporated in Schedule 2; and*
- *the Guidelines for advertising signs as determined by the Council from time to time and incorporated in Schedule 1.*

58. COLLECTIONS

Community generosity to charitable organisations is a valued quality of our community but this must be balanced against the right of residents not to be excessively imposed upon by charitable collectors in their homes, streets and vehicles.

- (1) A Person must not, without a Permit,
- (a) solicit or collect any waste materials, gifts of money or subscriptions; or
 - (b) distribute any handbills

from Council Land or on a Road or from house to house adjacent to any Road (except hand delivering printed matter only to street-side letterboxes) or cause or authorise another Person to do so.

Penalty: 10 Penalty Units

- (2) Sub-clause (1) does not apply to any solicitation or distribution of printed electoral material or to the collection of signatures for a petition.
- (3) Sub-clause (1) includes the distribution of information brochures, books and solicitation of anything from members of the general public in any Municipal Place.

In determining whether to grant a Permit, an Authorised or Delegated Officer must have regard to the guidelines incorporated in this Local Law in Schedule 1.

Guidelines for Collections, as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

59. TRADE WASTE BINS AND WASTE HOPPERS (INCLUDING ALL TRADE RECYCLING BINS)

- (1) An occupier of land may arrange for the collection of trade waste from, or for the placement of a waste hopper or recycling bin on, that land subject to compliance with the Guidelines for Trade Waste and Waste Hoppers incorporated in Schedule 1 to this Local Law.
- (2) A Person must not place any waste or material in a trade waste bin, waste hopper or recycling bin contrary to any notice on the trade waste bin, waste hopper or recycling bin.

Penalty: 10 Penalty Units

- (3) A Person must place any waste or material in a trade waste bin, waste hopper or recycling bin in compliance with the Guidelines for Trade Waste and Waste Hoppers incorporated in Schedule 1 to this Local Law.

Penalty: 10 Penalty Units

- (4) All trade waste and waste hoppers, including recycling bins, must be kept on the land of the Person on which the waste is generated, except for the period from twelve(12) hours before to (4) four hours following collection.

Penalty: 10 Penalty Units

Guidelines giving the Council's requirements for Trade Waste Bins as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

See also the following clauses in this Local Law:

- *Part 6 Vehicles and Roads: 43. Placing Bulk Rubbish Containers (& Guidelines in Schedule 1);*
- *Part 9 Council Buildings Places: 72. Obstructions on Council Land.*

BUILDERS

(While the following laws may particularly apply to building and development works, owners, builders and contractors are recommended to also refer to other local laws protecting Council assets, including but not limited to Section 9 - Public Places.)

60. DRAINAGE TAPPING / ROAD OPENING

A Person must not, without a Permit, tap into or interfere with any drain or open any road under the control of the Council.

Penalty: 20 Penalty Units

Guidelines and Permit Conditions for Drainage Tapping / Road Opening, as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

Permit Conditions for Drainage Tapping / Road Opening, as determined by the Council from time to time, are incorporated in Schedule 3 to this Local Law.

61. A VEHICLE CROSSING IS REQUIRED

- (1) The owner of land must ensure that each point of vehicle access from a Road to the land has a properly constructed vehicle crossing between the Road and the boundary of such land abutting the Road.

Penalty: 20 Penalty Units

- (2) Any such vehicle crossing must be properly constructed at the cost of the property owner and in accordance with the Council's specifications.
- (3) For the purposes of this clause, a vehicle crossing is properly constructed if:
 - (a) it was constructed by or in accordance with the terms of an approval by the Council; or
 - (b) the Council has approved in writing the method of construction of the particular vehicle crossing.
- (4) The owner of land must, at his or her own cost, ensure that the vehicle crossing between the Road and the boundary of such land is maintained.

Penalty: 20 Penalty Units

62. CONSTRUCTING VEHICLE CROSSING

- (1) A Person must not, without a Permit, construct, install, remove or alter a vehicle crossing, whether temporarily or permanently.

Penalty: 20 Penalty Units

- (2) A Person must not, remove, prune or damage any street tree as a result of a vehicle crossing construction, installation, removal or alteration.

Penalty: 20 Penalty Units

Guidelines for granting a Permit under this clause are the same Guidelines as determining whether to grant an Asset Protection Permit under Clause 64. Building Works on Private Property.

63. TEMPORARY VEHICLE CROSSINGS

- (1) Where it is likely that Building Works on a property will involve Vehicles leaving the Road or entering a property which abuts a Road, the owner of the property or the Person responsible for the Building Works must obtain a Permit for the construction of a temporary crossing, pay any inspection fee and protect all of the existing Road including the kerb, drains, street trees, Footpaths, nature strip and any other part of the Road.

Penalty: 20 Penalty Units

- (2) The owner of the property on which Building Works have been carried out must repair any damage to the kerb, drains, footpath, street tree or existing road caused by the carrying out of the Building Works to the satisfaction of the Council.

Penalty: 20 Penalty Units

- (3) Where, in the opinion of an Authorised Officer, an existing driveway crossing, footpath, kerb, street tree or other part of the Road has been damaged as a result of or arising out of the Building Works, the owner of the property on which the Building Works have been carried out must repair the damage or, when requested to do so by the Council, reimburse the Council for the cost and expense of the repair of such damage.

Penalty: 20 Penalty Units

- (4) The amount of reimbursement for such repairs under sub-clause (3) must be proportionate to the cost of repairing any damage.

64. BUILDING WORKS ON PRIVATE PROPERTY

<i>In relation to building works on private property, the Council's objectives are to secure community safety, protect public assets, enhance neighbourhood amenity and simultaneously support appropriate private building development.</i>
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A Person must not cause or allow any Building Works to commence or continue on Private Property without:

- (1) giving written advice to the Council of the general nature of the works to be undertaken;
- (2) paying an inspection fee to the Council not less than 5 normal working days prior to the commencement of the Building Works;
- (3) giving an opportunity for an Authorised or Delegated Officer to inspect the Roads, Council Land and Council assets in the vicinity of the Private Property; and
- (4) obtaining and complying with an Asset Protection Permit from the Council.

Guidelines as determined from time to time for determining whether to grant an Asset Protection Permit are incorporated in this Local Law in Schedule 1.

- (5) If an Authorised or Delegated Officer is of the reasonable opinion that there is an unacceptable level of risk of damage to the Roads, Council Land or Council assets in the vicinity of the Private Property on which the Building Works are proposed, the Authorised or Delegated Officer may issue a written notice to the owner or occupier of the Private Property or their authorised building agent, requiring the delivery to the Council of a guarantee or bond satisfactory to the Authorised or Delegated Officer, and no Building Works may commence until payment of that bond has been made.

Guidelines for the written notice, the circumstances in which all or part of the bond may be used by Council and/or refunded, as determined by the Council from time to time, are incorporated in this Local Law in Schedule 1.

- (6) Whether a condition of the Asset Protection Permit or not, a Person must not cause or permit any Building Works to commence or continue on Private Property without ensuring that:
- (a) the Private Property is properly fenced, whether permanent or temporary, and remains so for the duration of the Building Works;
 - (b) a protective barrier is installed around any Tree which is
 - (i) located on a Road or other Council Land within 4 metres of the building site unless reasonable grounds for its exclusion are determined by an Authorised or Delegated Officer; and
 - (ii) any additional Tree nominated by an Authorised or Delegated Officer as requiring a protective barrier;
 - (c) building clean-up, wash-down, slurry or other wastes do not enter the Council's stormwater system;
 - (d) the Private Property is provided with proper site identification; and
 - (e) upon being requested by an Authorised or Delegated Officer to do so, a traffic management plan is provided to the Council adequately addressing any parking or traffic issues referable to the Building Works which have been identified by the an Authorised or Delegated Officer.

Guidelines for proper fencing, protective tree barriers, site identification and traffic management plans, as determined by the Council from time to time, are incorporated in this Local Law in Schedule 1.

- (7) If a Person fails to comply with this clause 64 or any condition on an Asset Protection Permit he or she commits an offence.

Penalty: 20 Penalty Units

PART 8 - SMOKING & ALCOHOL

65. CONSUMPTION AND POSSESSION OF LIQUOR ON ROADS

A Person must not, unless covered by an exemption in clause 67, at any time on a Road:

- (1) consume any Liquor; or
- (2) have in his or her possession or control any Liquor other than in a container with an unbroken seal.

Penalty: 10 Penalty Units

66. CONSUMPTION AND POSSESSION ON MUNICIPAL RESERVES

Between sunset and sunrise, a Person must not, unless covered by an exemption in clause 67, in or on any Municipal Reserve (whether it be a Road within a Municipal Reserve or not) or in any motor vehicle within a Municipal Reserve:

- (1) consume any Liquor; or
- (2) have in his or her possession or control any Liquor other than Liquor in a container with an unbroken seal.

Penalty: 10 Penalty Units

67. EXEMPTION

A Person who consumes Liquor or has in his or her possession Liquor in an unsealed container does not commit an offence if:

- (1) he or she is taking part in a Procession, function, Street Party or other activity on a Road or on or in a Municipal Reserve in respect of which the Council has granted permission and in accordance with any other permit or licence required under any Act; or
- (2) he or she is in Licensed Premises or an extension of Licensed Premises in respect of which consumption and possession of Liquor in unsealed containers is permitted and in accordance with any other permit or licence required under any Act.

68. SMOKING IN MUNICIPAL PLACES

- (1) The Council may declare a Municipal Place or part of a Municipal Place to be a Smoke Free Area according to the guidelines incorporated in Schedule 1.
- (2) The Council must erect and maintain or cause to be erected and maintained signs in any Municipal Place or part of a Municipal Place which has been declared a Smoke Free Area.

- (3) A Person must not smoke in or on any Municipal Place or part of a Municipal Place that has been declared by the Council to be a Smoke Free Area and has a Smoke Free Area sign erected and maintained.

Penalty: 10 Penalty Units

Guidelines for the Declaration of a Smoke Free Area are incorporated in Schedule 1 to this Local Law.

PART 9 PUBLIC PLACES, PARKS & FORESHORE AND COUNCIL BUILDINGS

PUBLIC PLACES

69. BEHAVIOUR IN MUNICIPAL PLACES - PROHIBITIONS

Council's Municipal Places refers to all those areas controlled and managed by the Council, whether Reserves, Buildings or other places. These places are public assets and exist for the provision of services to the public, to enhance the environment, as places of work for employees and contractors of the Council, and for the general enjoyment, comfort and amenity of the community.

A Person must not, while in a Municipal Place, behave in a manner that endangers others or unreasonably interferes with the quiet enjoyment of the Municipal Place by any other Person.

Penalty: 10 Penalty Units

Guidelines for determining whether behaviour in a Municipal Place is in breach of this Local Law, as determined by the Council from time to time, are incorporated in Schedule 1.

70. DAMAGING/DEFACING A MUNICIPAL PLACE

A Person must not, unless employed, authorised or contracted by the Council for the purpose, do the following in or on a Municipal Place:

- (1) destroy, damage or interfere with a Municipal Place;
- (2) destroy, damage, remove or interfere with any Trees or plants on or within a Municipal Place;
- (3) remove anything belonging to the Council from any Municipal Place unless allowed by the Council, whether under this Local Law or otherwise; or
- (4) destroy, damage or interfere with any property or assets owned or managed by the Council.

Penalty: 20 Penalty Units

71. INTERFERENCE WITH A WATER COURSE ETC

A Person must not, without a Permit or unless employed or contracted by the Council for the purpose, destroy, damage or interfere with a water course, ditch, creek, gutter, drain, tunnel, bridge, levee, culvert, or any directly adjoining fence, vested in or under the control of the Council.

Penalty: 20 Penalty Units

Guidelines for granting a Permit under this clause are the same Guidelines as for determining whether to grant either an Asset Protection Permit under Clause 64. Building Works on Private Property or a Drainage Tapping Permit under Clause 60. Drainage Tappings.

72. OBSTRUCTIONS ON COUNCIL LAND

Where, in the reasonable opinion of an Authorised or Delegated Officer, a rubbish container, clothing recycling bin, movable structure, device, material or other object on Council Land is:

- (1) causing an obstruction;
- (2) a danger to Persons; or
- (3) in the way of or likely to obstruct traffic,

the rubbish container, clothing recycling bin, movable structure, device, material or other object will be dealt with in accordance with Schedule 11 to the Act , and the owner, occupier and/or Person responsible for the placement and location of the object is guilty of an offence under this Local Law.

Penalty: 20 Penalty Units

Schedule 11.5 of the Local Government Act 1989 as amended from time to time is incorporated in Schedule 2 to this Local Law.

See also the following clauses in this Local Law (and Guidelines in Schedule 1):

- *Part 6 Vehicles and Roads: 43. Placing Bulk Rubbish Containers;*
- *Part 7 Business and Builders: 59. Trade Waste and Waste Hoppers.*

PARKS & FORESHORE

(Note: Local laws controlling Municipal Places (ccl.69 -72) also apply to Municipal Reserves.)

73. BEHAVIOUR WITHIN A MUNICIPAL RESERVE - PROHIBITIONS

Council Reserves, including open space, flora, fauna and the built and natural environment, are for the enjoyment of the community, the enhancement of a public asset and the protection of the environmental.

A Person must not, while in a Municipal Reserve, behave in a manner that endangers others or unreasonably interferes with the quiet enjoyment of the Municipal Reserve by any other Person.

Penalty: 10 Penalty Units

Guidelines relating to whether behaviour in a Municipal Reserve constitutes an offence, as determined by the Council from time to time, are incorporated in this Local Law in Schedule 1.

74. USE OF MUNICIPAL RESERVES - PERMITS

Municipal Reserves, including open space, flora, fauna and the built and natural environment, are for the enjoyment of the community, the enhancement of a public asset and the protection of environmental values.

Any activity which goes beyond the quiet enjoyment of a Municipal Reserve by individuals and small groups, requires a permit to ensure the fair sharing of limited public open space and the maximum enjoyment of the community.

A Person who is required by this Local Law to obtain a Permit in order to use a Municipal Reserve in a specified way must not use the Municipal Reserve in this way without a Permit.

Penalty: 20 Penalty Units

Guidelines for uses requiring a Permit, as determined by the Council from time to time, are incorporated in this Local Law in Schedule 1.

75. ACCESS TO MUNICIPAL RESERVES

- (1) Except as determined otherwise by the Council or an Authorised or Delegated Officer, all Municipal Reserves are open to the public from sunrise to sunset free of charge on any day.
- (2) The Council or an Authorised or Delegated Officer may, in the case of any Municipal Reserve, set aside days and times upon which charges or entrance fees may be made for the use of the Municipal Reserve.
- (3) The Council or an Authorised or Delegated Officer may restrict access to any part of a Municipal Reserve, whether for temporary works, for long or short-term lease use or any other purpose, and public access to such

restricted areas may be non-existent, limited by condition or subject to a fee or donation.

- (4) A Person must not enter any Municipal Reserve, whether open to the public or subject to restricted access, other than via designated access points (where applicable), during hours of opening and subject to any conditions, fee or donation imposed, unless directed otherwise by a member of Council staff or authorised contractor in the course of their employment.

Penalty: 10 Penalty Units

76. CAMPING PROHIBITED ON COUNCIL LAND

A Person must not camp on Council Land in a tent, caravan, campervan or other temporary or makeshift structure unless such Person is within a licensed caravan park or an area determined to be available for camping purposes by the Council.

Penalty: 10 Penalty Units.

(Camping on Private Property may be permitted, subject to a Permit: see Clause 33. Camping on Private Land.)

77. LIGHTING FIRES

- (1) A Person must not, without a Permit, light or cause to be lit any fire on or in any Municipal Place or Municipal Reserve.

Penalty: 20 Penalty Units

- (2) A Person must not, without a Permit, use or congregate around a fire which has been lit on or in any Municipal Place or Municipal Reserve.

Penalty: 20 Penalty Units

- (3) A Person who lit or caused to be lit any fire, or a Person who assisted in or has been party to the preparation for the lighting of a fire by another on or in a Municipal Place or Municipal Reserve, must not allow that fire to remain alight.

Penalty: 20 Penalty Units

- (4) A member of Council staff or a Person contracted or authorised by the Council for the purpose may, without a Permit, undertake controlled burning-off as part of normal scheduled parks maintenance on any Council Land.

Guidelines for granting Permits for Lighting Fires on Municipal Reserves under this clause are the same Guidelines used for determining whether to issue a Permit for the Use of Municipal Reserve under Clause 73. Use of a Municipal Reserve.

78. FILMING ON COUNCIL LAND

- (1) A Person must not, without a Permit, undertake any Filming on any Council Land where the Filming is for any commercial purpose and/or television broadcasting purpose.

Penalty: 20 Penalty Units

- (2) In addition to the requirement to obtain a Permit for Filming on any Council Land, a Permit-holder must comply with any policy or protocol adopted by the Council and relevant to that activity.

79. PARKING ON MUNICIPAL RESERVES

- (1) A Person must not, without a Use of Municipal Reserves Permit, park any motor car, motor cycle or other motor vehicle on any part of any Municipal Reserve other than in any parking area set aside for that purpose by the Council or agreed to by the Council or an Authorised or Delegated Officer.

Penalty: 5 Penalty Units

- (2) Sub-clause (1) does not include any employee or contractor of the Council acting in the course of his or her duties.

Guidelines for the Use of Municipal Reserves Permit (see Cl.73), as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

80. RIDING ANIMALS ON COUNCIL LAND

- (1) A Person must not, without a Permit or unless the Person is a member of the Victoria Police acting in the course of his or her duties, ride or lead a horse, camel or any other mountable Animal or cause or authorise another Person to ride or lead such an Animal upon any Council Land.

Penalty: 10 Penalty Units

- (2) An Authorised or Delegated Officer may issue a Permit for a horse or mountable Animal to be ridden or led upon Council Land where it is reasonably necessary for this to take place and there is no reasonable and safe alternative.
- (3) A Permit issued by the Authorised or Delegated Officer may contain any conditions that the Authorised or Delegated Officer considers necessary.

Guidelines for the issue of this Permit are the same as for the Use of Municipal Reserves Permit (see Cl.73), as determined by the Council from time to time, are incorporated in Schedule 1 of this local law.

81. USE OF WHEELED NON-MOTORISED RECREATIONAL DEVICES & WHEELED CHILD'S TOYS

- (1) The Council may designate areas in which Wheeled Non-Motorised Recreational Devices and/or Wheeled Child's Toys must not be used.

- (2) If the Council designates areas in which Wheeled Non-Motorised Recreational Devices and/or Wheeled Child's Toys must not be used, it must cause signs to be erected in or on the areas designated by it, clearly indicating the location and extent of the area in which Wheeled Non-Motorised Recreational Devices or Wheeled Child's Toys (as the case may be) must not be used.
- (3) A Person must not use a Wheeled Non-Motorised Recreational Device and/or Wheeled Child's Toy in an area designated by the Council as an area in which the use of such is prohibited.

Penalty: 10 Penalty Units

- (4) Where the Council fails to erect and maintain signs as required under sub-clause (2), no Person may be prosecuted for an offence against sub-clause (3).

82. USE IN NON-DESIGNATED AREAS

- (1) Where any Person continues to use a Wheeled Non-Motorised Recreational Device or Wheeled Child's Toy in contravention of this clause 81 after an Authorised Officer has issued a warning to the user, the Wheeled Non-Motorised Recreational Device or Wheeled Child's Toy (as the case may be) may be removed by an Authorised Officer and impounded.
- (2) When a Wheeled Non-Motorised Recreational Device or Wheeled Child's Toy has been impounded, there must be compliance with the provisions of clause 15.

83. CONTROL OF BATHING BOXES

- (1) A Person must not erect, place, establish, maintain or keep or cause to be placed, erected, established, maintained or kept in a Municipal Reserve any Bathing Box unless such Person is the holder of a licence from the Council.

Penalty: 20 Penalty Units

- (2) Any licence for a Bathing Box expires at 30 September next following its issue.
- (3) A licence may be refused to any Person who is not a bona fide owner or occupier of a Dwelling within the Municipal District.
- (4) The holder of any licence must pay the fee fixed by the Council in every year by the date determined by the Council.

Guidelines for the issue or transfer of Bathing Box Licences, as determined by the Council from time to time, are incorporated in this Local Law in Schedule 1.

COUNCIL BUILDINGS

(Note: Local laws controlling Municipal Places (ccl.69 -72) also apply to Municipal Buildings.)

84. BEHAVIOUR IN A MUNICIPAL BUILDING - PROHIBITIONS

Council's Municipal Buildings exist for the provision of a of services to the public, as places of work for employees and contractors of Council, as meeting places for elected Councillors and the community, and for the general enjoyment, comfort and amenity of the community.

A Person must not, while in a Municipal Building, behave in a manner that endangers others or unreasonably interferes with the quiet enjoyment of the Municipal Building by any other Person.

Penalty: 10 Penalty Units

Guidelines for determining whether behaviour in a municipal building is an offence, as determined by the Council from time to time, are incorporated in this Local Law in Schedule 1.

85. AVAILABILITY AND HIRE

- (1) A Person must not organise or undertake any event in a Municipal Building without the consent of the Council.

Penalty: 10 Penalty Units

- (2) During any period for which a Municipal Building or any part of it has been hired out, the Manager may refuse admission to it to any Person who is not connected with the hiring purpose.

PART 10 - ENFORCEMENT AND PENALTIES

86. OFFENCES

- (1) Where any provision in this Local Law prohibits any act or thing, any Person who contravenes such provision is guilty of an offence.
- (2) Where any provision in this Local Law prohibits any act or thing between specified hours of the day or night or during specified months of the year or on certain days or in or at specified locations or specified parts of those locations, any Person who contravenes such provision is guilty of an offence.
- (3) Where any provision in this Local Law requires that a Person obtain a Permit before engaging in a particular activity, that Person is guilty of an offence if that Person engages in that activity without a Permit authorising that activity (unless the Council in its discretion has granted an exemption from, or waived the requirement for a Permit).

Penalty: 20 Penalty Units

- (4) Where any Permit, or exemption from a Permit, issued under this Local Law contains conditions any Person who contravenes or fails to comply with such a condition is guilty of an offence.

Penalty: 20 Penalty Units

- (5) Where any provision in this Local Law requires an act or thing to be done, any Person who is required to do the act or thing but does not do it contravenes such provision is guilty of an offence.
- (6) Any Person who is guilty of an offence against this Local Law is liable to the penalty indicated in respect of that offence, or if no such penalty is indicted, a penalty of:
 - (a) five (5) Penalty Units for a first offence; and
 - (b) ten (10) Penalty Units for any second or subsequent offence.

87. PENALTIES

Schedule 5 to this Local Law sets out penalties for Infringement Notice purposes which may be issued as an alternative to prosecution in respect of non-compliance with this Local Law where the Council or an Authorised or Delegated Officer determines to proceed by Infringement Notice.

88. INFRINGEMENT NOTICES & APPEALS UNDER LOCAL LAWS

- (1) An Authorised or Delegated Officer may serve an Infringement Notice or any other notice under this Local Law on a Person who has committed an offence requiring the Person:
 - (a) in the case of an Infringement notice, to pay the penalty (or comply with other conditions) for that offence within no less than 28 days of the issue of an Infringement Notice; or
 - (b) in the case of any other notice, to comply with the other conditions within any other nominated period.
- (2) If the Infringement Notice or any other notice is not withdrawn and the Person either pays to the Council the amount referred to in the Infringement Notice within the period of 28 days or such further period as the Council or an Authorised Officer may allow, or complies with the conditions of any other Notice, no conviction will be recorded against that Person for the alleged infringement.
- (3) If a Person issued with an Infringement Notice (or any other Notice under the Local Law) makes a written representation, within 28 days of the issue of an Infringement Notice or other Notice, to the Council, the Chief Executive Officer, a Senior Officer or to any other member of Council's staff, the representation must be brought to the attention of an Authorised or Delegated Appeals Officer.
- (4) An Authorised or Delegated Appeals Officer who is separate from the Officer issuing the Infringement Notice or other Notice, must consider any written representations and any other relevant information and must consider and decide upon any such material within 28 days of the representations concerning the issue of an Infringement Notice or other Notice being received by the Council.
- (5) Subject to clause 11 the decision of the Authorised or Delegated Appeals Officer (whichever has the matter referred to him or her on any representations received) will be final.
- (6) The Council or an Authorised or Delegated Officer may at any time withdraw an Infringement Notice or other Notice either as a result of consideration of any representations made or with a view to prosecuting for an offence.
- (7) Where an Infringement Notice is withdrawn, the Person upon whom it was served is entitled to a refund of any payment that has already been made by that Person on the Infringement Notice.
- (8) If the penalty referred to in an Infringement Notice has been paid within 28 days of its issue and no representation has been received by the Council or its officers or staff, no decision may be made to withdraw the Infringement Notice and prosecute the offence after the expiry of 28 days from the issue of the Infringement Notice.

- (9) Any withdrawal of an Infringement Notice or any other notice under this Local Law may be served in accordance with section 234 of the Act.
- (10) If the Person fails to comply with required conditions contained in any Notice other than an Infringement Notice, an Authorised or Delegated Officer may issue an Infringement Notice for the failure to so comply and also, if the circumstances warrant, for the original infringement. All sub-clauses in this clause applying to Infringement Notices then apply to those Infringement Notices.
- (11) In the event of the failure of a Person served with an Infringement Notice to pay the amount specified within 28 days of the issue of the notice or such further time as the Council or an Authorised or Delegated Officer may permit, the Council or the Authorised or Delegated Officer may pursue the matter by prosecuting for an offence.
- (12) Any Person served with an Infringement Notice is entitled to disregard the notice and defend the prosecution in Court.
- (13) All Infringement Notices whether issued under the *Local Government Act 1989* or some other empowering legislation are covered by the processes and procedures of the *Infringements Act 2006*, except that Infringement Notices issued under Local Laws made pursuant to powers from the *Local Government Act 1989*, may not be lodged with the Infringements Court. This means the penalties imposed by such Infringement Notices are enforced directly by prosecution in the Magistrates' Court.
- (14) Any Person served with an Infringement Notice should be notified on that Infringement Notice whether the power exercised to issue the Infringement Notice is derived from the Council's Local Laws (and thereby the *Local Government Act 1989*), or from some other empowering legislation, in which latter case Council has the additional avenue to enforce penalties by lodgement of the Infringement Notice with the Infringement Court.
- (15) The provisions of this clause 88 are to be read subject to the *Infringements Act 2006*.

89. DELEGATION

In accordance with section 114 of the Act, the Council:

- (1) delegates to the Chief Executive Officer, each Senior Officer and to any Person for the time being acting for such Persons all the powers, discretions, authorities and considerations of the Council under this Local Law including (but not limited to) the powers, discretions and authority, subject to any Guidelines and Council Policies incorporated in the Local Law, to issue or refuse Permits, fix conditions and durations relevant to such Permits, cancel Permits, require additional information, apply guidelines and policies of the Council, consider appeals and, waive the need

for any Permit or waive or fix or reduce any fee or charge or to do any act, matter or thing necessary or incidental to the performance or exercise of any function or power by the Council;

- (2) delegates to the Municipal Environmental Health Officer and any Authorised or Delegated Officer and to any Person for the time being acting for these Persons the power, subject to any Guidelines and Council Policies incorporated in the Local Law, to issue or refuse Permits and apply conditions, exercise discretions, require additional information and apply guidelines or policies of the Council in respect of Permit applications, exemptions and waivers; and
- (3) delegates to each Authorised Officer the powers, discretions and authorities to act on behalf of the Council in exercising any discretion of the Council in accordance with the guidelines specified in this Local Law, the issue of Infringement Notices and the undertaking of prosecutions.

SCHEDULE 1 – DISCRETION GUIDELINES

Local Law No. 2 ‘Neighbourhood Amenity’

SCHEDULE 1 - DISCRETION GUIDELINES

Note that the Guidelines in this Schedule have the same numbers (and titles) as their equivalent clauses in the Local Law. As a result, the Guidelines are numbered in ascending order, but have gaps in their sequential numbering equivalent to the local laws that have no guidelines.

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12. POWER OF AUTHORISED OR DELEGATED OFFICER TO DIRECT: NOTICE TO COMPLY

These Guidelines as determined by Council from time to time are incorporated in this local law for Notice to Comply.

When considering whether to issue a Notice to Comply, an Authorised or Delegated Officer must have regard to the following guidelines:

- (1) A Notice to Comply must state:
 - (a) the time within which the breach (to which the Notice to Comply relates) must be remedied;
 - (b) any consequence or penalty that may apply if the person served with a Notice to Comply fails to remedy a situation in accordance with the Notice to Comply;
 - (c) the following procedural matters:
 - (i) whether the power exercised to issue the Notice to Comply is derived from Council's Local Laws (and thereby *the Local Government Act 1989*), in which case Council's decision is final on any appeal about any matter or penalty related to that Notice to Comply, or
 - (ii) or whether the power is derived from some other empowering legislation, in which case there is be a right of judicial review of any appeal decision by Council on any matter or penalty related to that Notice to Comply.
- (2) The time specified in a Notice to Comply must be reasonable in the circumstances, and what will be reasonable will vary depending on the matters to be remedied but should take into account, if applicable:
 - (a) the amount of work to be performed in order to observe the Notice;
 - (b) the degree of difficulty;
 - (c) the availability of necessary materials or other necessary items;
 - (d) climatic conditions;
 - (e) the degree of risk or potential risk; and
 - (f) any other relevant factor that the Authorised or Delegated Officer reasonably believes is relevant in the circumstances.

Appeal processes which apply to any Infringement Notices issued under this Local Law also apply to Notices to Comply. See Part 10 Enforcement & Penalties: cl.88. Infringement Notices & Appeals Under Local Laws.

14. URGENT CIRCUMSTANCES

These Guidelines as determined by Council from time to time are incorporated in this local law for Urgent Circumstances.

When considering whether action to remedy Urgent Circumstances exists, an Authorised or Delegated Officer must apply the following guidelines:

What is regarded as urgent circumstances and whether action should be taken will depend on the circumstances of each situation. Factors to be taken into consideration may include:

- (1) Where:
 - (a) the person by whose default, permission or sufferance the situation has arisen; or
 - (b) the owner or the occupier of the premises or property affected; is not known or cannot be found.
- (2) The right of directly concerned persons to be heard, whether owner or occupier or some other person, provided in the reasonable belief of the Authorised or Delegated Officer this will not cause unacceptable delay in rectifying or reducing an urgent risk.
- (3) Where, in the opinion of the Authorised Officer, there exists an urgent risk or threat to:
 - (a) public health;
 - (b) public safety;
 - (c) the environment; or
 - (d) animal welfare.
- (4) Whether the need to take action is sufficiently urgent, and that the time involved or difficulties associated with the serving of a written warning or Notice to Comply may place a person, or any animal, property or thing at risk or in danger;
- (5) wherever practicable, a Senior Officer is given prior notice of the proposed action; and
- (6) details of the failure and remedying action are, as soon as possible, forwarded to the person on whose behalf the action was taken.
- (7) The urgent action taken by an Authorised or Delegated Officer must not extend beyond what is necessary to cause the immediate abatement of or to minimise the risk or danger involved.
- (8) An Authorised or Delegated Officer who takes urgent action must ensure that, as soon as practicable, a report of the action taken is submitted to the Chief Executive Officer.

15. POWER OF AUTHORISED OR DELEGATED OFFICER TO IMPOUND

These Guidelines for the exercise of the Power to Impound as determined by Council from time to time are incorporated in this local law.

When considering and/or exercising the Power to Impound (and dispose of), an Authorised or Delegated Officer must have regard to the following guidelines:

- (1) As soon as possible after the impounding and where it is practicable to do so, the Authorised Officer must serve a Notice of Impounding, in a form as amended from time to time and incorporated in Schedule 3, on the owner or persons responsible for the animal or thing which has been impounded setting out the fees and charges payable and time by which the animal or thing must be retrieved.

- (2) If an impounded animal or thing is not retrieved within the time specified in the Notice of Impounding, an Authorised Officer may take action to dispose of the impounded animal or thing.
- (3) If the identity or whereabouts of the owner or person responsible for the impounded animal or thing is unknown, the Authorised Officer must take reasonable steps to ascertain the identity or whereabouts of that person and may proceed to dispose of the impounded item in accordance with paragraph (4) once he or she is satisfied that all reasonable efforts have been made to contact the owner or person responsible for the impounded animal or thing.
- (4) In disposing of an impounded animal or thing an Authorised or Delegated Officer will have regard to the following:

Council's policy for the disposal of unrecovered impounded items is as follows:

- (a) Where the item is declared by the Authorised or Delegated Officer to have no saleable value, it may be disposed of in the most economical way, as determined by the Authorised or Delegated Officer.
- (b) Where the item is declared by the Authorised or Delegated Officer to have some saleable value, the item may be disposed of by tender, public auction or private sale, or failing sale may be given away or disposed of at the discretion of that Authorised or Delegated Officer.
- (c) When choosing which method of disposal by sale, the Authorised or Delegated Officer will consider the following matters:
 - (i) If the total estimated value of the impounded animal or thing is unknown, expert advice should be sought to obtain an estimate of its value;
 - (ii) If the estimated value exceeds \$ 2,000, disposal should be by way of tender or public auction first, and only by way of private sale if the animal or thing fails to sell by tender or public auction.
 - (iii) Sale of impounded animals or things by any means and of any value must be fully documented and reported to the Chief Executive Officer by the Authorised or Delegated Officer.
- (5) Any proceeds from the disposal of an impounded animal or thing under this Local Law will be paid to the owner or the person who, in the opinion of the Council, appears to be authorised to receive the money less the reasonable costs and expenses incurred by the Council in the administration of this clause.
- (6) In the event that the person described in paragraph (5) cannot be identified or located within six (6) months of serving the Notice of Impounding, any proceeds described in that paragraph cease to be payable and may be retained for municipal purposes.

Appeal processes which apply to any Infringement Notices issued under this Local Law also apply to Notices to Impound. See Part 10 Enforcement & Penalties: cl.88. Infringement Notices & Appeals Under Local Laws.

17. PERMITS - GENERAL GUIDELINES

These Guidelines as determined by Council from time to time are incorporated in this local law in relation to permits.

- (1) In relation to the exercise of the discretion under this Local Law for the processing of permit applications and the issuing of permits, an Authorised or Delegated Officer shall take into account all of the following factors, considerations and circumstances, as well as any other matters in any other guidelines specific to the type of permit being sought:
 - (a) whether additional information is required before dealing with an application;
 - (b) whether the appropriate fee or charge has been paid or made subject to an approved payment system, which must occur before the application can be processed;
 - (c) whether or not public notice, or written notice to specified adjoining landholders or other parties, of the permit application inviting submissions, should have been or will be made;
 - (d) whether the applicant is a Service Authority or a person employed by or acting on behalf of a Service Authority that is not required to obtain a Permit in respect of activities for the purposes of the Service Authority, although is nevertheless required to notify the Council of any activity prior to its commencement;
 - (e) whether the applicant has been exempted by Council from a requiring a permit, although this exemption may be subject to certain conditions being met and maintained during the term of an exemption and the exemption may be modified or cancelled in the same way as a permit.
 - (f) whether the rectification, remedying or restoration of a situation or circumstance is required prior to issuing or as a condition of any permit;
 - (g) before issuing a correction to a Permit, whether the value, importance and impact of any correction warrants that correction when compared with those works already undertaken or expenses already incurred under the existing permit that might be adversely impacted in time lost and/or new expense to the Permit Holder by the issue of the correction to the Permit
 - (h) whether the consent of the owner has been obtained where the applicant is not the owner of the property for which the Permit is sought;
 - (i) whether this application is or should be conditional upon the granting of some other Permit which may be required by the Council whether under this Local Law or otherwise;
 - (j) whether the Permit should be subject to the happening of an event;
 - (k) in what way a time limit should be applied by specifying the duration, commencement or completion date; and
 - (l) any other matter which the Council officer reasonably believes in the circumstances is relevant to the exercise of this discretion.

Standard permit conditions, in addition to conditions applicable to any specific type of Permit, apply to all Permits issued by Bayside City Council and as amended from time to time are incorporated in Schedule 3 of this local law.

20. EXEMPTION FROM PERMIT OR PERMIT FEE

These Guidelines as determined by Council from time to time are incorporated in this local law for Permit Exemptions and Permit Fee Waivers.

Council's Permit system and associated fee structure is designed to ensure sound fair and accountable management of Council's assets and responsibilities. Council's fee structures already make allowance for community users. Standard Permit Conditions inform Permit holders of their rights of appeal.

Therefore, in the serious matter of considering whether to recommend a Permit Exemption or Fee Waiver, an Authorised or Delegated Officer must have regard to the following guidelines:

- (1) Only a Director, the CEO or Council itself may authorise an Exemption from a Permit or a Fee Waiver, therefore any recommendation for such an exemption or fee waiver must be made in writing to the responsible Director, CEO or as a Report to Council.
- (2) Each request for an exemption from a Permit or Fee Waiver must be treated on its individual merits considering the factors set out below, but in the absence of clear or strong justification, should not be recommended.
- (3) All of the following matters are to be taken into consideration:
 - (a) Why do the normal Permit and its relevant Fee structure not work in this case and can these matters be resolved?
 - (b) Is the proposed activity or other behaviour of such a kind as to be not contemplated by or capable of being encompassed within the standard relevant Permit or Permit Fee Structure?
 - (c) Is this matter better dealt with under section 14 of this Local Law Power of Authorised Officers to Act in Urgent Circumstances, or by a Notice to Comply under section 12, or by reference to Commercial Services to negotiate a long-term Council Lease agreement?
 - (d) Would an Exemption from a Permit or Waiver of a Permit Fee seriously increase public risk or Council liability from the proposed activity or behaviour?
 - (e) What overriding Council policy or public good is involved to recommend a Permit Exemption and/or Permit Fee Waiver, which will be seriously inhibited or prevented by the required Permit or relevant fee? For example, a genuine scientific research project being undertaken on behalf of recognised research organisation such as a University, Government Department or CSIRO.
 - (f) How will the community of Bayside benefit directly or indirectly from the planned activity, which will be seriously inhibited or prevented by the required Permit or relevant fee?
 - (g) Are there overriding special circumstances related to an individual's or a group's personal disadvantage that would consequently be unfairly or unjustly impacted by the normal required Permit or relevant fee?
 - (h) Would issuing this Permit Exemption and or Permit Fee Waiver set a public policy precedent for similar applications, in which case, should any recommendation be subject to Council approval?

- (i) What are the appropriate conditions, limitations (including time limitations and public liability insurance) which should be included in any letter of Exemption from a Permit or Waiver of Permit Fee?
- (j) Has the Applicant party been warned that Permit Exemptions and Permit Fee Waivers may be subject to conditions and may be cancelled or varied at any time if those conditions are broken?

YOUR PROPERTY, TREES AND PETS

YOUR PROPERTY

25. ROAD NAMES: REQUIREMENTS FOR SELECTING A NAME

These Guidelines as determined by Council from time to time are incorporated in this local law for determining street names and should be read in conjunction with Council's Naming of Streets and Reserves Policy incorporated in Schedule 2.

- (1) In determining whether to allow a person to apply a name to a Road or whether to give a name to a Road or whether to change the name of a Road, the Council must take into account:
 - (a) whether the name is likely to be confused with the name of another Road in the area;
 - (b) whether the name would duplicate the name of another separate Road in the same post code area;
 - (c) whether a loop Road is named in such a way that two separate intersections involve Roads with the same two names or similar names;
 - (d) whether the same name would apply to separate lengths of Road which are separated by physical obstruction to vehicular travel, within the same postcode area; and
 - (e) Council's Naming of Streets and Reserves Policy incorporated in Schedule 2.
- (2) In a case described in sub-clause (1)(b), the Council must also take into account the principle that the same first part of the name, but with a different second part (eg. street, avenue etc) may be used in the same postcode area, where one Road leads directly to another.

26. PROPERTY NUMBERS: SIZE, LOCATION AND VISIBILITY

These Guidelines as determined by Council from time to time are incorporated in this local law for determining the sufficiency of size location and visibility of property numbers.

In determining whether a property number meets the requirements of Property Numbers under sub-clause (2), the Council or an Authorised or Delegated Officer must take into account the following guidelines:

- (1) the size of the property number;
- (2) the accuracy and completeness of the property number;
- (3) the state of repair of the property number having regard to its visibility;
- (4) the colour of the property number;
- (5) the legibility of the property number from the road immediately adjacent to the front boundary of the property having regard to all or any of:
 - (a) its size, accuracy and completeness;
 - (b) its state of repair;
 - (c) its colour;
 - (d) its distinction from its background; and

- (e) its freedom from obstruction; and
- (6) Council's Street Numbering Guidelines as incorporated in Schedule 2.
- (7) any other matter the Authorised or Delegated Officer reasonably believes is relevant.

29. DOMESTIC WASTE INCLUDING RECYCLABLE AND HARD RUBBISH COLLECTIONS

These Guidelines as determined by Council from time to time are incorporated in this local law to determine whether the occupier of every dwelling or other land where the Council provides a garbage service is compliant with Council's domestic waste, recyclable and hard rubbish collection services.

In determining whether occupiers of properties provided with a domestic waste service by Council are complying with Council's requirements, an Authorised or Delegated Officer must follow these guidelines.

(1) Use of Bins

All domestic waste must be placed in rubbish bins ready for collection except that rubbish bins awaiting collection must not be placed on the nature strip, or any other place of collection outside the property boundary, any more than 24 hours prior to the collection day specified by Council from time to time.

(2) Storage of Bins

All domestic waste bins must be stored and maintained in a clean and sanitary condition on the property to which they have been issued.

(3) Construction of Bins

The bins used should be in accordance with the Council's policy and procedures as determined by the Council from time to time.

(4) Prohibited Waste

The following material is prohibited from being placed in rubbish bins for collection by the Council:

- (a) slops, liquid waste, harmful or offensive material;
- (b) dirt, dust, or other matter from any vacuum cleaner, ashes, hair or other similar matter or moist refuse, unless it has been securely wrapped in paper or some other impermeable cover or container to prevent its escape;
- (c) ashes or other like matter unless they have been mixed with water to form a consistency of a stiff paste before being wrapped and placed in the bin;
- (d) glass or other sharp objects unless they are properly contained or wrapped in such a way as to render them harmless and inoffensive;
- (e) oil, paint, solvents, acids or similar substance or any other substance which may damage the bin or reduce its strength or effectiveness;
- (f) trade wastes of any kind; and
- (g) any other matter identified by the Council by notice to occupiers of a property.

(5) Recycling and Hard Rubbish Collection

- (a) Where the Council has notified occupiers of properties of a recycling or hard rubbish collection, or where an on-demand recycling or hard rubbish collection may operate, the material to be recycled and the hard rubbish to be collected must be left for collection in accordance with the Council's instructions.
 - (b) Any materials placed on nature strip or road for recyclable material or hard rubbish collection in accordance with any instruction determined by the Council, must not be placed there earlier than 7 days prior to the nominated collection date.
 - (c) Any materials placed on nature strip or road for Recyclable Material or Hard Rubbish collection in accordance with any instruction determined by the Council but not collected, regardless of the reason, must be removed no later than 7 days after the nominated collection date.
- (6) Removal of Bins and any Spillage
- Once the waste has been collected by the Council, the empty bins must be returned to the property by the owner or occupier and any waste which has spilled onto the Road, nature-strip or surrounding area must be removed by the owner or occupier responsible for the bin within twenty-four (24) hours of collection.
- (7) Cleanliness
- Bins must be maintained in a clean and tidy manner so as not to cause any health threat or be offensive to any person.

31. BURNING OF MATERIALS - GUIDELINES

In relation to the burning of materials in the open, these Guidelines as determined by Council from time to time, are incorporated in this local law for determining whether an offence has been committed and for the issue of a permit.

- (1) When determining whether an offence has occurred in relation to the burning of offensive materials in the open, Council or an Authorised or Delegated Officer must apply the following guidelines:
 - (a) Offensive materials that may not be burnt at any time include, but are not limited to, any substance containing any:
 - (i) manufactured chemical;
 - (ii) rubber or plastic;
 - (iii) petroleum, oil or petroleum-based product;
 - (iv) paint or receptacle which contains or which contained paint;
 - (v) food waste, fish or other offensive or noxious matter; or
 - (vi) any other material an Authorised or Delegated Officer reasonably believes is an offensive material.
 - (b) Offensive emissions of smoke and odour from outdoor burning do not include:
 - (i) the normal odour of food cooking on a permanent or portable barbeque; or
 - (ii) any emission of offensive smoke or odour from burning materials that the person responsible immediately extinguishes or otherwise prevents

from continuing to enter any neighbouring property, and which does not recur within 14 days.

- (2) When determining whether to grant a Permit for burning materials in the open, the Council or its Authorised or Delegated Officer must have regard to the additional guidelines set out below:
- (a) the location of the proposed outdoor burning in proximity to adjoining land;
 - (b) the land-use of the applicant's land and that of adjoining allotments where the burning is to take place;
 - (c) any alternative means of disposal;
 - (d) any adequate means of supervising the burning;
 - (e) any adequate means of controlling and extinguishing the spread of fire;
 - (f) the degree to which the material to be burnt is clean and dry or may produce offensive, toxic or unpleasant smells or smoke;
 - (g) the purpose stated for the burning and available alternative disposal methods;
 - (h) any relevant policies of the Environment Protection Authority; and
 - (i) any other matter an Authorised or Delegated Officer reasonably believes to be relevant to the circumstances of the application.

33. CAMPING ON PRIVATE PROPERTY

These Guidelines as determined by Council from time to time are incorporated in this local law for determining whether to grant a Permit for Camping on Private Property.

In determining whether to grant a Permit to allow camping in an area which is Private Property and is not a licensed caravan park and has not been declared by the Council to be a Camping Area, the Council or an Authorised or Delegated Officer must take into account the following guidelines:-

- (1) the location of the land;
- (2) the land-use of the applicant's land and that of adjoining allotments;
- (3) the suitability of the land for camping;
- (4) the number of tents or other structures to be located on the land;
- (5) the length of time the tents and other structures will be erected on the land;
- (6) the availability of sanitary facilities to the land;
- (7) the likely damage to be caused; and
- (8) any other matter the Authorised or Delegated Officer reasonably believes is relevant to the application.

34. AUDIBLE INTRUDER ALARMS - GUIDELINES

These Guidelines as determined by Council from time to time are incorporated in this local law for Audible Intruder Alarms.

When considering whether an offence has occurred in relation to an audible intruder alarm, Council or an Authorised or Delegated Officer will apply the following guidelines:

- (1) Any form of intruder alarm which emits a noise audible beyond the boundary of the Property on which it is installed is in breach of this local law unless the alarm is so constructed or regulated to ensure that:
 - (a) whenever a detection device is activated the Audible Intruder Alarm is automatically rendered inaudible beyond the boundary of the Urban Premises within five (5) minutes of being activated; and
 - (b) the Audible Intruder Alarm cannot reactivate following the operation of that single detection device until the alarm condition has been manually reset.
- (2) Despite Guideline (1) above, an Audible Intruder Alarm may operate for a further period of five (5) minutes following the cessation of the Alarm in accordance with Guideline (1)(a), provided the alarm is activated by a different detection device.
- (3) Where the Council receives any complaint that an Audible Intruder Alarm operates on any Property in a way which does not comply with Guideline (1)(a) (whether modified by sub-clause (2) or not), it may investigate the complaint.
- (4) If the investigating officer confirms a failure to comply with Guideline (1), a Notice to Comply may be issued to the owner or occupier requiring that the Audible Intruder Alarm be:
 - (a) adjusted to comply with this Guideline;
 - (b) replaced with a complying Audible Intruder Alarm;
 - (c) switched off or disconnected.
- (5) If an Authorised or Delegated officer determines that Urgent Circumstances exist under Clause 14, such as a danger to public health from ongoing or uncontrolled repeated loud noise at night, that Officer may take urgent action to ensure that the Audible Intruder Alarm be:
 - (a) adjusted to comply with this Guideline; or
 - (b) switched off or disconnected.

35. SHIPPING CONTAINERS

These Guidelines as determined by Council from time to time are incorporated in this local law for issuing a permit for the storage, repair and/or use of a Shipping Container on Private Property.

In determining whether to grant a permit for a Shipping Container on Private Property, an Authorised or Delegated Officer must follow these guidelines:

- (1) The applicant must pay the entire fee for the permit prior to the processing of the application or the placement of the container.
- (2) The permit for a Shipping Container must be time limited and will be for the number of days or to the date entered on the Permit, but will not be for a period of less than 8 days.
- (3) If the Authorised or Delegated Officer reasonably believes the Shipping Container on private property will create a traffic hazard or obstruction, or other danger to the public, the applicant may be required to take out public liability insurance (minimum \$10 million) and prior to the issue of the permit or the placement of the

- container, and Council must be provided with a Certificate of Currency of Public Liability Insurance for the application.
- (4) The Shipping Container must not be placed on Council land (including on roads, kerbs, footpaths or naturestrips).
 - (5) The application or permit should inform the applicant of the safety requirements for the Shipping Container: that it is the permit holder's responsibility to ensure the container does not represent an unacceptable risk to the health and safety of the public. Any concerns the Authorised or Delegated Officer may have about safety must be satisfactorily resolved prior to issuing the permit.
 - (6) The applicant must not intend to use or actually use the container as a permanent structure.
 - (7) Any damage to Council property caused by the placement or removal of the Shipping Container, including pavement, nature strip and services, is to be reinstated by the permit holder. If reinstatement is not completed, works will be undertaken by the Council at the permit holder's expense.
 - (8) Whilst the Container must not be placed on roads and must be placed on private property, it must nevertheless not obstruct motorists' vision or line of sight at intersections while pits, valve covers and hydrants must remain accessible.
 - (9) If the Shipping Container on private property nevertheless constitutes a traffic hazard or obstruction, the container must be mounted with yellow reflective tape on the corners of the containers, or lights which must be illuminated between sunset and sunrise and visible from a distance of 200 metres to prevent a hazard to the public.

Permit Conditions for Shipping Containers are incorporated in Schedule 3.

YOUR TREES

36. TREE PROTECTION- GUIDELINES

These Guidelines as determined by Council from time to time are incorporated in this local law for determining whether a tree-protection offence has occurred and/or whether to issue a permit for removal or pruning of a tree.

In determining whether a tree is a protected under this local law, whether a tree-protection offence has occurred and/or whether to issue a permit for removal or pruning of a tree, the Authorised or Delegated Council Officer must follow these guidelines:

- (1) When measuring whether or not the single or combined tree trunk circumference is 155 centimetres or more at one metre above ground level, the instrument used for measuring the trunk circumference or combined trunk circumference should be placed at a 90 degree angle to the growth direction of the trunk;
- (2) Any tree is exempt from protection if it is of a species which is a declared noxious weed species, as are proclaimed under the *Catchment and Land Protection Act 1994* and listed in the *Schedule of the Catchment and Land Protection Regulations 2002*, as determined by the Department of Primary Industries from time to time and incorporated in Schedule 2;

- (3) Any Permit granted may contain a condition stipulating that upon removal of a tree one or more new trees (whether or not of a specified type) must be planted. A planting location may also be specified;
- (4) In an emergency, any tree that is an immediate threat to life and or property may be removed without a permit.
- (5) A permit for pruning is not required if the pruning is to be carried out by a qualified arborist under Australian Standard No.4373. 2007 *Pruning of Amenity Trees* who certifies his work, including photographs before and after work.

Australian Standard No.4373.2007 Pruning of Amenity Trees as it occurs from time to time is hereby incorporated by reference into this Local Law.

37. TREES PLANTS NOT TO OBSTRUCT OR OBSCURE

These Guidelines as determined by Council from time to time are incorporated in this local law for Trees and Plants not to Obstruct or Obscure.

In determining whether to issue a permit for overhanging trees, or whether there has been an infringement related to overhanging trees under this clause, an Authorised or Delegated Officer must have regard to the following Guidelines as to whether the overhanging trees:

- (1) have been pruned to comply with the following requirements:
Canopies shall be lifted to provide the following clearances:
 - Footpaths 2.4 m to lowest foliage or limb;
- (2) obstructs the view between drivers of Vehicles at an intersection;
- (3) obstructs the view between drivers of Vehicles and pedestrians where they come close to each other;
- (4) obscures a Traffic Control Device from the driver of an approaching Vehicle or a pedestrian;
- (5) obscures street lighting; or
- (6) obstructs vehicular traffic; or
- (6) otherwise constitutes a danger to Vehicles or pedestrians or compromises the safe and convenient use of a Road.
- (7) The requirements for a clear view at intersections, pedestrian/vehicle conflict areas and traffic control devices are as follows:
 - (a) The view between vehicles at intersections:
Plants, fences and other obstructions must, wherever practicable, be kept to a maximum height of one (1) metre in the following areas:
 - (i) at signalised intersections
(A triangular area between the corner of each property at the intersection and a line drawn between points 3m back from the intersection.)
 - (ii) at major/minor intersections and roundabouts

(A triangular area in both directions from a minor Road, or to the right only at a roundabout .)

- (b) The view between vehicles and pedestrians:

Where pedestrians are likely to cross a Road or be in close proximity to a Road, plants must be no higher than 600mm above the ground for a distance of two (2) metres from the Road, except that trees with narrow, clean trunks may be planted (subject to any other requirements for safety and visibility), so long as their foliage is no lower than 2.4 metres above the ground.

YOUR PETS

39. KEEPING ANIMALS

These Guidelines as determined from time to time are incorporated in this local law for determining whether to issue a permit to keep animals.

In determining whether to grant a Permit for the keeping of Animals where the number exceeds that determined by the Council as set out clause 39 (1), the Council or an Authorised or Delegated Officer must take into account the following guidelines -

- (1) whether a Planning Scheme Permit Application may be required, such as for boarding or breeding of animals;
- (2) the land-use of the applicant's land and that of adjoining allotments;
- (3) the proximity to adjoining properties;
- (4) the amenity of the area;
- (5) the type and additional numbers of Animals to be kept;
- (6) the likely effects on adjoining owners;
- (7) the adequacy of Animal accommodation; and
- (8) any other matter the Authorised or Delegated Officer reasonably believes is relevant to the application.

40. ANIMAL ACCOMMODATION

These Guidelines as determined by Council from time to time are incorporated in this local law for determining reasonable accommodation for kept animals.

In determining what is reasonable accommodation for kept animals and whether such accommodation is adequately maintained, an Authorised or Delegated Officer must consider the following guidelines.

- (1) whether a Planning Scheme Permit Application may be required, such as for boarding or breeding of animals;
- (2) the type of Animals to be kept and whether those animals are adequately secured within the property boundary;
- (3) the height of the accommodation;
- (4) the location of the accommodation having regard to the amenity of the area;

- (5) the size of the accommodation in terms of its adequacy to house the proposed number and type of Animals;
- (6) the security of the accommodation in terms of the Animals to be housed in it;
- (7) whether all excreta and other waste are removed and/or treated as often as necessary so that they does not cause a nuisance or offensive condition;
- (8) whether all excreta and other waste are stored in a fly and vermin proof receptacle until removed from the premises or otherwise disposed of to the satisfaction of the Municipal Environmental Health Officer;
- (9) whether the ground surrounding the accommodation is drained to the satisfaction of the Municipal Environmental Health Officer;
- (10) whether the area of land within three (3) metres of the area or structure in which the animal is kept free from dry grass, weeds, refuse, rubbish or other material capable of harbouring vermin;
- (11) whether all food, grain or chaff is kept in vermin proof receptacles;
- (12) whether the area where Animals are kept is thoroughly cleaned and maintained at all times in a clean and sanitary manner to the satisfaction of the Municipal Environmental Health Officer; and
- (13) any other matter/issue pertaining to the accommodation that the Authorised or Delegated Officer reasonably believes is relevant.

VEHICLES AND ROADS

43. PLACING BULK RUBBISH CONTAINERS

These Guidelines as determined by Council from time to time are incorporated in this local law for the issuing a permit for bulk rubbish containers.

In determining whether to grant a Permit for the placement of a Bulk Rubbish Container on a Road, an Authorised or Delegated Officer must have regard to the following guidelines:

- (1) whether the placement will obstruct the passage of Vehicles and pedestrians, obscure the view of motorists or present a physical hazard;
- (2) whether the placement will contravene any traffic control signs;
- (3) protection of any Council assets;
- (4) any requirements under the provisions of the *Road Management Act 2004* and any requirements or provisions in the current *Code of Practice for Placement of Waste Bins on Roadsides* (Vic Roads Publication No. 00623) 2001 as amended from time to time;
- (5) the current (and historical) status of the applicants trading account with Council;
- (6) whether a copy of a valid insurance certificate of currency has been provided to Council;
- (7) whether an indemnity/guarantee has been provided to the Council; and
- (8) any other matter Authorised or Delegated Officer reasonably believes is relevant to the application.

See also the following clauses in this local law:

- *Part 7 Business and Builders: 59. Trade Waste and Waste Hoppers.*
- *Part 9 Council Buildings Places: 72. Obstructions on Council Land.*

44. MOTOR BIKES AND MOTORISED RECREATIONAL VEHICLES

These Guidelines as determined by Council from time to time are incorporated in this local law for issuing a permit for the use of a Motor Bike or Motorised Recreational Vehicle.

In determining whether to issue a permit for the use of for the use of a Motor Bike or Motorised Recreational Vehicle under this local law, an Authorised or Delegated Officer must consider the following guidelines.

- (1) the location of the Council Land or Private Property where the vehicle is to be used;
- (2) the land-use of the applicant's land and that of adjoining allotments within a 500 metre radius;
- (3) the suitability of the land for use by Motor Bikes or Motorised Recreational Vehicles (as the case may be);
- (4) the number of vehicles for which the Permit is required;
- (5) the days, times and hours such vehicles are to be used;
- (6) the likely effect on the amenity of the area including noise impacts;

- (7) whether neighbouring properties should be asked to make comment;
- (8) the likely damage which may be caused to the Council Land or any Council Land (as the case may be); and
- (9) any other matter the Authorised or Delegated Officer reasonably believes is relevant to the application.

47. HEAVY OR LONG VEHICLES: PARKING ON A ROAD OR ON PRIVATE PROPERTY OR COUNCIL LAND

These Guidelines as determined by Council from time to time are incorporated in this local law for issuing a permit for Parking a Heavy or Long Vehicle on a Road or Private or Council Owned or Managed Land.

In determining whether to grant a Permit for the parking or storage of a Heavy Vehicle on any road or private or Council owned or managed land for more than one (1) hour, the Council or an Authorised or Delegated Officer must take into account the following guidelines:

- (1) whether the Road is a declared Arterial Road; or
- (2) whether the Road carries less than 5,000 Vehicles per day;
- (3) the width of the road and clearance distance for passing traffic;
- (4) whether the vehicle will obstruct the passage of Vehicles and pedestrians, obscure the view of motorists or present a physical hazard;
- (5) whether the parking will contravene any traffic control devices;
- (6) protection of any Council assets;
- (7) any requirements under the provisions of the Road Management Act 2004;
- (8) whether the Vehicle would be clearly visible to approaching motorists at a safe distance, given the speed and nature of Traffic if left during hours of darkness;
- (9) whether the requirements of regulations regarding Vehicle lighting will be complied with; and
- (10) any other matter the Authorised or Delegated Officer reasonably believes is relevant to the circumstances of the application.

48. HEAVY OR LONG VEHICLES: STORING

These Guidelines as determined by Council from time to time for issuing a permit for Storage of Heavy Vehicles are incorporated in this local law.

In determining whether to grant a Permit for the storing of Heavy Vehicles, an Authorised or Delegated Officer must consider the following guidelines:

- (1) the land-use of the applicant's land and that of adjoining allotments;
- (2) the proximity to adjoining properties;
- (3) the likely effect on adjoining owners;
- (4) the distance from dwellings; and
- (5) any other matter an Authorised or Delegated Officer reasonably believes is relevant to the application.

49. HEAVY VEHICLES: PERMITS FOR USE ON RESTRICTED USE ROADS

These Guidelines as determined by Council from time to time for issuing a permit for use of heavy vehicles on restricted roads are incorporated in this local law.

In determining whether to grant a Permit to use a Road contrary to any sign erected on it, the Council or an Authorised or Delegated Officer must have regard to the following guidelines:

- (1) the amount of the damage likely to be caused to the Road by the Vehicle requiring the permit;
- (2) the type and weight of vehicle;
- (3) the goods to be transported and the weight of those goods;
- (4) alternative Roads which are available;
- (5) the necessity to impose speed limits; and
- (6) any other matter the Authorised or Delegated Officer reasonably believes is relevant to the circumstances of the application.

50. STREET PARTIES & STREET FESTIVALS: PERMITS

These Guidelines as determined by Council from time to time are incorporated in this local law for determining whether to grant a permit for street parties.

In determining whether to grant a Permit for a Street Party, Street Festival or Procession, the Council or an Authorised or Delegated Officer must have regard to the following guidelines:

- (1) whether an application to conduct a Street Party, Street Festival or Procession on any Road has been made at least 21 days before the event is to take place.
- (2) whether the Street Party, Street Festival or Procession is planned for a declared Arterial Road or any other main thoroughfare under the management and control of Vic Roads, requiring prior permission by the Chief Commissioner of Victorian Police and Vic Roads, and whether their requirements have been met including an appropriate traffic detour signing scheme;
- (2) whether the Road can be closed to vehicular traffic, or partly closed with safe and effective separation of vehicular traffic and Street Party, Street Festival or Procession patrons and equipment for the duration of the event;
- (3) whether all owners or occupiers of all properties with any immediate vehicular access via the section of Road to be closed have been advised by letter and given seven (7) days to comment or object or other arrangements to the Council's satisfaction have been put in place to alert relevant owners and occupiers of properties;
- (4) whether a person on behalf of the applicant has been nominated to erect and remove the barriers which close the Road at locations and times specified by the Council or the Authorised or Delegated Officer;
- (5) whether the Footpath on at least one side of the Road can be kept clear of obstructions; and
- (6) any other matter the Authorised or Delegated Officer reasonably believes is relevant to the application.

BUSINESS AND BUILDERS

51. ROADSIDE TRADING OR PERFORMING

These Guidelines as determined by Council from time to time are incorporated in this local law for determining whether to grant a permit for Roadside Trading or Performing (busking).

In determining whether to grant a Permit to allow trading or performing from a Road or to a person on a Road, an Authorised or Delegated Officer must have regard to:

- (1) whether the safety of Road users or the passage of Vehicles will be affected by the placement or performance;
- (2) and:
 - (a) whether Permits required by *Public Health and Wellbeing Act 2008*, *Food Act 1984* or any other legislation have been obtained;
 - (b) whether the activity will disturb, annoy or disrupt adjacent property owners or occupiers;
 - (c) whether the activity will be detrimental to the amenity of the area;
 - (d) the nature and duration of any performance and whether it should be time limited;
 - (e) whether an alternative performance location can be identified to reduce any annoyance or disruption to property owners or occupiers or other persons lawfully using the area;
 - (f) whether audience attracted by a performance may cause traffic, pedestrian or trader disruption;
 - (g) whether other performers will be unfairly impacted or excluded by the location or duration of any permit;
 - (h) whether appropriate arrangements can be made for:
 - waste water disposal;
 - litter and garbage;
 - lighting; and
 - advertising signs;
- (3) whether the consent of Vic Roads has been obtained where the road is an arterial or Vic Roads controlled road;
- (4) whether any indemnity/guarantee has been provided to the Council;
- (5) whether the activity will be detrimental to local businesses in the vicinity; and
- (6) any other matter the Authorised or Delegated Officer reasonably believes is relevant to the application.

57. ADVERTISING SIGNS: ERECTING OR PLACING – GUIDELINES

These Guidelines as determined by Council from time to time are incorporated in this local law for Advertising Signs: Erecting or Placing.

In determining whether to grant a Permit for an Advertising Sign, the Authorised or Delegated Officer must have regard to Council's Footpath Trading Policy and the following guidelines:

- (1) The erection or placing of advertising signs on the following parts of roads is not permitted:
 - (a) Any Council land that is not directly adjacent to the business it is promoting;
 - (b) Adjacent to any property line on a footpath (which means within the defined Accessway, as defined by the *Footpath Trading Policy* incorporated in Schedule 2);
 - (c) On any vehicle parked or left standing on a road; or
 - (d) In any other location which, in the reasonable opinion of an Authorised or Delegated Officer, is likely to obstruct motorists' lines of sight or cause danger to any road user, pedestrian or visually disabled person.
- (2) In determining whether to grant a Permit to allow advertising signs to be placed on roads, the Authorised or Delegated Officer must have regard to:
 - (a) the width and height of the sign not exceeding 600 mm and 1200 mm respectively;
 - (b) any other signs for the applicant's premises;
 - (c) whether the construction or erection of the sign will create a hazard to pedestrians;
 - (d) whether an indemnity/guarantee has been provided to the Council in the form contained in the Council's *Footpath Trading Policy* as amended by Council from time to time and incorporated in Schedule 2;
 - (e) any other relevant requirements of the Council's *Footpath Trading Policy* as amended by Council from time to time and incorporated in Schedule 2.
 - (f) whether the sign is to advertise a non-commercial local educational, cultural, political, religious, social or recreational event on a Municipal Reserve in which case it is may be subject to a Use of Municipal Reserve Permit and the application should be referred accordingly.
 - (g) any other matter the Authorised or Delegated Officer reasonably believes relevant to the application.

58. COLLECTIONS

These Guidelines as determined by Council from time to time are incorporated in this local law for determining whether to grant a permit for a Collection.

In determining whether to grant a Permit to allow a collection, an Authorised or Delegated Officer must have regard to:

- (1) the limited number of collection permits to be granted (one per month per location or postcode area, whether door-to-door, highway, or other) and a preference to be given to volunteer collectors for charitable organisations benefiting the Bayside community;
- (2) whether the organisation has already received a permit in any particular year for the location or area sought;
- (3) the times and days it is proposed to collect;
- (4) the land-use of the relevant land on which the collection would take place and that of adjoining allotments;
- (5) the matter or thing to be collected and/or distributed;
- (6) the age of the participants and the capacity for them to be supervised;
- (7) whether an indemnity/guarantee has been provided to the Council;
- (8) the Roads or areas in which the collections would take place;
- (9) the impact on Traffic and safety of pedestrians;
- (10) any view of the Victoria Police or Vic Roads (where relevant) concerning the proposed location or conduct of any collection, especially regarding a Highway Collection;
- (11) whether the following mandatory requirements for Highway Collections can be satisfied:
 - (a) The nominated intersection must be controlled by traffic signals.
 - (b) Highway collections should be limited to weekends or public holidays.
 - (c) No highway collection shall take place between sunset and sunrise.
 - (d) No Highway Collections shall take place at an intersection located in a speed zone greater than 70 kilometres per hour.
 - (e) No highway collection shall commence or continue during inclement weather or abnormal atmospheric conditions.
 - (f) Collectors shall only enter upon the carriageway:-
 - when a red traffic control signal is displayed facing vehicles from which they wish to solicit for contributions; and
 - shall immediately leave the carriageway and remain on the reservation or footpath when that traffic control signal changes from red; and
- (12) any other matter the Authorised or Delegated Officer reasonably believes is relevant to the application.

59. TRADE WASTE BINS AND WASTE HOPPERS

Guidelines giving Council's compliance requirements in relation to Trade Waste Hoppers as determined from time to time are incorporated in this local law.

In determining whether any breach has occurred in Council's requirements in relation to Trade Waste and Waste Hoppers (including all Trade Recycling Bins) under this local law, an Authorised or Delegated Officer must follow these guidelines.

(1) Construction of Bins

Waste hoppers or bins used for the collection and storage of trade waste must:

- (a) be constructed of approved impervious material to the satisfaction of the Municipal Environmental Health officer to prevent leakage, absorption or accumulation of any refuse or rubbish that may be deposited in it;
- (b) be water-tight, fly and vermin proof;
- (c) if its capacity exceeds 500 litres, contain a removable drainage plug for the purpose of cleaning; and
- (d) be fitted with fly and vermin proof lid with overlapping flanges which must be kept continuously closed; except when being used for the immediate deposit of waste material.

(2) Emptying of Trade Waste Bins

Waste hoppers or bins used for the collection and storage of trade waste must be emptied at least weekly or more regularly if the contents become offensive.

(3) Cleanliness and Storage of Bins

The occupier of land must ensure that, in relation to bin used for the collection and storage of trade waste:

- (a) the bin is stored and maintained in a clean, sanitary and inoffensive condition and must clean and at all times keep clean any footway, pavement or ground adjoining the storage area, to the satisfaction of the Municipal Environmental Health Officer;
- (b) the surface upon which the bin is stored is impervious, and graded and drained to the sewer or an approved outlet with such silt traps or other treatment devices as required by the Municipal Environmental Health Officer;
- (c) the storage site is supplied with a tap connection and hose of a size approved by the Municipal Environmental Health Officer to the satisfaction of the Municipal Environmental Health Officer;
- (d) the bin is screened in such a way and with such material as approved by the Municipal Environmental Health Officer;
- (e) the bin is adequately fenced or constructed in such a way so as to deny access to the public; and
- (f) the bin is stored and maintained in a clean and sanitary condition on the land to which it relates.

(4) Notice of Materials to be Deposited

Every waste hopper or recycling bin used for the collection of waste or recyclable material must display a notice indicating the type of waste or material which is permitted and stating that it is an offence to deposit any material contrary to the notice.

60. DRAINAGE TAPPING / ROAD OPENING

Guidelines for whether to grant a permit for Drainage Tapping / Road Opening as determined by Council from time to time are incorporated in this local law.

- (1) The application for a Drainage Tapping must include a written request, together with plans approved by building surveyor.
- (2) The applicant must pay the permit fee in advance of the issuing of the permit.
- (3) The Authorised or Delegated Officer must issue detailed permit conditions with regard to excavations, temporary seals, road opening and road opening fee procedures, safety signage for traffic and pedestrians, site cleanliness, final permanent repairs, manner of tapplings, and restoration of nature strips.
- (4) A drainage tapping to a legal point of discharge is for the purpose of rain water only, any other discharge intended must be revealed on the application and is subject to approval by the Authorised or Delegated Officer. Additional information regarding the source, quality, chemical and biological content, quantity and frequency of any other discharge should be given.
- (5) In considering whether to issue a drainage tapping permit and/or the appropriate conditions applicable to that permit, the Authorised or Delegated Officer may take into account any other matter he or she reasonably believes is relevant to the application.

Drainage Tapping/Road Opening Permit Conditions are incorporated in Schedule 3.

64. BUILDING WORKS ON PRIVATE PROPERTY - GUIDELINES

These Guidelines as determined by Council from time to time for issuing an Asset Protection Permit under cl.64 Building Works on Private Property, are incorporated in this local law. For convenience the Guidelines are divided by sub-clause.

64.5 Guidelines for Building Works on Private Land Bond or Guarantee

When considering whether or not to issue a notice for a building works bond or guarantee, an Authorised or Delegated officer will take into account the following guidelines:

- (1) the nature of the proposed Building Works;
- (2) the duration of the Building Works;
- (3) the condition of the Roads, land and assets;
- (4) an appropriate sum for the bond given the potential risk;
- (5) any other relevant matter the officer reasonably believes is relevant; and
- (6) a notice given under sub-clause 64 (5) must specify -
 - (a) the guarantee or bond which is satisfactory to the Authorised Officer;
 - (b) the amount of the guarantee or bond; and

- (c) the period within which the guarantee or bond must be delivered to the Council.
- (d) where a guarantee or bond is required and a person commences or permits any Building Works to commence without complying with such notice, that person is guilty of an offence under this local law.
- (e) when the Building Works have been completed the owner or occupier of the Private Property or their authorised building agent, must advise the Council in writing and the Council may arrange for an Authorised or Delegated Officer to inspect the Roads, Council Land and other Council assets in the vicinity of the Private Property.

When considering the application of (or a refund of) a building works bond or guarantee, an Authorised or Delegated officer will take into account the following guidelines:

- (7) The findings of any inspection made by an Authorised or Delegated Officer of the Roads, Council Land and other Council assets in the vicinity of the Private Property after the owner or occupier of the Private Property advised the Council in writing that the Building Works were completed.
- (8) If in the opinion of the Authorised or Delegated Officer the Building Works or activities associated with the Building Works have caused -
 - (a) damage to Roads, Council Land or other Council assets; or
 - (b) deposited residue, dirt or mud on Roads, Council Land or other Council assets the Authorised or Delegated Officer may serve a Notice to Comply on a person requiring a person to repair the damage or remove the material.
- (9) If the person on whom the Notice to Comply is served fails to repair the damage or remove the material as required by the Notice to Comply, an Authorised or Delegated Officer may apply the guarantee or bond towards the cost of repairing the damage or removing the material.
- (10) If -
 - (a) in the opinion of the Authorised or Delegated Officer, there is no damage to repair or material to remove; or
 - (b) an Authorised or Delegated Officer does not carry out an inspection referred to in sub-clause (6)the guarantee or bond must be returned.

64.6 These Guidelines for Proper Fencing, Protective Tree Barriers, Site Identification And Traffic Management Plans, as determined by Council from time to time are incorporated in this local law

When considering whether to issue a permit under clause 64 (6) or whether an offence has been committed under the clause 64 (6), an Authorised or Delegated officer will take into account the following guidelines:

(1) Proper Fencing

For the purposes of sub-clause (6) the Private Property is properly fenced if it is fenced in a manner which:

- (a) restricts access from Council Land by the general public to the Private Property at which the Building Works are being undertaken;
- (b) retains any refuse and debris from the Building Works being undertaken at the Private Property within the boundaries of the Private Property; and
- (c) is constructed and installed in accordance with any written direction of the Council or an Authorised or Delegated Officer.

(2) Protective Tree Barriers

- (a) A tree which requires a protective barrier under this sub-clause (6) will be referred to as a “protected tree” for the purposes of this clause.
- (b) An Authorised or Delegated Officer shall regard all trees located on Council land within 4 metres of a building site as protected trees requiring protective tree barriers, unless reasonable grounds for exclusion can be shown.
- (c) Other additional trees beyond 4 metres from the building site may also be determined as requiring protective tree barriers if in the reasonable opinion of an Authorised or Delegated Officer they are at genuine risk of damage from traffic movements or other relevant circumstances related to the building works. .
- (d) The Authorised or Delegated Officer will clearly identify to the owner or occupier of the Private Property or their authorised building agent, whether in writing or directly in person, which trees are considered protected trees.
- (e) All protective barriers must be properly constructed and installed at the cost of a person in accordance with Australian Standard 4970-2009 *Protection of Trees on Development Sites*, as it is amended from time to time, and is incorporated by reference in this local law.
- (f) For the purposes of this clause, a protective barrier is not required in respect of any particular tree if Council or an Authorised or Delegated Officer has advised in writing that a barrier is not required for that tree.

Australian Standard No. 4970-2009, Protection of Trees on Development Sites, as it occurs from time to time is hereby incorporated by reference in this Local Law.

(3) Site Identification

For the purposes of sub-clause (6) the Private Property has been provided with proper site identification if signage is displays:

- (a) the name and address of the person carrying out the Building Works;
- (b) the street and lot number relevant to the Private Property; and
- (c) a 24 hour contract telephone number or numbers of the person carrying out the Building Works;

in a manner approved by an Authorised or Delegated Officer, located close to the site entry and site boundary and clearly legible from within a vehicle on the adjoining roadway.

(4) Traffic Management Plans

None at this time.

SMOKING AND ALCOHOL

68. SMOKING IN MUNICIPAL PLACE

The following Guidelines for Declaring a Smoke Free area, as determined by Council from time to time are incorporated into this Local Law.

In preparing a Report to Council for a Resolution declaring an area a Smoke Free or a Non-Smoking Area, Council officers must follow the following procedure:

- (1) Prepare and implement a community and internal stakeholder consultation plan consistent with Council's Communication and Engagement Policy.
- (2) Provide a summary of key evidence-based research and relevant government and comparative municipality initiatives.
- (3) Prepare an analysis of enforcement issues, including procedures and estimated costs to Council.
- (4) Prepare a risk analysis for the proposed declaration.
- (5) Prepare a Report for Council summarising all of the above, including a recommendation for an area to be declared 'smoke free'.

PUBLIC PLACES, PARKS & FORESHORE, and COUNCIL BUILDINGS

69. BEHAVIOUR IN A MUNICIPAL PLACE – PROHIBITIONS - GUIDELINES

Guidelines for determining whether behaviour in a Municipal Place is in breach of this local law, as determined by Council from time to time, are incorporated in this local law.

When determining if certain behaviour is an offence in or on a Municipal Place, Council or an Authorised or Delegated Officer must follow these guidelines regarding prohibited behaviour when accessing, using or remaining in a Municipal Place:

- (1) A person must not behave in a Municipal Place in a manner which is boisterous or harmful and which interferes with the quiet enjoyment by any person using the Municipal Place or any neighbouring residential premises.
- (2) A person must not behave in a Municipal Place in a way that is detrimental to the Municipal Place or other public assets, or in a way that substantially increases the level of personal risk to other users or potential users of that Municipal Place.
- (3) A person must not in a Municipal Place, except where such behaviour is a reasonable part of an approved public theatrical performance or artistic exhibition:
 - (a) use language or behave in a manner which is indecent, offensive or abusive or which annoys, disturbs, interrupts, molests or obstructs any person's enjoyment of a Municipal Place;
 - (b) access any pornography on any computer or electronic device;
 - (c) act in a way which endangers any person;
 - (d) use any volatile, explosive or flammable matter;

- (e) damage, destroy, write on, interfere with, remove or affix anything to any building, improvement or other structure of any kind;
- (f) carry firearms unless specifically authorised to do so, except if that person is a member of the Victoria Police acting in the course of his or her duties or a person falling within the scope of section 130(2) of the Firearms Act 1996;
- (g) shoot, snare, molest, injure or in any way harm or interfere with any bird or animal;
- (h) use any life-saving or fire-fighting device unless during an emergency, an authorised practice or rehearsal for an emergency or with the approval of a person in charge or an Authorised Officer; or
- (i) act contrary to any sign or conditions of use applying to that Municipal Place.

73. BEHAVIOUR IN MUNICIPAL RESERVES - PROHIBITIONS - GUIDELINES

Guidelines, relating to whether behaviour in a Reserve constitutes an offence, as determined by Council from time to time, are incorporated in this local law in Schedule 1.

In determining whether behaviour of any person within a Municipal Reserve constitutes a breach of this local law, an Authorised or Delegated Officer must follow these guidelines.

Behaviour considered a breach of this local law in or upon any Municipal Reserve by any person includes:

- (1) acting to endanger any person, with or without their knowledge;
- (2) interfering with any structure, notice, building or part of it, seat, play equipment, tree or plant;
- (3) acting contrary to any notice or sign;
- (4) leaving in the Municipal Reserve or in any building on it any litter except in receptacles provided;
- (5) walking on flower beds or borders, climbing trees, steep banks or cliff faces, or getting on or over any fence or gate or entering any prohibited areas as designated by the Council or an Authorised or Delegated Officer from time to time;
- (6) posting bills or advertisements on any of the fences, gates, walls, seats of other structures;
- (7) using, other than as part of an approved permitted use, any amplifier, musical instrument, public address or sound broadcasting equipment so as to disturb other persons;
- (8) behaving in a disorderly, unseemly or indecent manner;
- (9) spitting or expectorating upon or otherwise fouling any path or structure;
- (10) rolling or throwing stones or missiles, other than in approved permitted organised sporting practice or competition;
- (11) creating or taking part in any fight or disturbance;
- (12) entering or remaining while in an intoxicated condition or while under the influence of any illicit drug;

- (13) playing any Unlawful Game or making any wager for money or carrying on any form of gambling;
- (14) acting contrary to any lawful direction by any Council staff or an Authorised or Delegated Officer, including a direction to leave the Municipal Reserve;
- (15) remaining at any time when lawfully directed to leave by any Authorised or Delegated Officer or employee of the Council notwithstanding that a fee or charge for admission may have been paid;
- (16) unreasonably interfering with hindering or interrupting any employee of the Council or Authorised or Delegated Officer in carrying out their duties;
- (17) causing a kite to fly in or over that Municipal Reserve in such a manner to unreasonably interfere with the enjoyment of any other person.

74. USE OF MUNICIPAL RESERVES – PERMITS - GUIDELINES

These Guidelines as determined by Council from time to time are incorporated in this local law for determining permitted uses of Municipal Reserves.

In determining whether to issue a permit for the use of a Municipal Reserve by any person, group or organisation under this local law, an Authorised or Delegated Officer must follow these guidelines.

A Permit is required for the following uses of any Municipal Reserve:

- (1) any activity which Council or an Authorised or Delegated Officer reasonably believes will interfere with or prevent the quiet enjoyment of the municipal reserve by any other person lawfully present or will directly impact neighbouring residential amenity.

Uses which require a Permit include, but are not limited to:

- (2) camp or pitch, erect or occupy any camp, tent or temporary shelter;
- (3) sell any intoxicating Liquor to any person or persons;
- (4) hold any event, public or private, whether a circus, fair, fireworks or carnival, food, wine, or produce festival or market, wedding or any other horticultural, social, educational, cultural, political, religious or commercial occasion, celebration or gathering;
- (5) organise, hold or attend any rally, procession, demonstration or other public gathering, except in this case permission, albeit subject to conditions, shall not be normally or unreasonably withheld;
- (6) use any amplifier, musical instrument, public address or sound broadcasting equipment that may interfere with the use and enjoyment of the Municipal Reserve or any part of it by any other person;
- (7) erect, fix or place any advertisement for educational, cultural, political, religious, social, or recreational purposes by any person other than a sporting and recreation club with an occupancy agreement with Council. Council or an Authorised or Delegated Officer acting in the course of his or her duties is exempt from a permit under this sub-clause, provided:
 - (a) only one sign is erected; and
 - (b) it is not animated or internally illuminated;

- (c) it does not exceed 5 square metres;
- (d) it only advertises a local educational, cultural, political, religious, social or recreational event not held for commercial purposes and excludes sporting and recreation clubs with an occupancy agreement with Council;
- (e) it is removed no later than 14 days after the event or is in place no longer than 3 months (or whichever time is sooner); and
- (f) must be placed in close proximity to the event or other location nominated by an Authorised or Delegated Officer.

Any advertising sign which does not conform to the above signage guidelines (a) to (e), whether proposed or erected by Council or any other person will also require a Planning Permit.

- (8) conduct or organise or participate in any competitive game or sport, excepting only small social groups not exclusively using or occupying any open space and not unreasonably interfering with the enjoyment of other persons;
- (9) engage in any sporting or recreation activity that may interfere with the use and enjoyment of the Municipal Reserve or any part of it by any other person;
- (10) sell, expose or offer for sale any article of food or drink or any other article or operate or cause to be operated any amusement for which a charge is made or make a collection of money for any purpose;
- (11) ride or drive any horse or motor car, motor cycle or other Vehicle or any bicycle, Wheeled Non-motorised Recreational Device or Wheeled Child's Toy, except for or on (as the case may be):
 - (a) the parking of any motor car, motor cycle, bicycle or other Vehicle in any parking area set aside for that purpose by the Council;
 - (b) the wheeling of bicycles, prams, wheelchairs, child or baby carriages and children's toys;
 - (c) the riding of a bicycle, Wheeled Non-Motorised Recreational Device or Wheeled Child's Toy in such a manner that does not interfere with the use or enjoyment of the Municipal Reserve or any part of it by any other person;
 - (d) any Authorised Officer or employee of the Council acting in the course of his or her duties; and
 - (e) any designated roadway or bicycle pathways;
- (12) allow any animal owned by him or her of which he or she is in charge to be in or upon any Municipal Reserve or any area or water in or adjacent to a Municipal Reserve unless in the case of a dog such dog is controlled by leash, chain or cord, except in the case of a dog, it is in a designated off-leash area;
- (13) fly or permit to be flown any model aeroplane, aircraft or similar apparatus of any kind, excluding a kite, but including any audible motor-propelled device, over such Municipal;
- (14) being a person other than a player, official or competitor at any sports gathering authorised under this Division, enter or remain within or upon the playing arena of a Municipal Reserve during the progress of such sports match or sports gathering;

- (15) enter any plots or areas which are set aside for the planting or growing of plants except in undertaking approved works where the person is, or is a volunteer directly supervised by, an employee of the Council, a person contracted to Council for the purpose, a member of the relevant Management Committee, or a member of that Reserve's approved Friends Group;
- (16) swim in, wade through, or enter for recreation purposes or fish in any lake, pond, or excavation containing water or attempt to catch, injure or kill any animal at that place;
- (17) install or permit to be installed a gateway or other means of access to or from the Municipal Reserve;
- (18) moor or place or leave any boat or other water craft or use, place or leave any boat or other water craft on any mooring or other rope or chain in such a manner as to cause an obstruction, unreasonable interference or danger to any person using the Municipal Reserve; or
- (19) undertake any organised activities where the activity is undertaken or organised in part or whole for commercial gain, including commercial tour operators and commercial providers of recreational activities, but excluding schools and not-for-profit community groups. In the case of tour operators and recreational activity providers (and other similar commercial users) a permit will include:
 - (a) a tour operators/recreational providers fee structure, including a licence fee and an additional capped usage fee, with usage reporting requirements;
 - (b) a Council permit with conditions for Council owned-land; and
 - (c) a State Government Permit for Crown land that is managed by Council as Committee of Management.

In addition to the requirement to obtain a Permit to do any of the things outlined in (1) to (19) above; all requirements contained in any permit, policy or protocol adopted by Council and relevant to that activity must be complied with.

Permit Conditions for Use of a Municipal Reserve are incorporated in Schedule 3.

83. BATHING BOXES

Guidelines for the issue and transfer of Bathing Box Licences as determined by Council from time to time are incorporated in this local law.

In determining whether to issue or transfer a Bathing Box Permit or Licence, an Authorised or Delegated Officer must follow the following guidelines:

- (1) The applicant for a Licence must pay the Licence fee in full, and/or any transfer fee applicable, prior to the application or transfer being processed or the Licence being issued.
- (2) An application for a licence may be refused to any person who is not a bona fide owner or occupier of a dwelling within the Municipal District.
- (3) The Bathing Box must only be used and occupied for the purposes of convenience, comfort, shelter and shade (excluding overnight accommodation) and the storage of equipment and accessories incidental to the use of and access to the Brighton Beach Reserve and any evidence to the contrary should be resolved prior to the issue or renewal of a Licence.

- (4) The Bathing Box must be maintained in good condition acceptable to Council and any evidence to the contrary should be resolved prior to the issue or renewal of a Licence.
- (5) The applicant must give evidence (a Certificate of Currency) of Public Liability Insurance in relation to the Bathing Box in an amount of not less than \$10 million prior to the issue or renewal of a Licence.
- (6) The Council may refuse any application for a licence or by giving one (1) month's notice in writing to the holder of any such licence cancel the licence if it considers it is necessary in the interests of the public so to do and no compensation shall be payable by the Council by reason of such cancellation.
- (7) If Council intends to cancel a licence for breach of conditions, Council's Standard Permit Conditions would apply.
- (8) If Council refuses the application for a Licence or gives notice of the cancellation of a licence for whatever reason, the applicant or Licensee may within 28 days of notice of the decision, make a submission to Council to have the decision reviewed.

84. BEHAVIOUR IN A MUNICIPAL BUILDING –PROHIBITIONS- GUIDELINES

Guidelines for determining whether behaviour in a Municipal Building is an offence, as determined by Council from time to time, are incorporated in this local law.

A person entering a Municipal Building must not:

- (1) be admitted to a Municipal Building if under the age of 8 years unless in the care of an adult;
- (2) deposit any litter in a Municipal Building except in receptacles provided for that purpose;
- (3) hawk, sell, offer for sale or hire out any goods, articles or services in a Municipal Building without the Council's or an Authorised or Delegated Officer's prior written consent; or
- (4) being of one sexual gender, enter or use, within a Municipal Building, any dressing room, shower, convenience or any passage leading thereto designated to the opposite gender, unless that person is a child in the care of a responsible adult, or where under the supervision of an approved sporting organisation, facilities and associated passageways are exclusively used by organised sporting teams, contrary to gender signage;
- (5) enter or remain in a Municipal Building while intoxicated or under the influence of any illegal drug or bring any illegal drug into a Municipal Building, except only a person attending a function in a Municipal Building organised with the approval of the Council or the Manager in accordance with a liquor licence or Permit or a person delivering Liquor to the building in accordance with an order of the Council;
- (6) bring any animal into a Municipal Building or allow any animal under his or her control to remain in a Municipal Building, except only a sight or hearing impaired person accompanied by a guide dog, or a person attending a Council approved function involving the showing of animals;

- (7) bring into a Municipal Building any Wheeled Non-Motorised Recreational Device or Wheeled Child's Toy other than a pram or pusher with a child or a wheelchair or other apparatus for the purpose of assisting a disabled person or a trolley or other similar device in the process of assisting the delivery or removal of goods;
- (8) bring into a Municipal Building any chemical, substance, liquid or powder which is dangerous to health or has the potential to foul, pollute or soil any part of a Municipal Building or to cause discomfort to any persons in a Municipal Building whether by offensive or noxious smell or otherwise;
- (9) enter or remain in any part of a Municipal Building, other than:
 - (a) during the hours in which the Municipal Building is open to the public;
 - (b) through an entrance provided for the purpose of public entry;
 - (c) in an area set aside for public use;unless that person has the approval of the Manager, an Authorised or Delegated Officer or Chief Executive Officer, or is a member of Council staff in the course of his or her duties or is a person engaged by the Council in the course of performing the function for which he or she was engaged;
- (10) obstruct, hinder or interfere with any Manager, attendant, or other member of Council staff or any person employed at the Municipal Building in the performance of his or her duties;
- (11) re-enter a Municipal Building within 24 hours after being directed by the Manager, an Authorised or Delegated Officer or an attendant to leave for any breach of this Local Law or any other law.

SCHEDULE 2 – POLICIES AND OTHER INCORPORATED DOCUMENTS

LOCAL LAW NO. 2 ‘Neighbourhood Amenity’

SCHEDULE 2 - POLICIES AND OTHER INCORPORATED DOCUMENTS

The following Council Policies and Other Documents are referred to in this Local Law for application by Authorised or Delegated Officers.

The following Council Policies and other documents as amended from time to time are incorporated in this local law in this Schedule 2.

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Council's Naming of Streets and Reserves Policy 2006 – 1

COUNCIL POLICY	POLICY No:
NAMING OF STREETS AND RESERVES	9.

Date Approved by Council	18 April 2006
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Policy Objective

To provide a consistent set of criteria to assist in the naming of Council Roads and Reserves.

To set out a process to be followed which will meet all administrative and legislative requirements.

To encourage input from residents and members of the community into the development of naming options.

To provide an equitable process across the municipality which highlights and identifies notable natural assets.

Policy Statement

This policy is to provide a process, which allows input from the community, as well as local groups that may have a specific interest in the naming of a particular location within the municipality.

The policy endeavours to ensure that all participants are treated in a fair and equitable manner and establishes guidelines to ensure that this process is as open and fair as possible.

Any requests for naming of a street, right of way or reserve will be referred to Council once this process is complete. The Council will then have final say on the various options proposed. The policy includes the components and guidelines incorporated in the Geographic Place Names Act 1998 and the process of registering and identifying any site at the completion of the process.

Areas of state or national significance will be the only areas that will be administered through the central body directly. The naming of all other areas or regions will now be the responsibility of Local Government in consultation with the Geographic Place Names Committee.

Policy

1. Form and Character of Names

When considering the naming of a specific place whether it is a road or a reserve, the following primary factors should be adopted.

- ◆ The names are easy to pronounce, spell and write
- ◆ Simple, concise and preferably 24 or fewer characters.

Council's Naming of Streets and Reserves Policy 2006 – 2

- ◆ Recognisable words or combination of words.
- ◆ In accordance with community standards: avoidance of derogatory terminology or terms in poor taste, discriminatory, or likely to cause offence, or to be construed as advertising a commercial or industrial enterprise.

2. Continuity of Address

The naming of road, which is constructed over a number of blocks, should have a consistent name for one end to the other. Duplication of names that are already in evidence within the municipality should be avoided to ensure clarity.

Compound names should be avoided except in cases where the name is of aboriginal origin, such as Bet Bet or Diddah Diddah. Compound names, which consist of a geographical reference, should always have the geographical location following the primary name, ie: Highett West.

3. Road and Street Addressing

The Council has a street numbering policy which is attached as Appendix A and details the manner in which street numbering is addressed.

3 a. Suburb / Locality Boundaries

Under the Geographic Place Names Act 1998, the suburban boundaries may from time to time require re-alignment. In these circumstances a number of street addresses may have been moved to adjacent suburbs. This may result in some confusion and require the road name to be changed.

Wherever possible the name of the new road should be as close as possible to the previous name without causing undue confusion.

4. Linking the name to the Place

Place names should have some sense of connection to the areas in which they are applied. This could relate to things such as Indigenous culture and occupation of the land, local flora and fauna, European exploration and settlement, local geography and geology, significant events, the cultural diversity of past and current inhabitants, or patterns of land usage and industrial/mineral/agricultural productions

5. Commemorative Naming Personal, Commercial or Institutional Names

The use of personal names, names of institutions or organisations, and names of register commercial enterprises should preferably only be applied posthumously, or on the basis of a tested historical record of achievement.

Names of living persons or enterprises are by their nature, subject to change and perception. This can be change of community judgement and acceptance. For this reason they are not efficient or effective choices for naming roads or reserves after. Alternative means of recognition should be adopted.

Where the name of a deceased person is being considered, the person should have had a direct and long term association with the area concerned. Examples include:

- ◆ Early or long term settler (20+ years)
- ◆ Advocate and active protector of the land or feature for public benefit
- ◆ Donor of the land to the community

Council's Naming of Streets and Reserves Policy 2006 – 3

The use of personal names, preferably surnames should not be used unless this can be demonstrated to be in the public interest.

6. Identification of Local Flora & Fauna

The rich diversity of native flora and fauna, which can be found in the area, should be proposed as a significant natural feature. Non-indeginous plants could also be given consideration due to the prominence and longevity with which they have been associated with the area in question.

Endangered species should be given a higher degree of significance when considering naming of an area where they can be found.

Process

7. Application to Name Roadway

Once a need to name a road or reserve has been established the person requesting the naming of the area needs to put forward suggestions made giving due consideration to the guidelines outlined in part 1.

The owners, families and individuals effected by the naming process should be encouraged to put forward their own choice however, the suggested names must be in accordance with the guidelines set out in this policy.

The choice of names for which to decide should be provided from as many parties who have an interest in the area. These should include Environmentalists, Local historians, residents and where applicable local business.

The following criteria should be considered when choosing names:-

- ◆ Historical links
- ◆ Cultural significance to the municipalities communities
- ◆ Recognising native flora and fauna
- ◆ Deceased community leaders or personalities
- ◆ Aboriginal/Koori cultural links

Names should not be considered if they incorporate any of the following:-

- ◆ Any corporate or service identity name or logo
- ◆ Any living person – Special consideration may be given to a living person if the person is no longer actively involved in any form of community work within the municipality.
- ◆ A name which is similar or easily mistaken for a name already in use within the municipality.

8. Legislative Requirements

The Local Government Act 1998 gives Council responsibility for the naming of roads. However it does not stipulate any process which is to be adopted.

Bayside City Council had adopted Local Law No. 3 section 35 mentions the issue and states "that a person must not apply a name to a road without the consent of Council".

Council's Naming of Streets and Reserves Policy 2006 – 4

The Local Law also provide that:-

In determining whether to allow a person to apply a name to a road... the Council must take into account:-

- a) whether the name is likely to be confused with the name of another road in the area.
- b) whether the name would duplicate the name of another separate road in the same postcode.
- c) whether a loop road is named in such a way that two separate intersections involve roads with the same two names or similar names.
- d) whether the same name would apply to separate lengths of road which are separated by a physical obstruction to vehicle traffic within the same post code area.

9. Previous Policies

The former City of Sandringham Policy established in 1994, stated:-

That the Council will consider the following when making its determination to name a street:

1. Names of historical relevance to the area, to be obtained from the Sandringham & District Historical Society.
2. Names of indigenous flora
3. Aboriginal words and their english language meaning
4. The names of Councillors, ex-councillors or citizens

The former City of Brighton had no policy in place for the naming of streets.

10. Community Consultation

Once an application is received and the suggested names have been identified the local historical society will be asked to provide some comment on the relevancy of the suggested names and where practical provide some suggestions for consideration by Council.

If the asset which requires naming impacts on more that the resident making the application as in the case of the naming of a reserve then adjacent residents should be surveyed.

11. Responsibility

The responsibility for the naming of the various roads and laneways will be through the Assets Department however, the responsibility for naming of parks and reserves will be the Environment Department due to their specific expertise and their local knowledge.

12. Council to Determine

A report will be submitted to Council outlining the process, which has been undertaken and provide a list of suggested names. The Council will need to make a judgement on the appropriateness of the names suggested. If residents or the persons with an interest wish to make submissions to Council it will need to be undertaken with the consent of Council at a time the Council deems appropriate.

Council's Naming of Streets and Reserves Policy 2006 – 5

Once the Council adopts the name of the road or reserve, The Registrar of Geographic Names will be notified in writing with maps which clearly identify the location of the area in question and any other supportive information.

13. Identification Signage

Once the Council determines to approve the proposal, the necessary identification signage will be installed. This signage will be consistent with the standard adopted by Council for Corporate identification signage relevant to the area to be identified.

<u>Date of Last Reviews</u>

Council Resolution – 18 April 2006

<u>Date of Next Review</u>

April 2008

POLICIES

Ref: naming of streets and roads policy.doc

Council's Management of Tree Protection on Private Property Policy 2008 - 1



Management of Tree Protection on Private Property Policy 2008

POLICIES

Bayside City Council
Corporate Centre
76 Royal Avenue
Sandringham Victoria 3191
Telephone (03) 9599 4444
Facsimile (03) 9598 4474
Email: enquiries@bayside.vic.gov.au
Website: www.bayside.vic.gov.au

Council’s Management of Tree Protection on Private Property Policy 2008 - 2

23 Sep 2008 Management of Tree Protection on Private Property Policy 2008

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POLICIES

Council's Management of Tree Protection on Private Property Policy 2008 - 3

23 Sep 2008 Management of Tree Protection on Private Property Policy 2008

1. Definitions

Any word in this policy has its meaning as defined in *Local Law No. 2 – Environment* or its ordinary meaning unless otherwise defined.

Dead tree: A tree with no live vascular tissue.

Flush Cutting: Flush cutting refers to an incorrect cut that damages or removes the branch collar or branch bark ridge and damages stem tissue.

Lopping¹: Lopping refers to the indiscriminate cutting of branches or stems between branch unions or at internodes on young trees. The indiscriminate removal of trunks or leaders at internodal points.

Pruning: Removal of branches or trunks at natural target pruning points; i.e. at collar.

Qualified arborist: An arborist who holds a minimum qualification of National Certificate IV in Arboriculture (AQF).

Structural engineer: An engineer with qualifications and experience adequate to admit to membership of the Structural College of Engineers Australia.

2. Statement of intent

Bayside City Council is committed to protecting, promoting and improving its highly valued tree canopy.

Council encourages the retention of tree canopy within the municipality. Council also promotes the retention of Bayside's native vegetation particularly within the designated Vegetation Protection Overlay (VPO3) areas of Black Rock, Beaumaris, south of Park Road, Cheltenham, and the south side of Edward Street, Sandringham.²

The existing vegetation is one of the primary features of Bayside, contributing to the amenity of the residential environment and established land values.

Council acts to preserve and maintain trees where practicable within the municipality, whether on Council land or on private property. Tree protection controls apply to the whole of the tree including its root system.

Tree protection in Bayside is supported by two legal instruments:

- Bayside Planning Scheme (incorporates controls under the Vegetation Protection Overlays, potential controls under the Heritage Protection Overlays and potential planning development permit conditions)

¹ Lopping also refers to 'topping'.

² 'Native vegetation' is defined in the Bayside Planning Scheme VPO3 as any vegetation that is indigenous to Australia, including trees, shrubs, herbs and grasses.

Council's Management of Tree Protection on Private Property Policy 2008 - 4

23 Sep 2008 Management of Tree Protection on Private Property Policy 2008

- *Local Law No. 2 – Environment* (clause 36 – Tree Protection)

3. Policy objectives

- To provide guidance on the application of the provisions of *Local Law No. 2 – Environment* that relate to tree protection.
- To provide for the assessment of applications to consider an appropriate balance between the sometimes competing considerations relating to: extension to or replacement of single family dwellings, damage to structures or unacceptable risk of harm to occupants; and the retention and replacement of the tree canopy.
- Promote the retention and replacement of tree canopy in order to enhance local amenity and urban character.
- To encourage all tree pruning works to comply with the appropriate Australian Standard.

4. Policy statement

This policy is limited in its application to trees that are protected under *Local Law No. 2 – Environment*. It does not apply in any instance where the Bayside Planning Scheme applies. This includes exemption provisions provided within the scheme.

4.1 Maintenance recommendations

Lopping, topping or flush cutting are not promoted practices as the indiscriminate removal of trunks or leaders at internodal points in the crown may lead to the development of poorly attached epicormic growth.

Pruning should be carried out by a qualified arborist in accordance with the relevant Australian standard (the current standard is *Australian Standard 4373:2007 Pruning of Amenity Trees*). This standard encourages pruning practices and procedures that reduce the potential for a tree hazard developing, branch failure, fungal infection or premature tree death.

4.2 Pruning trees on private property

Local Law No. 2 requires that a permit is required for a tree described in clause 36(1) of that local law to be cut, trimmed, lopped or pruned. Applications should be in the standard form and be adequately supported with relevant information.

Where the cutting, trimming, lopping or pruning will:

- be carried out by a qualified arborist in accordance with *Australian Standard 4373 – Pruning of Amenity Trees (2007)*; and
 - only remove dead wood and/or not more than 10% of live foliage mass;
- the application fee will be waived. This type of application will be assessed without inspection by Council arborists.

In all other cases, the application will be assessed with inspection by Council arborists.

Council's Management of Tree Protection on Private Property Policy 2008 - 5

23 Sep 2008 Management of Tree Protection on Private Property Policy 2008

4.3 Branches overhanging properties

Where a permit is required to cut, trim, lop or prune limbs that overhang a property boundary, the owner of the tree (if not the applicant) will be provided with a copy of any permit issued.

It is noted that a permit does not change any common law rights and obligations relating to overhanging branches.

4.4 Applications to remove trees on private property

Local Law No. 2 requires that a permit is required for a tree described in clause 36(1) of that local law to be removed. Applications should be in the standard form and be adequately supported with relevant information.

If the application claims a tree needs to be removed because it is dangerous or hazardous, evidence should be supplied in the form of a report from a qualified arborist.

If the application claims a tree needs to be removed to prevent further damage to structures, evidence should be supplied in the form of a report from a structural engineer.

Any application for removal should be accompanied by a plan for planting suitable replacement canopy tree or trees to the satisfaction of Council arborists where this is possible.

4.5 Fee reduction or waiver

The relevant manager has the authority to reduce or waive a permit application fee. Situations where a fee may be reduced or waived include the following.

- Permit application fees for pension-card holders may be reduced by 50%.
- Permit application fees for the removal of dead trees / tree stumps may be waived.
- Permit application fees may be refunded if the tree inspected is undersize.

4.6 Decision making

4.6.1 Guidelines

The Chief Executive Officer will cause such guidelines to be prepared as is considered necessary to assist staff in the application of this policy.

4.6.2 Quantified Tree Risk Assessment (QTRA)

As part of the assessment of a tree removal application, Council's arborists will use the Quantified Tree Risk Assessment (QTRA) criteria to determine the hazardous nature of a tree. If a tree is assessed using the QTRA and an unacceptable risk of harm is identified that cannot be managed using standard pruning practices, a permit to remove the tree will be issued.

Council's Management of Tree Protection on Private Property Policy 2008 - 6

23 Sep 2008 Management of Tree Protection on Private Property Policy 2008

For a tree-failure hazard to exist there must be potential for failure of the tree and potential for injury or damage to result. The assessment will consider the likelihood of a combination of tree failure, harm to people and property, and the likely severity of the harm.

The QTRA system enables tree assessors to apply numerical estimates of risk, which can be compared with a generally accepted level of risk.

The system quantifies three components of the tree failure risk.

- 1) Target;
- 2) impact potential; and
- 3) probability of failure.

The product of these probabilities is referred to as the 'risk of significant harm'.

4.6.3 Other considerations

Consideration of applications are to have full regard to on-site impacts of the tree under consideration.

When assessing applications for the purpose of removing or pruning trees to accommodate an extension to, or replacement of, a single family dwelling, to prevent further damage to structures or to remove an unacceptable risk to occupants, consideration is to be given to balancing these purposes with the desire to retain the tree canopy. Officers assessing applications are to take into consideration all relevant matters, and specifically, any evidence supplied in the form of:

- a) a report by a qualified arborist where the report assesses the tree as dangerous or hazardous; and/or
- b) a report by a structural engineer where the report assesses that the tree is the primary cause of damage to the structure; and
- c) a landscaping proposal that includes suitable canopy tree replacements for trees proposed to be removed. Approved replacement trees will be subject to inspection by Council officers after planting and failure to plant or removal shall be considered a breach of this permit. If the subject site is shown to be too small for a suitable replacement canopy tree, then a charge for planting and maintaining such a tree, off site, shall be levied to enable a replacement planting elsewhere in the area.

Consideration may also be given to any report by a qualified arborist commissioned by officers assessing an application.

4.7 Review of decision to refuse permit

If an applicant is dissatisfied with the decision in relation to the application, the applicant may apply in writing for an internal review of the decision.

Council's Management of Tree Protection on Private Property Policy 2008 - 7

23 Sep 2008 Management of Tree Protection on Private Property Policy 2008

If the applicant remains dissatisfied after the internal review, the rights of submission to Council under *Local Law No. 2 – Environment* remain available.

4.8 Tree pruning / removal in emergency circumstances

If severe storms cause widespread damage to trees on private property or in other emergency circumstances, if requested, Council's arborists will, as soon as is practicable, inspect storm-related tree damage and provide advice on:

- the condition of the trees;
- the work needed (removal or pruning); and
- priority of the work.

Normal application and approval processes and fees may be varied. For example, verbal permission may be granted to either prune or remove a damaged tree.

Proclaimed Noxious Weeds in Victoria 2002- 1

Catchment and Land Protection Regulations 2002

Sch.

S.R. No. 83/2002

Sch.
 inserted by
 S.R. No.
 149/2006
 reg. 5.

SCHEDULE

**NOXIOUS WEEDS FOR WHICH MEASURES ARE
 PRESCRIBED**

	<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>
<i>Item</i>	<i>Application of herbicide</i>	<i>Cultivation</i>	<i>Removal</i>	<i>Mulching</i>
1	<i>Acroptilon repens</i> Hardheads/ Russian Knapweed		<i>Acroptilon repens</i> Hardheads/ Russian Knapweed	
2	<i>Ailanthus altissima</i> Tree of Heaven		<i>Ailanthus altissima</i> Tree of Heaven	
3	<i>Allium triquetrum</i> Angled Onion	<i>Allium triquetrum</i> Angled Onion	<i>Allium triquetrum</i> Angled Onion	
4	<i>Allium vineale</i> Wild Garlic	<i>Allium vineale</i> Wild Garlic	<i>Allium vineale</i> Wild Garlic	
5	<i>Alternanthera pungens</i> Khaki Weed	<i>Alternanthera pungens</i> Khaki Weed	<i>Alternanthera pungens</i> Khaki Weed	
6	<i>Amsinckia spp.</i> Amsinckia	<i>Amsinckia spp.</i> Amsinckia	<i>Amsinckia spp.</i> Amsinckia	
7	<i>Asphodelus fistulosus</i> Onion Weed	<i>Asphodelus fistulosus</i> Onion Weed	<i>Asphodelus fistulosus</i> Onion Weed	
8	<i>Calicotome spinosa</i> Spiny Broom	<i>Calicotome spinosa</i> Spiny Broom	<i>Calicotome spinosa</i> Spiny Broom	
9	<i>Carduus tenuiflorus/C. pycnocephalus</i> Slender/Shore Thistle		<i>Carduus tenuiflorus/C. pycnocephalus</i> Slender/Shore Thistle	

POLICIES

Proclaimed Noxious Weeds in Victoria 2002 - 2

Catchment and Land Protection Regulations 2002

S.R. No. 83/2002				Sch.
Item	Column 1 Application of herbicide	Column 2 Cultivation	Column 3 Removal	Column 4 Mulching
10	<i>Carthamus lanatus</i> Saffron Thistle	<i>Carthamus lanatus</i> Saffron Thistle	<i>Carthamus lanatus</i> Saffron Thistle	
11	<i>Cenchrus longispinus</i> Spiny Burr Grass/Gentle Annie	<i>Cenchrus longispinus</i> Spiny Burr Grass/Gentle Annie	<i>Cenchrus longispinus</i> Spiny Burr Grass/Gentle Annie	
12	<i>Centaurea calcitrapa</i> Star Thistle	<i>Centaurea calcitrapa</i> Star Thistle	<i>Centaurea calcitrapa</i> Star Thistle	
13	<i>Centaurea solstitialis</i> St Barnaby's Thistle	<i>Centaurea solstitialis</i> St Barnaby's Thistle	<i>Centaurea solstitialis</i> St Barnaby's Thistle	
14	<i>Cestrum parqui</i> Chilean Cestrum		<i>Cestrum parqui</i> Chilean Cestrum	
15	<i>Chondrilla juncea</i> Skeleton Weed		<i>Chondrilla juncea</i> Skeleton Weed	
16	<i>Chrysanthemoides monilifera</i> Boneseed/ Bitou Bush		<i>Chrysanthemoides monilifera</i> Boneseed/ Bitou Bush	
17	<i>Cirsium arvense</i> Californian/ Perennial Thistle		<i>Cirsium arvense</i> Californian/ Perennial Thistle	
18	<i>Cirsium vulgare</i> Spear Thistle	<i>Cirsium vulgare</i> Spear Thistle	<i>Cirsium vulgare</i> Spear Thistle	
19	<i>Conium maculatum</i> Hemlock	<i>Conium maculatum</i> Hemlock	<i>Conium maculatum</i> Hemlock	

Proclaimed Noxious Weeds in Victoria 2002 - 3

Catchment and Land Protection Regulations 2002

Sch.	S.R. No. 83/2002			
	Column 1 Application of herbicide	Column 2 Cultivation	Column 3 Removal	Column 4 Mulching
20	<i>Convolvulus arvensis</i> Bindweed	<i>Convolvulus arvensis</i> Bindweed	<i>Convolvulus arvensis</i> Bindweed	
21	<i>Crataegus monogyna</i> Hawthorn		<i>Crataegus monogyna</i> Hawthorn	
22	<i>Cuscuta</i> spp. Dodder	<i>Cuscuta</i> spp. Dodder	<i>Cuscuta</i> spp. Dodder	
23	<i>Cynara cardunculus</i> Artichoke Thistle		<i>Cynara cardunculus</i> Artichoke Thistle	
24	<i>Cytisus scoparius</i> English Broom		<i>Cytisus scoparius</i> English Broom	
25	<i>Datura ferox</i> Thorn Apple (Long-spine)	<i>Datura ferox</i> Thorn Apple (Long-spine)	<i>Datura ferox</i> Thorn Apple (Long-spine)	
26	<i>Datura inoxia</i> Thorn Apple (Recurved)	<i>Datura inoxia</i> Thorn Apple (Recurved)	<i>Datura inoxia</i> Thorn Apple (Recurved)	
27	<i>Datura stramonium</i> Thorn Apple (Common)	<i>Datura stramonium</i> Thorn Apple (Common)	<i>Datura stramonium</i> Thorn Apple (Common)	
28	<i>Diploaxis tenuifolia</i> Sand Rocket/Sand Mustard	<i>Diploaxis tenuifolia</i> Sand Rocket/Sand Mustard	<i>Diploaxis tenuifolia</i> Sand Rocket/Sand Mustard	
29	<i>Dipsacus fullonum</i> Wild Teasel	<i>Dipsacus fullonum</i> Wild Teasel	<i>Dipsacus fullonum</i> Wild Teasel	
30	<i>Dittrichia graveolens</i> Stinkwort	<i>Dittrichia graveolens</i> Stinkwort	<i>Dittrichia graveolens</i> Stinkwort	

Proclaimed Noxious Weeds in Victoria 2002 - 4

Catchment and Land Protection Regulations 2002

S.R. No. 83/2002

Sch.

Item	Column 1 Application of herbicide	Column 2 Cultivation	Column 3 Removal	Column 4 Mulching
31	<i>Echium plantagineum</i> Paterson's Curse		<i>Echium plantagineum</i> Paterson's Curse	
32	<i>Echium vulgare</i> Viper's Bugloss		<i>Echium vulgare</i> Viper's Bugloss	
33	<i>Emex australis</i> Spiny Emex		<i>Emex australis</i> Spiny Emex	
34	<i>Eragrostis curvula</i> African Love-grass	<i>Eragrostis curvula</i> African Love-grass	<i>Eragrostis curvula</i> African Love-grass	
35	<i>Foeniculum vulgare</i> Fennel		<i>Foeniculum vulgare</i> Fennel	
36	<i>Genista linifolia</i> Flax-leaved Broom		<i>Genista linifolia</i> Flax-leaved Broom	
37	<i>Genista monspessulana</i> Cape Broom/ Montpellier Broom		<i>Genista monspessulana</i> Cape Broom/ Montpellier Broom	
38	<i>Hypericum androsaemum</i> Tutsan		<i>Hypericum androsaemum</i> Tutsan	
39	<i>Hypericum perforatum</i> St John's Wort		<i>Hypericum perforatum</i> St John's Wort	
40	<i>Hypericum tetrapterum</i> St Peter's Wort	<i>Hypericum tetrapterum</i> St Peter's Wort	<i>Hypericum tetrapterum</i> St Peter's Wort	
41	<i>Juncus acutus</i> Spiny Rush		<i>Juncus acutus</i> Spiny Rush	

POLICIES

Proclaimed Noxious Weeds in Victoria 2002 - 5

Catchment and Land Protection Regulations 2002

Sch.	S.R. No. 83/2002			
	Column 1 <i>Application of herbicide</i>	Column 2 <i>Cultivation</i>	Column 3 <i>Removal</i>	Column 4 <i>Mulching</i>
42	<i>Lavandula stoechas</i> Topped Lavender	<i>Lavandula stoechas</i> Topped Lavender	<i>Lavandula stoechas</i> Topped Lavender	
43	<i>Lepidium draba</i> (gazetted as <i>Cardaria draba</i>) Hoary Cress		<i>Lepidium draba</i> (gazetted as <i>Cardaria draba</i>) Hoary Cress	
44	<i>Leucanthemum vulgare</i> Ox-eye Daisy		<i>Leucanthemum vulgare</i> Ox-eye Daisy	
45	<i>Lycium ferocissimum</i> African Boxthorn		<i>Lycium ferocissimum</i> African Boxthorn	
46	<i>Marrubium vulgare</i> Horehound	<i>Marrubium vulgare</i> Horehound	<i>Marrubium vulgare</i> Horehound	
47	<i>Melianthus comosus</i> Tufted Honeyflower		<i>Melianthus comosus</i> Tufted Honeyflower	
48	<i>Moraea flaccida</i> (gazetted as <i>Homeria flaccida</i>) Cape Tulip (One-leaf)		<i>Moraea flaccida</i> (gazetted as <i>Homeria flaccida</i>) Cape Tulip (One-leaf)	
49	<i>Moraea miniata</i> (gazetted as <i>Homeria miniata</i>) Cape Tulip (Two-leaf)		<i>Moraea miniata</i> (gazetted as <i>Homeria miniata</i>) Cape Tulip (Two-leaf)	

Proclaimed Noxious Weeds in Victoria 2002 - 6

Catchment and Land Protection Regulations 2002

S.R. No. 83/2002				Sch.
Item	Column 1 Application of herbicide	Column 2 Cultivation	Column 3 Removal	Column 4 Mulching
50	<i>Nassella trichotoma</i> Serrated Tussock	<i>Nassella trichotoma</i> Serrated Tussock	<i>Nassella trichotoma</i> Serrated Tussock	
51	<i>Onopordum acanthium</i> Scotch/ Heraldic Thistle		<i>Onopordum acanthium</i> Scotch/ Heraldic Thistle	
52	<i>Onopordum acaulon</i> Stemless Thistle		<i>Onopordum acaulon</i> Stemless Thistle	
53	<i>Onopordum illyricum</i> Illyrian Thistle		<i>Onopordum illyricum</i> Illyrian Thistle	
54	<i>Opuntia monacantha</i> (gazetted as <i>O. vulgaris</i>) Prickly Pear (Drooping)		<i>Opuntia monacantha</i> (gazetted as <i>O. vulgaris</i>) Prickly Pear (Drooping)	
55	<i>Opuntia robusta</i> Wheel Cactus		<i>Opuntia robusta</i> Wheel Cactus	
56	<i>Opuntia stricta</i> Prickly Pear (Erect)		<i>Opuntia stricta</i> Prickly Pear (Erect)	
57	<i>Oxalis pes-caprae</i> Soursob		<i>Oxalis pes-caprae</i> Soursob	
58	<i>Pennisetum macrourum</i> African Feather-grass	<i>Pennisetum macrourum</i> African Feather-grass	<i>Pennisetum macrourum</i> African Feather-grass	

POLICIES

Proclaimed Noxious Weeds in Victoria 2002 - 7

Catchment and Land Protection Regulations 2002

Sch.	S.R. No. 83/2002			
	Column 1	Column 2	Column 3	Column 4
Item	Application of herbicide	Cultivation	Removal	Mulching
59	<i>Physalis viscosa</i> Prairie Ground Cherry		<i>Physalis viscosa</i> Prairie Ground Cherry	
60	<i>Picnemon acarna</i> (gazetted as <i>Cirsium arcana</i>) Soldier Thistle		<i>Picnemon acarna</i> (gazetted as <i>Cirsium arcana</i>) Soldier Thistle	
61	<i>Proboscidea louisianica</i> Devil's Claw (Purple-flower)		<i>Proboscidea louisianica</i> Devil's Claw (Purple-flower)	
62	<i>Proboscidea lutea</i> (gazetted as <i>Ibicella lutea</i>) Devil's Claw (Yellow-flower)		<i>Proboscidea lutea</i> (gazetted as <i>Ibicella lutea</i>) Devil's Claw (Yellow-flower)	
63	<i>Reseda luteola</i> Wild Mignonette	<i>Reseda luteola</i> Wild Mignonette	<i>Reseda luteola</i> Wild Mignonette	
64	<i>Rosa rubiginosa</i> Sweet Briar		<i>Rosa rubiginosa</i> Sweet Briar	
65	<i>Rubus fruticosus</i> agg. Blackberry		<i>Rubus fruticosus</i> agg. Blackberry	<i>Rubus fruticosus</i> agg. Blackberry
66	<i>Salpichroa organifolia</i> Pampas Lily-of-the-Valley	<i>Salpichroa organifolia</i> Pampas Lily-of-the-Valley	<i>Salpichroa organifolia</i> Pampas Lily-of-the-Valley	

Proclaimed Noxious Weeds in Victoria 2002 - 8

Catchment and Land Protection Regulations 2002				
S.R. No. 83/2002				Sch.
Item	Column 1 <i>Application of herbicide</i>	Column 2 <i>Cultivation</i>	Column 3 <i>Removal</i>	Column 4 <i>Mulching</i>
67	<i>Scolymus hispanicus</i> Golden Thistle		<i>Scolymus hispanicus</i> Golden Thistle	
68	<i>Senecio jacobaea</i> Ragwort	<i>Senecio jacobaea</i> Ragwort	<i>Senecio jacobaea</i> Ragwort	
69	<i>Senecio pterophorus</i> African Daisy		<i>Senecio pterophorus</i> African Daisy	
70	<i>Silybum marianum</i> Variegated Thistle		<i>Silybum marianum</i> Variegated Thistle	
71	<i>Solanum elaeagnifolium</i> Silverleaf Nightshade		<i>Solanum elaeagnifolium</i> Silverleaf Nightshade	
72	<i>Solanum linnaeanum</i> Apple of Sodom		<i>Solanum linnaeanum</i> Apple of Sodom	
73	<i>Solanum rostratum</i> Buffalo Burr		<i>Solanum rostratum</i> Buffalo Burr	
74	<i>Tribulus terrestris</i> Caltrop		<i>Tribulus terrestris</i> Caltrop	
75	<i>Ulex europaeus</i> Gorse/Furze	<i>Ulex europaeus</i> Gorse/Furze	<i>Ulex europaeus</i> Gorse/Furze	<i>Ulex europaeus</i> Gorse/Furze
76	<i>Verbascum thapsus</i> Great Mullein		<i>Verbascum thapsus</i> Great Mullein	

POLICIES

Proclaimed Noxious Weeds in Victoria 2002 - 9

Catchment and Land Protection Regulations 2002

Sch.	S.R. No. 83/2002			
Item	Column 1 <i>Application of herbicide</i>	Column 2 <i>Cultivation</i>	Column 3 <i>Removal</i>	Column 4 <i>Mulching</i>
77	<i>Watsonia meriana</i> var. <i>bulbillifera</i> (gazetted as <i>W. meriana</i> "Bulbillifera") Wild Watsonia		<i>Watsonia meriana</i> var. <i>bulbillifera</i> (gazetted as <i>W. meriana</i> "Bulbillifera") Wild Watsonia	
78	<i>Xanthium spinosum</i> Bathurst Burr	<i>Xanthium spinosum</i> Bathurst Burr	<i>Xanthium spinosum</i> Bathurst Burr	
79	<i>Xanthium strumarium</i> (incl. <i>X. occidentale</i> and <i>X. orientale</i>) Noogoora Burr/ Californian Burr	<i>Xanthium strumarium</i> (incl. <i>X. occidentale</i> and <i>X. orientale</i>) Noogoora Burr/ Californian Burr	<i>Xanthium strumarium</i> (incl. <i>X. occidentale</i> and <i>X. orientale</i>) Noogoora Burr/ Californian Burr	

Council’s Footpath Trading Policy 2005 – 1

BAYSIDE CITY COUNCIL - Footpath Trading Policy 2005

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1.0 General Principles & Background.

- 1.1 Bayside City Council is required to provide and manage a safe environment throughout the municipality for all pedestrians. This is achieved through the provision and maintenance of continuous accessible paths of travel along accessways for all people on all footpaths.
- 1.2 In managing footpaths local government has responsibility to manage activities and environmental factors that have an impact on footpaths by regulating trading activities, linkages with public transport and the interface between footpaths, gardens and the natural environment.
- 1.3 Safe pedestrian access is the primary purposes of all footpaths.
- 1.4 Other activities such as trading, advertising and street events are secondary. This Policy has been developed on the basis of this distinction.
- 1.5 This Policy aims to enable equity of access for all as defined in the Commonwealth Disability Discrimination Act (1992) (The DDA). Footpaths fall within the DDA definition of premises and are intended to enable access to required community facilities.
- 1.6 The key to an effective, accessible pedestrian system throughout the built environment is the provision and maintenance of accessways. The accessway should generally extend from the building or property line to provide a consistent footpath environment inclusive of the needs of all including older people and people with disabilities.
- 1.7 As a general principle with accessways at the property line, all street furniture, infrastructure, signs, trader's activities and displays should be located towards the kerb side, not along the building or property line.
- 1.8 This policy has been developed using the following principles:
 - 1.8.1 Council will provide and manage clear, safe and unobstructed access at all times for pedestrians of all abilities on municipal footpaths in accordance with local government's statutory responsibilities.
 - 1.8.2 Everyone has the right take part in community activities.
 - 1.8.3 The built environment will be accessible to all.
 - 1.8.4 The Footpath Policy will be simple and user friendly.

Council's Footpath Trading Policy 2005 – 4

2.0 Specific Principles - Footpath Trading Policy.

- 2.1 Footpath activity must make a positive contribution to the character and amenity of the area and surrounding residential areas.
- 2.2 Council supports the long-term viability and sustainability of a range of retail and business formats including strip and neighbourhood shopping precincts.
- 2.3 Planning for all footpath use and activities is based on the establishment of Footpath Zones.
- 2.4 Where permanent structures are proposed for any footpath area within the City, high standards of design are the starting point for the assessment of any such proposal.

Council's Footpath Trading Policy 2005 – 5

3.0 Definitions.

The following definitions apply to any form of footpath trading proposed within the City and includes outdoor eating facilities, goods on footpaths and signs.

3.1 Accessway:

An accessway is "an uninterrupted path of travel to or within a building, providing access to all required faculties.

3.2 The Trading Activity Zone:

The Trading Activity Zone is that area of the footpath where signs, goods, café furniture and ancillary items may be placed and where other permitted street activities may take place.

3.3 The Kerbside Zone:

A buffer from the kerb to allow for access to and from parked vehicles.

Council's Footpath Trading Policy 2005 – 5

4.0 Locational strategies and footpath width.

4.1 Footpaths 4000 mm or wider

In order to provide a clear and consistently unobstructed Accessway for pedestrians, the footpath is divided into three zones.

- 4.1.1 **The Accessway:** extends from the building line or shopfront of premises for a minimum of **2000 mm**. No items may extend into this zone at any time including items overhead below a height of 2200 mm.
- 4.1.2 **The Trading Activity Zone:** the only area of the footpath where goods, café furniture and ancillary items may be placed. Where premises are adjacent to an intersection the trading activity zone must not extend past the building/property line.
- 4.1.3 **The Kerbside Zone:** minimum of **600 mm** buffer from the kerb to allow for access to and from parked vehicles including at loading zones. Where there is a disabled parking bay the setback from the kerb will be at least 1500 mm.
- 4.1.4 No items may be placed in either the Accessway or the Kerbside Zone.

4.2 Footpaths from 3500 to 4000 mm wide

To provide a clear Accessway for pedestrians, the footpath is divided into three zones.

- 4.2.1 **The Accessway:** extends from the building line or shopfront of premises for a minimum of **1800 mm**. No items may extend into this zone at any time including items overhead below a height of 2200 mm.
- 4.2.2 **The Trading Activity Zone:** the only area of the footpath where goods, café furniture and ancillary items may be placed, subject to this policy. Where premises are adjacent to an intersection the Trading Activity Zone must not extend past the building line into the intersection.
- 4.2.3 **The Kerbside Zone:** a minimum of **500mm** buffer from the kerb to allow for access to and from parked vehicles including at loading zones. Where there is a disabled parking bay the setback from the kerb will be at least 1500 mm.
- 4.2.4 No items may be placed in either the Accessway or the Kerbside Zone.

4.3 Footpaths from 2.5 to 3.4 metres wide

To provide a clear Accessway for pedestrians, the footpath is divided into three zones.

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- 4.3.1 **The Accessway:** extends from the building line or shopfront of premises for a minimum of **1500 mm**. No items may extend into this zone at any time including items overhead below a height of 2200 mm.
- 4.3.2 **The Trading Activity Zone:** the only area of the footpath where goods, café furniture and ancillary items, subject to this policy, may be placed. Where premises are adjacent to an intersection the Trading Activity Zone must not extend past the building line.
- 4.3.3 **The Kerbside Zone:** a minimum of **400 mm** buffer from the kerb to allow for access to and from parked vehicles. Where there is a disabled parking bay the setback from the kerb will be at least 1500 mm. Where there is a loading zone the setback from the kerb will be at least 600 mm.
- 4.3.4 No items may be placed in either the Accessway Zone (Accessway) or the Kerbside Zone.

4.4 Footpaths less than 2500 mm wide.

In order to facilitate appropriate pedestrian accessway, footpaths of less than 2500 mm cannot be used for outdoor dining or placement of articles.

4.5 Use of Prows/extended footpaths

In a number of activity centres, Council have extended the footpath into the roadway to provide either traffic management measures by emphasising pedestrian priority or as part of an overall urban design plan for the centre.

- 4.5.1 **The Accessway:** extends from the building line or shopfront of premises for a minimum of **1800 mm**. No items may extend into this zone at any time including items overhead below a height of 2200 mm.
- 4.5.2 **The Trading Activity Zone:** the only area of the footpath where goods, café furniture and ancillary items may be placed. Where premises are adjacent to an intersection the Trading Activity Zone must not extend past the building/property line.
- 4.5.3 **The Kerbside Zone:** a minimum of **600 mm** buffer from the kerb to allow for access to and from parked vehicles including at loading zones. Where there is a disabled parking bay the setback from the kerb will be at least 1500 mm.
- 4.5.4 No items may be placed in either the Accessway or the Kerbside Zone.

4.6 Recessed shopfronts/buildings.

Throughout the city a number of circumstances exist in which the shopfront or building is setback from the front title boundary.

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Trading activity may occur in the building recess, but must not extend beyond the title boundary onto the footpath.

4.7 Other siting requirements

- 4.7.1 A set back of 500 mm is required from each side boundary of a premise to ensure access points from the footpath to the road are available between each premise.
- 4.7.2 Where a premise exceeds 12 metres of frontage then a break of 1.0 metres shall be provided the satisfaction of Council at an appropriate point to allow access to the accessway zone. In considering the location of a break in the trading activity the Council shall have regard to the car parking spaces provided on the road and the location of any other infrastructure within the road reserve.
- 4.7.3 Any footpath trading activity may only be outside the premises to which it relate and must be contained within the property line, with the required setback from the property line of 500 mm on each side to allow for access.
- 4.7.4 Where a footpath trading activity is proposed in close proximity to a mid-block pedestrian crossing the location of the footpath trading activity shall provide separation from any such crossing and ensure sight lines for pedestrians are protected.
- 4.7.5 Where a trading activity is proposed adjacent to car parking spaces designated for people with disabilities a kerbside zone of up to **1500mm** will be required.
- 4.7.6 Services such as gas power water and telecommunications should not be covered or obstructed by any permanent structures.
- 4.7.7 Unless exceptional circumstances apply, trading activity (including any outdoor eating facility) shall be placed so it is not within **1000mm** of any Council seat, rubbish bin or other item of street furniture.
- 4.7.8 All setback for goods, tables & chairs and signs where parking bay may be obstructed must comply with the Australian Standards W25.2980.1.2004 for "on street parking".
- 4.7.9 The placement of signs, goods or tables and chairs in a kerb extension area can only be approved by Councils Traffic Engineer.

Council's Footpath Trading Policy 2005 – 8

5.0 Outdoor Dining.

5.1 Operators Responsibilities

- 5.1.1 Restaurant & Café furniture and associated ancillary items will only be permitted at premises, which are registered as such under the Food Act 1984 to serve food and/or beverages.
- 5.1.2 Under exceptional circumstances Council may allow table and chairs to be placed outside non-registered premises. Applicants will need to demonstrate to Council why it is necessary for such a facility.
- 5.1.3 The permit holder is responsible for the conduct of patrons at tables and chairs in the outdoor seating area and must;
 - ensure that patrons do not move tables and chairs from their positions and obstruct the accessway;
 - ensure that patrons do not allow pets, prams or any other personal items to obstruct the accessway and,
 - Serving of food and beverages to patrons standing on the footpath within the accessway is not permitted.
- 5.1.4 Council may place a condition on a permit requiring a permit holder to place signs in the outdoor seating area, regarding 5.1.3.
- 5.1.5 A trader must supply each table outside with a wind-proof ashtray at all times. Traders are responsible for cigarette ash, butts and any other litter generated by patrons of their footpath dining areas.
- 5.1.6 Serving staff at outdoor eating facilities should facilitate free access by pedestrians and give all pedestrians priority right of way.
- 5.1.7 Each operator is responsible for maintaining the outdoor eating area. A permit may be cancelled or suspended if instances of littering, untidiness or failure to maintain the accessway are noted.
- 5.1.8 Items which are placed on the footpath must be stable and of a design approved by Council and not able to damage the footpath.
- 5.1.9 Items placed on the footpath must be maintained by the licensee in an acceptable manner to the satisfaction of the Council.
- 5.1.10 Tables and chairs should contrast with their background to assist people with vision impairment.
- 5.1.11 Traders will be responsible for reimbursing Council for any reinstatement works as a result of damage to footpaths or street fixtures and furniture.
- 5.1.12 Any premises where alcohol is served or consumed on the footpath must have its liquor licence endorsed with the footpath as part of the "licensed area" on the liquor licence for that premise.

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- 5.1.13 The permit holder must provide to Council satisfactory evidence of current public liability insurance and be for an amount of not less than \$10,000,000.00 for any single occurrence. Any permit issued will be on the basis that the policy will stay current for the life period of the permit.
- 5.1.14 The permit holder must provide an indemnity in a form suitable to Council against loss or damage. (See Appendix A)

5.2 Furniture & Fittings

- 5.2.1 No sound amplification equipment, or like equipment may be erected or utilised in the outdoor seating area to protect the amenity of the area
- 5.2.2 No live entertainment is permitted without the written permission of Council.
- 5.2.3 All outdoor heaters in the footpath trading zone must be licensed as part of a permit and covered by traders' public liability insurance. Conditions recommended by the Australian Office of Gas Safety will apply to any approval to place heaters on the footpath.
- 5.2.4 Umbrellas may only be placed in the Trading Activity Zone.
- 5.2.5 Where umbrellas are allowed they must be 2200 mm high at the lowest point other than the centre pole and must not protrude over the kerb. When it is raining water from large umbrellas should be discharged outside the accessway.
- 5.2.6 Where Council approved, umbrellas must be secured in a manner approved by Council. Applications for approval for other than a lock-in device should be clearly nominated on the application.
- 5.2.7 Screens or screening devices may be placed where there are tables and chairs for safety reasons.
- 5.2.8 Where an application proposes to suspend any fixture or fitting from the underside of a verandah or a building (such as lights or heaters) the fixture or fitting shall be fixed in accordance with the appropriate engineering standards and shall have a minimum clearance of 2.4 metres above the Trading Activity Zone. Outside the business hours of the premises with which they are associated, any fixture or fitting that is retractable must be retracted.
- 5.2.9 Advertising signage on temporary windbreaks or umbrellas must comply with the Planning Scheme to identify the operator of the business.
- 5.2.10 No advertising shall be permissible on permanent screens other than the name of the premises.
- 5.2.11 Permanent Screens: Refer to Section 13 of this policy.
- 5.2.12 Council may if the circumstances arise require a marker to be paced in the footpath to clearly designate the Trading Activity Zone.

Council's Footpath Trading Policy 2005 – 10

6.0 Goods on Footpaths

- 6.1 In order to provide a consistent accessway zone, goods and displays may only be displayed in the Trading Activity Zone of the footpath.
- 6.2 Goods may only be in place during normal or authorised trading hours, and must not be placed on a footpath prior to 7.00AM each trading day and remain on the footpath after 11.00PM on each trading day.
- 6.3 Goods (except furniture) must be displayed on stable stands approved by Council that are able to withstand adverse weather conditions. Stands must be secured in a manner, which ensures that adverse weather conditions will not create a risk for pedestrians, property and passing traffic. Stands and goods must not cause any damage to the footpath.
- 6.4 Goods or displays will not be permitted where access to a loading zone or disabled parking bay will be impeded. (1500 mm from the kerb)
- 6.5 Goods or displays will not be permitted where they will cause difficulty to pedestrians and people exiting or accessing parked vehicles or the footpath.
- 6.6 Goods displays will not be allowed to exceed a height of 1500 mm.
- 6.7 Stands and displays should contrast with their background to assist people with vision impairment.
- 6.8 Goods displays will not be permitted to overhang either the kerb zone or accessway.
- 6.9 Full-length shop awnings to protect goods located in the Trading Activity Zone shall be nominated on any application and shall be securely fixed by an appropriate means to the ground.
- 6.10 The permit applicant must provide to Council satisfactory evidence of current public liability insurance and be for an amount of not less than \$10,000,000.00 for any single occurrence. Any permit issued will be on the basis that the policy will stay current for the life period of the permit.

Council's Footpath Trading Policy 2005 – 11

7.0 Signs on Footpaths

- 7.1 All permitted signs are to be secured in place by a means that is not reliant on, or physically tied to any Council infrastructure; includes seats, poles, trees, etc.. The means by which these signs are to be secured must not extend beyond the circumference of the permitted sign and must be of a type approved by Council. Any securing device is to be removed with the sign in accordance with permitted display times.
- 7.2 Inflatable signs, portable electric signs, illuminated, revolving, spinning or flashing signs, flags and banners are prohibited.
- 7.3 Signs must only be placed in the Trading Activity Zone.
- 7.4 Signs must only be in place during normal trading hours.
- 7.5 Signs on footpath must be secured by Council approved method or the Authorised Officers discretion.
- 7.6 An advertising sign must not exceed **600 mm** in width or **1200 mm** in height. A 12-month moratorium will be provided for current permit signs, which exceed these dimensions.
- 7.7 The maximum number of signs permitted is one per 10m of shop front, with a maximum of 1 per premises.
- 7.8 The permit holder must provide to Council satisfactory evidence of current public liability insurance and be for an amount of not less than \$10,000,000.00 for any single occurrence. Any permit issued will be on the basis that the policy will stay current for the life period of the permit.
- 7.9 Advertising signs should have a contrasting colour to their background to assist people with a vision impairment.
- 7.10 All signs on footpath must comply with Schedule 1.57 of this Local Law.

Council's Footpath Trading Policy 2005 – 12

8.0 Other Obstructions

8.1 Obstructions

- 8.1.1 Any application for the placing of any other obstruction, fixture fitting or equipment that would not fit within the definition of sign, goods or outdoor eating facility shall be nominated on an application form and the applicant shall demonstrate compliance with this policy prior to any approval being issued.
- 8.1.2 Any obstruction shall be placed only within the Trading Activity Zone.
- 8.1.3 The fee applicable shall be determined by the Council depending upon the nature of the occupation sought.
- 8.1.4 The permit applicant must provide to Council satisfactory evidence of current public liability insurance and be for an amount of not less than \$10,000,000.00 for any single occurrence. Any permit issued will be on the basis that the policy will stay current for the life period of the permit.

8.2 Planter Boxes

- 8.2.1 Planter boxes will only be allowed in the Trading Activity Zone.
- 8.2.2 Planter boxes shall have a maximum height of **1000mm**, including the plant.
- 8.2.3 Planter Boxes must provide a positive contribution to the visual amenity of the street. Permits for planter boxes require that they be well maintained with healthy plants. Planter boxes will be removed where they are not adequately maintained.
- 8.2.4 Permission may be given for placement in the Trading Activity Zone of:
- Temporary Planters - must be brought in during non-trading hours.
 - Permanent Planters – must be of solid design and be consistent with the adopted urban design theme for the activity centre.
- 8.2.5 Permanent planters may not be used as enclosures without written consent from Councils Infrastructure Division and must be placed so as to cause no obstruction to street cleaning vehicles.
- 8.2.6 The permit applicant must provide to Council satisfactory evidence of current public liability insurance and be for an amount of not less than \$10,000,000.00 for any single occurrence. Any permit issued will be on the basis that the policy will stay current for the life period of the permit.

Council's Footpath Trading Policy 2005 – 13

8.3 Temporary Charity Events/sausage sizzles.

It is not intended that this policy apply to charity events and /or sausage sizzles.

However in conducting such events that the trading activity zone as defined will be the area of the footpath for the conduct of these activities

Council's Footpath Trading Policy 2005 – 14

9.0 Council & Public Authorities Responsibilities.

9.1 Maintenance of Footpaths.

Council will continue to manage the use of footpaths at all times and reserves the right to reclaim access to and remove all footpath trading at any time for any purpose. Council will endeavour to provide adequate notice to any license holder.

Except where permanent structures have been installed Council will continue to maintain a regime of repair and reinstatement of footpaths and furniture.

9.2 Activities of Service Authorities.

Council is not able to provide notification of any action of a service authority that is likely to interrupt or affect the use of footpaths for trading activities. Council where it is the authority required to carry out any works will generally give notice to affected traders.

Council will request that service authorities give under their adopted customer charters adequate notice of street works but Council is not able to give guarantees that such notice will be provided.

9.3 Compensation for loss of trade.

Where any service authority are required to carry out works within the road reserve which requires the removal and/or alteration to the footpath trading arrangements, no compensation will be payable for any loss of trade experienced during and after the works.

9.4 Inspection.

Council will make regular inspection of areas that have been authorised for footpath trading.

An Authorised or Delegated officer will give direction to any permit holder in respect to compliance with the permit or activity authorised. Failure to respond to a lawful direction will result in enforcement action being taken. See Section 12.0 of this Policy.

9.5 Revocation/suspension/modification.

The Council may suspend, revoke, amend, relocate or otherwise modify any permit it issues, subject only to the appeals process outlined in this local law. Council must give any permit holder 14 days' notice of its intention to suspend or revoke amend, relocate or otherwise modify any permit. If such action is taken by Council the permit holder or any other person shall not be entitled to any payment compensation or damages of any kind.

Council's Footpath Trading Policy 2005 – 15

10.0 Applying for a Permit.

10.1 Information to be provided.

To obtain a permit, applicants need to:

- 10.1.1 Complete and sign the Street Trading Activity application.
- 10.1.2 Provide a site plan drawn to scale that shows dimensions of proposed kerbside café, goods display etc and
- 10.1.3 Indicate setbacks from shop frontage, kerb and site boundaries and any existing elements, for example, tree, light pole, rubbish bin, public transport shelters, etc.
- 10.1.4 Provide a photograph(s) of the area at the front of the shop/premises where it is proposed to undertake the footpath trading activity.
- 10.1.5 Provide a Certificate of Currency in relation to a public liability policy of insurance, insuring against liability for the death of or injury to any person or damage to any property arising out of the display that will be authorised by the licence, which lists;
 - a) A minimum of \$10 million in public liability
 - b) The insured (including situation of risk)
 - c) The Company insuring you
 - d) Expiry Date
 - e) Policy Number.
- 10.1.6 Provide an indemnity in a form similar to that in Appendix A of this Policy

10.2 Decision Guidelines

- 10.2.1 Council reserves the right to reject any application made for footpath trading.
- 10.2.2 In addition to any matters set out above in considering whether to grant a permit for an outdoor eating facility the Council or an Authorised or Delegated Officer will consider:
 - 1) How the proposal meets the general and specific principles of this policy.
 - 2) The effect on pedestrian flow and safety
 - 3) The impact on the appearance of the street and its surroundings.
 - 4) The design and standard of any permanent structures proposed.
 - 5) Any impact on trading generally within the area.

Council's Footpath Trading Policy 2005 – 16

- 6) Any impact likely to be caused to nearby residential properties
- 7) The hours of operation of the facility/use and how it relates to the use of the adjacent land.
- 8) Whether approval has been granted for advertising or other forms of trading activities for the premises.
- 9) The effect on vehicular flows and traffic safety
- 10) Whether it is complementary to the business plan for the activity centre
- 11) Whether the conditions of any previous approval have been complied with.
- 12) Whether the proposal will under any circumstances be detrimental to the amenity of the area, including residential amenity.

Council's Footpath Trading Policy 2005 – 17

11.0 Fees

Council sets its fees and charges each year as part of the Council budget/estimate process.

The current fees are available on request.

Traders and permit applicants should note that permanent structures attract a separate fee than that established for non-permanent footpath trading activities.

Council's Footpath Trading Policy 2005 – 18

12.0 Enforcement.

- 12.1 Upon detection of a breach of the Local Law, Footpath Trading Policy or a specific permit condition, Council may in any order issue:
 - 12.1.1 a verbal warning.
 - 12.1.2 a written Notice to Comply – a first and final warning with time limit for compliance.
 - 12.1.3 an infringement Notice of \$100 – a fine for non-compliance with the above notice.
 - 12.1.4 further fines or permit suspensions for a minimum period of 3 months and/ or prosecution.
- 12.2 Council may impound any items on the footpath that do not comply with Local Laws, this Policy and any conditions placed on a permit. Guidelines for the exercise of the power of impounding are included in this local law.
- 12.3 Incidents of non-compliance will be noted on a trader's file and will be taken into consideration in delivering an appropriate penalty at a later date should further incidents of non-compliance be noted.
- 12.4 Second and subsequent fines will be issued without additional warning for further acts of non-compliance.
- 12.5 Traders will be required to sign a form acknowledging that they understand the enforcement protocol and its implications before each licence renewal.

Council's Footpath Trading Policy 2005 – 19

13.0 Technical Standards for Permanent Screen Structures.

The following standards shall apply to permanent screen structures:

- 13.1 Screens are manufactured of laminated glass 1.5m in height with a minimum thickness of **10.38mm**.
- 13.2 The screens shall not exceed **1500mm** in height.
- 13.3 The screens shall have a minimum clearance of **200mm** from the footpath surface.
- 13.4 Screens shall not have a return length of more than **2000mm**.
- 13.5 Glass screens must be certified by a structural engineer in relation to fixing and impact loads
- 13.6 Glass may be frosted or have a screen print pattern to a height of **500mm** above pavement level otherwise the glass shall be clear.
- 13.7 A safety screen print pattern shall be provided at a height of approximately **700mm** above pavement level.
- 13.8 No commercial advertising shall be permitted on the screens other than the name or logo of the café/restaurant.
- 13.9 Support Poles to be a minimum 48mm diameter extruded aluminium and finished in a clear anodised coating or such other colour that may be approved. Consideration will be given to any adopted urban design policy of the Council in approving non-standard fixtures and fittings.
- 13.10 The base of any screen is to be constructed of cast aluminium, and affixed in a location so that the screen is located in accordance with the siting requirements of this Policy.
- 13.11 The screens shall be regularly cleaned and maintained by the operator of the premises and if damaged shall be replaced within 24 hours of any damage that may cause risk to public safety otherwise within one week of the damage occurring.
- 13.12 Any graffiti shall be removed within 24 hours.
- 13.14 Any retractable awning that forms part of a permanent screen is to be retracted except in inclement weather.

Council's Footpath Trading Policy 2005 – 20

Appendix A - Indemnity Form

BAYSIDE CITY COUNCIL

This section to be completed by the Permit Holder or their authorised representative

FORM OF INDEMNITY

I, _____ (Name of the Person)
of _____ (Address of Person)
in the State of Victoria
holding the position of _____ (Role or Position in Business)
in the business named _____ (Business Name)
with ABN or ACN _____ (Australian Business or Company Number)
of _____ (Business Address)
for which business I am duly authorised to sign this indemnity,
in consideration of the Permit for _____
nature of the permit)
on the Footpath or Road
being granted to _____
(Name of Person or Incorporated Business Name on the Permit)

(referred to as "the Permit Holder") HEREBY COVENANTS with BAYSIDE CITY COUNCIL (hereinafter referred to as "the Council") that unless caused by a breach of statutory duty or common law by the Bayside City Council or any of its officers, agents, employees or contractors, the Permit Holder agrees to indemnify the Council and keep the Council indemnified from and against all and any damage, loss, cost or liability incurred or suffered by any person as a result of the Permit Holder's failure to comply with any conditions of the Permit granted by the Council, or any other failure to comply with any relevant law, lawful duty or obligation giving rise to any damage, loss, cost or liability incurred or suffered by any person as a result of or in any way associated with the exercise of this Permit.

SIGNED SEALED AND DELIVERED by

(Print Name)

(Sign)

(Print Position)

(Date)

in Victoria in the presence of:

(Print Witness Name)

(Witness Sign & Date)

Schedule 11.3 Of Local Government Act 1989 - 1

Local Government Act 1989
No. 11 of 1989

Sch. 11

3 Power to remove unregistered or abandoned vehicles

Sch. 11 cl. 3
amended by
No. 33/1995
s. 11(c)(d).

- (1) A Council may—
- (a) move or impound any unregistered vehicle or vehicle considered by it to be abandoned (and anything in, on or attached to, the vehicle);
 - (b) keep the vehicle in the place to which it has been moved or any other place;
 - (c) return the vehicle to its owner on payment of a fee; and
 - (d) sell, destroy or give away the vehicle (and anything in, on or attached to, the vehicle) if the owner of the vehicle has not paid the fee within 7 days of the Council impounding the vehicle.
- (2) The Council, and anyone who obtains the vehicle from the Council under subclause (1)(d), is not liable to the owner of the vehicle or any other person in respect of any action taken under that subclause.
- (3) The fee set for the purposes of subclause (1)(c) must not exceed an amount that reasonably represents the cost to the Council of impounding, moving, keeping and releasing the vehicle (including any relevant overhead and other indirect costs).

POLICIES

Schedule 11.5 Of Local Government Act 1989 - 2

Local Government Act 1989
No. 11 of 1989

Sch. 11

5 Power to move other obstructions

A Council may—

Sch. 11 cl. 5(a)
amended by
No. 109/2003
s. 92(a)(b).

- (a) move any thing that encroaches on or obstructs the free use of a road or that reduces the breadth, or confines the limits, of a road (including any thing placed on the road under clause 9, 10 or 11);
- (b) require any person responsible for, or in control of, the thing to move it.

POLICIES

SCHEDULE 3 – PERMIT CONDITIONS

LOCAL LAW NO. 2 ‘Neighbourhood Amenity’

SCHEDULE 3 -PERMIT CONDITIONS

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The incorporated Standard Conditions at the beginning of this Schedule 3 are applicable to all permits issued under this Local Law.

To ensure procedural fairness and to enhance customer focus, community safety, individual site differences, and the protection of public assets, Council reserves the right to add additional clauses to the following permits, provided an Authorised or Delegated Officer reasonably believes any additional clause is relevant and based upon the individual circumstances of a permit application. All additional clauses must be consistent with the relevant local law, the relevant incorporated Guidelines in Schedule 1, and the incorporated Policies in Schedule 2.

Note: The following Schedule of Council Permit Conditions covers some of the most commonly requested permits, but is not exhaustive and should not be regarded as such. Any Permit Conditions not included in this Schedule may be obtained from Council’s website or by enquiry direct to Council (at the contacts below).

Fees relating to permits are determined annually by Council in its budgeting process and are available from Council’s website or by enquiry direct to Council.

Council Website is: www.bayside.vic.gov.au

Council’s enquiry email is: enquiries@bayside.vic.gov.au

Council’s telephone number is: (03) 9599 4444

Council’s Corporate Centre is at: 76 Royal Ave, Sandringham 3191.

Council’s Office Hours: 8:30am-5:00pm Monday - Friday

Council’s Postal Address: Bayside City Council, PO Box 27, Sandringham VIC 3191

The following Permit Conditions listed in Schedule 3, as determined by Council from time to time, are incorporated in this Local Law.

17. STANDARD PERMIT CONDITIONS

The following standard permit conditions, as determined by Council and amended from time to time, are incorporated in this local law and apply to all Permits issued or corrections to permits issued by Bayside City Council. They are in addition to, and, if in conflict with, override any conditions applicable to any specific type of permit. These conditions should form part of or be attached to every permit issued.

1. The permit application must be accompanied by the appropriate fee, and the permit application will not be processed until the appropriate fee is paid in full to Council, or the fee due is made subject to an approved payment system.
2. If application is approved and issuing the permit involves an additional fee or fees, the permit is not valid until the appropriate fee or fees are paid in full to the Council, or the fee due is made subject to an approved payment system.
3. The applicant may be required to give public notice, or written notice to adjoining landowners and other specified parties of such application inviting submissions.
4. Except where otherwise expressly stated in this Permit, a Permit will operate from the date it is issued until 30 June next following that date.
5. This Permit may be fully or partially cancelled or suspended by Council at any time, if in the opinion of the Authorised or Delegated Officer:
 - a) there has been any material misstatement or concealment in relation to the application for a Permit; or
 - b) there has been a failure to comply with any condition or conditions subject to which the Permit was issued.

Where paragraph (a) of this clause applies, the Permit may be suspended by giving seven (7) days' notice of the decision to propose full or partial cancellation and of advice that an appeal may be lodged with the Council. If an appeal is lodged within that seven (7) days, the suspension continues until full or partial restoration or cancellation of the Permit is determined in the appeal to the Council.

Where paragraph (b) of this clause applies, any cancellation will not take place unless:

- (i) a Notice to Comply has been served upon the Permit Holder;
 - (ii) there has been a failure to comply with the Notice to Comply within the time required;
 - (iii) the failure to comply continues for a period of seven (7) days after the time specified in the Notice.
6. Where the Permit Holder is not the owner of the property to which the Permit applies and the owner's consent was required to be given to the application for the Permit, the owner must be notified of any and all Notices to Comply and the reasons why it has been served on the Permit Holder.
7. The Council reserves the right to correct or modify any Permit in relation to a clerical mistake or other error arising unintentionally or by an omission; or an evident material miscalculation of figures or an evident material mistake in description of any person, thing or property referred to in the Permit. The

Council will give notice of any correction or modification of a Permit to the Permit Holder.

8. Permit applicants should also be aware that under the Local Law any person who makes any false representation or declaration (whether oral or in writing) in, or who omits any relevant information from, an application for a Permit or exemption is guilty of an offence with a maximum penalty of 20 Penalty Units. Also any person who fails to comply with a Notice to Comply within the required time is guilty of an offence with a maximum penalty of 10 Penalty Units.
9. Any permit applicant or holder who is aggrieved by any matter in the granting, reviewing, modification, suspension, cancellation or renewal of this Permit, and/or in relation to any written notice, Notice to Comply or Infringement Notice issued in relation to breaches of conditions of this Permit, may by written request within twenty-eight (28) days of the date of the incident, notice or matter concerned, seek a review by Council (including by its delegated appeals officers) of the matter. However, the making of any such request will not in any way remove that person's obligation to act in accordance with any directions or notices which are applicable under the Permit or any notices issued pursuant to matters related to this Permit.
10. As Council is the final review authority in matters relating to this Permit, Council's review decision is final. However, if the review involves any infringement or penalty notice issued in relation to the permit, then during the review process such a notice will be suspended pending the review decision. Following any such Infringement Notice review decision, there is a further right to be heard in the Magistrate's Court provided notice is given to Council within 14 days.

End of Standard Permit Conditions

35. SHIPPING CONTAINER ON PRIVATE PROPERTY - PERMIT

Conditions of permit

- (1) The entire fee for the permit must be paid in full prior the placement of the container.
- (2) The permit for a Shipping Container is be time limited and is for the number of days or to the date entered on the Permit, but will not be for a period of less than 8 days.
- (3) The applicant must take out public liability insurance (minimum \$10 million) and prior the placement of the container, must have provided Council with a Certificate of Currency of Public Liability Insurance.
- (4) The Shipping Container must not be placed on Council land (including on roads, kerbs, footpaths or naturestrips).
- (5) It is the permit holder's responsibility to ensure the container does not represent an unacceptable risk to the health and safety of the public.
- (6) The Shipping Container must not be used as a permanent structure.
- (7) Any damage to Council property caused by the placement or removal of the Shipping Container, including pavement, nature strip and services, is to be reinstated by the permit holder. If reinstatement is not completed, works will be undertaken by the Council at the permit holder's expense.
- (8) Whilst the Container must not be placed on roads and must be placed on private property, it must nevertheless not obstruct motorists' vision or line of sight at intersections while pits, valve covers and hydrants must remain accessible.
- (9) If the Shipping Container on private property nevertheless constitutes a traffic hazard or obstruction, the container must be mounted with yellow reflective tape on the corners of the containers, or lights which must be illuminated between sunset and sunrise and visible from a distance of 200 metres to prevent a hazard to the public.
- (10) Any additional clause which an Authorised or Delegated Officer reasonably believes is relevant and based upon the individual circumstances of an application may be appended to this list of terms and conditions.

End of Shipping Containers on Private Property Permit Conditions

60. DRAINAGE TAPPINGS / ROAD OPENING PERMIT

Conditions of Permit

- (1) Excavations must be the minimum size for the work in hand. Concrete roads and footpaths are to be saw cut and not be broken unless this is absolutely unavoidable.
- (2) All excavated materials are to be kept segregated and replaced in the order in which they are removed from the excavation. In road pavements all excavated material is to be replaced with 20mm class 2 FCR. Each layer is to be thoroughly consolidated. Layers shall be replaced in thickness not exceeding 150mm and be thoroughly consolidated before placement of the next layer. A temporary seal consisting of 40mm of P.C.M. (Cold Mix asphalt) is to be applied to road pavement and footpath openings.
- (3) The recipient of this permit shall cause all works to be adequately barricaded and lighted for the protection of traffic (both pedestrian and vehicular) and shall be responsible for any damages incurred by reason of civil action. Appropriate advance warning signs shall be erected where necessary. Such barricades, lights and warning signs shall be provided by the recipient of the permit in accordance with AS 1742.3 Temporary Roadworks Signing Code of Practice.
- (4) Should the above conditions be not carried out a further charge sufficient to cover the cost of bringing the work into conformity therewith will be made.
- (5) If the area of road opened as measured by Bayside Council exceeds the area for which an estimated reinstatement charge has been paid, an account for the extra area will be rendered to the recipient of the permit.
- (6) If the area of road opened is less than the area for which a fee has been paid, a written request for a refund, based on the reduced area opened, will receive consideration by the Council.
- (7) Recipients of street opening permits are reminded of their obligations at law in connection with the opening of roads and the placing of obstructions thereon.
- (8) The road shall at all times be kept open for traffic, unless written permission has been obtained from the relevant Council Officer.
- (9) Unless otherwise approved by Council, all permanent repairs to road pavement, footpath, nature strip, kerb and channel, vehicular crossings, lanes and unmade roads shall be carried out by the Council.
- (10) All backfilled trenches or excavations carried out under this permit shall be maintained in a safe condition by the person taking the permit out for a period of twenty eight (28) days after notification to Council of completion of the work.
- (11) The recipient of this permit shall at all times keep roads, footpaths and channels in a clean and tidy condition and upon completion of the work shall remove all surplus materials.
- (12) Vehicle crossings shall be constructed in accordance with the requirements described in the Council's specification, a copy of which will be made available upon request at the Technical services Department. The onus is on the permit holder to obtain the necessary drawings and specifications prior to construction.
- (13) Persons digging trenches are reminded of the need to take appropriate safety precautions and to comply with the relevant provisions of Clause 202 of the

Mines (Trenches) Regulations (1979). Information can be obtained from the Occupational Health and Safety Authority.

- (14) This permit is valid for 12 months from the date of issue.
- (15) All drains to be constructed in accordance with requirements specified by the Technical Services Department and/or building surveyor as appropriate.
- (16) Connections to council's drains or pits are to be carried out in accordance with Council's standard drawings and specifications.
- (17) A drainage tapping to a legal point of discharge is for the purpose of rain water only. Council or an Authorised or Delegated Officer must approve any other discharge before connection and/or any discharge. Additional information regarding the source, quality (chemical and biological), quantity and frequency of such discharge may be required prior to assessment for approval.
- (18) All disturbed nature strips are to be top dressed with a minimum of 50mm of seeded sandy loam topsoil.
- (19) Any additional clause which an Authorised or Delegated Officer reasonably believes is relevant and based upon the individual circumstances of an application may be appended to this list of terms and conditions.

End of Drainage Tapping/ Road Opening Permit Conditions

64. BUILDING WORKS ON PRIVATE PROPERTY -

ASSET PROTECTION PERMIT

Work is permitted, subject to the conditions here under, to transport building materials, machinery and equipment across the road reserve to gain access to:
[address]

Conditions under which permit is granted

1. A non-refundable permit fee as specified above is paid to the Bayside City Council prior to the commencement of works.
2. A Security Deposit as specified is to be lodged with the Bayside City Council. The amount of the deposit is to be determined by Council's Authorised officer.
3. Ensure that a tree protection fence is in place for Council's nature strip (street) tree if requested, in accordance with *Australian Standard No. 4970-2009, Protection of Trees on Development Sites*.
4. Where the Council's assets have been protected or restored to Council's standard, the Security Deposit will be refunded in full.
5. Failure to restore the road reserve and make good any damage caused to Council's assets within Fourteen days of notification by Council to do so, will result in Council undertaking the necessary reinstatement works and deducting the cost from the Security Deposit. Where a portion remains unused, it will be refunded. Where the costs exceed the Security Deposit, the permit holder will be liable for the excess and invoiced accordingly.
6. The permit holder is to take all necessary precautions to ensure that Council's assets are not damaged.
7. No building material shall be placed on the naturestrip, footpath, road or Council Reserve without prior written approval of Council.
8. No buildings such as site sheds, toilets etc., or activities associated with any building works shall be placed/carried out on the naturestrip, footpath or reserve without prior written approval from Council.
9. All public areas disturbed by any building activity is to be maintained in a safe trafficable manner.
10. The entry point for the transport of materials should be confined to any existing vehicle crossing point. Where a property is not provided with a permanent vehicle crossing, a temporary crossing will be required to be installed if directed by Council's Authorised Officer.
11. The site is to be managed to minimise the risks of stormwater pollution or the deposit of sediment on roadways.
12. Any additional clause which an Authorised or Delegated Officer reasonably believes is relevant and based upon the individual circumstances of an application may be appended to this list of terms and conditions.
13. **The permit is valid for the entire period of the works.**

End of Building on Private Property – Asset Protection Permit Conditions.

74. USE OF MUNICIPAL RESERVE PERMIT

The Use of Municipal Reserve Permit takes a number of forms and may include a Casual Use & Filming Permit, a Works Permit, an Events Permit, and a Tour Operators/Recreational Activity Providers Permit. All Permits also include Bayside City Council's Standard Permit Conditions.

Permit for Use of a Municipal Reserve - Casual Use & Filming

Permit Conditions –

(1) *Condition of venue*

The Hirer agrees and acknowledges that the venue and/or reserve is in good repair and clean condition at the commencement of the hire period and must be returned to the Bayside City Council (Council) in the same condition at the end of the hire period.

The Hirer shall reimburse Council for the cost of any reinstatement or repairs occasioned as a result of any damage to property resulting from the conduct of the function and any associated activities.

Due care is to be exercised at all times, with the protection of all natural vegetation and geographical features in the area being a prime consideration.

If the Hirer causes damage, Council retains the right to withhold part or all of the security deposit towards the cost of repair and/or reinstatement. If no security deposit is held, Council retains the right to invoice the Hirer the full cost of repair and/or reinstatement.

(2) *Homestead and veranda (where applicable)*

All users are advised that the veranda and homestead at Kamesburgh Gardens, Billilla Gardens and Black Rock house are not available for the hirer's access or use. The house and veranda do not form part of your booking.

(3) *Signage*

The use of any portable, freestanding signs on or above any roadway, footpath or public place without prior approval from the Responsible Manager is prohibited.

(4) *Council direction*

The Hirer shall have regard to any lawful direction or instruction given by an authorised officer of the Council in relation to the conduct of the function.

All Council Local Laws must be complied with at all times.

(5) *Amplification equipment / noise*

The use of any amplification equipment shall be kept to a level prescribed by the Environment Protection Act (72 decibels and must not disturb other users).

(6) *Litter*

Litter generated shall be removed from the site immediately after the event. Confetti and petals are considered litter and should not be used. If the site is

left in an unclean condition following usage, the Council retains the right to withhold part or all of the security deposit towards the cost of any clean-up.

(7) *Booking process (separate from this Permit)*

Confirmation of casual use bookings should be made on the appropriate Permit application form. The completed form should be forwarded with payment at least 10 business days prior to the proposed use. The Permit includes a booking confirmation and will be forwarded to the applicant.

If payment is not received with the Permit application, any booking will be cancelled.

You must declare all relevant facts on your Permit application, in order for Council to assess the application. If you fail to do so, your Permit may not be issued and any booking may be revoked without notice. Council will not be held liable for any damages or losses incurred. Permit applications must be received by Council at least 10 business days prior to the booking date. All bookings are subject to availability, suitability and completely at Council's discretion.

(8) *Indemnity*

The Permit Holder hereby covenants with Bayside City Council (hereinafter referred to as "the Council") that unless caused by a breach of statutory duty or common law by the Bayside City Council or any of its officers, agents, employees or contractors, the Permit Holder agrees to indemnify the Council and keep the Council indemnified from and against all and any damage, loss, cost or liability incurred or suffered by any person as a result of the Permit Holder's failure to comply with any conditions of the Permit granted by the Council, or any other failure to comply with any relevant law, lawful duty or obligation giving rise to any damage, loss, cost or liability incurred or suffered by any person as a result of or in any way associated with the exercise of this Permit.

(9) *Keys*

Where a key is required, for an approved use, this must be collected from the Leisure and Recreation Administration Officer, Bayside City Council Corporate Centre, 76 Royal Ave Sandringham, on the last working day prior to booking. The key must be collected, by prior arrangement, during business hours, 8.30am to 5pm. It must be returned the first working day following the booking. A fully refundable key deposit of \$50.00 per key is required.

(10) *Bollard keys*

It is the Hirer's responsibility to ensure that bollards are safe and secured after removal and they are returned and secured at the end of the hire period. Council retains the right to invoice the Hirer the full cost of repair and/or reinstatement for any loss.

(11) *Vehicles / parking*

Vehicles may only be taken onto Council reserves and parks if the Permit specifically allows this. This approval is limited to those vehicles essential for

the conduct of the approved activity (e.g. wedding party, film crew, disabled access). The Responsible Manager or an Authorised or Delegated Officer reserves the right to revoke this approval in certain weather conditions.

Please see special conditions for Kamesburgh Gardens. The Permit does not include parking fees or permission to park contrary to any restriction.

(12) *Liquor and food*

Between sunset and sunrise, a person must not, on any Municipal Reserve, whether it be a Road within a Municipal Reserve or not, or in any motor vehicle within a Municipal Reserve, consume any Liquor, or have in his or her possession or control, any Liquor, other than Liquor in a container with an unbroken seal.

No alcohol or food can be served as part of a commercial arrangement without the necessary Permit approval from Council.

(13) *Marquees and other portable structures*

Bayside City Council requires a Security Deposit of \$500 if a portable structure and/or other infrastructure is to be located on the site.

The Security Deposit will be refunded by cheque within 4 weeks after the function, subject to the site being left in a satisfactory condition.

No ground penetration securing system or device is permitted at parks with irrigation systems.

A current Certificate of Currency of the supplier's Public Liability insurance for a minimum of \$10 million must be provided to Bayside City Council prior to approval being granted.

(14) *Booking BBQ's, park structures and amenities*

Apart from the Sandringham Rotunda, no park amenities, structures or BBQ's can be booked.

Please ensure that all users connected with your booking conduct themselves with due respect and consideration of others with regard to shrines, memorials, park furniture, structures and amenities.

(15) *Cancellation fee*

A fee of \$50 will apply to all cancellations once the Permit is issued.

(16) *Kamesburgh and Billilla Gardens – special conditions*

Special conditions are applicable for these Reserves and will be appended to this Permit.

(17) *Filming and photography*

- (a) If filming and photography is for private, non-commercial, community and/or social media purposes and the images will not be publicly exhibited or broadcast for television, then no permit is required. All other filming or photography that is conducted for commercial or television broadcasting purposes or for public exhibition must not be undertaken on land that is managed by Council without a permit.

- (b) Where a permit for filming or photography on Council Land is required:

The production company (the permit holder) must letter box drop ALL residents and businesses which may be affected by the filming process at least 48 hours in advance.

The production company (the permit holder) must provide a copy of the letter that has been letter box dropped to the affected properties to Council.

(18) *Public Liability Insurance*

Council reserves the right to make a condition of this Permit that the Applicant show evidence of current public liability insurance to an amount approved by Council, depending upon the nature of the proposed activity.

(19) *Other*

Any additional clause which an Authorised or Delegated Officer reasonably believes is relevant and based upon the individual circumstances of an application may be appended to this list of terms and conditions.

SCHEDULE 4 – FORMS

LOCAL LAW NO. 2 ‘Neighbourhood Amenity’

SCHEDULE 4 - FORMS

The following forms are included but not incorporated in this local law. Council reserves the right to amend forms from time to time based on the changing need or new circumstances.

NOTICE TO COMPLY

TO: _____
(Name)

(Address)

The following constitutes a breach under clause _____ of the Council’s Local Law No. 2 – Neighbourhood Amenity. To remedy the breach you must carry out the following work, within _____ days from the date of this notice.

Work to be done _____

You should contact the undersigned at the Municipal Offices during business hours for any further information about this Notice.

If you fail to comply with this Notice you will be guilty of an offence and liable for payment of the penalty of \$_____ (penalty) for the offence. Additionally, an Authorised Officer may proceed to have any required work carried out, in which case, you will be liable for the cost of such works (in addition to the above penalty) under Section 225 of the *Local Government Act 1989*.

Date _____
(Insert Date) (Name of Authorised Officer)

Telephone _____
(Signature of Authorised Officer)

NOTE: If this notice relates to a contravention of a Permit there is no compliance with the Notice, the Permit may be cancelled. If you do not wish to have the Permit cancelled you should comply with the directions in this Notice or show cause to the Council in writing why the Permit should not be cancelled.

FORMS

NOTICE OF IMPOUNDING

TO: _____
(Name)

(Address)

The following thing(s) has/have been impounded in accordance with clause 15 of the Council's Local Law No. 2 – Neighbourhood Amenity.

(Describe thing(s) impounded) _____

You may collect the thing(s) by attending at the municipal offices during normal business hours and paying the following:

Details of Fees and Charges

\$

_____	_____
_____	_____
_____	_____
_____	_____

TOTAL \$ _____

If you fail to collect the thing(s) and pay the required fees and charges by _____ (date), the Council's Authorised Officer will proceed to dispose of the thing(s) in accordance with Council policy.

Date _____
(Insert Date)

(Name of Authorised Officer)

Telephone _____

(Signature of Authorised Officer)

FORMS

APPLICATION FOR PERMIT

Applicant: _____

Organisation: _____

Address: _____

Telephone: BH: _____ AH: _____ Mobile: _____

Application to: _____

For further information I may be contacted on _____ (telephone).

Fee: \$ _____

Declaration: I attach a copy of Certificate of Currency for public liability insurance (\$10m), which provides indemnity to Bayside City Council in relation to this application and permit, and agree to abide with all conditions herewith.

Signature _____ Date ____/____/____

Name (please print) _____

Please note: Council collects your personal information for the purposes of processing your application for a permit. If you have any queries or wish to gain access to your information, please contact Council's Privacy Officer on 9599 4444 or at privacy@bayside.vic.gov.au

Office use only

T110 account: E1166.1025

amount: \$

Received from _____

FORMS

SCHEDULE 5 –PENALTIES

LOCAL LAW NO. 2 ‘Neighbourhood Amenities’

SCHEDULE 5 - PENALTIES

TABLE OF MAXIMUM PENALTIES and INFRINGEMENT NOTICE PENALTIES IN RESPECT TO OFFENCES AGAINST THE LOCAL LAW

Why are Infringement Penalties different from Maximum Penalties?

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.

* ‘An infringement penalty should generally be approximately no more than 20 – 25% of the maximum penalty for the offence’: Annexure A , Attorney-General’s Guidelines to the Infringements Act 2006 (Vic).

Maximum penalties may be imposed by a Court when:

- Council chooses to prosecute an offence, rather than issue an Infringement Notice, or
- A person receiving an Infringement Notice chooses to have the matter heard in Court.

A ‘**Penalty Unit**’ means a penalty unit under the Sentencing Act 1991, s. 110(2) and/or Monetary Units Act 2004, s. 13(2). For Local Laws, a penalty unit is currently fixed by the State Government at the value of \$100 per penalty unit (but this may vary from time to time).

If any offence under this Local Law is not set out in the table below, the infringement penalty for that offence will be 20% of the maximum penalty.

Clause	Title	Maximum Penalty Units	Infringement Notice Penalty Units
13	Failure to adhere to a Notice to Comply	20	5
21	Falsify application for a Permit or exemption	20	5
25(1)	Applying a Road Name without consent	10	2
26	Failure to provide a suitable property number	10	2
27(1)	Permitting unsightly land detrimental to amenity	20	5
27(2)	Allowing graffiti to remain on Private Property	10	2
27(3)	Allowing graffiti to remain on Council Land	10	2
28	Land kept in a dangerous manner	20	5
29	Failure to comply with domestic waste guidelines	10	2
30(1)	Removing or Interfering with Recyclable Material	10	2

Clause	Title	Maximum Penalty Units	Infringement Notice Penalty Units
31(1) and (2)	Burning of materials	20	4
32	Failure to keep land free from fire hazards	20	5
33(1)	Camping on Private Land without Permit	10	2
34	Audible Intruder Alarm contrary to Local Law	10	2
35	Keeping a Shipping Containers on Council Land or without a permit on Private Property	20	5
36 (1a)	Destruction, damage or removal of Trees	20	5
36 (1b)	Cutting, trimming or pruning of Trees	10	2
36 (3a)	Destruction, damage, removal of Replacement Trees	20	5
36 (3b)	Cutting, trimming or pruning of Replacement Trees	10	2
37	Trees or plants to obstructing or obscuring	10	2
38(1)	Allowing trees or plants to cause damage	20	5
39(1)	Keeping Animals contrary to Local Law	10	2
40	Failure to provide adequate Animal Shelter	10	2
41 (1)	Animal excrement remaining on Council land	10	2
41 (2)	Failure to carry a suitable animal litter device	10	2
42	Failure to remove Wasp Nest within 7 days	10	2
43(1)	Bulk rubbish containers on a Road without Permit	10	2
44 (1) (2) & (4)	Use of Motor Bikes and Motor Recreational Vehicles contrary to Local Law	10	2
45	Repair of vehicles on Roads	10	2
46(1)	Leave a derelict, abandoned or unregistered vehicle on Council Land	20	5
47(1)	Parking a Heavy Vehicle on a Road	10	2
48(1)	Storing Heavy Vehicle	10	2
49(2)	Use of Restricted Use Roads by Heavy Vehicle – without permit	10	2
50(1)	Holding a Street Party, Street Festival or Procession	20	5
51 (1)	Roadside trading without Permit	20	5

Clause	Title	Maximum Penalty Units	Infringement Notice Penalty Units
51 (2)	Roadside performance (busking) without a permit	10	2
52	Roadside trading on another's pre-allocated site	20	5
54(1)	Displaying goods for sale on a Road without permit	20	5
55(1)	Using Council Land for an Outdoor Eating Facility without permit	20	5
56	Failing to Remove the Outdoor Eating Facility	20	5
57(1)	Advertising sign on Council land without permit	20	5
58(1)	Collecting money or subscriptions without permit	10	2
59(2)	Placing of trade waste contrary to requirements	10	2
59(3)	Placing of trade waste contrary to guidelines	10	2
59(4)	Failure to store waste container on property as required.	10	2
60	Tap into or interfere with a drain under the control of Council	20	5
61 (1) & (4)	Failure to provide or maintain a properly constructed vehicle crossing	20	5
62 (1)	Construct, install, remove or alter a vehicle crossing without first obtaining a Permit to do so	20	5
62 (2)	Removing, pruning or damaging street tree from works on vehicle crossing	20	5
63 (1) (2) & (3)	Temporary Vehicle Crossing – Failure to obtain Permit, or Repair Damage, or Reimburse Council	20	5
64	Building Works contrary to requirements	20	5
65	Consumption and possession of Liquor on Roads	10	2
66	Consumption and possession of Liquor on Municipal Reserves	10	2
68(3)	Smoking in Municipal Places contrary to signs	10	2
69	Contrary Behaviour in a Municipal Place	10	2
70	Damaging/defacing a Municipal Place	20	5
71	Interference with watercourse	20	5

Clause	Title	Maximum Penalty Units	Infringement Notice Penalty Units
72	Obstructions on Council Land	20	5
73	Contrary behaviour in a Municipal Reserve	10	2
74	Use of a Municipal Reserve without permit	20	5
75(4)	Unauthorised Accessing Municipal Reserve	10	2
76	Camping on Council Land	10	2
77(1), (2), (3)	Lighting a fire on a Municipal Place	20	5
78	Filming on Council Land without a Permit	20	5
79	Parking on Council Reserve	5	1
80	Riding Animals on Council Land	10	2
81 (3)	Using a wheeled non-motorised device or child's toy in a restricted area	10	2
83 (1)	Control of Bathing Boxes	20	5
84	Contrary behaviour in a Municipal Building	10	2
85	Use of a Municipal Building without consent	10	2
86 (3)	Failure to obtain Permit	20	5
86 (4)	Failure to comply with a condition of a Permit or exemption	20	5

Resolution for the making of this Local Law was agreed to by the Council on the 10th day of April 2012.

The Common Seal of BAYSIDE CITY COUNCIL was affixed this

..... day of 2012 in the presence of:

..... Mayor/Councillor

..... Chief Executive Officer

Notices of the proposal to make and of the making of this Local Law were included in the Victorian Government Gazette date the 23 February 2012 and 19 April 2012 respectively.

Public Notices of the proposal to make and confirmation of this Local Law were inserted in *the Age* Newspaper on 23 February 2012 and 19 April 2012 respectively.

A copy of this Local Law was sent to the Minister for Local Government on the 19th day of April 2012.

Attachment 2

**Changes as marked to draft Local Law 2 as endorsed for
exhibition by Council on 14 February 2012**



Bayside
CITY COUNCIL

**CONSOLIDATED
LOCAL LAW NO. 2
'Neighbourhood Amenity'**

April 2012

NOTES ON DRAFT CONSOLIDATED LOCAL LAW

@ 31 January 2012

Please note the following limitations to this Draft Local Law.

1. This is a completed draft document –
 - The draft has not yet been endorsed by Council for Exhibition.
 - The draft has not yet been subject to Public Exhibition and Submissions.
 - There may be changes from the Submission process
 - There may be other minor technical or legal corrections.
 - The draft has not yet been adopted by Council.

2. This document is a consolidation and re-structure of previous Local Laws.

The new structure can be seen in the Table below.

NEW SECTION TITLES *

- a) Your Property, Trees & Pets**
- b) Vehicles & Roads**
- c) Business & Builders**
- d) Smoking & Alcohol**
- e) Public Places, Parks & Foreshore and Council Buildings**

*** It should be noted that this structure is for convenience of use only. Laws affecting a specific situation may not be limited to any one section.**

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- (9) *the Disability Discrimination Act 1992;*
- (10) *the Domestic Animals Act 1994;*
- (11) *the Firearms Act 1996;*
- (12) *the Food Act 1984;*
- (13) *the Gambling Regulation Act 2004;*
- (14) *the Geographic Place Names Act 1998;*
- (15) *the Infringements Act 2006;*
- (16) *the Land Act 1958;*
- (17) *the Liquor Control Reform Act 1998;*
- (18) *the Local Government Act 1989;*
- (19) *the Monetary Units Act 2004;*
- (20) *the Planning and Environment Act 1987;*
- (21) *the Public Health and Wellbeing Act 2008;*
- (22) *the Road Management Act 2004;*
- (23) *the Road Safety Act 1986;*
- (24) *the Road Safety Rules 2009;*
- (25) *the Sentencing Act 1991;*
- (26) *the Summary Offences Act 1966;*
- (27) *Vic Roads Code of Practice for Placement of Waste Bins on Roadsides (Vic Roads Publication No. 00623) 2001;* and
- (28) *the Victoria Government Gazette.*

If a provision of any document incorporated by, or referred to in this Local Law, excepting only State or Commonwealth legislation and regulations and any relevant Planning Scheme, is inconsistent with any provision in this Local Law, the provision in the Local Law prevails.

9. DEFINITIONS

In this Local Law, unless the context or subject-matter indicates otherwise, definitions are as in the *Local Government Act 1989*, indicated by 'as in the Act'. Other words and phrases have the respective meanings assigned:

WORDS AND PHRASES

MEANING OR EXTENDED MEANING

Act

Means the *Local Government Act 1989*.

Advertising Sign

Means any board, notice, structure, banner or other similar device used for the purpose of soliciting sales or notifying people of the presence of an adjacent property or other address, whether real, internet-based or otherwise electronic, where goods or services may be obtained.

Abandoned Vehicle	A Vehicle left on Council Land that has, in the opinion of an Authorised or Delegated Officer, been abandoned.
<u>Advertising Sign</u>	<u>Means any board, notice, structure, banner or other similar device used for the purpose of soliciting sales or notifying people of the presence of an adjacent property or other address, whether real, internet-based or otherwise electronic, where goods or services may be obtained.</u>
Animals	Excludes persons but includes although is not limited to any of the species or groups listed in the first column of the table in Clause 39, Keeping Animals.
Applicant	Means a person who applies for a Permit under this Local Law.
Appropriate Fee	Means the fee determined by the Council in accordance with Clause 22, Setting Fees and Charges.
Arterial Road	Means any Road declared as an ‘Arterial Road’ under s.14 of the <i>Road Management Act 2004</i> , the main function of which is to provide for through traffic movements and is controlled and managed by Vic Roads.
Audible Intruder Alarm	Means a device, installed or retained in a property by the owner or occupier of that property or at the direction of the owner or occupier of the property, which is designed to be (or which has the effect when switched on or being) activated by an intruder to the property so as to emit noise capable of being heard beyond the boundary of the property in which it is installed.
Authorised Officer	Means an Authorised Officer appointed under section 224 of the Act.
Barbecue	Means a device used for the cooking of food outdoors whether constructed or manufactured and whether powered by gas, electricity, liquid or solid fuel or any combination of them, and includes a device for spit roasting when used outdoors.
Bathing Box	Means a building on a Foreshore Reserve vested in, owned or managed by the Council and subject to an annual L icence or Lease , used primarily or substantially as a bathing box.

Notice to Comply	Means a Notice to Comply issued by the Council or an Authorised or Delegated Officer under this Local Law.
Noxious Weed	Has the meaning ascribed to it by section 3 of the <i>Catchment and Land Protection Act 1994</i> : (a) a State prohibited weed; or (b) a regionally prohibited weed; or (c) a regionally controlled weed; or (d) a restricted weed, and are listed, as determined from time to time, in the Schedule to the <i>Catchment and Land Protection Regulations 2002</i> and incorporated in Schedule 2 to this Local Law.
Outdoor Eating Facility	Means any tables and/or chairs located out of doors at which food or drinks are served and may be consumed.
Penalty Unit	Means a penalty unit under the <i>Sentencing Act 1991</i> , currently fixed at \$100 but includes any amendments to that amount as determined from time to time.
Permit	Means a permit issued by the Council under this Local Law.
Permit Holder	Is a person to whom a Permit has been issued under this Local Law.
Person	Has the meaning ascribed to it in section 3 of the Act, except that it also includes any other legal entity, whether a corporation, incorporated association or otherwise.
Poultry	Means fowls, bantams and ducks but does not include roosters, geese or turkeys.
Private Property	Means land other than Council Land, and land occupied, managed or controlled by a public authority.
Procession	Means an organised group of people <u>proceeding</u> along a Road or gathering for a ceremony or function and includes a fun run and bicycle event.
Recyclable Material	Means any recyclable material or hard waste in respect of which a separate Council or Council authorised or approved collection service applies.

Tree	Means any perennial plant having one or more permanent, woody, self-supporting Trunks and with branches forming a crown, and includes all parts of the plant whether above or below ground.
Trunk	Means, in relation to tree protection, the main structural member of a Tree that is supported by and directly attached to the roots, and which, in turn, supports the branches.
Traffic	Means the movement of people by foot or in or on Vehicles along, across or within a Road.
Traffic Control Device	Means a traffic control device, within the meaning of the <i>Road Safety Road Rules 2009</i> as amended from time to time: <i>a traffic sign, road marking, traffic signals, or other device, to direct or warn traffic on, entering or leaving a road.</i>
Unlawful Game	Has the meaning ascribed to it in section 2.3.1 of the <i>Gambling Regulation Act 2004</i> as amended from time to time, which is: <i>(1) Each of the following games is declared to be an unlawful game—</i> <i>(a) the Chinese game of fan-tan or any similar game;</i> <i>(b) the game known as two-up or any similar game;</i> <i>(c) the game known as hazard or any similar game;</i> <i>(d) the game known as baccarat or any similar game;</i> <i>(e) the game known as dinah-minah or minahdinah or any similar game;</i> <i>(f) the game known as faro or any similar game;</i> <i>(g) the game known as roulette or any similar game;</i> <i>(h) the game known as skill-ball or any similar game;</i> <i>(i) any game in which the chances are not equally favourable to all the players, including among the players the banker or other person by whom the game is managed or against whom the other players stake play or bet;</i> <i>(j) any game with cards or other instruments of gaming wherefrom any person derives a percentage or share of the amount or amounts wagered;</i> <i>(k) the using or conducting of a totalisator.</i> <i>(2) A game referred to in subsection (1) is not an unlawful game to the extent that it is authorised by a gaming Act or any other Act.</i>

PART 2 - ADMINISTRATION OF THIS LOCAL LAW

10. EXERCISE OF DISCRETIONS

- (1) In exercising any discretion contained in this Local Law, the Council and Authorised and Delegated Officers ~~will~~must have regard to:
 - (a) the objectives of this Local Law;
 - (b) the guidelines, as appropriate, as determined from time to time and incorporated in this Local Law in Schedule 1;
 - (c) Council Policies as determined from time to time and incorporated in this Local Law in Schedule 2;
 - (d) the Permit conditions, as determined from time to time and incorporated in this Local Law in Schedule 3; and
 - (e) any other policies adopted by the Council from time to time, provided such policies are not inconsistent with this Local Law.
- (2) The Council may from time to time prepare policies for use by the Council, Council staff and other persons for the purposes of the Local Law.
- (3) Policies adopted by the Council must not be inconsistent with the objectives of this Local Law or with the guidelines or any other documents as determined from time to time and incorporated in this Local Law in Schedules 1, 2 and 3.
- (4) Council may, by Resolution from time to time, amend any item in Schedules 1, 2 and 3 to this Local Law but any such change shall have no force or effect until formal notification has been given through *the Victoria Government Gazette*. To this extent, such Schedules do not form part of this Local Law.
- (5) In preparing guidelines the Council must have regard to the objectives of this Local Law.

11. REGISTER OF DETERMINATIONS

- (1) Any determinations resolved by the Council for the purposes of this Local Law and any policies or amendments to Schedules adopted by the Council as in clause 10 (4) must be maintained by the Council in a register kept for that purpose.
- (2) The register kept for the purposes of this clause must be made available for inspection at the office of the Council during normal office hours.

12. POWER OF AUTHORISED OR DELEGATED OFFICER TO DIRECT – NOTICE TO COMPLY

Any Authorised or Delegated Officer may, by serving a Notice to Comply, direct any owner, occupier or other relevant Person to remedy any situation that constitutes a breach of this Local Law.

Guidelines for issuing Notice to Comply, as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

The form of a Notice to Comply is included in Schedule 4 to this Local Law.

13. FAILURE TO ADHERE TO A NOTICE TO COMPLY

A Person who fails to remedy a situation in accordance with a Notice to Comply served on that Person under this Local Law is guilty of an offence.

Penalty: 20 Penalty Units

14. POWER OF AUTHORISED OFFICERS TO ACT IN URGENT CIRCUMSTANCES

In urgent circumstances arising as a result of a failure to comply with this Local Law, an Authorised or Delegated Officer may take action to remove, remedy or rectify the failure without the necessity to serve a written warning, Notice to Comply, or take other action, provided he or she applies the Guidelines for Urgent Circumstances .

Guidelines for Urgent Circumstances, as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

15. POWER OF AUTHORISED OR DELEGATED OFFICER TO IMPOUND

- (1) If an Authorised or Delegated Officer detects an Animal, item or thing in breach of or being used contrary to the provisions of this Local Law, and, in the opinion of that Authorised or Delegated Officer, the continuation of that breach or use presents a potential hazard or risk to any Person or property, the Authorised or Delegated Officer may impound that Animal, item or thing.
- (2) If an Authorised or Delegated Officer has impounded an Animal, item or thing in accordance with this Local Law, the Council may refuse to release it until the appropriate fee or charge for its release has been paid to the Council.

Guidelines for the exercise of the Power to Impound, as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

The form of a Notice of Impounding is included in Schedule 4 to this Local Law.

16. APPEALS

- (1) Any Person who is aggrieved by any ~~matter~~ notice served on him or her under this Local Law or by any decision to reject his or her application for a Permit, licence or like approval under this Local Law may make a written submission for consideration by the Council within twenty-eight (28) days of the date on which the notice was served or the date on which the application was rejected (as the case may be) ~~of the matter concerned~~ but the making of any submission will not in any way remove that Person's obligation to act in accordance with any obligations, directions or notices which are applicable under this Local Law.
- (2) Sub-clause (1) does not confer a right for a Person to make a submission under section 223 of the Act.
- (3) Details regarding submissions and appeal processes relating to Infringement Notices issued under this Local Law are found in Part 11 of this Local Law.

PART 3 - PERMITS

17. PERMITS

- (1) The form of an application for a Permit is set out in Schedule 4 – Forms.
- (2) Despite sub-clause (1), a written application contrary to the form in Schedule 4 may be accepted by the Council or the Authorised or Delegated Officer if it is considered that the appropriate information has been supplied.
- (3) When receiving and processing Permit applications and when imposing conditions making corrections or considering cancellations of Permits, the Council or an Authorised or Delegated Officer must have regard to the Guidelines relating to Permits as amended by the Council from time to time and incorporated in Schedule 1, [Council Policies as determined from time to time and incorporated in Schedule 2](#) and the Standard Permit Conditions as amended by the Council from time to time and incorporated in Schedule 3.

18. POWER TO OBTAIN NECESSARY AND ADDITIONAL INFORMATION

The Council or an Authorised or Delegated Officer may require any applicant to provide additional information before dealing with an application for a Permit or an exemption and for the purposes of administering and enforcing the provisions of this Local Law.

19. RECORD OF PERMITS

- (1) A record of any Permits issued by the Council for the purposes of this Local Law must be maintained by the Council.
- (2) Any cancellations or corrections of Permits which have been issued under this Local Law are also to be recorded.

20. EXEMPTION FROM PERMIT OR PERMIT FEE

- (1) The Council may by written notice exempt any Person or class of Person from the need to obtain a Permit, and such exemption may be conditional, may be altered and may be cancelled.
- (2) The Council may by written notice exempt any Person or class of Person from the need to pay any Permit fee.
- (3) An exemption from the requirement to pay a Permit fee may be cancelled or corrected in the same way as a Permit.
- (4) A Service Authority or a Person employed by or acting on behalf of a Service Authority is exempt from this Local Law and is not required to obtain a Permit in respect of activity to be undertaken for the purposes of the Service Authority but must notify the Council of the activity prior to its commencement.

- (c) has undergrowth exceeding 300mm in height but excluding the natural height of native Australian grasses cultivated in a planned or landscaped garden and excluding Municipal Reserves maintained under an approved management plan.

Penalty: 20 Penalty Units

- (2) An owner or occupier of Private Property must not allow any graffiti to remain on any building, wall, fence, post or other structure or object erected on that property.

Penalty: 10 Penalty Units

- (3) A Person who owns or has vested in him, her or it, or who has the control and management of, any building, wall, fence, post or other structure or object, or any asset, located on Council Land must not allow any graffiti to remain on that building, wall, fence, post or other structure or object, or asset.

Penalty: 10 Penalty Units

- (4) No offence will be committed under sub-clause (2) or sub-clause (3) until a Notice to Comply has been issued and the owner, occupier or Person (as the case may be) has failed to comply with the Notice to Comply within the required time, which time shall be reasonable in the circumstances.

28. DANGEROUS LAND

An owner or occupier of land must not cause or allow the land to be kept in a manner which is dangerous or likely to cause danger to life or property, including but not limited to land which is:

- (1) a haven for vermin ~~or~~ Noxious Weeds, ~~or insects~~;
- (2) used without a Permit for the storage of any substance which is dangerous or is likely to cause danger to life or property; or
- (3) occupied by an unsecured hole or excavation.

Penalty: 20 Penalty Units

29. DOMESTIC WASTE INCLUDING RECYCLABLE AND HARD RUBBISH COLLECTION

The occupier of every dwelling or other land to which the Council provides a waste collection service (including a recyclable material and hard rubbish collection) must comply with the Guidelines for domestic waste, recyclable and hard rubbish services incorporated in Schedule 1 to this Local Law.

Penalty: 10 Penalty Units

Guidelines for domestic waste, recyclable and hard rubbish collection services, as determined by the Council from time to time, are incorporated in in Schedule 1 of this Local Law.

from Council Land or on a Road or from house to house adjacent to any Road (except hand delivering printed matter only to street-side letterboxes) or cause or authorise another Person to do so.

Penalty: 10 Penalty Units

- (2) Sub-clause (1) does not apply to any solicitation or distribution of printed electoral material or to the collection of signatures for a petition.
- (3) Sub-clause (1) includes the distribution of information brochures, books and solicitation of anything from members of the general public in any Municipal Place.

In determining whether to grant a Permit, an Authorised or Delegated Officer must have regard to the guidelines incorporated in this Local Law in Schedule 1.

Guidelines for Collections, as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

59. TRADE WASTE BINS AND WASTE HOPPERS (INCLUDING ALL TRADE RECYCLING BINS)

- (1) An occupier of land may arrange for the collection of trade waste from, or for the placement of a waste hopper or recycling bin on, that land subject to compliance with the Guidelines for Trade Waste and Waste Hoppers incorporated in Schedule 1 to this Local Law.

~~Penalty: 10 Penalty Units~~

- (2) A Person must not place any waste or material in a trade waste bin, waste hopper or recycling bin contrary to any notice on the trade waste bin, waste hopper or recycling bin.

Penalty: 10 Penalty Units

- (3) A Person must place any waste or material in a trade waste bin, waste hopper or recycling bin in compliance with the Guidelines for Trade Waste and Waste Hoppers incorporated in Schedule 1 to this Local Law.

Penalty: 10 Penalty Units

- (4) All trade waste and waste hoppers, including recycling bins, must be kept on the land of the Person on which the waste is generated, except for the period from twelve(12) hours before to (4) four hours following collection.

Penalty: 10 Penalty Units

Guidelines giving the Council's requirements for Trade Waste Bins as determined by the Council from time to time, are incorporated in Schedule 1 to this Local Law.

See also the following clauses in this Local Law:

- *Part 6 Vehicles and Roads: 43. Placing Bulk Rubbish Containers (& Guidelines in Schedule 1);*
- *Part 9 Council Buildings Places: 72. Obstructions on Council Land.*

- (2) If the Council designates areas in which Wheeled Non-Motorised Recreational Devices and/or Wheeled Child's Toys must not be used, it must cause signs to be erected in or on the areas designated by it, clearly indicating the location and extent of the area in which Wheeled Non-Motorised Recreational Devices or Wheeled Child's Toys (as the case may be) must not be used.
- (3) A Person must not use a Wheeled Non-Motorised Recreational Device and/or Wheeled Child's Toy in an area designated by the Council as an area in which the use of such is prohibited.
Penalty: 10 Penalty Units
- (4) Where the Council fails to erect and maintain signs as required under sub-clause (2), no Person may be prosecuted for an offence against sub-clause (3).

82. USE IN NON-DESIGNATED AREAS

- (1) Where any Person continues to use a Wheeled Non-Motorised Recreational Device or Wheeled Child's Toy in contravention of this clause 81 after an Authorised Officer has issued a warning to the user, the Wheeled Non-Motorised Recreational Device or Wheeled Child's Toy (as the case may be) may be removed by an Authorised Officer and impounded.
- (2) When a Wheeled Non-Motorised Recreational Device or Wheeled Child's Toy has been impounded, there must be compliance with the provisions of clause 15.

83. CONTROL OF BATHING BOXES

- (1) A Person must not erect, place, establish, maintain or keep or cause to be placed, erected, established, maintained or kept in a Municipal Reserve any Bathing Box unless such Person is the holder of a licence from the Council.

Penalty: 20 Penalty Units

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- (2) Any licence for a Bathing Box expires at 30 September next following its issue.
- (3) A licence may be refused to any Person who is not a bona fide owner or occupier of a Dwelling within the Municipal District.
- (4) The holder of any licence must pay the fee fixed by the Council in every year by the date determined by the Council.

Guidelines for the issue or transfer of Bathing Box Licences, as determined by the Council from time to time, are incorporated in this Local Law in Schedule 1.

12. POWER OF AUTHORISED OR DELEGATED OFFICER TO DIRECT: NOTICE TO COMPLY

These Guidelines as determined by Council from time to time are incorporated in this local law for Notice to Comply.

When considering whether to issue a Notice to Comply, an Authorised or Delegated Officer must have regard to the following guidelines:

- (1) A Notice to Comply must state:
 - (a) the time within which the breach (to which the Notice to Comply relates) must be remedied;
 - (b) any consequence or penalty that may apply if the person served with a Notice to Comply fails to remedy a situation in accordance with the Notice to Comply;
 - (c) the following procedural matters:
 - (i) whether the power exercised to issue the Notice to Comply is derived from Council's Local Laws (and thereby *the Local Government Act 1989*), in which case Council's decision is final on any appeal about any matter or penalty related to that Notice to Comply, or
 - (ii) or whether the power is derived from some other empowering legislation, in which case there is to be a right of judicial review of any appeal decision by Council on any matter or penalty related to that Notice to Comply.
- (2) The time specified in a Notice to Comply must be reasonable in the circumstances, and what will be reasonable will vary depending on the matters to be remedied but should take into account, if applicable:
 - (a) the amount of work to be performed in order to observe the Notice;
 - (b) the degree of difficulty;
 - (c) the availability of necessary materials or other necessary items;
 - (d) climatic conditions;
 - (e) the degree of risk or potential risk; and
 - (f) any other relevant factor that the Authorised or Delegated Officer reasonably believes is relevant in the circumstances.

Appeal processes which apply to any Infringement Notices issued under this Local Law also apply to Notices to Comply. See Part 10 Enforcement & Penalties: cl.88. Infringement Notices & Appeals Under Local Laws.

14. URGENT CIRCUMSTANCES

These Guidelines as determined by Council from time to time are incorporated in this local law for Urgent Circumstances.

When considering whether action to remedy Urgent Circumstances exists, an Authorised or Delegated Officer ~~will~~must apply the following guidelines:

What is regarded as urgent circumstances and whether action should be taken will depend on the circumstances of each situation. Factors to be taken into consideration may include:

- (1) Where:
 - (a) the person by whose default, permission or sufferance the situation has arisen; or
 - (b) the owner or the occupier of the premises or property affected; is not known or cannot be found.
- (2) The right of directly concerned persons to be heard, whether owner or occupier or some other person, provided in the reasonable belief of the Authorised or Delegated Officer this will not cause unacceptable delay in rectifying or reducing an urgent risk.
- (3) Where, in the opinion of the Authorised Officer, there exists an urgent risk or threat to:
 - (a) public health;
 - (b) public safety;
 - (c) the environment; or
 - (d) animal welfare.
- (4) Whether the need to take action is sufficiently urgent, and that the time involved or difficulties associated with the serving of a written warning or Notice to Comply may place a person, or any animal, property or thing at risk or in danger;
- (5) wherever practicable, a Senior Officer is given prior notice of the proposed action; and
- (6) details of the failure and remedying action are, as soon as possible, forwarded to the person on whose behalf the action was taken.
- (7) The urgent action taken by an Authorised or Delegated Officer must not extend beyond what is necessary to cause the immediate abatement of or to minimise the risk or danger involved.
- (8) An Authorised or Delegated Officer who takes urgent action must ensure that, as soon as practicable, a report of the action taken is submitted to the Chief Executive Officer.

15. POWER OF AUTHORISED OR DELEGATED OFFICER TO IMPOUND

These Guidelines for the exercise of the Power to Impound as determined by Council from time to time are incorporated in this local law.

When considering and/or exercising the Power to Impound (and dispose of), an Authorised or Delegated Officer must have regard to the following guidelines:

- (1) As soon as possible after the impounding and where it is practicable to do so, the Authorised Officer will-must serve a Notice of Impounding, in a form as amended from time to time and incorporated in Schedule 3, on the owner or persons responsible for the animal or thing which has been impounded setting out the fees and charges payable and time by which the animal or thing must be retrieved.

- (2) If an impounded animal or thing is not retrieved within the time specified in the Notice of Impounding, an Authorised Officer may take action to dispose of the impounded animal or thing.
- (3) If the identity or whereabouts of the owner or person responsible for the impounded animal or thing is unknown, the Authorised Officer must take reasonable steps to ascertain the identity or whereabouts of that person and may proceed to dispose of the impounded item in accordance with paragraph (4) once he or she is satisfied that all reasonable efforts have been made to contact the owner or person responsible for the impounded animal or thing.
- (4) In disposing of an impounded animal or thing an Authorised or Delegated Officer will have regard to the following:

Council's policy for the disposal of unrecovered impounded items is as follows:

- (a) Where the item is declared by the Authorised or Delegated Officer to have no saleable value, it may be disposed of in the most economical way, as determined by the Authorised or Delegated Officer.
- (b) Where the item is declared by the Authorised or Delegated Officer to have some saleable value, the item may be disposed of by tender, public auction or private sale, or failing sale may be given away or disposed of at the discretion of that Authorised or Delegated Officer.
- (c) When choosing which method of disposal by sale, the Authorised or Delegated Officer will consider the following matters:
 - (i) If the total estimated value of the impounded animal or thing is unknown, expert advice should be sought to obtain an estimate of its value;
 - (ii) If the estimated value exceeds \$ 2,000, disposal should be by way of tender or public auction first, and only by way of private sale if the animal or thing fails to sell by tender or public auction.
 - (iii) Sale of impounded animals or things by any means and of any value must be fully documented and reported to ~~Council the Chief~~ Executive Officer by the Authorised or Delegated Officer.
- (5) Any proceeds from the disposal of an impounded animal or thing under this Local Law will be paid to the owner or the person who, in the opinion of the Council, appears to be authorised to receive the money less the reasonable costs and expenses incurred by the Council in the administration of this clause.
- (6) In the event that the person described in paragraph (5) cannot be identified or located within six (6) months of serving the Notice of Impounding, any proceeds described in that paragraph cease to be payable and may be retained for municipal purposes.

*Appeal processes which apply to any Infringement Notices issued under this Local Law also apply to Notices to Impound. See Part 10 Enforcement & Penalties:
cl.88. Infringement Notices & Appeals Under Local Laws.*

Clause	Title	Maximum Penalty Units	Infringement Notice Penalty Units
51 (2)	Roadside performance (busking) without a permit	10	2
52	Roadside trading on another's pre-allocated site	20	5
54(1)	Displaying goods for sale on a Road without permit	20	5
55(1)	Using Council Land for an Outdoor Eating Facility without permit	20	5
56	Failing to Remove the Outdoor Eating Facility	20	5
57(1)	Advertising sign on Council land without permit	20	5
58(1)	Collecting money or subscriptions without permit	10	2
59(1)	Collection/placement of trade waste bins contrary to Local Law	10	2
59(2)	Placing of trade waste contrary to requirements	10	2
59(3)	Placing of trade waste contrary to guidelines	10	2
59(4)	Failure to store waste container on property as required.	10	2
60	Tap into or interfere with a drain under the control of Council	20	5
61 (1) & (4)	Failure to provide or maintain a properly constructed vehicle crossing	20	5
62 (1)	Construct, install, remove or alter a vehicle crossing without first obtaining a Permit to do so	20	5
62 (2)	Removing, pruning or damaging street tree from works on vehicle crossing	20	5
63 (1) (2) & (3)	Temporary Vehicle Crossing – Failure to obtain Permit, or Repair Damage, or Reimburse Council	20	5
64	Building Works contrary to requirements	20	5
65	Consumption and possession of Liquor on Roads	10	2
66	Consumption and possession of Liquor on Municipal Reserves	10	2
68(3)	Smoking in Municipal Places contrary to signs	10	2
69	Contrary Behaviour in a Municipal Place	10	2
70	Damaging/defacing a Municipal Place	20	5



**LOCAL LAW COMMUNITY
IMPACT STATEMENT**

for

LOCAL LAW 2

‘Neighbourhood Amenity’

April 2012

BAYSIDE CITY COUNCIL

LOCAL LAW 2

‘Neighbourhood Amenity’ 2012

LOCAL LAW COMMUNITY IMPACT STATEMENT

PART A - BACKGROUND

Bayside City Council has undertaken a Review of its Local Laws (excluding Local Law 1, Governance and Meetings, reviewed and adopted in 2009). New State Government guidelines, changing legislation, the confusing structure of existing Local Laws, and community interest and concern over some issues all gave rise to this project.

The Review has created a single new consolidated Local Law 2 ‘Neighbourhood Amenity’. The following table shows what will happen to Council’s previous Local Laws (all of which are to be repealed at the time of the adoption of the new Consolidated Local Law 2).

Existing Local Laws	Title / Content	What will happen
Local Law 2, 2007	Environment	Consolidated into new LL 2
Local Law 3, 2007	Streets and Roads	Consolidated into new LL 2
Local Law 4, 2007	Municipal Places	Consolidated into new LL 2
Local Law 5, 2006	Spray Cans	Repeal – covered by State law
Local Law 6, 2007	Amendment to LL 2	Already incorporated in 2007
Local Law 7, 2007	Amendment to LL 3	Already incorporated in 2007
Local Law 8, 2007	Amendment to LL 4	Already incorporated in 2007
Proposed Local Law 9	Shopping Trolleys	Abandoned in February 2008
Local Law 10, 2009	Cat Ownership	To be replaced by an Order of Council under the Domestic Animals Act.

In 2010, the State Government, through Local Government Victoria, released '*Guidelines for Local Laws Manual*', listing new best practice guidelines for the creation and enforcement of Local Laws. The key features of these best practice guidelines are summarised as follows:

- the key aim is to improve accessibility, accountability, compliance, consistency, currency, efficiency, enforceability, necessity, and transparency;
- regulation should be viewed as a last resort, because it imposes a burdens of compliance on the community and a burden of enforcement on the council;
- the community should be involved from the commencement of the law-making process, not just at the final formal submissions stage under section 223 of the *Local Government Act 1989*;
- local laws should incorporate relevant council policies and should not leave any discretions without clear guidelines, and should include where possible relevant permit conditions;
- councils must produce a *Local Law Community Impact Statement* for all new or materially altered local laws.

Consultation

Under Bayside City Council's Community Engagement Policy, the Local Law Review was rated high impact, community-wide and complex - requiring extensive internal and community consultation. The State's Guidelines for Local Laws also required wide consultation from the commencement of the process. Bayside City Council's Local Law Review included a consultation and engagement plan as an integrated part of the Project Plan. There was also an Internal Stakeholder Reference Group, with members including ten relevant departmental managers and other closely involved staff. An external consultant also met individually with relevant staff through all levels of the organisation. Councillors were briefed and opportunity was given to all individual Councillors to discuss the review with the consultant.

Community consultation included three public meetings (April 12, May 19 and October 17) facilitated by the consultant and key staff. To ensure effective cross community consultation beyond simple public meetings, there were also numerous group and one-on-one community and business consultation interviews, all, chosen by recommendations from Council staff and by requests from community groups. Groups consulted included environmental groups, sporting groups, community groups, ratepayer, bathing box and trader associations, government agencies, state government and other municipalities. A master list of community contacts was maintained (including additional individual community members who made contact by mail, email and telephone) and this list was circulated with project news, notices of meetings and consultation outcomes. There was also opportunity for anonymous comment on the draft Law on the Council's website. The public, group and individual community meetings were in addition to a formal s.223 Submission process which followed Council's endorsement of the new consolidated Local Law 2 'Neighbourhood Amenity' in September. Exhibition and submissions occurred between 22 September and 3 of November. There was a Special Committee of Council (attended by all Councillors) to hear Submissions on 16 November 2011. Only one of three submitters chose to speak to his submission. A number of minor changes were made as a result of written submissions. The Local Law was presented to Council for adoption on 14 December 2011.

Post-Script – Re-Making of the new Local Law

The draft law was adopted by Council on 14 December 2011 and gazetted on 22 December 2011. However, Council became aware that the Public Notices in both September (*Intention to Make a Local Law*) and December (*Making of a Local Law*) contained an administrative error rendering the process of making the local law invalid. Consequently, Council is required to repeat the *section 119* process for *Making a Local Law*. Therefore, the draft Local Law No.2 'Neighbourhood Amenity' was re-presented to Council for Exhibition and section 223 submissions on February 14. (A few minor technical corrections were included.) Exhibition was undertaken from 27 February and a submission hearing was held on 2 April 2012. Seven submissions were received and four people spoke in regards to their submissions at the submission hearing. Re-adoption is planned on 10 April 2012 and gazetted on 19 April 2012.

The previous Local Law remains in force during this period because a local law is required to revoke a local law.

The Changes

The key changes to the Bayside's local laws involve the implementation of the State Government's Guidelines as shown in the *Table of Changes* below. Note that the examples given are representative and do not consist of a full listing of relevant changes.

Table of Changes: based on new State Guideline values for better Local Laws.

<i>Guideline Value</i>	<i>Change implemented</i>	<i>Examples of change (not exhaustive)</i>
accessibility	<ul style="list-style-type: none"> • a new community/customer focus in the structure; • outcome focused drafting; • consistent use of plain language and appropriate terminology; and • removal of redundant and confusing terminology. 	<ul style="list-style-type: none"> • see new structure; • new drafting of clauses for burning of materials, audible intruder alarms, use of municipal reserves, behaviour in municipal places etc.
accountability & transparency	<ul style="list-style-type: none"> • incorporation of comprehensive discretion guidelines, permit conditions and relevant Council policies, and clear statements of appeal provisions. • clear and unambiguous statements of incorporation of documents. 	<ul style="list-style-type: none"> • Schedule 1 includes revised discretion guidelines (many non-existent in previous local laws) for over 40 local laws; • Schedule 1 & 3 includes standard conditions for all council permits and licences, and conditions for common permits only available in the past when the permit was issued.
compliance	<ul style="list-style-type: none"> • the removal of laws duplicated by State legislation (<i>Road Safety Rules 2009, Domestic Animals Act 1994, Public Health and Wellbeing Act</i>) 	<ul style="list-style-type: none"> • Local Law 10 is covered by Orders of Council under <i>the Domestic Animals Act 1994</i>;

	<p>2008 etc.) or in breach of the <i>Local Government Act 1989</i> and the <i>Charter of Human Rights and Responsibilities Act 2006</i>;</p> <ul style="list-style-type: none"> • clear and unambiguous statements of incorporation of documents. 	<ul style="list-style-type: none"> • Building Site Toilets are covered by OH&S code of practice and <i>Public Health and Wellbeing Act 2008</i>; • Strict owner liability (tree removal and obstructions on Council Land) is inconsistent with the <i>Local Government Act 1989</i> and the <i>Charter of Human Rights and Responsibilities Act 2006</i>; • indemnity forms revised (e.g. Footpath Trading) to include Council's responsibilities.
consistency	<ul style="list-style-type: none"> • ensuring enforceability and fairness in the laws, which ensures more consistent enforcement; <p><i>of approach:</i></p> <ul style="list-style-type: none"> • consistent use of plain language and appropriate terminology; • removal of redundant and confusing terminology; 	<ul style="list-style-type: none"> • enforcement: a new low penalty offence for Parking on Municipal Reserves; removal of time limit on swings in parks; • language: clearer definition of foreshore, use of 'Authorised or Delegated Officer'; • removal of road hierarchy and all references to Planning Scheme zones.
currency & necessity	<ul style="list-style-type: none"> • by removing laws no longer required; • by moving prescriptive detail from the local law to the Schedule which allows easier up-dating; • ensuring laws reflect current practice by revision of definitions and removal of some permits. • ensuring laws reflect current practice by removal of some permits. 	<ul style="list-style-type: none"> • removed: dumping ice chests, fencing livestock, transportation of waste, time limit on swings in parks, scavenging at transfer stations etc. • details in schedule: building works, use of municipal reserve, behaviour in municipal place, etc. • current practice: Redefinition of Filming; removal of permit to camp on Council land and to place clothing recycle bins. • removed permits: recycled clothing bins (prohibited), camping and shipping containers on Council Land, and damaging municipal places.
efficiency	<ul style="list-style-type: none"> • by ensuring the laws meet legal requirements to minimise permit processes for applicants (i.e. 	<ul style="list-style-type: none"> • use of Council land for outdoor eating facilities including alcohol service; erection of compliant

	avoiding unnecessary referrals for planning permits); <ul style="list-style-type: none"> • by removal of permit for tree pruning when done by qualified arborist; and 	advertising signage on Council land for non-commercial purposes. <ul style="list-style-type: none"> • tree pruning performed by qualified arborist according to Australian Standard and documented no longer requires a permit.
enforceability	<ul style="list-style-type: none"> • by redrafting laws to ensure they are enforceable; • by removing laws no longer required; • by avoiding introducing new unenforceable laws; and 	<ul style="list-style-type: none"> • Redrafting: Clear prohibition of Camping on Council land and the inclusion of campervans in definition of camping; the insertion of a time limit both prior to and after collection of rubbish for bin to be on roadway; • Removal swing time limit in parks.

A few explanatory notes on the Changes:

The new Structure: While many local laws adopt complex legalistic structures or confused structures based upon the chronology of implementation or simply to suit the internal responsibilities of Council departments, Bayside City Council's new consolidated Local Law has been structured for community accessibility, with a new topical, user-friendly customer focus. Starting with the laws directly impacting owners/occupiers of private property, it moves from homes to vehicles and roads, to special interest groups (business, builders), to topical issues (alcohol, smoking) and only then to laws involving public places, parks and Council buildings.

The new structure within the local law and its schedules is:

- your property, trees and pets;
- vehicles and roads;
- business and builders;
- smoking and alcohol;
- public places, parks & foreshore and Council buildings.

Other changes: While there have been a number of deletions for laws no longer needed and minor changes in the wording of some laws for clarity, the greatest changes include:

- Discretion Guidelines and Permit Conditions - all officer discretions created under the Local Law now have clear publically available objective Guidelines and Council Permits have published Standard Conditions, together with conditions to many of the most common permits. Relevant Council Policies are also incorporated as part of the local law and are binding on officers and Council itself, unless amended by Council resolution and gazettal.
- Long and complex existing local laws have been redrafted to be simpler and more easily understood with outcome-focused preambles. Where detail is unavoidable, it has been mostly relegated to the Schedules where it may be reviewed and revised

for changing circumstances by the more simple process of Council resolution and gazettal.

- A number of laws had technical changes to render them fairer, more practical and enforceable. For example, the emergency removal of trees endangering life or property; greater freedom for theatrical performance and artistic exhibition in municipal reserves; inclusion of a reasonable right to be heard in urgent circumstances; and the exemption of cultivated native grasses in landscaped gardens from unsightly land.

The process of consultation, legislative analysis, and legal advice led to the abandonment of a number of the proposed changes. Other changes requiring significant policy or strategic work by Council may be reconsidered at a later date.

PART B – Comments on proposed Local Law overall

Measures of success of proposed Local Law

The goal of Local Laws is not simply compliance, although this is the goal of enforcement. The goal is a sustainable natural, built and social environment harmoniously shared, by residents and visitors alike, with mutual respect and enjoyment, in two words 'Neighbourhood Amenity'.

Measuring compliance is difficult; measuring harmoniously shared amenity is even more difficult.

There are, however, measurements applicable to local laws. No single set of numbers should be viewed in isolation. Council needs to annually collate and compare to previous years the following quantitative and qualitative measures:

- The number and subject of infringement notices and notices to comply issued.
- The number, subject and outcome of appeals submitted.
- The number, subject and outcome of prosecutions undertaken.
- The number of staff and its allocation to specific enforcement activities.
- The number, subject and outcome of public complaints related to local laws.
- The community satisfaction survey rating for local laws and related issues.
- The qualitative assessment of enforcement officers and other relevant staff regarding community compliance and enforcement problems.
- The interpretation of these indicators by Council management, to explain anomalies, comment on trends and discuss declining or emerging problems.

State Legislation and the Local Laws

There was some duplication between Council's previous local laws and State legislation. Consequently, Council is repealing its Local Law 5 on spray cans which is now adequately dealt with under the *Environment Protection Act 1970* and the *Graffiti Prevention Act 2007*. Similarly, provisions related to emissions from vehicles and dumping ice chests are adequately dealt with under State laws. Local Law 10 (Responsible Cat Ownership) will be revoked and replaced by Orders of Council under the *Domestic Animals Act 1994*.

There proved to be a number of compliance issues under the *Local Government Act 1989*, the *Charter of Human Rights and Responsibilities Act 2006* as well as other matters adequately covered by OH&S industry code of practice and the *Road Safety Rules 2009*.

New procedures from the State Government for permits for recreational activity providers on Council-managed Crown Land (administered by Council) will be mirrored by a Council permit. These permits (as well as Council's event permit) are treated as variations of the Use of a Municipal Reserve Permit. Bayside City Council's model Asset Protection Permit persists with minor variations, separate from a Drainage Tapping/Road Opening Permit. Consultation with State agencies and legal advice endorsed Council's approach in relation to the *Building Act 1993*.

Overlap of planning scheme

A strong statement in the Scope of the Law indicates that no prohibition or permit requirement will apply if any activity is allowed under the municipal Planning Scheme. This obviates the need to provide Planning Scheme comment or exemptions throughout the local law. This statement was drafted by Council's legal advisors.

Comment was sought from and made by Council's Planning Managers. Several areas of concern and overlap were noted and changes were made in the local law accordingly.

For example, the previous local law made provision for the parking, storage and repair of heavy vehicles by permit. However, the repair of heavy vehicles is a prohibited use under the Bayside Planning Scheme in virtually all zones, and even in Business 3 zone a Planning Permit is required. As a result this aspect of the local laws was deleted.

References to Planning Permits were removed where inappropriate, such as in the clauses relating to burning off, in relation to which the Planning Scheme is silent. Discretion guidelines now refer to considering the land-use of the relevant allotment and neighbouring allotments.

Risk assessment

A risk analysis was performed on new laws in the consolidated local law. See Attachment A

Regulatory approach adopted

The regulatory approach of Council differs in the local law depending on the subject and the related risk. The decision of which regulatory approach to take (whether high, medium or low impact) varies according to the extent of risk, the perceived extent of non-compliance, how recently the law was introduced, and the enforcement resources available.

Council adopts a notification and inspection regime (high impact) in relation to asset protection, footpath trading and private tree removal (although tree-pruning has dropped to medium by obviating the need for notification and permit when a qualified arborist is used); an enforced permit system with general guidelines (medium impact) with commercial waste hoppers and overhanging or obstructing trees; and a response to breach and damage (low impact) with the use of Bathing Boxes and the use of municipal reserves for events. (This list is representative only.)

Neighbouring Councils, such as Kingston and Port Phillip, adopt similar approaches, although their enforcement resources are allocated according to local issues and conditions.

Bayside City Council also chose a preference for simplified accessible language and, where redrafting occurred, a focus on outcome rather than detailed prescriptions. This approach was adopted consistently throughout the new Local Law where long and complex laws were broken into simplified offences with detailed interpretative guidelines incorporated in the Schedules. The overall protection of a person's right not to experience unreasonable interference with 'quiet enjoyment' of Council places (whether parks, buildings or elsewhere) is an example of this approach.

Restriction of competition – NCP

The application of National Competition Policy (NCP) to local government in Victoria flows from 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. Under the *Local Government Act 1989*, NCP principles are applied to local laws as follows: *Schedule 8.2 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.

An analysis of changes in Bayside City Council's new consolidated local law indicates that there are no issues adversely impacting National Competition Policy.

Footpath Trading Permit conditions closely mirror other municipalities (e.g. Kingston City Council) and are applied equally to all applicants. The redrafting of Bayside's outdoor eating facilities law (following recent legal decisions) should make obtaining alcohol permits less complex (at a Council level) for traders already serving alcohol within their premises. (Such permits of course remain at the discretion of the state Liquor Control authority.)

Tree Protection law changes actually deregulate the commercial pruning of private trees for property owners using qualified Arborists whose work is documented and conforms to Australian Standards. This change is both administratively efficient and was requested by industry operators. This is an area in which Bayside City Council is seen as a leading Council.

Changes to the definition of Filming on public land serve to exempt TV news, private, community and social media filming, but do not alter the permit requirement for commercial purposes, also applicable in other municipalities (e.g. neighbouring/like municipalities Kingston, Port Phillip and Glen Eira City Councils).

The new permit requirements for commercial recreation activity providers on public land are the result of new mandatory State Government requirements on Crown Land managed by Council. Consequently, the new local law guidelines offer 2 parallel permits (Local and State) for one application as a variation of a Use of Municipal Reserve Permit. This is in fact simplifying the process for commercial operators who might otherwise be required to obtain and operate under two separate permit systems for Council owned and Crown Land Managed areas of the foreshore and other Council Reserves.

The new local law also includes many deletions of previous regulations applicable to potentially commercial matters as transportation of waste, livestock fencing, second hand goods storage, recycled clothing bins, building site toilet systems and so on. These repealed laws were considered redundant regulation often duplicating more recent State legislation.

Penalties

Bayside City Council Local Law uses 'penalty units' (rather than dollar amounts, unlike some municipalities, such as the City of Port Phillip). The dollar amount for each penalty unit is controlled by State Legislation (*the Local Government Act 1989, the Sentencing Act 1991, and the Monetary Units Act 2004*) and is currently set at \$100 per penalty unit for laws made pursuant to the *Local Government Act 1989*.

According to Annexure A, *Attorney-General's Guidelines to the Infringements Act 2006 (Vic)*, 'An infringement penalty should generally be approximately no more than 20 – 25% of the maximum penalty for the offence'. Consequently, there have been some changes to penalties reconciling maximum penalties with the Infringement Notice penalties. This has also led to a greater range of maximum penalties, providing greater fairness as well as conformity with State Guidelines.

A new lower penalty (5 Units or 1 Unit Infringement Notice Penalty) has been attached to the new offence *Parking on a Municipal Reserve*. While this behaviour was already an offence without a Permit, under *Use of a Municipal Reserve*, the penalty is significantly higher (20 Units or 5 Units Infringement Notice Penalty). This led to a tendency among some enforcement officers to issue warnings rather than enforce a harsh penalty against casual community offenders. This in turn leads to inconsistency in the treatment of unwanted behaviour. The lower penalty is equal to the equivalent offence in the neighbouring municipality of Kingston. In the neighbouring City of Port Phillip the full penalty is only 2 Units but still 1 Unit Infringement Notice Penalty. In Glen Eira City Council the penalty is 3 units and the Infringement Notice Penalty is 25% or \$50, whichever is the greater (25% = \$75).

Permits

Satisfying the transparency and accountability principles of best practice local law making, discretionary guidelines have been incorporated into the Schedules of the new Local Law, for all discretions to issue Permits (and all other discretions). Standard Permit Conditions applicable to all Permits, as well as Conditions for the most common permits are also incorporated in the Schedules. Where Council Policy is inherent to this process, Council Policies have also been incorporated in the Schedules. Nevertheless, fairness in the face of the inevitable practical variations of everyday life is catered for by retaining a general discretion for officers who reasonably believed specific circumstances are relevant. The adoption of guidelines, conditions and policies as incorporated documents also recognizes the occasional need for amendment through Council resolution and gazettal.

Council's permit system raises many issues. Those officers issuing Permits under the local law must have Delegation for the purpose. Some permits are in fact potentially many permits, such as filming and event permits. Co-ordination, compliance and enforcement of such multiple permit systems are a complex matter in all municipalities. The incorporation of Standard Form Permit Conditions – to be appended to all issued permits – is an important step in Council's risk management and the protection of the rights of permit holders.

Fees

While Local Laws regulate for the provision of a number of fees and charges, most Permit Fees and related charges are a budgetary matter decided independently by Council as part of the annual Budget papers. Consequently, while a local law review consultation process may inevitably give rise to comment on fees, it is largely not within its ambit to determine the level of fees and charges.

In the case of the Permit to Use a Municipal Reserve for Commercial Recreational Activity Providers, Council's policy and fees is a necessary reflection of new mandatory State Government charges and fee structures for Crown Land managed by Council.

Evidence was provided by one trader group during consultation that cross-municipal comparisons shows Bayside City Council's Footpath Trading Permit Fees are in the top quartile of municipal fees charged. This may in part be a reflection of the high value of real estate in the municipality and the higher than average income of local residents. However, this matter is subject of separate report to Council.

Performance standards or prescriptive

In the first instance Council explored the possibility of a non-prescriptive approach to writing the local law. This was seen to pose risk management issues and after some discussion the approach was taken to focus on the desirable outcomes (to be achieved or not interfered with), rather than exhaustively detailing forbidden behaviors, which may be relegated to the Schedule Guidelines, Permit Conditions and/or Policies.

Comparison with neighbouring and like Councils

Council's commitment to the LG Pro Pilot Program in Better Practice Local Laws proved invaluable in working closely with a number of other Council's in developing the process and discussing the problems in reviewing the Local Laws under the new State Guidelines. These Councils included Melbourne City Council, Maribyrnong City Council, Moreland City Council, Towong Shire Council, Wodonga Shire Council, Baw Baw Shire Council, Stonnington City Council and Hobson Bay City Council. During this process many issues and approaches were trialled and discussed.

Specific clauses have been subject to municipal comparison, for example parking on a Municipal Reserve, Footpath Trading and the requirement of a permit for commercial filming on Council owned or managed land.

Charter of Human Rights

The Charter of Human Rights and Responsibilities Act 2006 (Vic) (the Charter) applies to all subordinate legislation (local laws). Schedule 8 of *the Local Government Act 1989* also applies a number of the principles of *the Charter* to the making of local laws, especially the requirement for local laws to be inconsistent with principles of justice and fairness. There have been a number of changes in Bayside City Council's local laws to conform with these principles, most notably the removal of 'strict owner onus' in relation to Tree Protection and Obstructions on Council land. There are a number of other minor amendments related to procedural fairness (for example, 'an offender's right to be heard, where reasonable, in Urgent Circumstances'; protection of unamplified free speech in municipal places; the clear explanation of the rights of appeal; the incorporation of discretion guidelines and permit conditions wherever applicable; and simplification of language and structure of the consolidated local law.)

Consultation meetings

Council's consultation program for the Review of the Local Laws was extensive. The initial phase was one of enquiry and listening – what were the issues perceived by both the Council organisation and by the community. Consultation meetings and detailed written responses were organised with staff individually and in groups. Councillors were all consulted directly on their concerns. The community was consulted by 3 public meetings, group meetings and one-on-one interviews. Consulted parties included sporting groups, environmental groups, ratepayers association, trader associations, bathing box association, business people, state agencies, such as Victoria Police and Local Government Victoria. There was a cross-section of opinions on many issues, for example, the tree protection laws. While a professional tree-removalist endorsed Bayside laws as the best in Melbourne, many members of the community, including some environmental leaders, believed the existing laws were too restrictive, discouraging the planting and retention of young trees. Others hoped to move the entire tree protection issue under the Planning Scheme through a Vegetation Protection Overlay (requiring both time and monetary resources beyond this review).

Other community suggestions were abandoned as either impractical (compulsory motor mower grass catchers) or unenforceable (maximum time-limit for parking registered vehicles in residential streets). While in this last case, such a law exists in the City of Port Phillip and City of Dandenong, most agree, including the Police and Council Enforcement Officers that it would be close to unenforceable.

Other suggestions for regulation which were investigated and not pursued included nature strip landscaping (adequate controls exist); pit-pump outflows (alternative controls); tiered fee structure of outdoor eating facilities (subject to a separate report to Council on fees).

Environmental impacts

With strong community interest in environmental values, it is important to comment on the impact of the new Local Law 2 'Neighbourhood Amenity' environmental amenity. The Changes is to the tree protection laws are largely procedural, while Council's Management of Tree Protection on Private Property Policy has been given the force of law by incorporation in the Schedules. The two Australian Standards 4373-2007: *Pruning Amenity Trees (2007)* and 4970-2009: *Protection of Trees on Development Sites (2009)* have been incorporated by reference through the Permit system, adding significant protection to Council's tree assets.

It is expected that these procedural changes will lead to greater acceptance and compliance in the community and greater efficiency for associated businesses.

Deletion of laws related to transfer stations, transport of waste, dumping ice chests, and junk yards are based on their obsolescence and should have no impact on environmental amenity.

The outcome-focused re-drafting of such laws as the burning of materials (including barbeques) and the use of municipal reserves, (and the placement of details in the Schedules) should increase public appreciation and respect for the protection of environmental amenity and will also improve enforcement efficiency.

Social impacts

Local laws have both a broad and specific impact on social wellbeing. The perception of a fair and safe community is an essential part of a sense of health and well-being. The new local law includes a number of minor procedural changes to better reflect Council's respect for community rights under the law, such as the right to be heard, the right to a fair hearing, the right of political and artistic expression, and the right to quietly enjoy the amenity of both private and public places without unreasonable interference by inappropriate activity of others. The new law also provides for greater consistency of enforcement and greater transparency and accountability for Council procedures and processes. Some specific examples include:

- the time limit for the use of swings in public parks has been removed;
- social sporting groups on municipal reserves will no longer risk infringing local laws, or be required to seek additional permits, to undertake their everyday normal organised activities; and
- members of the community are less likely to be endangered by vehicles driving and parking on municipal reserves.

For Bayside businesses, increased clarity, compliance and flexibility of laws surrounding tree protection, asset protection and footpath trading will also assist. The more transparent permit system, with published conditions, standard clauses and discretion guidelines should also make dealing with Council more consistent, predictable and efficient.

Submissions

Local Law 2 'Neighbourhood Amenity' was originally endorsed for Exhibition by Council on September 13 and was publicly advertised and placed on Exhibition between 22 September and 3 November 2011 (6 weeks). During that time an educative public meeting was held (17 October) and numerous public enquiries were received. Council's website also offered opportunity for on-line anonymous comment on the draft local law.

Council received three formal written submissions. On 16 November, a Special Committee of Council (attended by all Councillors) was convened to hear submitters wishing to speak to their submissions. One submitter spoke. A number of minor corrections were made as a result.

Local Law 2 'Neighbourhood Amenity' is being presented to Council for re- endorsement for Exhibition by Council on February 14 2012 and will be publicly advertised and placed on Exhibition between 23 February and 27 March (34 days). A submission hearing is scheduled for 2 April, presentation for adoption on 10 April and gazettal (if adopted) on 19 April 2012.

Adopting by Council

Local Law 2 'Neighbourhood Amenity' is planned to be presented to Council for final adoption on 10 April 2012.

Post-Adopting Communication and Education Plan

Following adoption of the Local Law, the new law must be made available on Council's website and an internal and community education plan will be implemented (as below).

Local Law Review - Post-Adopting Communication and Education Plan

<i>Date</i>	<i>Audience</i>	<i>Action</i>	<i>Responsible</i>	<i>Measure</i>
January 2012	Community	Local Law on Website	Manager Amenity Protection	Available on website
January – March 2012	Local Laws Officers	Training Sessions	Consultant	Feedback Survey
January – March 2012	Other Officers	Training Sessions	Consultant	Feedback Survey
January – March 2012	Community	Interest Group Direct Information	Consultant	List of Groups Contacted
January – June 2012	Community	Education Website – Develop Content: Info, quiz, etc.	Manager Amenity Protection & Dept. Communications	Community & Enforcement Feedback
January – June 2012	Community	Education Flyers - Ongoing Distribution	Manager Amenity Protection	Community & Enforcement Feedback

Part C – Comments on specific parts or provisions of the proposed Local Law

71 Parking on Municipal Reserves	<p><i>Any person who, without a Use of Municipal Reserves Permit which includes this purpose, parks any motor car, motor cycle or other motor vehicle on any part of any Municipal Reserve other than in any parking area set aside for that purpose by the Council, excluding any Authorised Officer or employee or contractor of the Council acting in the course of his or her duties, is guilty of an offence.</i></p> <p><i>Penalty: 5 Penalty Units</i></p>
The problem the provision is intended to address	<p>There is a general acceptance that parking vehicles on Municipal Reserves is not acceptable. There is a risk to the public, potential damage to a public asset and interference with use of the Reserve. However, under previous law, the offence was failure to obtain a permit, with an appropriate high penalty (20 Units) because of the inclusive nature of that offence. A tendency among some enforcement officers to issue warnings rather than enforce such a harsh penalty against casual community offenders. This in turn lead to inconsistency in the treatment of this unwanted behaviour.</p> <p>Consequently officers requested the introduction of a lower penalty offence to improve both enforcement, consistency and compliance.</p> <p><i>Differentiate between the fact giving rise to the problem and the problem. For example, the fact is driving of vehicles on reserves. The problem is damage to reserves. A related problem may be risk of injury from driving vehicles among spectators.]</i></p>
Description of the problem	<i>[2.1 Why is it a problem? What is the evidence? How big a problem? – for example, how many ratepayers inconvenienced, cost to Council (ratepayers), etc. Who causes the problem?]</i>
Council objective	<i>[2.2 Why is it a Council problem? A number of objectives may be involved: protection of Council assets, safety of public, public amenity. A reasonably specific objective is to be preferred. Words such as 'amenity' or 'safety' should be sufficiently qualified to relate them to a specific objective.]</i>
Where is Council's objective set out?	<i>[2.2 The objective may be set out in the Council Plan, or a policy document, or the results of a risk assessment that has been adopted by Council, etc.]</i>
How does proposed Local Law provision help achieve objectives?	<i>[2.2 Will it remove an impediment? Is it a direct solution – for example, requiring a notice or permit so Council can exercise control or will it make something an offence that will enable enforcement action to be taken?]</i>

Attachment A – Risk Analysis for new laws

Below is the risk analysis performed on the new local laws. Bayside City Council Risk Analysis Template defines the parameters in the following 3 Tables as follows:

Table 1: Risk Consequence Descriptors

Consequence	Category	Business Interruption	Environmental	Financial	Human	Public Image & Reputation
Catastrophic	5	Essential service failure, or key revenue generating service removed	Irreversible damage	Above \$5,000,000	Death(s) / many critical injuries	National & International Concern / exposure
Major	4	Service or provider needs to be replaced	Harm requiring restorative work	Up to \$5,000,000	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 \$500,000	Single minor disablement/ multiple temporary disablement	Local community concern
Minor	2	Brief service interruption	Remote, temporary pollution	Up to \$100,000	Injury	Customer complaint
Negligible	1	Negligible impact, brief reduction/loss of service	Brief, non hazardous, transient pollution	Up to \$10,000	Minor First Aid	Resolved in day-to-day management

Table 2: Likelihood Ratings

Likelihood	Category	Description
Almost Certain	A	The incident <i>is expected to occur</i> in most circumstances
Likely	B	The incident <i>will probably occur</i> in most circumstances
Possible	C	The incident <i>should occur</i> at some time
Unlikely	D	The incident <i>could occur</i> at some time
Rare	E	The incident <i>may only occur in exceptional circumstances</i>

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

Control Hierarchy

The control hierarchy is a list of control measures, in priority order, that can be used to eliminate or minimize exposure to hazards. Below is the control hierarchy with general examples of each control measure:

- **Elimination**
Avoid the risk by removing the hazard completely.
- **Substitution**
Use less hazardous procedure/substances equipment/process.
- **Isolation**
Separate the process from people by the use of barriers/enclosures or distance.
- **Engineering Controls**
Mechanical/physical changes to equipment/materials/process.
- **Administrative Controls**
Change procedures to reduce exposure to a hazard
- **Personal Protective Equipment**
Gloves, goggles, etc.

Utilizing this template the following analysis was done.

RISK ANALYSIS OF NEW LOCAL LAWS

Parking on Municipal Reserve							
Hazard	Risks	Existing Risk Controls	Risk rating	Assessment of Controls	Additional Risk Treatment or action Plan	Risk Rating	Responsible to Monitor / Supervise
1. Risk to Public Safety	<ul style="list-style-type: none"> 4 – Significant Injury to one or more persons 	Permit Required. Penalty 20 Units or Infringement Notice \$500 – too high for casual offences. Leads to inconsistent enforcement.	C High	Administrative	New Offence – 5 Penalty Units or Infringement Notice \$100 – More likely to be enforced consistently	D Low	Local Laws
2. Damage to Council Asset	<ul style="list-style-type: none"> 2 – Serious damage to Council reserve 	Permit Required. Penalty 20 Units or Infringement Notice \$500 – too high for casual offences. Leads to inconsistent enforcement.	B High	Administrative	New Offence – 5 Penalty Units or Infringement Notice \$100 – More likely to be enforced consistently	D Low	Local Laws
3. Risk of Re-Offending	<ul style="list-style-type: none"> 1 – No penalty encourages re-offence 	Permit Required. Penalty 20 Units or Infringement Notice \$500 – too high for casual offences. Leads to inconsistent enforcement.	A High	Administrative	New Offence – 5 Penalty Units or Infringement Notice \$100 – More likely to be enforced consistently	D Low	Local Laws
4. Risk of Non-Compliance	<ul style="list-style-type: none"> 1 – No Penalty encourages others to offend. 	Permit Required. Penalty 20 Units or Infringement Notice \$500 – too high for casual offences. Leads to inconsistent enforcement.	A Moderate	Administrative	New Offence – 5 Penalty Units or Infringement Notice \$100 – More likely to be enforced consistently	C Low	Local Laws
5. Risk of Inconsistent Enforcement	<ul style="list-style-type: none"> 1 – Some enforcement creates unfair inconsistent penalties 	Permit Required. Penalty 20 Units or Infringement Notice \$500 – too high for casual offences. Leads to inconsistent enforcement.	A High	Administrative	New Offence – 5 Penalty Units or Infringement Notice \$100 – More likely to be enforced consistently	E Low	Local Laws



**Special Committee of Council Agenda
to hear submissions in relation to the consolidated
Local Law No 2
in accordance with Section 223 of the Local Government Act**

Monday 2 April 2012

at 6.30pm

**Council Chamber, Civic Centre,
Boxshall Street Brighton**

In accordance with Section 223 of the Local Government Act 1989, Council has received Seven (7) submission in relation to the consolidated Local Law No: 2 as follows:

- Mr Mark Wilson
- Mr Alistair Rowan
- Mr Andrew Quinn
- Brighton Bathing Box Association
- The Bayside Ratepayers Association Inc
- Mr John Atkinson
- Mr Furlonger

The following listed people have requested to be heard in support of their submission to the consolidated Local Law No: 2;

- Mr Alistair Rowan
- Mr John Rundell (on behalf of the Brighton Bathing Box Association)
- Mr George Reynolds (on behalf of the Bayside Ratepayers Association Inc)
- Mr John Atkinson
- Mr Furlonger

Submissions to the (Draft) Consolidated Local Law No.2 Neighbourhood Amenity 2012

1. Mr Mark Wilson

Date Received: 6 February 2012

Submission	Officer comment
<p>I understand a review of local council laws is currently underway. I would like to submit a change to one of the local laws relating to parking of trailers. The council website currently states:</p> <p>Trucks and trailers Registered trailers or trucks may park on a roadway providing the vehicle does not exceed seven and one half metres in length, or has a gross vehicle mass (i.e. the weight of the vehicle plus it's maximum load) that exceeds four thousand five hundred kilograms.</p> <p>A trailer or truck exceeding seven and one half metres in length, or exceeding 4500 kilograms in gross vehicle mass, is not allowed to be parked within a street for longer than one hour at a time.</p> <p>Note: The length of the vehicle includes any attachment, therefore a vehicle four metres in length with a four metre trailer attached could only be left parked in a suburban street for a maximum period of one hour at a time.</p> <p>I would submit that the maximum length for trailers be extended to 9 metres.</p> <p>Can you please put forward this submission?</p>	<p>The primary issue appears to be that there are community safety and parking concerns with allowing vehicles longer than 7.5m to park in local streets.</p> <p>Such a change to the Local Law risks inconsistency with the <i>Victorian Road Rules</i>.</p> <p>Any change could only be effected through an Act of Parliament.</p> <p>No change to cl.47 recommended due to the reasons above.</p>

2. Mr Alistair Rowan

Date Received: 5 March 2012

Submission	Officer comment
<p>In relation to the proposed local law, I note that it will:</p> <ul style="list-style-type: none">· make it an offence, between sunset and sunrise, for a person in a municipal reserve or in a motor vehicle in a municipal reserve to consume or have in their possession any liquor unless the liquor is in a container with an unbroken seal or certain circumstances exist; <p>Basically this makes recreational areas such as Ricketts Point, or other picnic locations within Bayside dry areas.</p> <p>I cannot see the rationale for such laws given that the local law will provide:</p> <ul style="list-style-type: none">· make it an offence for a person, in a municipal place, to behave in a manner that endangers others or unreasonably interferes with the quiet enjoyment of the municipal place by any other person;	<p>Cl.66 clearly states that Council Reserves are intended to be alcohol free during the hours between sunset and sunrise, unless covered by an exemption in cl.67. Note that the prohibition does not apply during daylight hours. This local law has been developed in consultation with the Bayside Police and will minimise nuisance behaviours within the municipal reserves.</p>

3. Mr Andrew Quinn

Date Received: 6 March 2012

Submission	Officer comment
I submit that the following be included in the Proposed Neighbourhood Amenity local Law general purport provisions:	
"make it an offence for an owner or occupier of land to allow dogs to continually bark"	Dog barking causing a nuisance is covered under nuisance in the <i>Public Health and Wellbeing Act</i> 2008. It is also an offence under s.32 of the <i>Domestic Animals Act</i> 1994, enforced by Council's Animal Management Officers. It is therefore not a matter for the Local Law.
"make it an offence for any cyclist to ride at an inappropriate speed (or exceeding 15 kph) on the shared bike/pedestrian path in the municipality."	An offence of this kind risks inconsistency with the <i>Victorian Road Rules</i> , which occupies the 'field' of regulating vehicles (including bicycles) on roads and other trafficable areas.
"make it an offence to leave a boat on a trailer or a motor vehicle parked in the same position on a roadway for more than 30 days and to re-park it in the same position within 30 days of removing it."	This kind of provision was considered but not supported. It is believed to be unenforceable and that the payment of registration entitles vehicles to be legally parked on a roadway. Note also cl.45 Abandoned or derelict vehicles and what is to be noted?.

4. Brighton Bathing Box Association Inc.

Date Received: 27 March 2012

Submission	Officer comment
<p>The Brighton Bathing Box Association makes the following comments and observations in relation to the proposed Consolidated Local Law No. 2 insofar as it applies to Bathing Boxes. To assist the Council, a Comparative Table as between the relevant provisions in Local Law No. 4 and the proposed Consolidated Local Law No. 2 is attached.</p>	
<p>The Consolidated Local Law No. 2 comprises the provisions of the Consolidated Local Law and 5 schedules.</p> <p>The provisions relating to the control of Bathing Boxes are contained in both:</p> <p>(a) section 83 of the Consolidated Local Law; and</p> <p>(b) section 83 of Schedule 1 (Discretion Guidelines).</p> <p>The provisions of the Consolidated Local Law cannot be amended other than through the process set out in the <i>Local Government Act</i>. However, the Discretion Guidelines set out in Schedule 1 contemplate guidelines as may be determined by the Council "from time to time".</p> <p>In other words, the Discretion Guidelines contemplate amendment "as determined by Council from time to time" as distinct from the statutory process set out in the <i>Local Government Act</i>.</p> <p>Of particular interest in this regard, is that in each of section 83 of the Consolidated Local Law and section 83 of Schedule 1, it is provided that a licence (or an application for a licence) may be refused to any person who is not a bona fide owner or occupier of a dwelling within the Municipal District. It is not explained why the same provision appears in both the law and the Discretion Guidelines. Even if the Council were to purport to amend this provision in the Discretion Guidelines, it could not amend the same provision in the Local Law without following the statutory process in the <i>Local Government Act</i>.</p>	<p>Council is planning to review its Bathing Box regulations at a future date. No change has occurred under the new draft Local Law from the previous Local Law, pending this review. The Local Law has been in effect for many years and has been working effectively.</p> <p>The points raised in this submission are noted by Council and will be considered as part of the review.</p> <p>Repeating cl. 83(3) in the Guidelines is not considered to create any difficulty. The Guidelines are intended to govern the issue and transfer of licences, and as such can safely repeat any significant provisions in the Local Law itself.</p>
<p>Definition of "Bathing Box":</p> <p>The definition of "Bathing Box" in section 9 of Local Law No. 2 states expressly that it is a building on a Foreshore Reserve "subject to an annual</p>	<p>It is accepted that Council issues licences rather than grants leases. The definitions in cl. 9 will be amended to remove the reference to 'lease'.</p>

<p>Licence or Lease". "Licence" and "Lease" are not defined, but each would have its usual meaning.</p> <p>However, section 83 of Schedule 1 to Local Law No. 2 refers only to a Licence – there is no reference to a Lease.</p> <p>In addition, it states that the building must be used "primarily or substantially as a bathing box". Appearing in the definition of "Bathing Box", this description is circular. Further, the meaning of the words "<i>primarily or substantially</i>" is unclear; particularly when read with section 83(3) of Schedule 1 to Local Law No. 2 which provides that a Bathing Box must <i>only</i> be used and occupied "for the purposes of convenience, comfort, shelter and shade (excluding overnight accommodation) and the storage of equipment and accessories incidental to the use of and access to the Brighton Beach Reserve".</p>	<p>There is no circularity of definition. What is said in the Guidelines merely describes the bathing box use referred to in the cl. 9 definition. This will be considered as part of the Bathing Box review.</p>
<p>Section 83(4) of Schedule 1 provides that a Bathing Box "must be maintained in good condition acceptable to Council".</p> <p>No guidance is provided as to what is meant by "good condition acceptable to Council".</p>	<p>This will be considered as part of the Bathing Box review.</p>
<p>Section 83(7) of Schedule 1 provides that if "the Council intends to <i>cancel</i> a licence for breach of conditions, Council's Standard Permit Conditions would apply".</p> <p>This warrants the following observations:</p> <p>(a) Section 83(7) applies only to a cancellation of a licence and does not have any application to a refusal on the part of the Council to issue or renew a licence.</p> <p>(b) Council's Standard Permit Conditions are set out in Schedule 3 to Consolidated Local Law No. 2.</p> <p>However, they apply to "all Permits issued or corrections to permits issued by Bayside City Council".</p> <p>"Permit" is defined in the Consolidated Local Law No. 2 as meaning "a permit issued by the Council under this Local Law".</p>	<p>Council's Standard Permit Conditions are intended to apply. They will become licence conditions.</p>

<p>The fundamental difficulty is that a Licence or Lease issued in relation to a Bathing Box is not a "Permit".</p> <p>As a result, it is not clear how the Council proposes to engage section 83(7) of Schedule 1 in relation to a Licence.</p>	
<p>A related point is that the procedures and rights relating to a potential cancellation of a Licence or a refusal to issue or renew a Licence are unclear.</p> <p>For example, leaving to one side the fact that a Licence is not a Permit and that the Council's Standard Permit Conditions do not apply to a Licence (notwithstanding section 83(7) of Schedule 1), sections 83(7) and 83(8) appear inconsistent.</p>	<p>This will be considered as part of the Bathing Box review.</p>
<p>The form of section 83 of Local Law No. 2 released for comment in 2011 provided that if a person does not comply with any of the 4 requirements set out in that section, that person will be subject to a penalty equal to 20 Penalty Units.</p> <p>It is inappropriate for a penalty to apply to any of subsections 83(2), (3) and (4). The penalty should apply only to section 83(1) which provides as follows:</p> <p><i>"A Person must not erect, place, establish, maintain or keep or cause to be placed, erected, established, maintained or kept in a Municipal Reserve any Bathing Box unless such Person is the holder of a licence from the Council."</i></p> <p>The Association notes that this error has been corrected in the revised draft consolidated Local Law No. 2 (April 2012)</p>	<p>This will be considered as part of the Bathing Box review.</p> <p>The Association notes that this error has been corrected in the revised draft consolidated Local Law No. 2 (April 2012)</p>
<p>The Association would appreciate the opportunity to explain and discuss the above comments and observations with the Council.</p> <p>In particular, the Association requests that a representative appear before a Special Committee of Council on Monday, 2 April 2012 at 6.30pm at the Council Chambers, Civic Centre, Brighton.</p>	<p><i>A Committee of Council Submission Hearing will be held on Monday 2 April at 6.30 pm at the Council Chambers, Civic Centre, Brighton.</i></p>

26 March 2012

ANNEXURE TO: S.223 Submission on Proposed Local Law No. 2 Neighbourhood

ANNEXURE
CONSOLIDATED LOCAL LAW NO. 2
COMPARATIVE TABLE

Local Law No. 4 Section 50	Consolidated Local Law No. 2
Section 50(1): (1) <i>A person must not erect, place, establish, maintain or keep or cause to be placed, erected, established, maintained or kept in a Municipal Reserve any Bathing Box unless such person is the holder of a licence from the Council</i>	Section 83(1) of Local Law No. 2: Identical
Section 50(2): (2) <i>Any licence for a Bathing Box expires at 30 September next following its issue.</i>	Section 83(2) of Local Law No. 2: Identical
Section 50(3): (3) <i>A licence may be refused to any person who is not a bona fide owner or occupier of a dwelling within the Municipal District.</i>	Section 83(3) of Local Law No. 2: Identical Section 83(2) of Schedule 1 to Local Law No. 2 (Discretion Guidelines): <i>An application for a licence may be refused to any person who is not a bona fide owner or occupier of a dwelling within the Municipal District.</i>
Section 50(4): (4) <i>The Council may refuse any application for a licence or by giving one (1) month's notice in writing to the holder of any such licence cancel the licence if it considers it is necessary in the interests of the public so to do and no compensation shall be payable by the Council by reason of such cancellation.</i>	Section 83(6) of Schedule 1 to Local Law No. 2 (Discretion Guidelines): Identical
Section 50(5): (5) <i>The holder of any licence must pay the fee fixed by the Council in every year by the date determined by the Council.</i>	Section 83(4) of Local Law No. 2: Identical
Section 50(6): (6) <i>Upon any application for a transfer of any</i>	Section 83(1) of Schedule 1 to Local Law No. 2 (Discretion Guidelines):

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ANNEXURE TO: S.223 Submission on Proposed Local Law No. 2 Neighbourhood

Local Law No. 4 Section 50	Consolidated Local Law No. 2
<i>licence, the applicant for the transfer must pay the transfer fee fixed by the Council and the transfer must be refused until the fee is paid to the Council.</i>	<i>The applicant for a Licence must pay the Licence fee in full and/or any transfer fee applicable, prior to the application or transfer being processed or the Licence being issued.</i>
No equivalent. See Bathing Box and Boatshed Policy section 6.1	Section 83(3) of Schedule 1 to Local Law No. 2 (Discretion Guidelines): <i>The Bathing Box must only be used and occupied for the purposes of convenience, comfort, shelter and shade (excluding overnight accommodation) and the storage of equipment and accessories incidental to the use of and access to the Brighton Beach Reserve and any evidence to the contrary should be resolved prior to the issue or renewal of a Licence.</i>
No equivalent. See Bathing Box and Boatshed Policy section 6.6	Section 83(4) of Schedule 1 to Local Law No. 2 (Discretion Guidelines): <i>The Bathing Box must be maintained in good condition acceptable to Council and any evidence to the contrary should be resolved prior to the issue or renewal of a Licence.</i>
No equivalent. See Bathing Box and Boatshed Policy section 6.5	Section 83(5) of Schedule 1 to Local Law No. 2 (Discretion Guidelines): <i>The applicant must give evidence (a Certificate of Currency) of Public Liability Insurance in relation to the Bathing Box in an amount of not less than \$10 million prior to the issue or renewal of a Licence.</i>
No equivalent.	Section 83(7) of Schedule 1 to Local Law No. 2 (Discretion Guidelines): <i>If Council intends to cancel a licence for breach of conditions, Council's Standard Permit Conditions would apply.</i>
No equivalent. See Bathing Boxes and Boatshed Policy section 6.2.2.	Section 83(8) of Schedule 1 to Local Law No. 2 (Discretion Guidelines): <i>If Council refuses the application for a Licence or gives notice of the cancellation of a licence for whatever reason, the applicant or Licensee may within 28 days of notice of the decision, make a submission to Council to have the decision reviewed.</i>

5. The Bayside Ratepayers Association Inc.

Date Received: 27 March 2012

Submission	Officer comment
<p>This is a submission in accordance with advertised documents setting out the purpose and general purport of the Proposed Local Law.</p> <p>Our submission is that the proposed law as published fails to meet the elementary standards for the development of a Local Law. In particular:</p>	<p><i>(Unless otherwise stated in each response below, no change is recommended.)</i></p>
<ul style="list-style-type: none"> • it has substantially (and unobtrusively) changed the appeals process without any indication that this is the purport of the law, and 	<p><i>The local law appeals process is in accordance with the best practice State Guidelines for Local Laws Manual 2010 and the Local Government Act 1989.</i></p>
<ul style="list-style-type: none"> • introduced laws which are inconsistent with and replicate similar parts of the planning scheme, and 	<p><i>Cl. 7 (4) clearly states the relationship between the Local Law to the Bayside Planning Scheme. The Local Law is congruent with the Bayside Planning Scheme.</i></p>
<ul style="list-style-type: none"> • introduces permits licences fees and charges in the form of guidelines rather than as specific clauses in the law, and 	<p><i>Cl.22-24 of the Local Law clearly states Councils' power to set fees.</i></p>
<ul style="list-style-type: none"> • introduces offences as part of the guidelines instead of within the clauses of the law, and 	<p><i>The Local Law has been examined by expert legal advice The Guidelines are incorporated in the Local Law and form an integral part of it. Offences only occur within the clauses of the Local Law.</i></p>
<ul style="list-style-type: none"> • has widespread grammatical and structural errors which bring confusion to the law, and 	<p><i>No grammatical or structural errors are evidenced.</i></p>
<ul style="list-style-type: none"> • is structured to prevent Council from reviewing the work of authorised officers, and 	<p><i>Comprehensive incorporated Guidelines are included for most discretions created under the Local Law. Accountability was a key value instilled throughout the new Local Law.</i></p>
<ul style="list-style-type: none"> • incorporates unnecessary delegations which make it difficult for a new Council to review delegations in the manner set out in set out in s98(6) of the Local Government Act. 	<p><i>Cl. 89 delegations under the Local Law are in accordance with s.114 of the Local Government Act, are subject to incorporated Guidelines and Policies, are lawfully created and are required for and limited to the purposes of the Local Law.</i></p>

<ul style="list-style-type: none"> • The law does not appear to have been reviewed against the Human Rights and Equal Opportunity Act. 	<p><i>The Local Law has been reviewed against the Charter of Human Rights and Responsibilities Act 2006 as required by State Guidelines.</i></p>
<p>A more detailed list of uncertain, conflicting and unnecessary matters, included in the law, is attached. This work is not exhaustive</p> <p>We wish to be heard in support of our submission in the manner set out in s223(b)(i) of the Local Government Act.</p>	<p><i>A Committee of Council Submission Hearing will be held on Monday 2 April at 6.30 pm at the Council Chambers, Civic Centre, Brighton.</i></p>
<p>General. In the following document, our submission statements are in <i>Italics</i>. This submission builds on our earlier work and benefits from the exposure of the purport of the Local Laws together with the – often irrelevant– comments from Council staff. Note that there is confusion in the documents over the version of the law which has been published. Our comments are based on a document with a cover sheet entitled "Consolidated Local Law No 2. Neighbourhood Amenity. April 2012. (Note this is in conflict with the title of the document at the head of the contents page. Part 1 Clause 1 does not alleviate this difficulty.</p>	<p>The correct draft Local Law endorsed by Council for Exhibition and s.223 submissions on February 14 2012 is the document being referred to.</p> <p>Typographical errors occur:</p> <ul style="list-style-type: none"> • On page 2, the Local Law will be altered from '2011' to '2012'. • In clause 1 the word <i>Consolidated</i> will be added to the title.
<p>THIS DOCUMENT NEEDS TO BE READ IN CONJUNCTION WITH "CONSOLIDATED LOCAL LAW NO 2. 'Neighbourhood Amenity' April 2012.</p>	
<p>Section 2, Objectives.</p> <p>We note the objectives of the new law – particularly to "secure community safety" and to "protect public assets". We also note the objective to embrace, et al, ",,consistency, necessity and transparency, et. al.". Importantly, the purport of the Local Laws is now exposed and consistency between the purport and outcome of the Local Law is able to be identified.</p> <p>Similar outcomes were missing in many parts of the existing laws and our submission will be considerate of the new laws and any success in achieving such outcomes.</p> <p>Previous laws also failed to provide "equity in access to our open space and foreshore". The degree to which this is now provided will also be considered.</p>	<p>The objectives of the Local Law have not been altered from earlier drafts.</p>

<p>Section 7, Scope.</p> <p>The law is stated to apply to the whole of the Municipal District.</p> <p><i>It would be useful, in the document, to clarify the boundary of application at the foreshore. It would also be useful to indicate the limits of where the Local Law is subordinate to the Planning Scheme and other legislation.</i></p>	<p>The foreshore boundary of the Municipal District is defined in s.3 (3A) of the <i>Local Government Act 1989</i> and is included in the Local Law (s.9 <i>Definitions</i> under <i>Foreshore Reserve</i>).</p> <p>Cl.7 (4) Clearly states the relationship between the Local Law and the <i>Bayside Planning Scheme</i>.</p>
<p>Section 8, Reference Documents.</p> <p><i>It would seem to be self conflicting to incorporate documents and allow parts to be ignored if they conflict with the Local Law. If you adopt a standard you are required to adopt the whole standard.</i></p>	<p>Cl.7 has been reviewed by expert legal advice and is considered adequate. It is standard legal drafting practice to clearly state which document is subordinate should any conflict be discovered at any future time.</p>
<p><i>The clause at the end of s7ought to be reversed and mean that the local law is subordinate to:</i></p> <ul style="list-style-type: none"> • <i>Common wealth legislation</i> • <i>State legislation</i> • <i>All standards and statutes listed (and incorporated) in this Section.</i> • <i>The City of Bayside Planning Scheme</i> • <i>(Maybe) also the Building Regulations.</i> 	<p>Local Laws are subordinate to Commonwealth and State Legislation and regulation. It is not necessary to state this, nor is it practical to include a list of all potentially overriding legislation.</p> <p>Cl.7 has been drafted subject to expert legal advice.</p>
<p><i>If a part of an incorporated document is not to apply, this ought to be identified in the Local Law.</i></p>	<p>No section of any incorporated document is intended to be excluded or this would have been clearly stated or specifically deleted. No change is recommended.</p>
<p>Section 9, Definitions.</p> <p>Arterial Road. <i>Needs better identification by signposting, mapping or such.</i></p> <p>How would the subjects be aware of the existence of such a road from the Local Law definition?</p>	<p>This is a matter for the State Government. <i>Arterial Road</i> primarily refers to a <i>Vic Roads</i> controlled road and is referred to only twice in the Guidelines: 47. Storing and Parking Heavy Vehicles, and 50. Street Parties. On both occasions the reference is to guide Council staff in whether to grant a permit. No change is recommended.</p>
<p>Combined Trunk Circumference. <i>This needs better definition.</i> The current usage is intellectually unsound. To compare the equivalent size of say three trunks with a single trunk, one must calculate the (square root of the sum of the squares of the diameters) Using the current definition allows a tree with 4 branches 120 mm diameter on the same root to be classed as a tree. The equivalent size of a single tree matching the size of the four branches is only 75.4 centimetres – half the 155cm of the single trunk of the "protected tree".</p>	<p>Tree trunks are measured 1 metre above the ground and multiple trunk trees are aggregated to establish the protection trigger, see <i>Single Tree Circumference</i>. Council's expert arborists and expert legal advice are satisfied with the current definition. No change is recommended.</p>

Dwelling. <i>This is conflicting and ought to be better described. Can it be matched to anything in the Building Control Act? (Is a tent a dwelling?)</i>	Current definition is considered as adequate.
Foreshore Reserve. <i>This needs better definition (or mapping). Who knows what land is managed owned or not owned by Council? Maps or signs are needed</i>	Council's Local Laws apply to all foreshore areas of the Municipal District except where State regulation has been made contrary to the Local Law by a Committee of Management.
Significant Tree. <i>We comment that the Significant Tree Register ought not to exist outside the Planning Scheme.</i>	This matter will be referred to Council's Planning Department for a response as it beyond the scope of the Local Law.
Section 10, Exercise of Discretion. We note that the Guidelines and Policies are "incorporated into this local law". Any changes ought thus to be prepared in accordance with the procedures for making a Local Law. There is also a conflict here with the Infringements Act. If Council seeks to use this act to administer the law, anything conflicting will be subordinated.	Schedules of incorporated documents may be amended by Council resolution and Gazettal under the <i>Local Government Act 1989</i> and <i>is supported by the State Guidelines for Local Laws Manual 2010</i> . There is no conflict with the <i>Infringements Act 2006</i> , but if so, the <i>Infringements Act 2006</i> , as State legislation, will take precedence.
Note that 10(1) contains the word "will". This is meant to be a law not a pledge! S10 (1) should cease at (c „from time to time,,	The word 'will' will be amended to 'must'.
S10 (2)(3)(4) and (5) <i>ought to be eliminated. Policies have no function being incorporated into the Local Law. As the clause is stated, the following of the policy and the guidelines is mandatory. This will apply to the appeal party as well as the staff/ Note s10 is headed "Exercise of Discretions"! s10(3) would suggest that the Law is dictating the Policy; the policy should guide the application of the law but allow the appeal body to exercise discretion should special conditions arise.</i>	Under <i>State Guidelines for Local Laws Manual 2010</i> best practice requires relevant Council policies bearing directly on officer discretions to be incorporated in the Local Law. The Local Law does take legal precedence over Council policy. Council must alter the Local Law prior to resolving a contrary policy. The appeals officer, by definition, exercises a discretion to reconsider any matter under appeal. All Council staff are bound by Council policy.
<i>The ability to incorporate other documents is contained in s112 of The Act. However, any incorporated document ought to be identified as incorporated into a section of the particular Local Law, not a general permission for all and sundry to use.</i>	All incorporated documents are very clearly identified as incorporated, frequently in several different places, and are referred to specifically in individual clauses. No policy is incorporated without reference in the body of the draft Local Law.
S10 fails the test of necessity and consistency and, as written, is inconsistent with objective 4.	Cl.10 is consistent with objective 4, especially accountability, transparency, compliance and accessibility.

<p><i>S11. The term 'determinations' is confusing. If this clause is to be used it would be better to be a Register of Incorporated Documents. It could be matched to a notice properly published in the Government Gazette, as incorporation requires this to happen. Unincorporated documents which are resolved by Council to "direct" the exercise of discretion by officers would usefully be published and maintained in a similar directory.</i></p>	<p>In this context, the term 'determinations' refers to decisions embodied in resolutions of Council relating to the Local Law and its schedule of incorporated documents. The clause is unambiguous. Best practice requires documents directly guiding officer discretion under the Local Law to be incorporated in the Local Law.</p>
<p><i>S12 to S16 deals with matters related to compliance and penalties. These clauses are almost identical with those of the Infringements Act, If it is intended to use the Infringements Act to ensure compliance, this Act ought to be utilised at this juncture.</i></p>	<p>Clauses 12-16 do not overlap with the <i>Infringements Act</i> 2006.</p>
<p>Section 16, Appeals. <i>There is no indication in the definitions of what or who the "Appeals Officer" is. While it could be a sound intermediate step – depending on how the office is constructed –it cannot be the final avenue of appeal. Again, the office exists in the Infringements Act and adoption of this Act for enforcement will require the process to be used.</i></p>	<p>Council, through the Chief Executive Officer, appoints one or more Appeals Officers. Council uses the appeals provisions of the <i>Infringements Act</i> 2006 for all Infringement Notice offences. However because some Local Law provisions do not involve prosecution or the issuing of Infringement Notices, the <i>Infringements Act</i> 2006 and its appeal provisions do not apply. Local Law appeals are made to Council as the final avenue of appeal, other than an application to the Supreme Court on a matter of law.</p>
<p><i>The matter of a single internal appeal is allowed in the Infringement Act. Basically it allows for the withdrawal of the Infringement Notice for special considerations associated with the infringement. Even if not withdrawn, the system allows the matter to be determined in the Magistrates Court. This, of course, fails to deal with the matter of the granting of permits, notice to comply etc. The use of VCAT for appeals in such instances has been canvassed and found possible. It is suggested that to be consistent with the planning scheme, an appeal to VCA T ought to be possible. However, failing the VCAT option, the current system of appeal to Council ought to be retained. It would be consistent with the idea that Councillors might delegate an authority to a staff member to act yet retain the responsibility to themselves to ensure that the ultimate decision is in the best interests of the community.</i></p>	<p>A right of review or appeal under the Local Law is not specifically required by the <i>Local Government Act</i> 1989. However, best practice and the principles of justice and fairness require Council to provide a review process where a matter is not subject to review under the <i>Infringements Act</i> 2006. Appeals to VCAT are not considered to be necessary or desirable.</p>

<p><i>Note that s16 (5) purports to have an appeal decided by council yet s16 (4) prevents this. S16(4) needs to be changed to allow appeals – other than against infringement notices –to a third party not part of council staff.</i></p>	<p>There is no inconsistency between cl.16 (4) and (5). Cl.16 (4) states that the appeals officer will be a person other than the officer issuing the offence. Cl.16 (4) applies to appeals of both Infringement Notices and Local Law offences. Cl.16 (5) notifies that appeals on non-Infringement Notice offences are finally decided by Council (or its delegated appeals officer).</p>
<p>17, Permits. <i>17(3) This Clause ought to be applied to Delegated Officers only. They ought to have regard to the Local Law, any Incorporated Documents on the appropriate register and the guidelines in the Unincorporated Documents Register.</i></p>	<p>It is considered that the current wording achieves this result. All guidelines are incorporated documents. The clause will be amended to include incorporated policies in Schedule 2. No other change is recommended.</p>
<p>20, Exemptions. Clause 20 (1) is a dangerous clause to allow in its present form. It is nonsense to have a law prepared in accordance with s111of The Act yet allow unrestricted exemptions to be applied. <i>This clause ought to be modified, to limit exemptions from compliance with a section of the Local Law, to entities listed on a Schedule incorporated into the law. In particular, Council ought not to exempt itself – or its councillors and staff – from compliance with the Local Law. Should it be appropriate for council staff or contractors to be given an exemption from a local law, this should be done by resolution, not notice. The principle of transparency requires such a process.</i></p>	<p>The new Guidelines to cl. 20 Exemptions are extensive, restrictive, weighted against granting and include a number of Council and public interest tests which must be applied. Note the power to issue exemptions is limited to the Council, the Chief Executive Officer and Directors only and must be done in writing. Council and its staff are specifically exempted from some clauses of the local law to allow the performance of normal duties.eg? 77. Lighting Fires on Municipal Reserves. There is no general exemption for Council or Council staff from the Local Law other than stated previously?.</p>
<p>25 & 26, Naming and Numbering of Roads and Properties. <i>S25 (2) would seem to be neglectful of the role of the State in the naming of streets. This section should simply turn the matter over to the appropriate State law. In order to avoid directing the State, the term "is to have regard" needs to change to the permissive 'may'. A wording change is needed ihere to demonstrate the three stage nature of the transaction, to provide transparency.</i></p>	<p>The allocation of Street names and numbers is a power vested in Council by the <i>Local Government Act</i> 1989 in Schedule 10 (5), as stated in the incorporated Bayside City Council <i>Naming of Streets and Reserves Policy</i> 2006 in Schedule 2. Council must also follow guidelines pursuant to the <i>Geographic Place Names Act</i> 1998 and advise the Registrar of actions under that Act.</p>
<p>27, Unsightly Land. This could well interfere with proceedings under the Graffiti Prevention Act. It could also remove opportunity for penalties under this Act. <i>The penalty for non-compliance appears to be out of proportion to the</i></p>	<p>Cl.27 is not considered to be inconsistent with the <i>Graffiti Prevention Act</i> 2007, which is directed at perpetrators of graffiti and restricting the sale of graffiti materials.</p>

<p><i>gravity of the offence. S27 (2), (3) and (4) penalise a victim not a perpetrator. Why introduce a conflicting Local Law when the matter is being dealt with in the Graffiti Prevention Act?</i></p>	<p>The penalties for s.27 (2) and (3) are not heavy (Maximum, 10 penalty units; Infringement Notice, 2 penalty units). S 27 (4) is an exemption, not an offence. Clause 27 is to assist the maintenance of neighbourhood amenity.</p>
<p><i>The exemption of Municipal Reserves from the plus 300mm undergrowth limit fails the test of consistency and accountability. There is widespread failure to comply with the principle of this law by the City of Bayside. This exemption ought not to be allowed to apply.</i></p>	<p>Cl.27 (1) Exempts Council Reserves maintained under an approved management plan. This is not an open-ended exemption, but respects the planned allocation of maintenance resources by Council's Parks and Gardens services.</p>
<p>28. Dangerous Land.</p> <p>This has a very broad application. However there are many other hazards that are possible that need to be addressed. (Are all insects banned from land in Bayside?)</p>	<p>The word <i>insects</i> will be deleted.</p>
<p><i>Land harbouring unguarded machinery and exposed electrical cables ought to be specified as well as dangerous trees and other dangerous structures.</i></p> <p><i>To avoid duplication, s32, Fire Hazard& would usefully be combined with s28. Note that s28 introduces an offence to keep the land in the manner [described. The offence in S32, on the other hand, is that "necessary steps are taken to prevent", (the hazard). The principle of consistency requires the treatment of hazards on dangerous land in the same manner.</i></p> <p><i>Both in s32 and s28 hazards can both accumulate or appear relatively quickly. They are treated as just an offence without provision for Council action in an emergency. The objective to "secure community safety" would suggest provision is needed to hold the land occupier to account for emergency protection work.</i></p> <p><i>The exemption given to Municipal Reserves denies the accountability principle and ought to be removed.</i></p>	<p>The general wording used in of cl.28 avoids the impracticality of attempting to define all potential hazardous conditions.</p> <p>While both cl. 28 and 32 deal with community safety, cl.32 (fire hazard) is a separate clause because it is a special category of risk.</p> <p>Two clauses allow two approaches to avoiding the different types of risk. Fire hazard reduction is an ongoing responsibility related to fuel levels and storage of materials. It is treated separately to the very specific obligation to remove clear and obvious dangers to individual safety.</p> <p>Council's power to act in urgent circumstances is in cl.14.</p> <p>Cl.32 (2) exempts Council Reserves maintained under an approved management plan. This is not an open-ended exemption, but respects Council's planned allocation of community funds to park maintenance.</p>
<p>30, Removing Recyclable Material.</p> <p>It would seem difficult to show, without signage, that material left on a roadside is recyclable material. It would seem fatuous that instructions on council website could be used to show the nature of material on a distant Road.</p>	<p>The clause is designed to protect the value of Recyclable Material for Council's contractors. This helps to reduce the cost of collection and reduce the burden on Council's funds.</p>

<p><i>It would appear that this clause is useless and ought to be deleted. Given Council's 9–5 workforce, it would also appear that this law is unenforceable without widespread camera installation.</i></p>	
<p>31, Burning of Materials.</p> <p>It would appear that Council reserves to itself the right to create "unreasonably offensive emissions".</p> <p><i>Section 31(3) allows council to behave in an antisocial manner. This is unacceptable. The section ought to be deleted. Council ought to meet the permit requirement and must meet any further requirements under the Environmental Protection Act. Maybe the permit should be issued by a Suitable third party such as the Fire Brigade or the EPA.</i></p>	<p>Council is required to fulfill all EPA and MFB fire requirements. The Council exemption relates to controlled fuel-reduction burning off in accordance with park management plans.</p>
<p>32, Fire Hazards.</p> <p>It is suggested that this be amalgamated with s28. Both sections have a common issue and fail to provide adequate safety to the citizens. Importantly, Council has again reserved to itself the right to contravene its own law.</p>	<p>As stated above, cl. 28 and 32 deal with sufficiently different and specialised public risks to be kept separate.</p>
<p>36, Tree Protection</p> <p>This is a very confusing topic. Tree protection is also covered under the Planning Scheme. There are trees in Vegetation Protection Overlays and those which have been planted to comply with conditions on a Planning Permit. Such trees may have or have not, size limitation for inclusion. The tree size under the planning scheme is generally smaller than in the Local Law. Recent events indicate that the planning scheme applies to most trees in the road reserve yet the local law applies to trees on the adjoining private land.</p> <p>Trees are structures which change shape and grow to the point of failure. They <i>also</i> form a fire hazard and interfere with the overlooking and the</p>	<p>Cl. 36 has been modified in the new Local Law. Strict owner onus has been removed and an exemption for pruning permits has been introduced where a qualified arborist carries out the work. However, cl. 36 is not inconsistent with the Planning Scheme and, until and unless the entire municipality is placed under a Vegetation Overlay, the Local Law will continue to be an effective instrument of Council policy for maintaining and extending the tree canopy in Bayside.</p> <p>There is significant community support for retaining this provision. No change is recommended.</p>

<p>overshadowing elements of the siting of a building. They interfere with the solar collection sites on a building and they undermine and damage other structures, It is a land use issue. As such, all trees ought to be dealt with under the Building Regulations and the Planning Scheme.</p> <p><i>Tree protection ought to be eliminated from the local law. The LGAct indicates that "Council must not make a local law which duplicates or is inconsistent with the Planning Scheme". S36 should be eliminated from these Local Laws. Prescriptive conditions could then be established within the Planning Scheme, for the keeping of trees. Such conditions ought to be based on health and safety considerations together with the avoidance of damage to and interference with urban infrastructure.</i></p>	
<p><i>Re. cl.36</i></p> <p><i>Prescriptive condition to ensure:</i></p> <ul style="list-style-type: none"> • <i>A common minimum size for a protected tree – suggest the 500mm circumference in the Planning Scheme.</i> • <i>Avoid protected trees within 10metres of a habitable room.</i> • <i>Avoid protected trees within 2metres of a property boundary</i> • <i>Tree canopy density within 30 metres of a residence to be less than 20%</i> • <i>The structural root zone of a protected tree (which may be calculated from its diameter) not to encroach on walls, pavements or drainage owned by others.</i> • <i>A minimum solar collection area to be established for each property depending on the number of rooms; tree height to be limited so as not to encroach into the consequent solar window between 9am and 4pm at the winter solstice. (The same would apply to overlooking structures)</i> <p><i>A failure to have the above conditions incorporated into the Planning Scheme would be partly compensated by incorporation into the Guidelines under the Local Law. Without such incorporation, the clause fails to meet the objective in s2 (1) –secure community safety.</i></p>	<p>There is no evidence to support adoption of these prescriptive conditions. No change is recommended.</p> <p>There is also a new emergency exemption for trees immediately endangering life or property which is consistent with a similar exemption in the Bayside Planning Scheme. This is consistent with the objective of securing community safety.</p>

<p><i>The Significant Tree Register, in its present form, must be questioned. It simply is a book in which Council Staff may record any tree they feel needs protection. If it is to be used it ought to be prepared in a manner subject to a s223 examination and then become an Incorporated document.</i></p>	<p>The significant Tree Register is available for inspection under the new Local Law. Note that National Trust guidelines are used to define significant trees and no new tree has been added to the Register in the last 5 years (why are we making this point?).</p>
<p>37. Trees and Plants not to Obstruct.</p> <p><i>The objective in s2 (1) – secure community safety– cannot be met if a permit can be issued to retain an obstruction. This provision ought to be removed. The requirement to remove the obstruction ought to apply equally to Council trees.</i></p>	<p>The Guidelines for cl.37 make it clear no permit would be issued if public safety would be compromised.</p>
<p>38, Trees or Plants Causing Damage.</p> <p>This is probably superfluous given the common law right for a property owner (Council) to trim back the growth to the boundary of the adjoining property. However s38 puts the onus to trim the plant on the tree owner, not Council.</p> <p><i>We suggest that this clause be modified to:</i></p> <ul style="list-style-type: none"> • <i>Apply to all adjoining properties, not just Municipal Places</i> • <i>Allow a property owner to request Council to act and to use the provisions of the clause to enforce compliance, including the removal or pruning of Council owned trees</i> • <i>Allow Council to act to carry out the work if the notice is not complied with</i> • <i>Suspend any other permit requirements in relation to the problem plant.</i> 	<p>Cl.38 relates to the protection of public assets and the reduction of public risk enforced by notice rather than private court action. Private landholders have access to their common law rights to protect private property.</p> <p>The cost to ratepayers of the proposed extensions of this provision would be excessive and it is not recommended to implement such changes.</p>
<p>41, Animal Excrement.</p> <p>41(2) is difficult to comply with at all times. What of the situation where the device has been used and disposed with and the owner is walking home with the animal? What about a dispute over what comprises a litter device? It is suggested the act be penalised, not the preparation for the act to occur.</p> <p><i>It is suggested that 41(2) be eliminated as unreasonable and unenforceable. S42 (c) of the Domestic Animals Act permits Council to make the law set out in s41 (1). However, this permission is not extended to s41 (2).</i></p>	<p>The current Local Law is working effectively. No change to the equivalent provision in the new Local Law is recommended.</p>

<p>42, Wasps Nests.</p> <p>This is badly worded and asks for action which is often very difficult to comply with. Wasp nests are usually found in wall cavities and are impossible to remove without demolishing the wall. Removal is unnecessary.</p> <p><i>It is suggested that the requirement be to attempt to eliminate the wasp infestation within a nominated period of time (the gestation period of wasp larvae). This is most likely to be achieved using insecticides and could be attested to by a pest control official. Wasps are not defined; there are likely to be many types of insects locally known as wasps and probably protected. The penalty for failure appears unduly harsh for a task that can be carried out using a \$5 can of insecticide.</i></p>	<p>The current Local Law is working effectively. No change to the equivalent provision in the new Local Law is recommended.</p>
<p>51, Roadside Trading.</p> <p>51(1) fails to mention the solicitation of gifts, the selling of lottery tickets and the giving of invitations to attend display and description events e.g. time share availability.</p> <p><i>51(1) ought to be expanded to cover people soliciting gifts and selling raffle tickets. It may also be in conflict with State provisions dealing with hawker's licences, i.e. what about the ice cream seller?</i></p>	<p>The soliciting of gifts and selling of lottery tickets etc are covered by s.58 Collections. Lotteries are also subject to State Government regulation.</p>
<p>57, Advertising Signs.</p> <p>Is there any exemption for signs placed on the outside of a fence e.g. House for Sale signs?</p>	<p>Exemption referred to is subject of the Planning Scheme.</p>
<p>58, Collections.</p> <p><i>The wording is confusing. The hand delivery of printed matter to street side letter boxes needs to be more clearly defined especially in relation to junk mail. Sub clause (3) would appear to prohibit the collection of signatures for a petition on the street or park.</i></p>	<p>The delivery of junk mail is regulated by State legislation. The collection of signatures etc. is clearly outside the scope of this provision. The wording of the clause is considered clear. No change is recommended.</p>
<p>64, Building Works.</p> <p>The need for pre commencement inspections is recognised. However, this needs to be expanded beyond Council land and assets. The neighbouring land must also be checked for intactness– especially when excavating on a boundary. Is this not properly a matter for the Building Act?</p>	<p>Cl.64 is a public asset protection clause. It has been carefully drafted to be consistent with the <i>Building Act</i> 1993. It has been subject to legal advice. It relates to Council land adjoining a building site.</p>

<p><i>Clause (5), The construction bond ought not to be subject to an officer opinion. A nominated bond ought to be specified –possibly graduated to the cost of the works. The difficult situation of the extent of the possible damage envelope needs to be addressed here. Is the 4m distance in (4)(b)(i)a sufficient distance?</i></p> <p><i>The bond ought to be treated as being held in trust pending certain conditions for its release which is not dependent on an officer opinion. Council does not operate a fund under the control of a trustee despite holding more than \$3 million on trust. Before this clause is implemented Council needs to establish a legal trust to hold funds of the nature of the deposits contemplated. The clause ought to state that the deposits are held in trust and the procedure to be followed for the funds to be removed from the trust account. Pavement crossing deposits required under s64 ought also to be dealt with by Trust Account procedures.</i></p>	<p>The provision of a bond matrix is being considered by the Asset Protection Department. If approved by Council, it would form part of Council's Fees and Charges Budget, not part of the Local Law.</p> <p>The 4m distance is considered the correct figure.</p> <p>This is a matter for Council Budget submissions. How is this a matter for budget submissions?</p> <p>No change recommended.</p>
<p>66, 67. Consumption of Liquor.</p> <p><i>While the sunset to sunrise limitation is noted the use of sports field lighting allows functions to extend beyond such times. Maybe s67 ought to allow an exemption until one hour after the sports lights have been switched off. Signage ought also to be compulsory. c.f smoke free areas. The principle of consistency ought to allow the same conditions to apply to s65.</i></p>	<p>The consumption of alcohol on Sports Fields is normally a matter for the lease conditions with the relevant Sporting Club, not the Local Law.</p> <p>Council's regulation of alcohol consumption on roads and in Municipal Reserves (including Foreshore Reserves) is considered clear and unambiguous. Additional signage will be investigated.</p>
<p>75, Access to Reserves.</p> <p>The manner in which this Clause is written makes anyone in the reserve after sunset liable to a 10 unitfine. We suggest the access to reserves ought to be unqualified in this clause. It should read:</p> <p><i>(1) All Municipal reserves are open to the public at all times except when a notice placed at every entrance to the reserve shows when such access is not available</i></p>	<p>Council's Access to Reserves clause is largely unaltered in the new Local Law. It is considered appropriate and effective. No change is recommended.</p>

<p><i>(2)(3) and (4) ought to confine limitations to access to instances which are consequent to a resolution of council or if such limitations are part of the conditions of any lease agreement with an occupier of the reserve. It ought to apply only to such parts of reserves which are fully fenced and have a notice to this effect at every entrance. Otherwise, the law is likely to be unenforceable.</i></p>	
<p>77, Lighting Fires. Given the dire consequences of park fires, as listed in Council's statements, it would seem that the issuing of permits to light fires is, ipso facto, an illustration of negligence on the part of Council. The reserving of the right for Council to act without a permit is doubly negligent. <i>Lighting offires in public places ought to be banned without qualification. It compromises s2(1) – secure community safety.</i></p>	<p>The issuing of a Permit is subject to the Guidelines for the cl.74. Use of Municipal Reserve, including general protection of the amenity of the neighbourhood.. No change is recommended.</p>
<p>79, Parking in Reserves. Given that many parking areas in reserves are not surfaced, nor signposted, this defect could usefully be addressed here. <i>The clause ought to describe the parking area as "clearly marked and set aside,,. There is also, however, an offence in the Road Traffic Act "Parked or stopped on a reserve without consent". Maybe this clause ought to join the other 105 parking offences under the Road Rules. The Local Law thus fails both the clarity and consistency test.</i></p>	<p>Cl.79 is fully explained and justified in the accompanying Local Law Community Impact Statement. The drafting and usefulness are considered adequate. No change is recommended.</p>
<p>83, Control of Bathing Boxes. Note Clause (3) is permissive, not mandatory. We believe this matter has previously been tested at law and found to be inoperative. Try the records of the City of Chelsea for information. <i>We believe that this clause is inoperative. It is also a restriction of competition which is banned in Schedule 8, clause 2(j) in The Act. It may also infringe the Human Rights and Equal Opportunity Act.</i></p>	<p>Council is planning a review of its Bathing Box regulations at a future date. No change has occurred under the new draft Local Law. No changes are recommended in the Local Law until that review occurs.</p>

<p>88, Infringement Notices.</p> <p>While an Authorised or Delegated Appeals Officer is a new and possibly valuable change to the Local Law, it is notably deficient in detail. It appears to be simply the standard process set out in the Infringements Act. However s88 (4) refers to "an Infringement Notice or other Notice". S16 (4) makes it clear that "Any submission or appeal.. will be determined by an Appeals Officer".</p> <p>In the current law, the appeal of matters related to the issue of permits is to a full Council meeting. This was questioned in the past and work was carried out to appoint VCAT to be the appeal body. It was found to be acceptable to VCAT but Council failed to follow this route.</p>	<p>Council's Appeals Officers deal with two appeals processes, i.e.. 1) Appeals under the <i>Infringements Act</i> 2006, and 2) Appeals under the Local Law. These two processes are similar but separate.</p> <p>Council or its Delegated or Authorised Officer make the final decision for all appeals under the Local Law. This is set out and made clear in cl.16 and 88. This is not a change of procedure for Council.</p> <p>Appeals under the new Local Law may be dealt with by the Appeals Officer. A VCAT appeal is neither necessary nor desirable.</p>
<p><i>Clause 88 (8) fails to allow an appeal against the decision of the Appeals Officer in instances where a permit is required. Such officer is an employee of Bayside Council. There is no independent party to appeal to. This is a major change from the previous law where the appeal was and remains, to Council. NOTE. THE CHANGE TO THE APPEAL PROVISIONS WAS NOT LISTED AS A PURPORT OF THE LOCAL LAW WHEN THE NOTICE WAS PUBLISHED.</i></p>	<p>The existing Local Laws 2006 appeal provisions were reviewed and considered unclear and inconsistent with the accountability and transparency objectives in the best practice State Guidelines. A major change in the new draft Local Law 2012 is the clear articulation of the appeals process under the Local Law, separate from the <i>Infringements Act</i> appeals process. This is best practice under the State Guidelines and not a change in Council practice.</p>
<p><i>Clause 10 would usefully distinguish between different types of notice. We suggest that the reference to "Notice (not an infringement notice),," ought to be given a precise name e.g. A Compliance Notice or Notice to Comply</i></p>	<p>Cl.88(10) refers to a variety of potential notices under the Local Law. The clause has been carefully drafted and is considered to be clear and unambiguous.</p>
<p><i>This confusion on how infringements are to be handled has been considered earlier in our submission. The provisions of the Infringements Act should be applied in full without qualification and all the clauses which copy parts of the Act abandoned. Alternatively the Local Law ought to stand alone and not attempt to take incomplete bits from other Acts. It is suggested that councillors need to intervene in this process as staff are seeking to deprive them (or their nominees such as VCA T) of their right to make the final decision in the event of a dispute. (REFER ALSO TO SCHEDULE 1 S12 (1) (c))</i></p>	<p>As per the response above, this comment clearly misunderstands the two separate appeals processes. Best Practice requires Council's Local Laws appeals process to approximate as close as possible to the <i>Infringements Act</i> process, which it does. The similarity is intentional and recommended by State Guidelines for consistency.</p> <p>Council staff at all times act on behalf of Council and Council may revoke its Appeals delegation to the Chief Executive Officer at any time, if it so wishes. Council (or its delegated officers) nevertheless, as per the <i>Local Government Act</i> 1989, makes the final decision on non-Infringement Appeals under the Local Law.</p> <p>There is not, nor has ever been, an appeal beyond Council on these matters.</p>

<p>89, Delegation.</p> <p><i>Clause 114 of the Local Government Act is permissive and the Council may "leave any matter or thing to be...regulated by Council". The all-embracing delegation contained in s89 allows contractors and temporary employees to act in the name of the Council without constraint while this law is valid.</i></p> <p><i>We suggest that specific positions or persons be delegated individually for various tasks within the Local Law. This should be done outside the Local Law so that the 2013 Council (and later Councils) may review such delegations in the manner set out in s98(6) of the LGA, without having to bring in a new Local Law. Section 89, Delegation, ought to be withdrawn.</i></p>	<p><i>Cl. 89 Delegations under the Local Law are in accordance with s.114 of the Local Government Act, are subject to incorporated Guidelines and Policies, are lawfully created and are required for and limited to the purposes of the Local Law.</i></p>
<p>GUIDELINES</p> <p>Schedule 1.</p> <p>Sch 1, Clause 12. Power to Direct</p> <p><i>1(c) (i) seems to ignore any avenue of appeal to the Supreme Court. How does this avoid the provisions of s124 of The Act? There is also much confusion over procedural matters. It infers that there is an offence, Failure to comply with a Notice to Comply. Surely the only offence is the one which was allowed to be remediated and the Infringement Notice must reflect this.</i></p>	<p>The right of appeal to the Supreme Court is derived from the <i>Local Government Act</i> 1989, not the Local Law. It is clearly stated in cl.16.</p> <p>No, it is also a separate offence under the Local Law to fail to comply with a Notice to Comply or any other Notice under the Local Law.</p> <p>No change is recommended.</p>
<p><i>Sch 1. Cl 14. The use of the word "will" (1" para) in s14 is loose and presumes actions which may not happen. The second para. uses the term "may" when "must" is essential. The word "are" in clause (6) ought to be another "must".</i></p>	<p>The word 'will' will be amended to 'must'.</p> <p>The other changes are not considered appropriate.</p>
<p>Sch.1 Clause15, Impounding.</p> <p><i>Another "will" is misplaced here. This is in clause s15 (1) and s15 (4) Clause 4(c) (iii) has the term "Council Executive" which is not a defined term</i></p>	<p>As already noted above, 'will' is recommended altered to 'must'.</p> <p>Typographical error 'Council Executive' should be 'Council's Chief Executive Officer'. Recommended to amend.</p>

<p>Sch.1 Clause 17, General Guidelines.</p> <p><i>In para 1 "ought to be replaced by "must".</i></p> <p><i>(1)(c) is confusing. It infers that third parties are allowed to make submissions about the application of local laws. This is a serious conflict with Schedule 8 of LGA, particularly 2(a), 2(b) (iv), 2(d), 2(e), 2(g) and 2(h). There does not appear to be any process for dealing with submissions. (s17(c) appears to have been lifted from the Planning and Environment Act)</i></p> <p><i>We also question the wording of s17 which allows Authorised Officers as well as Delegated Officers to process permit applications and issue permits. Authorised Officers can be and are, unqualified in any way. (s224 (1) of the LGA). They are probably most suited to collecting the money from parking meters and dealing with dog excrement offences. Delegated Officers are able to be selected for their suitability to competently perform a task requiring judgement. The instrument of delegation allows Council to delegate specifically without on-delegation. The current system of delegation of individuals to deal with specific Acts is clearly selective on a competency basis. This process ought to be incorporated in this Local Law.</i></p> <p><i>The above comments are also applicable to the s14 Authority to Act in Urgent Circumstances. Such authority ought to be confined to Delegated Officers. Sch 1 s20 (3) (c) is an example of a need for a professionally qualified officer to make a critical decision. Note that this principle of certain decisions being restricted to certain employment positions in Council is seen in Sch. 1 s20 (1).</i></p>	<p>The word 'ought' does not exist at the reference given.</p> <p>There is no evidence of any conflict with Schedule 8 to the <i>Local Government Act</i> 1989. The Guidelines suggest that in certain circumstances an officer may request notice be given to and then consider the submitted views of adjoining landholders as to whether to issue a Local Law Permit (e.g. recreational use of motor bikes).</p> <p>Authorised Officers exercise considerable authority and independent judgement on behalf of Council and are either highly trained or very senior officers. The distinction made between Delegated and Authorised Officers here is incorrect. The difference is technical in nature. Both Authorisation and Delegation are formal processes under different sections of the <i>Local Government Act</i> 1989. The denigration of Council's Authorised officers as unprofessional or in some way unqualified for their authority is both incorrect and inappropriate.</p>
<p>Sch. 1 Clause 31, Burning Materials</p> <p><i>This is a sector where we have suggested that permits to burn-off ought not to be issued to anyone in urban areas, including Council and its staff. If Council persists in retaining its right to issue permits, they ought only to be issued by suitably qualified professionals – at State level. Health professionals ought to attest to the ventilation issues and fire control professionals to the urban wildfire risk issues It is not sufficient to mention in Policy documents that the appropriate professionals will be consulted only to find that Council staff has "forgotten" to do so.</i></p>	<p>Council's Municipal Fire Prevention Officer is responsible for granting burning-off permits. Council's Parks Officers are responsible for burning-off in Council Reserves in accordance with industry guidelines. This is not a matter for the draft Local Law.</p> <p>Council is also subject to EPA emission standards.</p>

<p>SUMMARY OF SCHEDULE 1.</p> <p><i>There is considerable confusion over the function of Guidelines. There are long lists of activities that are normally banned in order to allow the proper functioning of public places. These are misplaced and ought to be listed in the law, not in an incorporated document. If the law states that the banned conduct may be allowed by the issue of a permit a set of guidelines needs to be produced indicating the special set of conditions which justify the granting of a permit. Using 74(2) as an example, one would start with "any person, without a permit, pitching a tent and/or occupying such temporary shelter is guilty of an offence. Penalty 20 units." The guidelines would then indicate the type of situation when a shelter could be erected, the location of the site, the time it could be retained, the conditions for site clearing and restitution and the fee (if any) to be paid. The current penalty of 20 units is high if someone erected a small shelter to watch a soccer game for a couple of hours. Buried in the guidelines rather than the law it would be difficult to even know it was an offence.</i></p> <p><i>Council needs to review the structure of its Local Law No 2 to ensure accessibility, consistency, necessity, and transparency.</i></p>	<p>The role of the Discretion Guidelines is clear and unambiguously stated at the commencement of every set of guidelines.</p> <p>To maintain simplicity, complex detail has been removed from the Local Law and placed in the Guidelines, where it may be more flexibly amended by resolution and gazettal. This is compliant with the <i>Local Government Act</i> 1989 and the State Government <i>Guidelines for Local Laws Manual</i> 2010. The draft Local Law has undergone expert legal overview</p> <p>Maximum penalties can only be imposed by a Court. Council's Infringement Notices are set at 20-25% of maximum penalties per the guidelines issued by the State Attorney General.</p> <p>The general penalty for breaching cl.74 is because of the potential risk to public safety and to Council assets in some offending behaviour.</p> <p>The draft Local Law has been drafted with the values listed in the objectives as an integral part of the new Local Law.</p>
<p>POLICIES AND OTHER INCORPORATED DOCUMENTS.</p> <p>As an introduction to Schedule 2 we question if a policy document is an appropriate document to be incorporated into a Local Law. Certainly, it may be used to inform the preparation of guidelines but policies are not usually sufficiently binding to be published in the Government Gazette and thus lose flexibility. Section 112(2) of the Act requires gazettal of the policy and any amendment before it can be incorporated –or adjusted. Further, if policies embody principles of major substance, Clause 2(e) of Schedule 8 of the LGA indicates they ought not to be dealt with by subordinate legislation. Many of the policies set detailed administrative requirements as to how the policy objective may be</p> <p>achieved and are thus in conflict with 1(d) and 1(e) of Schedule 8 of the LGA.</p>	<p>Policies which are technical in nature and serve as guidelines to officers exercising discretions are appropriate for incorporation. This is compliant with best practice as in the State Government Guidelines. The policy takes the place of or extends discretion guidelines by incorporation in the Local Law.</p> <p>s.112 of the <i>Local Government Act</i> states that incorporation in the Local Law cannot occur until gazettal and the policies are incorporated in this process.</p> <p>No incorporated policy is in breach Schedule 8 to the <i>Local Government Act</i> 1989.</p>

<p>We suggest that Policies are much more useful outside the Local Law. In its incorporated form, the policy appears to be a legal document that must be followed. Presumably, this limits the ability of Council to vary or overturn any decision of an Authorised or Delegated Officer provided it is based on the policy document. This makes nonsense of the concept that there can be an appeal against an Officer decision.</p> <p>We suggest that the incorporation of Policies into the Law is another proposal to isolate Council from any role in reviewing the activity of Authorised or Delegated Officers. Is the tail wagging the dog?</p> <p>We make no further comment on Policies as we suggest that they are not documents suitable for incorporation in the Local Law.</p>	<p>See above. Council staff should not be acting contrary to Council Policy whether incorporated in the Local Law or not.</p> <p>This is contrary to best practice as outlined in the State Government's Guidelines for Local Laws Manual 2010.</p>
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6. Mr John Atkinson

Date Received: 27 March 2012

Submission	Officer comment
1. This submission relates to the proposed Neighbourhood Amenity Local Law 2012. That I have not commented on any specific provision is not to be taken as support for or endorsement of such content.	Unless otherwise stated below, no change is recommended in response to each submission point made.
2. The dog's breakfast served at the dress rehearsal for this exercise has been much improved. That is possibly attributable to the fact that drafting was carried out or at least reviewed by lawyers. Legislative drafting is an art not commonly mastered by ignorant amateurs.	No comment required
3. I submit that the following changes should be made-- (a) All self-serving pap preceding the table of contents be removed. As to whether Bayside local laws are best practice is a matter for the judgment of others not assertion by council.	The language of the Local Law is designed to be user-friendly and explanatory. No change is recommended.
(b) Capitals. There is no need for every defined term to be provided with initial capitals..	One of the only changes made since December 2011 is additional capitalisation..
(c) Numbering. All provisions be numbered in the conventional way (clause 1, subclause (1) paragraph (a) subparagraph (i) and so on).	The numbering system will remain as is.
(d) There is no place in legislation for the word "should".	Specific instances are required. The current draft has undergone expert legal review.
(e) The title of the local law be changed to "Neighbourhood Amenity Local Law 2012". The requirement that local laws be numbered was removed many years ago. Although acts and subordinate legislation may be referred to by number, that practice is about as common as rocking horse excrement.	There is no defined form for a Local Law under the <i>Local Government Act</i> 1989. It is recommended the current title be retained.
(f) The date of commencement be altered to read "on the day following the publication in the Government Gazette of the notice of the making hereof".	The current wording has been subject to expert legal review.
(g) There is no need to specify a cessation date as the 10 year sunset provision is contained in the Act.	The cessation date has been included for user convenience.
(h) Definitions."advertising sign" should be defined.	'advertising sign' is defined in the Definitions. It is placed slightly out of alphabetical order and will be amended. Advertising signs are also clearly defined in the incorporated Footpath Trading Policy 2005 and in the Guidelines to 74. Use of a Municipal Reserve.

(i) Definition of "procession": insert before "along" the word "proceeding".	Suggestion is recommended as appropriate.
(j) In the heading to part 5 and within that part and also throughout the related guidelines remove the word "your". This is an entirely inappropriate infantilising of a serious matter.	It is recommended to retain user-friendly language.
(k) Clause 42 (wasp nests) hardly belongs under "pets": it should be relocated after cl 28.	It is recommended not to alter the structure.
(l) Policies which are set in another font be reset in the same font as the rest of the text. (m) In policies, extraneous matter such as dates etc be removed.	It is recommended to retain accurate copies of material reproduced precisely as images of original documents from sources outside the Local Law.
(n) Legislation reproduced on pp 104--112 (noxious weeds) be deleted. (o) Legislation reproduced on pp 133--134 (removal of vehicles etc) be deleted.	It is recommended to retain relevant incorporated documentation. This makes the Local Law accessible and a 'stand-alone document' which is according to best practice in the State Guidelines.
4. What constitutes the substance of the local law should be discoverable within its covers, not by reference to external documentation which can be brought into being possibly in an entirely arbitrary or capricious fashion on the vote of two individuals without any prior consultation. (I refer to a council meeting with a bare quorum of 4 with the matter determined by the casting vote of the chairman). The parliament has provided a procedure for making and changing local laws. It is not for a tinpot suburban council to attempt to subvert that proper process.	All documents within the Local Law are incorporated into the Local Law, including all materials in Schedules 1-3. The method (resolution and gazettal) of amending incorporated documentation (possibly being referred to here) is compliant with the Local Government Act 1989 and the State Government <i>Guidelines for Local Law Manual</i> 2010.
5. Delegation. The local law should be clarified as to delegations-- (a) Matters that are reserved to the council itself (the elected body of councillors) be clearly specified. (b) Matters delegated to each category of delegated officers be better expressed. (c) Scope and limitations of every such generic delegation be outlined in greater detail. (d) Manner of appointment as a delegate be specified.	Where matters reserved to Council in Council Meetings occur the words 'resolution' of Council is used e.g. cl. 68 Guidelines for declaration of Smoke-free area. <i>Cl. 89 Delegations under the Local Law are in accordance with s.114 of the Local Government Act, are subject to incorporated Guidelines and Policies, are lawfully created and are required for and limited to the purposes of the Local Law.</i> Local Law Delegations include delegations from the Chief Executive Officer.
6. Permits. The local law should be amended to incorporate the following -- (a) Broadly the process for applications etc to parallel that applying to	a) The procedures and standard clauses for Local Law permits are included in the draft Local Law in Cl.17-21, in the extensive permit discretion guidelines incorporated in Schedule 1 and in the Standard Permit Conditions

<p>planning permits.</p> <p>(b) A register of all applications similar to the planning register be available online.</p> <p>(c) Notice to neighbouring properties of applications where amenity could be impacted.</p> <p>(d) Objections to be considered.</p> <p>(e) Reasons for decisions to be recorded in writing.</p> <p>(f) Notice of decision and reason for decision to be given to applicant and objectors.</p> <p>(g) Conferment on VCAT of power of review on grounds and time limits similar to those applying in its planning jurisdiction.</p> <p>(h) No permit to issue until review determined (or time for application expired).</p> <p>(i) All permits be available for inspection online.</p>	<p>incorporated in Schedule 3. Forms are included in Schedule 4.</p> <p>b) Aligning the requirements of the <i>Local Government Act</i> 1989 and the <i>Planning and Environment Act</i> 1987 is a matter for the State Government. The cost to both public resources and the community, and subsequent delays for applicants, must also be considered.</p> <p>There is no obligation on Council to maintain a public register of Local Law permits or permit applications. The draft Local Law follows Council's existing practice of preserving the privacy of applicants for Local Law permits.</p> <p>c) Permit issuing discretion guidelines include consideration of notification of neighbouring properties for comment when appropriate in specific instances (e.g. Guidelines for 44. Motor Bikes and Motorised Recreational Vehicles.)</p> <p>d) In the case of c) above objections would be considered.</p> <p>e) Documentation of all permit applications and permits issued is retained in Council records.</p> <p>f) Processes appropriate to Planning Applications are not applicable to Local Law permits. It is normal Council practice to notify any permit Applicant of reasons if a permit application is refused. A refusal to grant a permit may also be reviewed by written request under appeal provisions.</p> <p>g) and h) An appeal to VCAT is neither necessary nor desirable.</p> <p>i) See b) above.</p>
<p>7. Offences and Enforcement. The local law should be amended to reflect the following--</p> <p>(a) That what constitutes an offence will be determined by an employee processing a series of thoughts through what passes for a brain is a ludicrous proposition. The elements of what constitutes an offence must be clearly stated in the body of the local law.</p> <p>(b) As to the action to be taken in relation to offences the scope for discretion should be strictly limited. Council should incorporate in the body of the local law a code of enforcement broadly similar to its existing planning enforcement policy setting out the course of action for categories of offending. It is important to hold employees accountable for their actions, and to prevent both oppressive enforcement on the one hand and the corrupt protection of offenders on the other. Integrity in the process is critical.</p> <p>(c) It must be made clear that such a code is binding on staff and is not to be</p>	<p>a) No change is recommended.</p> <p>b) Aligning requirements of the <i>Local Government Act</i> 1989 and the <i>Planning and Environment Act</i> 1987 is a matter for the State Government. Discretion Guidelines are more extensive under the draft Local Law than under the existing Local Law, covering essentially all discretions created. Principles of accountability and transparency are integrated throughout the new draft Local Law in accordance with State Government Guidelines.</p> <p>c) The discretion guidelines incorporated in the Local Law are binding on all staff.</p> <p>d) Council's appeal process is outlined in detail in cl.16 & 88 and in Standard Permit Conditions in Schedule 3.</p> <p>e) Any complaint about conduct of Council enforcement staff is always treated in a serious manner and results in an internal review by senior management.</p>

<p>replaced by a variant of their own devising.</p> <p>(d) That incorporated code should provide that where a complaint is made to council alleging an offence council staff should be required promptly to acknowledge the complaint, investigate the matter, and advise the complainant of the outcome, together with the reasons for any decision made.</p> <p>(e) That code include provision for complaints about the conduct of council staff in relation to enforcement matters to be determined by an internal review officer.</p>	
<p>8. Employee Commentary. It will not be necessary for any employee to offer any ignorant irrelevant misconceived impertinent or gratuitous commentary observations opinions or remarks on any part of this submission.</p>	<p>No comment required.</p>
<p>9. I request that I be heard in support of this submission.</p>	<p><i>A Committee of Council Submission Hearing will be held on Monday 2 April at 6.30 pm at the Council Chambers, Civic Centre, Brighton.</i></p>

7. Mr Furlonger

Date Received: 28 March 2012

Submission	Officer comment
My submission is with regard to a number of issues which do not appear to have been adequately addressed in the recently published public notice summarizing LL2 nor in a recent LL2 draft published on the Council website.	
<p>1. Objectives</p> <p>In some cases the responsibilities of Council with regard to an area of infringement are set out – but not always and in particular in the area of property and roads.</p> <p>e.g. A recent footpath renewal in Cummins Road saw the nature strip on completion of works a complete mess. Council have not indicated any responsibilities to carry out reinstatement work to at least restore the areas to their prior condition. A statement of policy re Council responsibility is missing.</p>	<p>Council policy on the issue of restitution works carried out by Council on Council Land are not a matter for the draft Local Law.</p> <p>Council's responsibilities as Road Management Authority are set out in the <i>Road Management Act</i> 2004 and its relevant regulations. The Local Law creates certain offences; it does not generate and is not required to authorise Council policy.</p>
<p>2. Council officers</p> <p>Officers gathering info or investigating complaints should have wearing of identifying labels as well as a code of conduct in LL2 e.g. entry on private property taking photographs. The State Govt. objectives indicated accountability and transparency were key features to be included in updating Local Laws.</p>	<p>Accountability and transparency were key features in reviewing the Local Law. S.224 of the <i>Local Government Act</i> 1989 requires a photographic identity card be issued to and shown by all Authorised Officers of Council. Enforcement Officers carry Council identification.</p>
<p>3. Nature strips</p> <p>From the summary of LL2 recently advertised indicates there is no offence in placing goods on nature strip so long as no obstruction caused recently reported court proceeding states such goods were free for pick-up by inte. Parties. This issue should be addressed.</p>	<p>Cl.30 relates to the offence of interfering with recyclable materials or other rubbish left on the roadside for collection by Council.</p> <p>Any materials left on a nature-strip may be defined as an obstruction under cl.72 and could be subject to an Infringement Notice, a Notice to Comply, impounding or removal as an urgent matter for public safety. Council, as Road Management Authority under <i>the Road Management Act</i> 2004, also is empowered to remove obstructions to ensure access and safety.</p>
<p>4. Use of nature strips</p> <p>In some areas with wide nature strips parking of vehicles is quite common – also trailers/boats and caravans. This practice does not cause any obstruction but issue again not addressed.</p>	<p>Any vehicle parked on a nature strip constitutes an obstruction under the Local Law. However, the matter is prohibited under the <i>Road Safety Rules</i> and is subject to Infringement Notice enforcement by Council or by the police whenever it occurs.</p>

<p>5. Vehicles and driveways</p> <p>In streets with large nature strips parking of vehicles on driveways is quite common. In streets with smaller nature strips this would be an obstruction but no policy statement.</p>	<p>The matter is prohibited under the <i>Road Safety Rules</i> and is subject to Infringement Notice enforcement by Council or by the police whenever it occurs. It is not a Local Law matter.</p>
<p>6. Unsightly land</p> <p>The summary publication assumes that this criteria can be judged from a street view. However such a judgement is not possible when a 6' fence is in place. Nevertheless the amenity of a neighbour may well be impacted by an unsightly property from the side or rear. This needs to be included if the total community well-being is valued.</p>	<p>Cl.27 (1) is not limited to land viewed from a public roadway.</p>
<p>7. Rubbish bins</p> <p>LL2 refers to bins not permitted to be place on nature strip more than 24 hours before collection. However no statement is made about after collection. If law is to be seriously implemented there should be an amended guideline as many properties leave bins out for extended periods – particularly in multi-unit dwellings. Also some property designs are such that although the bin may be on private property is is still in full view from street. If amenity of neighbourhood is to have meaning this situation needs to be clarified otherwise there will need to be many infringement notices issued.</p>	<p>The requirement to remove empty domestic bins back within the property boundary no longer than 24 hours after collection is found in cl. 29 (6) Guidelines as referred to in cl. 29.</p>
<p>8. Spilt waste from collection bins</p> <p>This is invariably caused by the collection service being in such a hurry that they lower the bin before it is emptied – and usually some distance along the street as they move whist in the bin emptying process. It would be more appropriate for the collector to take responsibility for the cleanup to make collection efficiency also mean responsibility rather than penalise residents sometimes for spillage they can't see when returning home in the dark. It would seem in the interests of neighbourhood amenity if it was an offence to use collection bins other than you own for disposing of irregular waste.</p>	<p>Council's contractual terms for its waste collection service are not a matter for the Local Law, but include service standards.</p> <p>However, it is a condition of Council's waste collection service that occupiers of properties serviced accept responsibility for any spilt waste from their domestic bins. The Guidelines for domestic waste collections includes limitations on the kind of waste which may be placed in bins.</p> <p>No community support was expressed during community consultations for additional regulation of domestic waste bins.</p>
<p>9. Advertising and other signs</p> <p>The subject of real estate portable street placards does not appear to be addressed in the residential areas although it is exactly the same as kerbside advertising boards in commercial areas. No permit or regulation seems</p>	<p>Control of temporary roadside signage, including real estate signage (other than signage subject to the Planning Scheme), is subject to the <i>Road Management Act 2004</i> and is not a matter for the Local Law. Public safety is</p>

<p>required although they are quite dangerous on windy days.</p> <p>Also signs on public property meant to be seen by passing traffic is not covered anywhere including election advertising. Flags and poles might also be included under this item when not only size is an issue but also the type of flag or message.</p>	<p>a key factor in any permission under all relevant authorities. Advertising signage referred to in cl.57 is in the Guidelines (1) restricted to signage on roadsides immediately adjoining a place of business.</p> <p>Certain signage on Council Reserves is covered under by permit under cl.74 Use a Municipal Reserve. All other signage on Council property is subject to the Planning Scheme and to Council's contractual terms with lessees.</p> <p>Flags and flag poles attached to private property is a matter for the Planning Scheme. Flag poles attached to Council Land require a permit.</p>
<p>10. Trees overhanging private property</p> <p>The summary public notice for the proposed LL2 states it is an offence for residents to allow vegetation to overhang public property. Is this law is applied over 50% of residents will get an infringement notice so that issue needs to be addressed more seriously. This may well be a consequence of what appears to be a scare campaign to stop residents pruning ornamental trees. Perhaps this is not a deliberate intention but there are often undesirable consequences in trying to make legitimate improvements – particularly as further down the list of 72 items in the public notice it is an offence to prune or damage a tree.</p>	<p>The offence under cl.37 is clarified under the Guidelines. Only overhanging trees lower than 2.4 metres over a footpath are prohibited by this Local Law. Cl.37 is designed to protect public safety and Council assets. However, to prune any tree which is large enough to be a protected tree (see cl.36) does require a permit unless covered by exemptions in cl.36 Guidelines. This permit is to ensure professional pruning and to protect and enhance the tree canopy within the Municipality. Compare any regulatory situation where an offence occurs, but rectification may require a permit (e.g. buildings dangerous to the public requiring a building permit for repairs).</p>
<p>11. Trees overhanging private property (neighbor)</p> <p>It has been legally advocated over many years that a resident is within his rights to prune leaf growth or roots from a neighbour's tree which interfere with his property and are likely to be dangerous or an obstruction. This practice of cutting back offensive growth often happens at the side and rear of adjoining properties. This issue is very real and has not been addressed in many cases damage is caused to spouts and plumbing and is often settled with tenants in any adjoining property. Conversely tenants who may not be interested in obtaining a permit to prune vegetation/trees etc. if work is carried out to prevent root damage to underground services or property – and the tree dies – who is responsible and who will be issued with the infringement notice even if both neighbours agree?</p> <p>In principle, the same situation exists in practice with street trees encroaching on private property. To have an efficient/accountable</p>	<p>An infringement notice relates to a criminal offence created under legislation. The matters referred to here are civil matters between private parties best dealt with by mediation and/or the administrative or judicial systems of justice. However, regardless of any mediated outcome, any tree warranting protection (by size) under cl.36 will require a permit prior to pruning, unless covered by an exemption listed in the Guidelines. It should be noted some trees in some areas may have greater protection than given by the draft Local Law under the Planning Scheme and enquiry should be made.</p>

neighbourhood the issues are long overdue for Council involvement.	An owner of private property has every right to complain to Council if a street tree overhangs his/her private property as would be the case for any other adjoining landholder.
<p>12. Advertising on Council/public land</p> <p>No attention seems to have been given to the display on parked vehicles of 'for sale' signs. There are several popular spots where this practice is quite common. Is this to be treated the same as is advertising on the ground?</p>	See cl.57 Guidelines, excluding advertising signs on vehicles from an Advertising Sign permit.
<p>13. Kerbside trading</p> <p>There appears to be a different standard of compliance built into LL2 for commercial areas regarding obstruction than for residential zones. In several busy shopping strips on a 4m wide proper boundary to kerb footpath the nominal walk through area is also used to park prams/allow pet sleeping areas (and drink bowl)/table service and ordering. As a result in busy times there is very little space that is not obstructed. Also plastic barriers prevent access to the kerb and parked cars. Obviously no infringement notices are being issued but on the grounds of accountability and consistency LL2 should ensure that common use of 'obstruction' is uniformly applied. Now is the best opportunity to have this clarified.</p>	<p>Under the incorporated Footpath Trading Policy 2005, the Footpath Accessway, which varies in width between a minimum of 1500 to 2000 mm in width, must be kept clear for pedestrian access. Where a Footpath Trading Permit exists, it is a trader's responsibility to ensure the access way is clear of obstacles within that trader's property lines. The trader risks penalties for breaching the Permit where this does not occur.</p> <p>Regular pedestrian access from the kerb to the footpath Accessway are also covered in Council's incorporated <i>Footpath Trading Policy 2005</i> at s.4.7.</p>
<p>14. Specific penalty unit infringements</p> <p>It was disappointing and detracted from the intent of the public notice to note the final item in effect said that an infringement notice against LL2 would be issued if there was a penalty specified in LL2 Schedule. If one hasn't infringed why is there a penalty?</p>	<p>The public notice does not refer to the Schedule, but to cl. 86 Offences, where certain general offences under the Local Law are defined in relation to permits and so on.</p> <p>An Infringement Notice can only be issued where an infringement has occurred.</p>
<p>15. Designated entry points to parks</p> <p>Is this only meant to apply to vehicles? Not stated.</p>	No; it includes persons.

Minutes of a Special Committee of Council to Hear Submissions in relation to the consolidated Local Law 2

**Held on Wednesday 2 April 2012
at 6.30pm
Council Chamber, Civic Centre Brighton**

PRESENT:

Cr Louise Cooper-Shaw (Mayor)
Cr Michael Norris
Cr Simon Russell JP
Cr James Long BM JP

OFFICERS IN ATTENDANCE

Guy Wilson-Browne	-	Director Infrastructure Services
Lili James	-	Manager Amenity Protection
Terry Callant	-	Manager Governance

APOLOGIES: An apology from Crs Frederico, Hayes and del Porto were submitted to the meeting.

Moved Cr Norris

Seconded Cr Russell

That the apologies from Cr Frederico, Hayes and del Porto be received and leave of absence be granted.

CARRIED

DECLARATION OF INTERESTS

There were no declarations of interest submitted to the meeting.

In accordance with Section 223 of the Local Government Act 1989, Council must consider any submissions received by the Council following the 28 days after the publication of the public notice. At the closing date of submissions, Council received seven written submissions in relation to the consolidated Local Law 2.

- ◆ Mr Mark Wilson
- ◆ Mr Alistair Rowan
- ◆ Mr Andrew Quinn
- ◆ Brighton Bathing Box Association
- ◆ The Bayside Ratepayers Association Inc
- ◆ Mr John Atkinson
- ◆ Mr Furlonger

Of those submissions, the following listed submitters requested to be heard in support of their written submission:

- ◆ Mr Alistair Rowan
- ◆ Mr John Rundell (on behalf of the Brighton Bathing Box Association)
- ◆ Mr George Reynolds (on behalf of the Bayside Ratepayers Association Inc)
- ◆ Mr John Atkinson
- ◆ Mr Furlonger

The Chairman welcomed the submitters to the meeting and read Section 223 (b) parts 1 of the Local Government Act 1989. The Chairman reminded the speakers that in accordance with Council's governance Local Law No: 1 submissions in relation to section 223 of the Local Government Act be granted up to 15 minutes to speak in support of their submission. A copy of the submissions had been circulated to Councillors for their consideration prior to the meeting.

- It is recorded that Mr Alistair Rowan was not present in the Chamber.
- It is recorded that Mr John Rundell on behalf of the Brighton Bathing Box Association spoke in support of the Association's submission for a period of 4.30 minutes.
- It is recorded that Mr George Reynolds on behalf of the Bayside Ratepayers Association Inc spoke in support of the Association's submission for a period of 15 minutes and it is noted that Mr Reynolds was unable to conclude his submission given time restraints.
- It is recorded that written advice has been received from Mr John Atkinson indicating he is unable to attend the meeting and accordingly was not present in the Chamber.

- It is recorded that Mr Furlonger spoke in support of his submission for a period of 13 minutes.

The Chairperson thanked the submitters for their comprehensive submissions, and advised that Council will consider all submissions at the Ordinary Meeting of Council to be held on Tuesday 10 April 2012.

Moved Cr Russell

Seconded Cr Long

That the submissions relating to the consolidated Local Law 2 be received and noted.

CARRIED

The Chairperson declared the Meeting closed at 7.11pm.