

MEETING OF THE PORT PHILLIP CITY COUNCIL 1 MARCH 2023



10.1 PROPOSED LOCAL LAW 2023

EXECUTIVE MEMBER: BRIAN TEE, GENERAL MANAGER, CITY GROWTH AND DEVELOPMENT

PREPARED BY: DIRK CUMMINS, COORDINATOR LOCAL LAWS & ANIMAL MANAGEMENT

LISA DAVIS, EXECUTIVE MANAGER MAJOR PROJECTS AND CUSTOMER EXPERIENCE UPLIFT

CINDY STUBBS, LOCAL LAW REVIEW CONSULTANT

1. PURPOSE

- 1.1 To seek approval for the release of the proposed Community Amenity Local Law 2023 for community consultation, in accordance with the Local Government Act 2020.

2. EXECUTIVE SUMMARY

- 2.1 Victorian Councils have the broad power to make local laws under Section 71(1) of the Local Government Act 2020.
- 2.2 The Local Laws automatically 'sunset' (are revoked) 10 years after their making. Council's current Local Law and the Procedures and Protocols sunset on 31 August 2023.
- 2.3 On 6 April 2022 Council adopted Principles and Desired Outcomes for the draft Local Law. These together with benchmarking, direct feedback from the community and stakeholders, Councillor consultation, internal workshops, a review of complaints and service requests, and in some cases, a review of challenges faced when enforcing the current local laws have all been considered in developing the new proposed Local Law.
- 2.4 This report recommends changes to Local Law along with administrative changes relating to:
- Clause 9 Connecting to Council Drains;
 - Clause 15 Asset Protection Permit;
 - Clause 20 Commercial Dog Walkers;
 - Clause 23 Shopping Trolleys;
 - Clause 31 Residential Parking Permits;
 - Clause 33 Itinerant Trading;
 - Clause 35 Special Events;
 - Clause 43 Furniture and other items on Council Land and Footpaths;
 - Clause 50 Political Signs.
 - Clause 51 Dangerous or Unsightly Land;
 - Clause 52 Managing Amenity on Building Sites.
- 2.5 Section 73 of the Local Government Act 2020 provides that the creation of the Local Law must comply with Council's Community Engagement Policy.
- 2.6 Subject to Council approval, community consultation is scheduled to occur from 6 March through to 31 March 2023. This will be via Council's online engagement website 'Have Your Say', a dedicated project email, community drop-in sessions through the

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Neighbourhood Engagement Program and key stakeholder engagement. Hard copies of the proposed Local Law and the surveys will be available at Port Phillip Town Halls and Libraries. The engagement process will be supported with a detailed communications plan.

- 2.7 The results of community consultation will inform the final Local Law, planned for adoption in mid-2023.

3. RECOMMENDATION

That Council:

- 3.1 Approves the release of the proposed Community Amenity Local Law 2023 and associated Community Impact Statement for community consultation.
- 3.2 Delegates authority to the CEO or delegate to reflect any changes made by Council at tonight's meeting, to make minor typographical corrections or changes, and/or formatting to the proposed Local Law and consultation information prior to community consultation.

4. KEY POINTS/ISSUES

- 4.1 Victorian Councils have the broad power to make local laws under Section 71(1) of the Local Government Act 2020.
- 4.2 Council's Local Law No. 1 (Community Amenity) ('the Local Law') was created in 2013. There have been some additions since that date (for example new Local Laws relating to alcohol consumption on the foreshore) but much of it has remained unchanged since that time. There is an associated Procedures and Protocols Manual.
- 4.3 The Local Laws automatically 'sunset' (are revoked) ten years after their making, unless revoked sooner. Council's current Local Law and the Procedures and Protocols sunset on 31 August 2023.
- 4.4 Most matters concerning the making and operation of local laws under the 2020 Act are generally the same as applied under the previous Local Government Act 1989 (1989 Act). These include that the Local Law:
- cannot be inconsistent with other legislation, nor be inconsistent with the Council's planning scheme.
 - must be expressed clearly and unambiguously and cannot exceed the power to make the local law under the relevant authorising Act.
 - may incorporate by reference matters contained in other documents, codes, rules, and formulas.
 - may provide for the determination of fees, granting of permits and licences, and delegation of powers under the local law.
 - may prescribe penalties not exceeding 20 penalty units for a contravention and enable infringement notices to be served.
 - may regulate the use of the council's common seal.
 - must comply with regulations relating to the preparation and content of local laws.
- 4.5 Local Laws are developed within the context of other existing legislation. Some of this legislation, such as the Infringements Act 2006 will impact on specific provisions of a Local Law. Other legislation, such as the Charter of Human Rights and Responsibilities

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Act 2006 (Charter), applies to the Local Law as a whole and potentially to each substantive provision.

- 4.6 Other legislation that must be considered includes the Planning & Environment Act 1984, Building Act 1993, Domestic Animals Act 1994, Summary Offences Act 1966 and the Food Act 1994.
- 4.7 The Local Law plays an important role in enabling Council to deliver on its strategic objectives, core strategies and policies, including but not limited to:

Council Policy / Strategy	Local Law Considerations
<i>Health & Wellbeing Strategy</i>	<i>Behaviour on Council Land, Consumption of Alcohol, Camping on Council Land, Commercial Waste and Noise, Use of Council Reserves, Outdoor Permits, Managing Building Site Amenity.</i>
<i>The Art and Soul Strategy</i>	<i>Event Permits, Busking, Filming, Behaviour on Council Land.</i>
<i>Outdoor Events Policy</i>	<i>Event Permits, Fireworks. Market Sites.</i>
<i>Sports & Recreation Policy</i>	<i>Ballooning, Skydiving, Outdoor Gyms and Personal Trainers.</i>
<i>Homelessness Action Strategy</i>	<i>Camping on Council Land, Behaviour on Council Land.</i>
<i>Protocol For Assisting People Who Sleep Rough (2012)</i>	<i>Camping on Council Land, Behaviour on Council Land.</i>
<i>Greening Port Phillip</i>	<i>Significant Trees, Council's Trees</i>
<i>Asset Management Policy</i>	<i>Asset Protection Permits, Setting Bonds, Repairing Damage.</i>
<i>Move, Connect, Live Strategy</i>	<i>Active transport, Event permits, Heavy Vehicle Permits</i>
<i>Waste Strategy</i>	<i>Commercial waste collection, bins.</i>
<i>Parking Management Policy</i>	<i>Resident and other permit issuing</i>

- 4.8 The following Principles, adopted by Council on 6 April 2022, underpinned the work undertaken in creating the new Local Law. As they will form part of the new Local Law, they, like the remainder of the Local Law will be subject to community consultation. The Local Law:
- Supports and enables delivery of Council's core strategies and policies and where there may be conflict, that outcomes are balanced across strategies;
 - Is practical and safe to implement and enforce;
 - Reflects the value our community places on liveability and amenity;



- d) Responds to known and foreseen amenity issues (that are not covered under other legislation);
- e) Recognises the value of a partnered approach to managing the City's amenity;
- f) Supports Council's role as a regulator and enforcement agency by ensuring the bylaws are:
 - necessary
 - proportionate
 - consistent (in language and effect)
 - compliant (with the legislation under which they are made and other legislative requirements)
 - enforceable
 - accessible
 - efficient
 - accountable
 - transparent
 - current
 - do not replicate other provisions.

4.9 On 6 April 2022 Council also adopted the following desired outcomes for the new Local Law. A Local Law that:

- Supports the creation of a liveable, safer and healthier city by regulating activities that occur in public and private places that may impact on urban character, local amenity and the fair enjoyment by or safety of others;
- Enhances individual rights and liberties and contributes to social inclusion, community connectedness and wellbeing;
- Contributes and enhances the vibrancy and activation of our city;
- Protects Council assets and property given the significant investment made by ratepayers;
- Educates our community on what is permissible, what is not and how breaches will be enforced by Council;
- Ensures Council meets its city governance requirements and the community has confidence that Council is administering its powers and functions appropriately.

Key changes to the draft Local Law:

4.10 The following key changes are proposed in the revised Local Law. These changes have arisen through benchmarking, direct feedback from the community, Councillor consultation, internal workshops, a review of complaints and service requests and in some cases, challenges faced when enforcing the current local laws. There are also 'administrative only' changes.

Changes to existing clauses:

4.11 Clause 9 Connecting to Council Drains has been altered to ensure that any connection to a Council drain is carried out pursuant to a permit. This alteration has been made to increase control over activities that have the potential to damage Council assets, and/or impact the quality of water entering stormwater systems, water courses and Port Phillip Bay. The current requirement to obtain a permit does not apply where Council



has approved a plan of subdivision. This exemption has been removed to ensure that all connections to a Council drain are carried out in accordance with Council's requirements.

- 4.12 Clause 15 Asset Protection Permit has been amended to make it clear that the owner of the land can be held responsible for damages caused by a builder if the builder fails to repair the damage. The wording of the clause has been simplified, and definition of builder extended to ensure that all parties involved in building works can be held responsible for damage to Council assets. This change is consistent with Building and Planning legislation.
- 4.13 Clause 23 Shopping Trolleys has been amended to require all venues with over 30 trolleys to have a perimeter lock system installed to reduce the number of trolleys being taken off site. This amendment is aimed at preventing shopping trolleys being moved well beyond the stores, misused or being abandoned on public land where they can cause damage and block access.
- 4.14 Clause 31 Residential Parking has been amended to align with Council's new Parking Management Policy. The revised clause also makes it an offence to sell or purchase, hire, lease, licence or receive a residential parking permit that has been allocated to another person. The clause makes it an offence to copy, reproduce, tamper with, lend or sell a residential parking permit. This change is to minimise misuse and forgery.
- 4.15 Clause 33 Itinerant Trading has been amended to include all Council Land. This will allow Council to require permits for any businesses seeking to use Council Land for commercial purposes, including e-bikes and e-scooters.
- 4.16 Clause 35 Special Events has been amended to include the requirement for a permit for the placement of any furniture, heater, fire pit or other item on a road or Council Land. This enables event organisers to broaden their offer at some special events, whilst managing risks through the permitting process.
- 4.17 Clause 51 Dangerous or Unsightly Land. This clause has been expanded. A new Part (1) sub clause (2) has been introduced to require owners or owners corporations to not allow nature strips and land adjacent to property to be unsightly or occupied with furniture or other objects. This amendment responds to community complaints and feedback about amenity, access and visual impacts by encouraging a joint approach to dumped hard waste. Land owners and owners corporations will be required to book hard waste collections services through Council's service provider.
- 4.18 Clause 52 Managing Amenity on Building Sites has been amended to include the requirement for Tree Protection Barriers for Council trees (including root zone) on the nature strip or other Council Land adjoining a building site. This change is in recognition of the trees' environmental and aesthetic values, and the significant investment of public funds in tree maintenance, monitoring and replacement.
- 4.19 Clause 52 Managing Amenity on Building Sites has been amended to increase the allowable hours when construction works can be carried out on a Saturday without an 'Out of Hours' permit. The allowable hours will increase from 9am to 3pm to 9am to 5pm. This is in response to increasing requests for permits from the construction industry and in consideration of the municipality's increasing level of development and projected growth. Permit issuance beyond these hours will be managed to protect community amenity. Benchmarking indicates that allowable start times in neighbouring Councils is 9am, but there is a variety of Saturday end times, ranging from 3pm in Bayside and 6pm in Glen Eira to 8pm in Stonnington.



New clauses/definitions recommended for inclusion within the draft Local Law

- 4.20 Clause 20 Commercial Dog Walkers. This clause was adopted in principle by Council when it adopted the Domestic Animal Management Plan 2021. It seeks to ensure the safety of people, animals, and amenity of parks and their neighbours by imposing an obligation upon commercial dog walking businesses to obtain a permit if walking, exercising, or otherwise being in control of seven (7) dogs or more on Council Land.
- 4.21 Clause 43 Furniture and other items on Council Land and Footpaths. This new clause makes it an offence to place furniture or other items on footpaths or other Council Land that obstructs access and provides a power for Authorised Officers to direct that they be removed, or impound the items, if there is a breach. The clause is aimed at reducing the incidence of dumped furniture and other items being moved from their original positions to open spaces and footpaths within the municipality, where they impact pedestrian and customer access to businesses, public amenities and footpaths. It is similar to a clause in the City of Melbourne's Local Law.
- 4.22 Given that some vulnerable members of the community may be impacted by this clause, enforcement will be implemented sensitively, in accordance with the Council's Protocol for Assisting People Who Are Sleeping Rough (Attachment 2). Under this Protocol, persons sleeping rough may carry bedding that can be carried (e.g. a rolled up camp mats, foam, a swag).
- 4.23 The recommended definition of furniture in the proposed Local Law is:
Furniture means the moveable articles required for use or ornament in a house, office or the like and includes bed frames, bed mattresses (other than rolled up camp mats, foam, a swag) chairs, tables, crates, kitchen appliances and the like).
- 4.24 Clause 50 Political Signs: This clause is proposed in order to improve transparency and remove any confusion arising from the Planning Scheme and other legislation. The clause makes it an offence to affix, erect, install or otherwise display a political sign on Council Land other than where authorised under any other legislation. State and Federal legislation provide for the placing, erection and display of candidate signs within 100m of polling places.

Definitions and clauses that Officers were requested to review

Definition of Significant Tree

- 4.25 Officers were requested to consider if a different definition of significant tree may result in greater protection of large trees on private land.
- 4.26 The current definition is:
Significant tree or palm on private land:
- *with a trunk circumference of 150 centimeters or greater measured 1 metre from its base;*
 - *a multi-stemmed tree on private land where the circumference of its exterior stems equals or is greater than 1.5m when measured 1 metre from its base; or*
 - *if the tree has been removed, a trunk circumference of 150 centimetres or greater measured at its base.*
- 4.27 Benchmarking found that many Councils use the circumference at a height above ground in their definition, as this is an easier measure to obtain, and for the community



to understand. With the benchmarked Councils, there is no consistent point as to where a tree is measured, nor the circumference that defines the tree as significant.

- 4.28 Options have been considered to reduce the size of tree circumference that triggers a permit requirement from the current 150cm at 100cm above ground, to either 140cm or 120cm at 140cm above the ground. These reductions align with Council's current Act and Adapt Strategy to protect and enhance canopy cover.
- 4.29 Two options were considered:
- (a) **Option 1:** No change to current definition, while further strategic work is undertaken through the Greening Port Phillip Strategy.
 - (b) **Option 2:** Change the definition to:
“Significant tree” means a tree or palm on private land:
 - i. with a trunk circumference of 140 cm or greater measured 1.40 m from its base;
 - ii. with a total circumference of all its trunks of 140cm or greater measured at 1.40m above its base; or
 - iii. if the tree has been removed, a trunk circumference of 140 cm or greater measured at its base.
- 4.30 Option 2 is consistent with Stonnington Council's local law adopted in 2018.
- 4.31 Council's strategy, *Greening Port Phillip: An Urban Forest Approach 2010* is to be reviewed in 2023-24. The new strategy will provide the framework and policy context for the development and management of greening across the municipality, including significant trees. Officers recommend that any changes to the definition of 'significant tree' be considered as part of that process. This may include opportunities to strengthen controls through Victorian Planning Scheme provisions.

Hoon events clause

- 4.32 On 6 April 2022, Council considered petitions from the community on hoon driving. In its resolution, Council asked officers to consider the development of a local law to assist Council and Victoria Police address antisocial and/or inappropriate behaviour associated with persons in charge of motor vehicles in foreshore areas of the municipality.
- 4.33 Under State anti-hoon laws introduced in 2006, Victoria Police can impound a vehicle for 30 days where Police believe, on reasonable grounds, a hoon-related offence has been committed. In addition, impoundment laws apply to organising and participating in a street racing trial, loss of traction, excessive noise/smoke, improper control, excessive speed, driving in a dangerous manner, unlicensed driving etc. A person found guilty of three hoon-related offences inside three years can have their vehicle permanently forfeited. In addition, the courts can impose a fine of up to 240 penalty units (in excess of \$28,000) and/or a period of imprisonment of up to two years. The driver can also incur demerit points and/or license loss from the underlying offence.
- 4.34 Development of a hoon event local law focused on addressing the gap in current legislation that does not allow for enforcement action to be taken against spectators of hoon events.
- 4.35 Hoon local laws have been made by Brimbank, Frankston and Dandenong Councils in response to large hoon events regularly occurring, primarily in industrial estates. These Councils reported that the local law has reduced these gatherings..



- 4.36 There have been no significant hooning 'events' reported in Port Phillip since October 2021. In contrast to those councils who have adopted a 'hooning' local law, in Port Phillip 'hooning' generally involves small groups of drivers in car parks and on roads along the foreshore, and loud vehicles including motorbikes on main roads.
- 4.37 Where possible Council implements changes to the road environment to mitigate against hoon driver behaviour. This includes changes to access times and installing physical barriers to prevent illegal access to Pier Road, and the planned installation of a raised pedestrian crossing on Waterfront Place.
- 4.38 The Department of Transport (DoT) has established a Hooning Community Reference Group (CRG) with representation from a number of local governments across Melbourne and community groups from City of Port Phillip and City of Melbourne. The CRG is supported by DoT and Victoria Police.
- 4.39 The CRG has been tasked with creating a Recommendations Report to be presented to the Minister for Roads and Road Safety, with a draft expected during 2023.
- 4.40 The CRG is considering approaches to tackling hoon behaviour, including legal changes similar to the local laws implemented in other local government areas. DoT has recommended that Councils looking to alter their local laws consider any recommendations from the final version of the CRG report, as a state wide approach will improve the ability to enforce local laws.
- 4.41 Any legislated hoon event clause could be enforced by Victoria Police. Council's role would be to support Police through the processing of infringements and follow up actions.
- 4.42 Two options were considered:
- (a) **Option 1:** Do not make a hoon event local law; or
 - (b) **Option 2:** Include a new hoon event local law in the proposed Local Law 2023.

This would read:

- (1) *A person must not organise, participate in, promote or attend a hoon event without a reasonable excuse.*
- (2) *The driver or person in charge of a motor vehicle must not stop or park in close proximity to an area where a hoon event is taking place, without a reasonable excuse.*

In this section -

hoon event means an event where more than one person participates in or gathers for the purpose of participating in hoon driving;

hoon driving means dangerous or illegal driving of a motor vehicle, including but not limited to the following:

- (i) *driving a motor vehicle in a manner that involves a loss of traction of the motor vehicle;*
- (ii) *racing a motor vehicle;*
- (iii) *time trials for driving a motor vehicle;*
- (iv) *driving a motor vehicle in a manner that causes undue noise or smoke.*



4.43 Part (1) provides Victoria Police with the power to respond to those planning or running a hoon event using, for example, social media to advertise the location of a hoon event.

Part (2) is aimed at enabling Victoria Police to take action against people who are participating as spectators or passengers. This is important as their presence may encourage others to participate.

Since 'hoon' behaviour is currently being considered by the State Government, this report does not recommend the introduction of a new hoon local law.

Amenity and safety impacts of antisocial behaviour

4.44 In reviewing the local law, consideration has been given to concerns raised our community, including traders, about antisocial and illegal behaviour (including public drug and alcohol use, dealing, abuse and harassment of passers-by). Council receives many complaints about the issue, its impacts upon amenity, safety, perceptions of safety and the appeal of high streets and other areas as vibrant, attractive and safe places to visit.

4.45 In many cases those who are involved are vulnerable and include people experiencing homelessness, mental health, addiction and other challenges.

4.46 Council has a multi-layered and holistic approach to addressing this complex problem. It has:

- Invested and partnered with the State Government and St Kilda Community Housing in the Wellington Street Common Ground Project, to provide 26 self-contained units for people with complex needs who have been sleeping rough.
- Invested and partnered to build the Victoria Pride Centre in Fitzroy Street, that is home to practical and supportive services.
- Undertaken landscaping works and plantings to beautify streetscapes.
- Invested in CCTV in Fitzroy Street to enable Police to monitor activity.
- Purchased a mobile CCTV unit that Victoria Police move around the city to deter poor behaviour and to provide footage of specific problem areas.
- Funded cardboard collection for businesses on these streets.
- Introduced the 7 day a week Rapid Response crew to provide 'instant' response to incidents, spillages, waste and cleanliness problems.
- Introduced the 7 day a week City Amenity Officers' team to undertake daily patrols to identify and manage hotspot areas.
- Increased overnight street sweeping and pressure washing of both Fitzroy and Acland Streets.
- Advocated for additional Police resources to provide an increased presence, improved response times and for Police to accompany our Officers on City patrols. This advocacy continues.
- Committed to developing a Community Safety Plan in 2023-24.

4.47 Council works to address the complex needs of people sleeping rough, including:

- Working with social service agencies such as Star Health and Launch Housing to provide outreach and other services. Through this work we've seen the number of people 'actively homeless' decline from 129 in 2020 to 80 in 2022.



- Partnering with different sectors to address issues which impact on our sense of safety, with a particular focus on family violence and alcohol and other drug use.
- Coordinating weekly meetings of all agencies including health services and Police to monitor and manage amenity of public spaces and identify hotspots. This helps us plan our services, respond to specific issues and link people with the support services they need.

Council's role versus State Government's role

4.48 Under the Local Government Act, Council's powers are limited to making local laws that regulate Council land and roads. Council cannot duplicate existing legislation or cross into the 'field' of that legislation.

4.49 The *Summary Offences Act 1966* makes it an offence to use 'profane, indecent or obscene language or threatening, abusive or insulting words' or behave in a 'riotous, indecent, offensive or insulting or disorderly manner'. Implementation of the Act is the responsibility of the police who, among other things, are provided with a 'move on' power. Under this power Police can give a direction to a person in a public place to leave the public place if they are breaching or likely to breach the peace, endangering or likely to endanger the safety of another person, likely to cause injury to another person or damage to property or is otherwise a risk to public safety. Council local laws cannot duplicate these powers.

4.50 Officers examined how Council can use its limited powers to create local laws that address concerns about antisocial behaviour where this behaviour impacts on the amenity, safety and perceptions of safety; and the ability of the area to appeal as a vibrant, attractive and safe place to visit. Based on legal advice the following options were considered:

4.51 Behaviour on Council land clause

a) Option 1: No change to the current clauses

17. Behaviour on Council Land

(1) *A person must not behave on Council land:*

- In a manner which causes interference with the quiet enjoyment by any person using the Council land or living in close proximity to the Council land;*
- Contrary to any conditions or signs that contain conditions applying to the use of Council land; or*
- Contrary to any direction by an authorised officer.*
- For the avoidance of doubt, a person does not interfere with the quiet enjoyment of other persons simply by expressing political or other opinions which may cause offence.*

(2) *Council may erect any sign on Council land which imposes a condition or conditions that apply to the use of Council land.*

b) Option 2: Include an amended clause in the Proposed Local Law 2023. This would read:

17. Behaviour on Council Land or Roads



- (1) *A person must not on or in Council land, a road or a footpath:*
- a) *Create a nuisance*;*
 - b) *Behave in a manner which unreasonably interferes with another person on or in the Council land, road or footpath.*
 - c) *Behaves in a manner which unreasonably interferes with another person occupying premises in close proximity to the Council land, road or footpath.*
 - d) *Harass any person using the Council land, a road or footpath.*
 - e) *Defecate or urinate except in a toilet or urinal (as the case may be) in a public convenience;*
 - f) *Act contrary to any conditions or signs that contain conditions applying to the use of the Council land, road or footpath.*
 - g) *Fail to comply with a reasonable direction of an Authorised Officer or Council staff member whilst on Council land.*

4.52 **Nuisance* is a legally defined word. There are two types of nuisance, a 'private nuisance' or a 'public nuisance'. A private nuisance is the 'unreasonable and material interference with another person's use of their own land'. A public nuisance is an 'unreasonable inconvenience, annoyance or hurt to the public at large'. 'Nuisance' is a 'catch all' for harm caused to persons in their home, at large or in public places.

4.53 Under Option 1 and 2, if a person is conducting a breach of the local law, Council City Amenity Officers can advise the persons of the breach and give them a direction to cease. Failure to comply may result in the issuing of a Notice to Comply and/or infringement. If a person refuses to cooperate, there is no power to arrest or enforce.

4.54 Officers recommend that the existing clause remain unchanged for the following reasons:

- The nature of the antisocial behaviour is such that there is a risk that Council cannot sufficiently train, equip and protect Council staff from violent or threatening behaviour should they seek to enforce the amended local law.
- In creating an increased local law power, there is the risk that the community may expect Council officers to implement the law in circumstances where it is dangerous for the Council officer to implement the local law. This may include an expectation that Council staff will 'fill the space' of Victoria Police to stop threatening and violent behaviour.
- Victoria Police are better equipped to deal with aggressive behaviour, they have the training equipment and enforcement powers, including arrest, under the provisions of the Summary Offences Act 1966. Council will continue to advocate for the police to exercise those powers and be visible presence to deter offending behaviour.
- Council officer relationships with persons on the streets may become adversarial, which may impact Council officers ability to deter offensive behaviour.
- Given the complex subject matter and potential need for extra enforcement support, specialist skills would need to be developed within the broader Local Laws team to support the existing 2.5 FTE City Amenity Officers.



Move on powers

- 4.55 The existing police 'move on' powers under the Summary Offences Act 1966, limits the capacity for Council to develop 'move on' powers.
- 4.56 Council's legal advice is that Council could introduce a move on local law, but it would be problematic. It would need to be very specific in its application to avoid duplication with State legislation; and there is limited ability to enforce the provision. Legal advice provided concludes that "it is difficult to see how any provision of this kind would withstand legal challenge".
- 4.57 Notwithstanding the above, Council could consider a new move on power in the narrow space that it has. Two options were considered:
- a) Option 1:** Do not include a move on clause in the proposed Local Law 2023.
- b) Option 2:** Include a move on clause in the proposed Local Law 2023. This reads:
- (1) *An Authorised Officer may direct a person to leave the Council land or a road (or a part of that Council land or a road) if:*
- (a) *That person has contravened this Local Law; and*
- (b) *The Authorised Officer believes on reasonable grounds that:*
- i. *Unless the person leaves the Council land or road (or part of the Council land or road) the person will continue to contravene this Local Law; and*
- ii. *A continuation of the contravention of this Local Law will significantly interfere with any other person.*
- (2) *A direction given by an Authorised Officer under this clause (1) must be reasonable in the circumstances.*
- (3) *A person given a direction by an Authorised Officer must comply with the direction..*
- 4.58 Application of the move on power (ie. Option 2) would require that an Authorised Officer satisfy themselves that there is a breach, and unless the person leaves, there is an ongoing breach and that if the person doesn't leave, there would be a significant interference with another person. The officer would then advise the person that they are in breach of the Council local law and give the person a Notice to Comply to cease causing a breach and leave the area. The officer could then infringe the person if they ignore the Notice to Comply. Neither Council nor Police have any power to arrest or take other action under the Local Law.
- 4.59 Officers recommend a move on clause is not included in the proposed Local Law 2023, due to the legal complexities, risks with administering the provision, the limited enforcement action that can be taken and the safety risks presented to officers and noting that police have the training and requisite move on powers. In addition,:
- The nature of the antisocial behaviour is such that there is a risk that Council cannot sufficiently train, equip and protect Council staff from violent or threatening behaviour should they seek to enforce the local law.
 - In creating an increased local law power, the community may expect Council officers to implement the law in circumstances where it is dangerous for the Council officer to implement the local law. This may include an expectation that



Council staff will 'fill the space' of Victoria Police to stop threatening and violent behaviour.

- Victoria Police are better equipped to deal with aggressive behaviour, they have the training equipment and enforcement powers, including arrest, under the provisions of the Summary Offences Act 1966. Council will continue to advocate for the police to exercise those powers and be visible presence to deter offending behaviour.
- Council officer relationships with persons on the streets may become adversarial, which may impact Council officers ability to deter offensive behaviour.
- Given the complex subject matter and potential need for extra enforcement support, specialist skills would need to be developed within the broader Local Laws team to support the existing 2.5 FTE City Amenity Officers
- Moving a person from one area, is likely to shift the problem to another.
- Additional resources would be required if the City Amenity level of service is to be lifted to an all-day service. Currently the service operates 6.30am-2.00pm. Three additional officers, plus vehicles, would cost approximately \$400,000 per annum.
- Victoria Police, and not Council officers, have the training, powers and equipment needed to enforce move on powers. Council can continue advocating for an increased police presence and the effective use by Police of their existing move on and other powers.

4.60 Camping on Council land clause

4.61 Two options were considered:

- a) **Option 1:** No change to the current clause in the proposed Local Law 2023. This reads:

42. Camping on Council Land

- (1) *A person must not camp on any Council land or in any public place in a vehicle, tent, caravan or any other type of temporary or provisional form of accommodation.*
- (2) *A person is not guilty of an offence under sub-clause (1) where that person establishes that they:*
 - a) *Are homeless or in need of secure accommodation; or*
 - b) *Have complex needs or is in the need of additional assistance because of mental or physical disability or illness.*

- b) **Option 2:** Include an amended clause in the proposed Local Law 2023 to provide exemptions for campers who are confirmed as not having housing or secure accommodation. This would read:

42. Camping on Council Land

- (1) *A person must not camp on any Council land or in any public place in a vehicle, tent, caravan or any other type of temporary or provisional form of accommodation.*



(2) *A person is not guilty of an offence under sub-clause (1) where that person establishes they are homeless or in need of secure accommodation.*

4.62 Officers recommend that the existing clause remains unchanged for the following reasons:

- The intent of part 1 is to manage camping, whilst part 2(a) and 2(b) protects the rights of both the homeless and vulnerable.
- Removing the exemption from the local law for people who are in need of assistance because of mental or physical disability or illness would disadvantage vulnerable members of the community.
- The current provision already prohibits campers who do have homes and excludes from the application of the provision those who 'are homeless or in need of secure accommodation'.

Information on Regulation of Short Stay Accommodation

4.63 Complaints relating to short term accommodation (eg. AirBnB) have been received by Council. The complaints centre on noise impacts from persons using the apartments for short stay holidays. Under current council local laws council has limited power to intervene.

4.64 Some Councils, such as Mornington Peninsula, created a local law requiring all short term accommodation owners to register their business and comply with rules around amenity. Their amenity concerns primarily relate to detached dwellings not covered by owners' corporation requirements. In contrast, complaints to council relate to short term accommodation in apartments that are subject to the *Owners Corporation Act 2006*. The Act was amended in 2021 to make owners responsible for their guests' behaviour and allow other residents to seek compensation for any loss of amenity at the Victorian Civil Administrative Tribunal (VCAT). A new Local Law for short term accommodation would be a duplication of this legislation.

5. CONSULTATION AND STAKEHOLDERS

5.1 The creation of the Community Amenity Local Law 2023 must comply with Council's Community Engagement Policy pursuant to Division 1 of Part 3 of the Local Government Act 2020.

5.2 Subject to Council approval, community consultation is scheduled to occur from 6 March 2023 through to 31 March 2023. This will be via Council's online engagement website 'Have Your Say', a dedicated project email address, community drop-in sessions through the Neighbourhood Engagement Program and key stakeholder engagement. Hard copies of the proposed Local Law and the surveys will be available at Port Phillip Town Halls and Libraries.

5.3 Community Engagement will be supported with a detailed communications plan that includes a Community Impact Statement that explains the key changes proposed.

5.4 Following consultation, if Council wishes to change the proposed Local Law, those changes may require further consultation, in accordance with the Local Government Act 2020.

5.5 The results of all community consultation will inform the final Local Law, which is planned to be adopted in mid-2023.



6. LEGAL AND RISK IMPLICATIONS

- 6.1 All Local Government authorities are required to develop a local law in accordance with the Local Government Act 2020 (the Act).
- 6.2 Section 71 of the Act gives the power to Councils to make a local law.
- 6.3 Section 72 of the Act outlines the requirements for the making of a local law, including a requirement that a local law must not be inconsistent with any Act (including the Charter of Human Rights and Responsibilities Act 2006) or regulations.
- 6.4 Section 73 of the Act outlines community notice and consultation requirements including that:
 - (6) If (a) the Council proposes to alter a proposed local law in respect of which notice has been given under subsection (3); and (b) the alteration will affect the rights or responsibilities of any person— the Council must comply with subsections (2) to (5) and conduct a further community engagement process in respect of the proposed alteration
- 6.5 Section 84 of the Act provides that the local law is revoked 10 years after its making, unless sooner revoked. Port Phillip's Local Law No.1 (Community Amenity) 2013 will be revoked on 31 August 2023. If the Community Amenity Local Law 2023 is not adopted prior to 31 August 2023, Council will not have any 'local laws' for the municipal district until the local law is adopted. Accordingly, there is a risk that there will be a period where there is no ability for Council to function in relation to activities regulated by the local law.
- 6.6 Prior to recommending the final Local Law to Council for adoption, various assessments will be completed including Risk Assessment, Gender Impact Assessment; Competitive Neutrality Assessment; Compatibility with Charter of Human Rights Assessment, Accessibility Assessment.

7. FINANCIAL IMPACT

- 7.1 Council allocated a budget of \$421,000 for the development of a new Local Law.

ECONOMIC IMPACT

- 7.2 The Local Law supports well managed economic recovery and development through regulating the use of public space for activities that generate economic benefits in the city such as event, parklets, footpath trading and construction projects.

8. ENVIRONMENTAL IMPACT

- 8.1 The Local Law is anticipated to have positive impacts on the environment through protecting the amenity, natural and built assets, and cleanliness of the City.

9. COMMUNITY IMPACT

- 9.1 The Local Law aims to support the creation of a liveable, safer and healthier city by regulating activities that occur in public and private places that may impact on urban character, local amenity and the fair enjoyment by or safety of others.
- 9.2 A Community Impact Statement (CIS) will be made available as part of the information provided in the community consultation process (Attachment 3).

MEETING OF THE PORT PHILLIP CITY COUNCIL 1 MARCH 2023



10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

10.1 The draft Local Law is a key initiative identified in the Council Plan. It supports the *Liveable Port Phillip* and *Well Governed Port Phillip* strategic directions.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

11.1.1 Key dates for the introduction of the new local law are:

6 to 31 March 2023:	Community consultation period
Apr to Mid-May 2023:	Consideration of feedback and final drafting/documentation
June or July 2023:	Council Report to adopt Local Law
Aug 2023:	Gazettal, design and publishing, community information period

12. OFFICER DIRECT OR INDIRECT INTEREST

12.1 No officers involved in the preparation of this report have any material or general interest in the matter.

ATTACHMENTS

1. Draft Proposed Community Amenity Local Law 2023 [↓](#)
2. City of Port Phillip Protocol for Assisting People Sleeping Rough [↓](#)
3. Community Impact Statement - Draft Proposed Community Amenity Local Law 2023 [↓](#)