

# NILLUMBIK SHIRE COUNCIL

## PROHIBITION OF FIREWORKS LOCAL LAW 2019

### PART 1 – PRELIMINARY

#### 1. Local Law

This Local Law is the Prohibition of Fireworks Local Law 2019 and is made under Part 5 of the *Local Government Act 1989*.

#### 2. Objectives

The objective of this Local Law is to prohibit the discharge of fireworks in certain parts of the municipality:

- (a) to restrict activities in a bushfire prone rural environment that can impact on the health and wellbeing of residents, specifically those who have experienced catastrophic bushfires;
- (b) to reduce the risk of danger and injury to animals and wildlife arising from the discharge of fireworks;
- (c) to address nuisance, amenity and environmental impacts of fireworks activities;
- (d) apply standards that address safety matters directed at reducing risk to the community.

#### 3. Commencement

This Local Law comes into operation on *(insert date)*

#### 4. Date this Local Law ceases operation

Unless this Local Law is revoked sooner, its operation will cease on *(insert date)*

#### 5. Application of this Local Law

This Local Law applies to land outside of the urban growth boundary within the Nillumbik Shire.

#### 6. Definitions

In this Local Law:

**“authorised officer”** – means a person appointed by the Council under section 224 of the *Local Government Act 1989*.

**“Council”** – means the Nillumbik Shire Council.

**“urban growth boundary”** – means the boundary defined in the Nillumbik Planning Scheme identifying the scope of urban growth within the municipality and identified on the plan in Schedule 1.

## **PART 2 – PROHIBITION OF FIREWORKS**

### **7. General prohibition**

A person must not discharge any fireworks on or from private property outside the urban growth boundary.

## **PART 3 – ADMINISTRATION**

### **8. Direction of an Authorised Officer**

An authorised officer may give any reasonable direction, including a verbal direction, to a person in respect of any matter under this Local Law and a person must comply with that direction.

### **9. Notice to Comply**

- (1) An authorised officer may serve a Notice to Comply directing any owner or occupier of land or any other person on whom an obligation is imposed by this Local Law to remedy anything which constitutes a breach of this Local Law.
- (2) A person to whom a Notice to Comply is issued must comply with that notice.
- (3) A Notice to Comply must state the date and time by which the breach must be remedied.
- (4) The date and time stated in the Notice to Comply to remedy the breach must be reasonable in the circumstances having regard to:
  - (a) the amount of work involved;
  - (b) the degree of difficulty;
  - (c) the availability of necessary materials or other items;
  - (d) climatic conditions;;
  - (e) the degree of risk or potential risk which a continued breach of this Local Law poses to persons or animals, including any wildlife; and
  - (f) any other relevant matter.

### **10. Power of an authorised officer to impound**

A authorised officer may act to remedy any circumstance which threatens a person's life, health or property, or which threatens an animal without serving a Notice to Comply provided that:

- (a) the circumstance arises out of a person's failure to comply with this Local Law;
- (b) the action taken is no more than the minimum reasonably necessary to remedy the urgent circumstance; and
- (c) the person to whom the Notice to Comply would have otherwise been served is as soon as possible notified of the urgent circumstances and the action taken to remedy it.

## **11. Impounding**

- (1) An authorised officer may:
  - (a) impound any item that encroaches or obstructs the free use of a public place or any item that contravenes or is being used in contravention of this Local Law.
  - (b) release the item to the owner on payment of a fee determined by the Council which is not to exceed an amount that reasonably represents the cost to the Council of impounding, keeping and releasing the item; and
  - (c) sell, destroy, dispose of or give away the impounded item if the owner of the item has not paid the fee within 14 days of the service of the notice under subclause (2) or after taking the steps required under subclause (3).
- (2) If an authorised officer impounds an item under subclause (1), he or she must serve a notice in a form approved by the Council, on the owner as soon as possible after the item is impounded.
- (3) If the identity or whereabouts of the owner of the item impounded under subclause (1) is unknown, the authorised officer must take reasonable steps to ascertain the owner's identity and/or whereabouts prior to exercising his or her powers under subclause (1).
- (4) The Council is entitled to retain out of the proceeds of sale of any impounded item its reasonable costs incurred in impounding, keeping or selling them.

## **12. Delegation**

The powers of the Council under this Local Law to:

- (a) impound an item under clause 11;
- (b) issue, refuse or revoke a permit;
- (c) issue, sign, revoke, exempt, require or cancel any notice, order or agreement; and
- (d) enforce any matter –

are delegated to the Chief Executive Officer of the Council and to all authorised officers who are also members of Council staff.

## **PART 4 – ENFORCEMENT**

### **13. Offences**

A person is guilty of an offence against this Local Law if the person:

- (a) does something which a provision of this Local Law prohibits to be done;
- (b) fails to do something which a provision of this Local Law requires to be done;
- (c) engages in activity without a current permit where this Local Law requires a person to obtain a permit before engaging in that activity;

- (d) breaches or fails to comply with a direction of an authorised officer under this Local Law;
- (e) fails to comply with a condition of a permit issued under this Local Law; or
- (f) fails to remedy a thing in accordance with a Notice to Comply by the date and time stated in the Notice to Comply.

#### **14. Infringement Notices**

- (1) Where an authorised officer reasonably believes that a person has committed an offence against this Local Law, the authorised officer may issue an infringement notice to the person in a form approved by the Council, as an alternative to a prosecution for the offence.
- (2) A person to whom an infringement notice has been issued must pay to the Council the amount specified in the notice within 28 days.
- (3) A person served with an infringement notice is entitled to disregard the notice and defend the prosecution in Court.
- (4) An infringement notice may be waived by an authorised officer following representations from any person served with an infringement notice or made on behalf of that person.

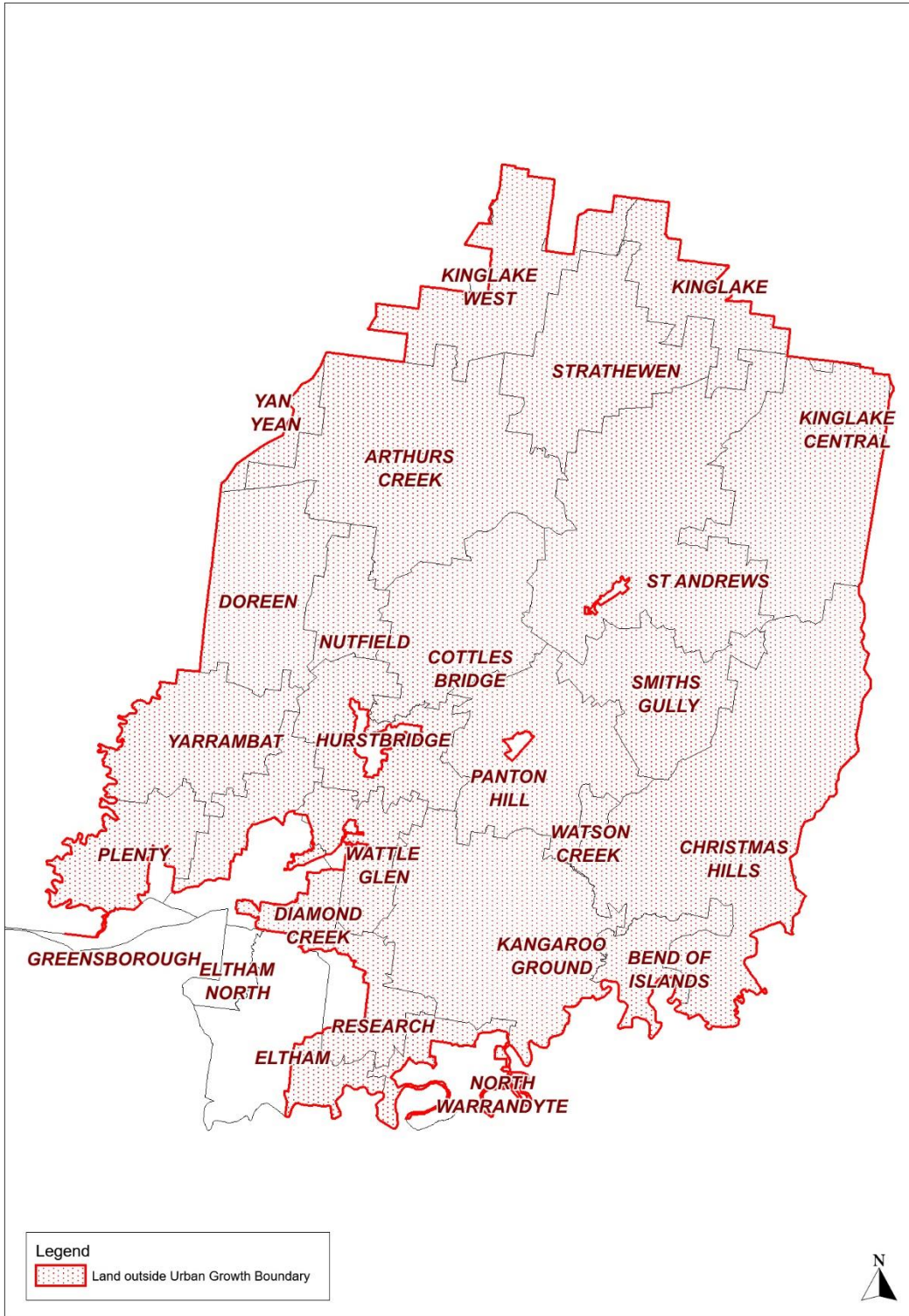
#### **15. Penalties**

- (1) The fixed penalty in respect of an infringement notice is set out in Schedule 1.
- (2) A person guilty of an offence is subject to the penalties set out in Schedule 1.

# PROHIBITION OF FIREWORKS LOCAL LAW

## SCHEDULE 1

Map showing all land (shaded) located outside the urban growth boundary within Nillumbik.



# PROHIBITION OF FIREWORKS LOCAL LAW

## SCHEDULE 1 – PENALTIES

Clause	Offence	Infringement notice fixed penalty	On conviction first offence
7	Failing to obtain a permit to discharge fireworks from private property outside the urban growth boundary		
8	Failing to comply with a direction of an authorised officer		
9	Failing to comply with a Notice to Comply		

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