

Nillumbik Shire Council

Proposals to regulate fireworks in Nillumbik Shire

Fireworks Local Law 2019 and Prohibition of Fireworks Local Law

Community Impact Statement

Background

Nillumbik Shire Council has committed to regulating fireworks displays from private land in the municipality through local law controls in response to ongoing and significant community concerns about annual fireworks displays on private property.

Over the past 3 years Council has been lobbied by residents who do not support fireworks displays on private property. In addition to individual representations to Councillors, Council received a petition containing over 1100 signatures from residents requesting that action be taken to prohibit private fireworks during the peak summer period. Council has considered several reports identifying the impacts of fireworks on the community and proposing options for an approach. At the January 2019 Council meeting, Council responded to a question from a resident about controlling fireworks on private land and gave an undertaking that a report about introducing a local law to control fireworks on private land would be presented at the February 2019 Council meeting.

At its February 2019 meeting, Council received a report advising of its powers to make a local law to regulate fireworks from private land and subsequently resolved that it proceed “with the development of a new Fireworks Local Law focussing on regulating displays on private land only outside the Urban Growth Boundary.”

Council recognises that there are both positive and negative consequences from regulating fireworks. While many residents have voiced their concern about fireworks to Council, there are many residents who support annual community events such as the Diamond Creek Festival and the Eltham Festival where fireworks are part of the event. These community events occur on public land in more urban areas of the municipality.

Council wants the community to let it know its preferred approach about how fireworks are managed and regulated in the municipality. To promote the discussion and to show the ways in which local laws can apply controls, it has developed two draft Local Laws for community review and response. These are:

- The *Fireworks Local Law 2019* which allows fireworks on private property outside of the Urban Growth Boundary, subject to obtaining a permit. The proposed Local Law prohibits Council from granting a permit for fireworks during the declared fire danger period.
- The alternative draft Local Law, the *Prohibition of Fireworks Local Law 2019*, does as its names suggests. It prohibits fireworks displays on private property outside of the Urban Growth Boundary at any time.

Reasons for the Proposed Local Laws

In the absence of appropriate State legislation regulating the environmental and other impacts of fireworks, the only other means by which fireworks can be regulated and properly enforced is by local law control. Councils have clear and broad local law making powers under the *Local Government Act 1989* (the LGA). Councils can make local laws for or with respect “to any act, matter or thing in respect of which the Council has a function or power” under the LGA or any other Act.

Council has clear objectives and functions under both the LGA and the *Public Health and Wellbeing Act 2008* to achieve outcomes in the best interests for the local community, to improve the overall quality of life for people in the local community and to protect, improve and promote public health and wellbeing in the community.

While Council’s local law making powers appear broad, Council cannot make a local law that contravenes principles set out in the Local Government Act. For instance, a local law cannot be inconsistent with the principles, objective or intent of the enabling Act. A local law cannot be inconsistent with any Act or regulation. A local law cannot be inconsistent or duplicate a planning scheme in force in the municipal district.

Nillumbik Shire is in a recognised bushfire prone area. Of particular concern to Council is the stress and anxiety caused by fireworks to residents who have lived through the catastrophic Black Saturday fires in February 2009. Many residents have serious concerns and fears that fireworks could cause another significant bushfire such as Black Saturday. Previous research undertaken by the CFA and other fire and emergency agencies has identified that it can take decades for the impact of catastrophic events on people to be reduced.

To emphasise the importance the community places on bushfire mitigation and emergency management, the *2019 Nillumbik Shire Annual Community Survey* shows about one-sixth (14.4%) of survey respondents identified bushfire management and prevention as an issue for Council to address, which was rated second of the top five issues. Both proposed fireworks local laws aim to prevent rural fireworks displays during the declared bushfire period.

Another major concern is the well documented effect that fireworks have on animals, including wildlife. Apart from animals escaping from their property in reaction to the noise (with the potential to cause traffic accidents), many have been injured and many have been euthanised because of injury. Council officers are required to play a role in animal welfare and have first hand experience of the consequences of fireworks on animals.

Given the limitations of the planning controls, particularly the ad hoc application of the requirements and the significant community concerns, the power for Councils under section 111 of the *Local Government Act 1989* to make local laws for or with respect to any function or power of the Council seems to be the only realistic approach to dealing with the problem. Given the references to local government in the State legislation referred to above, it is clear that State legislation considers it appropriate that local government have some role to play in regulating and managing fireworks in their own specific area.

Objectives of the Local Laws

The objectives of the *Fireworks Local Law* are simple. They are to:

- (a) manage and regulate the discharge of fireworks on private land in the municipal district to reduce amenity and environmental impacts of fireworks;

- (b) address activities with the potential to be a nuisance and impact on the health and wellbeing of residents in a bushfire prone rural environment; and
- (c) apply standards that address safety matters directed at reducing risk to the community.

In addition to Councils' functions and powers under legislation, the Local Law objectives recognise the strategic objective in the Council Plan 2017-2021 of safe and healthy communities which include a number of strategies and actions directed at emergency management including fire prevention and generally enhancing the health and wellbeing of the community.

The objectives of the *Prohibition of Fireworks Local Law* are 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.

Nature of the controls

Both Local Laws follow the form of the current *Amenity Local Law 2013*. They contain similar administrative and enforcement provisions.

The key provisions of the *Fireworks Local Law* are that:

- A permit will be required to discharge fireworks on private property that is outside of the Urban Growth Boundary. Failure to obtain a permit will be an offence under the Local Law.
- An applicant will be required to provide supporting information such as a risk assessment, to show how identified risks will be managed. An applicant may be required to provide additional supporting information to Council. The information sought is similar to that required for community events of varying sizes as events, whether on public or private land have the potential to impact on residents in proximity and in some circumstances, the community at large (eg: traffic impacts).
- An applicant will need to provide evidence to the Council that they have appropriate public liability insurance in place, the person discharging the fireworks has the necessary licence and that other required notifications have been given.
- Council will undertake a notification process on behalf of the applicant to ensure that relevant information and timely notifications are provided, especially to residents directly affected by fireworks displays. This will provide an opportunity for residents to decide what action they can take to minimise the effect on them and their animals. Some might choose to remove themselves or their animals, despite costs incurred and inconvenience.
- A permit may be issued subject to compliance with conditions. Failure to comply with conditions on a permit will be an offence under the Local Law. Permit conditions will not address matters addressed by other bodies such as a prohibition on the use of fireworks on total fire ban days. This is an offence under the Country Fire Authority Act.

- Council will be prohibited from granting a permit between 1 November or the declared fire danger period, whichever is earlier and 30 March or the end of the declared fire danger period, whichever is the later.
- Authorised officers of the Council will have a power to direct, to issue a notice to comply and a power to prohibit the activity if risky weather conditions (winds) suddenly erupt on the day the activity is planned to occur. (There is a general prohibition on fire risk activities being undertaken on a total fire ban day under State legislation, however, the increased ability under the Local Law to deal with sudden or unexpected weather conditions will allow action to be taken on the day of the event if necessary.)
- Failure to comply with the directions of an authorised officer or failure to comply with a notice to comply will be an offence under the Local Law.

As the Local Law applies to land outside of the Urban Growth Boundary as identified in the Nillumbik Planning Scheme it will apply to approximately 90 per cent of land in the municipality. Much of the land outside of the Urban Growth Boundary is undulating rural land with high levels of vegetation coverage. This is both an attraction but an environment with risks for residents of the area.

Council considers that a permit system will provide a balanced outcome to address resident concerns and manage an activity that is also supported by other residents.

If enacted this Local Law will provide an enforceable means of regulating the activity and will provide appropriate warning to the community about the event.

Prohibition of Fireworks Local Law

This Local Law prohibits fireworks on private property on land outside the Urban Growth Boundary. This alternative is in recognition that a permit and conditions on a permit will not totally eliminate the consequences of fireworks on the environment and effects on residents' amenity and wellbeing.

Similar provisions to Council's current Local Law and the proposed *Fireworks Local Law* include:

- Powers for an authorised officers of the Council to direct and to issue a notice to comply. For instance, an authorised officer could direct a person contravening the Local Law to stop the activity.
- Failure to comply with the directions of an authorised officer or failure to comply with a notice to comply will be an offence under the Local Law.
- Power to issue an infringement notice for contravening the Local Law.

Analysis of other matters considered

<i>Matter reviewed</i>	<i>Comments</i>
<i>Existing legislation that might be used instead</i>	No existing legislation that could be used as an option to a Local Law was identified.
<i>Whether there is more appropriate State legislation</i>	There is no cohesive legislative approach to the regulation and control of fireworks, whether on private or public land and therefore no State legislation that can be applied to achieve the objectives in the proposed Local Law.

	<p>Each of the entities with a role under current legislation deals with fireworks from different perspectives such as health and safety and management of fire risk.</p> <p>Worksafe Victoria apply the <i>Dangerous Goods Act 1985</i> and the <i>Dangerous Goods (Explosives) Regulations 2011</i> to regulate matters such as the storage, sale, transport, use, disposal and import of explosives which includes fireworks. The licensing system also requires a person to be licensed to discharge fireworks and provides a system for that.</p> <p>The <i>Country Fire Authority Act 1958</i> contains a power for regulations to be made regulating or prohibiting the use of fireworks in the country area of Victoria during a fire danger period. Permits are required to be obtained from CFA during the declared fire danger period to light a fire in the open air. Fireworks are treated as lighting a fire in the open air. While CFA plays a permit issuing role in regulating fireworks displays during the declared fire danger period, its powers are limited to fire prevention. CFA cannot address other matters such as amenity, environmental matters, nuisance including noise and the health and well being of the community.</p> <p>The Dangerous Goods (Explosives) Regulations require CFA to be given not less than 7 days notice of intended fireworks.</p> <p>Section 4 of the <i>Summary Offences Act 1966</i> regulates the discharge of fireworks on public land, not private land.</p>
<p><i>Overlap with existing legislation</i></p>	<p>It is considered that there is no overlap with other legislation. Rather, the proposed Local Law/s will fill a gap that exists in legislation as none addresses controls applying to fireworks displays on private land from an amenity, nuisance, environment and a community wellbeing perspective.</p>
<p><i>Overlap with the Nillumbik Planning Scheme</i></p>	<p>Currently, Council has limited controls on fireworks displays from public land in its Guidelines for Community Events, but has no enforceable means of regulating and controlling fireworks on private land unless the nature of the activity brings it under the Nillumbik Planning Scheme.</p> <p>The Planning Scheme may apply in some cases and a permit may be necessary if the proposed use or activity falls within the definition of one of the uses and activities regulated by the Planning Scheme, such as a carnival. The nature of past events on private land indicates that the activity does not fall within the definition of activities such as a “carnival”.</p>

<p><i>Options & other approaches</i></p>	<p>Council presents the community with two Local Law options for dealing with fireworks.</p> <p>Council is aware that the more urban part of the municipality generally supports fireworks in controlled circumstances such as those at community events, but that there is strong opposition in rural areas of the municipality to fireworks.</p> <p>While the limitations of the permit option are recognised, it is considered to provide a consistent approach which is to regulate private displays with similar requirements applying to public displays. The permit option provides a balanced approach to the regulation of fireworks.</p> <p>The prohibition option is not about a balanced approach but is an approach that recognises the needs and concerns of many residents. It has the potential to overcome the shortcomings of the permit option although it is recognised that people can always ignore the Local Law. The maximum penalty under the LGA that can be applied for contravention of the Local Law, (\$2000), may not be a sufficient deterrent.</p> <p>Council requirements are often expressed in Council Policy. Many Councils use this approach fireworks displays in the municipality. Policies lack enforcement capability unless they are linked to a Local Law and can only be a guide to a standard that Council applies to a particular activity.</p> <p>Some Councils play no role in regulating fireworks other than to receive the required legislation notification under the health and safety legislation in advance of fireworks displays. The level of anxiety and concern identified to Council by residents and the effects (death or injury) on animals and wildlife are known, so the “do nothing” option is not an option for Council.</p>
<p><i>Assessment of risk</i></p>	<p>A risk analysis of the various potential risk elements associated with the unmanaged use of fireworks on private property was undertaken using the accepted measures in the Risk Matrix Likelihood and Consequence Table. These included:</p> <ul style="list-style-type: none"> • Risk to the amenity of residents, primarily from noise: likelihood - almost certain, consequence – moderate. • Risk of nuisance and to the well being of residents from noise, fear of fire etc: likelihood almost certain, consequence – moderate. • Risk to domestic animals, livestock and wildlife: likelihood – almost certain, consequence – moderate to major.

<p><i>Restriction on competition</i></p>	<p>Schedule 8 of the <i>Local Government Act</i> states that a local law must not restrict competition unless it can be demonstrated that-</p> <ul style="list-style-type: none"> (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. <p>A review of the proposed Local Law against the competition policy principles has been undertaken. The Local Law does not regulate individuals in the business of fireworks displays or businesses licensed to discharge fireworks. That is done under the Dangerous Goods Act and Regulations.</p> <p>It is possible that an individual in the business of fireworks displays or a business operation could say that the capacity to prohibit or regulate a fireworks display on private land impacts on business or adds costs to their business, but even if it were possible to sustain such an argument, it is considered that any restriction on competition is outweighed by the benefits to the community as a whole from the application of appropriate controls.</p>
<p><i>Penalties</i></p>	<p>The penalties proposed in the Local Law are the maximum penalties that can be applied. Given the restriction on the maximum penalties under the LGA, they are considered to be reasonable and proportionate to the purposes of the Local Law.</p>
<p><i>Permit requirements and enforcement approach</i></p>	<p>The requirement in the <i>Fireworks Local Law</i> for a person to obtain a permit provides a means by Council is aware of a proposed fireworks event and can apply appropriate controls as well as informing the community of the event.</p> <p>Some of the requirements in the proposed Local Law such as the information to be provided by the applicant are similar to requirements in Council's <i>Guidelines for Community Events</i> which applies to proposed events on public land. Those Guidelines identify how key risks associated with a particular event will be managed as well as health and environmental considerations. Council will be able to undertake an assessment of the adequacy of the proposed measures identified by the applicant to ensure that if a permit is granted, all reasonable steps will be taken to minimise the impact of the activity.</p> <p>Enforcement mechanisms are the same as those in the Amenity Local Law 2013 for the both the <i>Fireworks Local Law</i> and the <i>Prohibition of Fireworks Local Law</i>.</p>

Benchmarking with adjoining Councils

There are few councils with the same characteristics as Nillumbik Shire – a peri urban/high fire risk area, so the ability to benchmark the approach in similar Councils is limited. - that have enacted Local Laws regulating fireworks on private land.

The benchmarking exercise undertaken has identified that there is no common approach to controlling fireworks displays held on private property. Most Councils do not require a permit. However, for those Councils that do require a permit, this has generally been enacted through their Local Law, either as part of a broader events based permit requirement such as that in the City of Greater Geelong or a standalone fireworks permit. In each case, Councils generally have a policy which outlines criteria against which a fireworks permit application must be assessed.

The benchmarking has identified various models used to assess a fireworks permit, with some Councils assessing only fire risk and treating a fireworks permit the same as a permit to burn off on private property. Other Councils assess the wider amenity impact from fireworks displays, particularly in a rural or semi-rural environment.

The City of Casey applies a permit system to discharge fireworks from private land. The Casey Community Local Law applies the maximum penalty of 20 penalty units for an offence against the Local Law and 5 penalty units for an offence for which an infringement notice is issued.

Some metropolitan and larger rural Councils have applied “controls” through Policy and require a person to have public liability insurance and to provide notification in newspapers.

Benchmarking across local government in Victoria indicates that of the 79 Victorian Councils, 29% (23) of Councils have fireworks related controls in their local laws, however the vast majority relate to fireworks on Council land.

The following table summarises the current approach of those Councils that do maintain a fireworks provision within their local law:

Banyule	Event based permit on council land. Only licensed pyro-technicians, persons under their direct supervision, or persons with a valid single occasion licence are allowed to discharge fireworks in Victoria
Bass Coast	fireworks section in local laws
Baw Baw	both in local laws and fire risk doc
Bayside	Council Land permit

	Boroondara	multiple sections on webpage under parties, parks and events talk about fire works in the area
	Cardinia	Local law requires fireworks displays to be carried out in accordance with <i>Dangerous Goods (Explosives) Regulations 2011</i> , Similar requirement to a Worksafe permit.
	Casey	No guidance provided
	Central Goldfields	Events registration form only allows for pyro tec use
	Colac Otway	Public place entertainment application (events permit)
	Greater Dandenong	Events Permit
	City of Geelong	Events Permit
	Greater Shepparton	Council Land permit
	Hume	Council Land permit
	Knox	Events Permit
	Latrobe	Council Land permit
	Maroondah	Council Land permit
	Mitchell	Assessed against likely amenity impacts. Often restricted to an organisation, rather than individual property owners.
	Monash	Council Land permit
	Moreland	Council Land permit
	Murrindindi	Treated like a burning off permit. Consideration of potential amenity impacts during permit process.
	Port Phillip	Council Land permit
	Wyndham	No fireworks on council land
	Yarra ranges	Community Events Only
<i>Consultation undertaken</i>	<p>The motivation for the proposed Local Law comes from community concerns that have been growing over the last 3 years and which have been made known to Council and individual Councillors through representations, petitions and correspondence.</p> <p>The concern about fireworks on private land has been reported in local newspapers as has Council's decision to make a local law.</p> <p>Several residents have made representations to the Minister for Emergency Services about the CFA role in managing fireworks during the declared fire danger period but that has not resulted in any change to State legislation.</p> <p>Council has a robust community engagement process, including the use of its website for community members to make their views known to Council. Council's website,</p>	

	<p>along with notifications in libraries and other Council facilities about the proposed Local Law/s will be used extensively to “test” the two different approaches proposed in the Local Laws.</p> <p>Council believes that there has been considerable discussion and that there is extensive knowledge of its decision to make a local law to deal with fireworks on private land outside the Urban Growth Boundary. As such, it will undertake the statutory process under section 223 of the LGA to obtain community views about the optional Local Laws presented.</p>
<p><i>Consideration of the Human Rights and Equal Opportunity Act – “the Charter”</i></p>	<p>The <i>Charter of Human Rights and Responsibilities Act 2006</i> (the Charter), identifies 20 basic human rights that apply to all Victorians. Many of those human rights are associated with criminal proceedings and are not relevant to local law reviews.</p> <p>Councils are public authorities under the Charter and as public authorities, Councils are required to consider human rights when they make, interpret and apply laws, develop policies and provide day-to-day services.</p> <p>Councils must ensure that:</p> <ul style="list-style-type: none"> • all Council decisions give proper consideration to human rights; • all actions, policies and services are compatible with human rights; • local laws are interpreted and applied consistently with human rights; and • people who work on behalf of councils do so in a way that respects human rights. <p>An assessment of the proposed Local Law against the Charter is a recommended approach in the <i>Guidelines for Local Laws Manual</i> (February 2010). As such, the rights considered to be relevant prescribed under the Charter have been reviewed to determine whether either Local Law is incompatible with any of those rights.</p> <p>Applying an expansive interpretation of the rights in the Charter, there is a remote possibility that some of the controls, such as those that have the effect of restricting people from living how they want to live on their land, could be a restriction on property rights. While the controls in the proposed <i>Fireworks Local Law</i> are along the lines of planning controls because they too regulate uses and activities on all land, it was generally concluded that the proposed restrictions on fireworks displays on private land are not interfering with or incompatible with a right under the Charter.</p>

	<p>For the purpose of the exercise the question whether such a restriction could be reasonably and demonstrably justified, was addressed. It was concluded that while the permit requirement and the information to be provided with the application may be considered overly bureaucratic, the capacity to minimise the impact of fireworks on people and the environment in the Nillumbik context is a reasonable justification of the controls.</p> <p>Examination of the prohibition approach in the <i>Prohibition of Fireworks Local Law</i> was also undertaken. The discussion above in relation to property rights and the conclusion reached is also applicable to this Local Law.</p> <p>It is possible to say in relation to this Local Law that the prohibition is a restriction on the right of freedom of expression. Even if it could be said that discharging fireworks on private property cuts across the freedom of expression right in the way the legislation intended that right to apply, the conclusion is that the restriction is reasonable necessary to ensure that public health is protected.</p> <p>Enforcement of the Local Laws has been designed around processes that have regard to procedural fairness. Generally unless a matter is urgent or could compromise public safety, the enforcement processes provide ample opportunities to a person to remedy a breach of the Local Law.</p> <p>It was concluded that on balance the proposals in the two Local Laws options are not incompatible with the rights in the Charter. The measures in either Local Law are considered to be reasonable and proportionate to the circumstances and Council's objectives in the Local Laws.</p>
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