

**Swan Hill Rural City Council**  
**Community Local Law No.2 2017 (Amendment)**  
**Community Impact Statement**  
**July 2020**

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## **PART A - GENERAL COMMENTS**

### **Background**

Council's Community Local Law No. 2 2017 was reviewed and adopted on 16 May 2017.

A review has been undertaken as issues and anomalies were identified whilst investigating complaints as the wording relating to specific clauses required clarity.

The review considered;

- the scope of local law provisions and revisions is necessary and relevant to the Swan Hill Rural City Council context
- the provisions are enforceable, so services are effectively delivered, and expectations met
- relevant emerging community issues are identified and included, if relevant, in the local law
- resourcing is commensurate with external and internal service demands

Specific issues arising from the review resulted in the following proposed changes to:

- Dangerous and unsightly land (Clause 53) - to incorporate amended height recommendations for vegetation.
- Open Air Burning (Clause 55) - to ensure adequate enforcement can occur in relation to burn offs in all parts of urban areas in the municipality.
- Droving of Livestock (Clause 79) - to accurately reflect Council's position on cattle droving throughout the municipality to ensure the protection of assets and native vegetation.

Concurrently the Trading Code of Practice was reviewed and updated to reflect the legislative changes to the Tobacco Act 1987 for outdoor dining and drinking. The additional clauses are in line with Local Law No. 2 2017 and the document modernised in line with Council's style guide.

The purpose of the proposed amendments are expected to play an instrumental role in addressing amenity and safety issues. These amendments will assist Council officers with current and emerging issues. In addition to the clause changes, the definitions have been reviewed for currency and some new definitions added.

This Community Impact Statement should be read in conjunction with the Swan Hill Rural City Council Community Local Law No.2 2017 (Amendment).

## **Purpose**

The purpose of the Community Local Law No. 2 2017 is to improve the overall living conditions and amenity of the municipality for residents and visitors by regulating certain behaviours or activities that may cause nuisance to neighbours or the general public. The Local Law regulates specific activities by ratepayers and residents in relation to open air burning and the movements of livestock. This proposed amendment should reduce further risk to the community which may help mitigate illegal activities, damage to property and dangerous behavior.

The purpose of the Swan Hill Rural City Council Community Local Law No. 2 2017 is to provide:

- a) the peace, order and good governance of the municipal district;
- b) a safe and healthy environment so that the community can enjoy a quality of life that meets its expectations;
- c) the safe and equitable use and enjoyment of public and municipal places;
- d) the protection and enhancement of the amenity and environment of the municipal district;
- e) the fair and reasonable use and enjoyment of private land;
- f) the uniform and fair application of this Local Law;
- g) to prevent damage to Council property and infrastructure;
- h) manage, regulate and control the keeping of animals and birds; and
- i) regulate, prohibit and control the consumption of alcohol in designated areas within the municipal district.

## **Consultation**

Officers from the Country Fire Authority, Councils Municipal Fire Prevention Officer and Deputy Municipal Fire Prevention Officer have been involved in the development of these changes.

## **State Legislation and the Local Laws**

The State and Federal Governments have Laws covering certain issues however, there are no specific provisions relating to the proposed changes with the Swan Hill Rural City Council Community Local Law No.2 2017. Council is unaware of any other legislation that may be used for the particular items as outlined in the proposed amendments to Community Local Law No.2 2017. Council is of the view that each of the issues that have been identified for review within the Local Law are in fact Council issues and that, accordingly, the provisions of the proposed Local Law changes are an appropriate solution. Council is unaware of any provisions of the proposed changes to its Local Law which overlaps, duplicates or creates inconsistency with any other existing legislation.

## **PART B – COMMENTS ON PROPOSED CHANGES TO EXISTING COMMUNITY LOCAL LAW NO. 2 2017**

### **Measures of success**

Council will measure the success of the Community Local Law No.2 through;

- Recording the levels of compliance and non-compliance using inspection data.
- Review of compliance action taken, including official warnings, notices to comply, infringements and prosecutions.
- Volume of complaints.

### **Risk Assessment**

Community Local Law No. 2 2017 regulates specific activities by ratepayers and residents in relation to open air burning and the movements of livestock. These proposed amendments should reduce further risk to the community which may help mitigate illegal activities, damage to property and dangerous behaviour.

Council has adopted a risk management approach to the review of the Local Law and the development of the proposed changes to these laws. Councils approach has involved:

- a) an examination of the impacts on community safety and amenity.
- b) an examination of existing laws that have the ability to effectively manage and reduce risk to community members; property and safety in public areas; and
- c) a long term solution, as reflected by the proposed introduction of changes to certain clauses of the Swan Hill Rural City Council Community Local Law No.2 2017.

**Legislative approach adopted** Council is of the view that introduction of the proposed changes to the Swan Hill Rural City Council's Community Local Law 2017 are necessary to address local issues; otherwise a gap may exist in managing issues within the community.

**Restrictions of competition** Council is of the view that the introduction of the changes will impose no restrictions on competition and that the Local Law complies with National Competition Principles.

**Charter of Human Rights** Council is also of the view that the introduction of changes will not impose any restrictions on human rights.

### **Submissions**

Submissions regarding the proposed Local Law (Amendment) must be in writing and should be marked 'Community Local Law No.2 2017 (Amendment) Review Submission' and sent to the Chief Executive Officer, **PO Box 488, Swan Hill VIC 3585, or emailed to [council@swanhill.vic.gov.au](mailto:council@swanhill.vic.gov.au)**.

Council will consider any written submission relating to the proposed Local Law in accordance with section 223 of the Act. Any person who has made a written submission under Section 223 of the Act to Council and has requested to be heard in support of their written submission is entitled to appear in person, or to be represented by a person specified in the submission, at a meeting of Council to be held at the Robinvale Community Centre, Robinvale on Tuesday 18 August 2020 commencing at 2pm.

All submissions will be handled as authorised or required by law including under the Privacy and Data Protection Act 2014. Submitters should note that all submissions received (including any personal information) are included within the Council Agenda and Minutes

which are permanent public documents, and are available on Council's website. If you do not wish to be identified in Agendas and Minutes, please indicate this in your submission.

Any person requiring further information concerning the proposed Local Law should in the first instance contact Council's Public Health and Regulatory Services Department on 5036 2591.

## Proposed Changes

### CLAUSE 53 - DANGEROUS & UNSIGHTLY LAND

During the review, it was identified that the reference to the *Country Fire Authority Act (1958)* is incorrect. The *Country Fire Authority Act (1958)* makes no reference to the height limit of grass and therefore this section requires amending to ensure it is legally enforceable.

It is recommended to amend the height limit to **250mm** for unsightliness and remove the reference to the *Country Fire Authority Act (1958)*. It is considered that 100mm is too short to be classed as unsightly and a height of 250mm is more appropriate. It should be noted that dry grass 100mm in height during a fire danger period maybe classed as a fire hazard by an Authorised Officer and dealt with accordingly under the *Country Fire Authority Act (1958)* during this period.

#### **CURRENT: 53. Dangerous and unsightly land**

- (1) The owner and occupier of land must not allow or permit the land or grassed area of a road abutting the land to be kept in a manner that:
- a) constitutes a fire hazard;
  - b) is unsightly or detrimental to the general amenity of the neighbourhood including but not limited by the appearance of:
    - stored unregistered motor vehicles;
    - machinery or any parts of them;
    - scrap metal;
    - second-hand timber or building materials;
    - waste paper;
    - rags;
    - bottles;
    - overgrown vegetation;
    - grass or weeds in excess of 100mm in height in accordance with the Country Fire Authority 1958;
    - Is kept free of graffiti

**Penalty: 5 penalty units**

#### **PROPOSED: 53. Dangerous and unsightly land**

- (1) The owner and occupier of land must not allow or permit the land or grassed area of a road abutting the land to be kept in a manner that:
- c) constitutes a fire hazard;
  - d) is unsightly or detrimental to the general amenity of the neighbourhood including but not limited by the appearance of:
    - stored unregistered motor vehicles;
    - machinery or any parts of them;
    - scrap metal;
    - second-hand timber or building materials;
    - waste paper;
    - rags;
    - bottles;

- overgrown vegetation;
- grass or weeds in excess of 250mm in height;
- Is kept free of graffiti

**Penalty: 5 penalty units**

## CLAUSE 55 - OPEN AIR BURNING

On 18 July 2018, a letter was received from the Municipal Emergency Management Planning Committee in relation to a burn off that had taken place in the industrial estate in Karinie Street Swan Hill. Residents who reported the fire to the Country Fire Authority (CFA) had concerns on the air quality and potential health related issues associated with the illegal burn off.

The CFA has requested Council's assistance with the following areas:

- Enforcing non-compliance of the relevant Local Law in relations to burn offs in both residential and industrial areas of the municipality.
- Communicating the relevant local law to the community by highlighting it on Council's websites and/or other options open to Council.

This clause has been reviewed and changes to Clause 55 - Open Air Burning are recommended. The proposed changes will assist Authorised Officers and the CFA by providing clarity in the assessment and carrying out of enforcement.

The proposed amendments are;

- Including industrial zones within the prohibited burning zone to further prevent the burning of offensive materials. This would allow only properties within a farming zone to burn.
- The inclusion of Fire Restriction Zones on maps to provide clear visual guidance to residents. These maps will prohibit some properties that have been allowed to burn in the past due to their zoning. An example of this will be a farm located in Robinvale surrounded by residences. Due to these anomalies, Officers are proposing that a permit system be introduced.
- The Fire Restriction Zones Township maps will be located at the rear of the Community Local Law No.2 2017(Amendment) and will continue from schedule 12.
- Include ability to grant conditional permits for exceptional circumstances as determined by Authorised Officers.

### **CURRENT: 55. Open air burning**

- 1) A person must not cause or allow any domestic chimney or properly constructed appliance to discharge dust, grit, ashes or smoke to such an extent that it is dangerous to health or is an nuisance to another person.
- 2) A person must not light or allow to be lit or remain alight any open air burn in any part of the municipal district which is zoned commercial or residential under Council's Planning Scheme.
- 3) Sub-clause (2) does not apply in respect to rural properties, if the burning is 100 metres or more from a neighbouring residence.
- 4) A person must not burn or cause to burn any material in the open air on any land, road within a residential area except in a pizza oven, barbecue, fire pit, chimenea, fire brazier or other properly constructed appliance while it is being used for cooking food or heating.
- 5) A person must not burn or cause to burn any dead animal except where the burning of a dead animal has been ordered by the Department of Economic Development, Jobs, Transport and Resources.

**PROPOSED: 55. Open air burning**

- (1) A person must not, **without a permit**, light or allow to be lit or remain alight any open air burn in any part of the municipal district which is zoned commercial, **industrial** or residential under Council's Planning Scheme.
- (2) **Property owners may apply in writing for a conditional permit to burn in a restricted zone. The fire restricted zones are specified on Schedules 12 to 20 of this Local Law. Authorised Officers may grant a permit if there are exceptional circumstances.**
- (3) Sub clause (1) shall not apply to –
  - a. a pizza oven, barbecue, fire pit, chimenea, fire brazier or other properly constructed appliance while it is being used for cooking food or heating;
  - b. rural properties if the burning is more than 100 metres or more from a neighbouring residence; or
  - c. **where a conditional permit has been granted under subclause (2).**
- (4) **A person must not light a fire in the open air, including on a rural property:**
  - a) **on any day of Total Fire Ban declared by the Country Fire Authority, or**
  - b) **during a declared Fire Danger Period under the Country Fire Authority Act 1958 without first obtaining a permit from the Municipal Fire Prevention Officer and/or Country Fire Authority.**
- (5) **A person must, when directed to do so by a member of an emergency service agency or an Authorised Officer, immediately extinguish a fire in the open air.**
- (6) **A person must not burn or cause to burn any dead animal carcass except where the burning of a dead animal carcass has been ordered by the Department of Jobs, Precincts and Regions.**

## CLAUSE 79 - MOVING OF LIVESTOCK

On 21 August 2018, Council received correspondence from Gannawarra Shire Council regarding someone wanting to drive approximately 400 head of cattle through both municipalities. A decision was made to not allow the driving due to potential damage to native vegetation, Council assets, risk to horticulture and fences.

As a result of the above decision, a recommendation was made by Councillors to review the current Local Law (Clause 79 – Moving of Livestock on a Road Reserve) so that it accurately reflects Council's position on cattle driving throughout the municipality.

The following changes to Clause 79 to assist officers in compliance and enforcement with regards to the movement of livestock and issues that may arise in the future are suggested.

### **CURRENT: 79. Moving of livestock on a road reserve**

- (1) Council may, by resolution, prohibit a road or part of a road within the municipal district from being used for the grazing or moving of livestock.
- (2) Notice of resolutions made by Council shall be available at Council offices.

### **PROPOSED: 79 Droving and moving of livestock on a road reserve**

- (1) The droving of any livestock in the municipality is prohibited.
- (2) A person who owns or is in charge of livestock must not cause or allow the movement of livestock on any road without a permit.
- (3) Sub clause (2) does not apply when the person complies with the 'Manual for Traffic Control at Stock Crossings' (Vic Roads, June 2015), and has obtained a permit from Vic Roads.
- (4) Sub clause (2) does not apply when livestock is being moved between two adjoining parts of a farm and the livestock are only moved within the boundaries of that farm.
- (5) Sub clause (2) does not apply to a person who owns or is in charge of the movement of livestock between two properties divided by a road but shall comply with the following;
  - a. the livestock are moved directly across the road at a stock crossing approved by Council;
  - b. portable signage is displayed to warn motorists when livestock are being moved. Permanent signage and related infrastructure must not be installed without a permit;
  - c. the livestock are supervised and under effective control by a person who is competent in the management of livestock;
  - d. as far as possible, the livestock are moved during daylight hours;
  - e. areas of high conservation are avoided and protected at all times;
  - f. any livestock excretion, mud or other debris deposits on the road are removed if required by an Authorised Officer for safety and amenity of the area;
  - g. any reasonable direction from an Authorised Officer is complied with.
- (6) Any person who owns or is in charge of moving livestock along, across or on Council land must comply with any reasonable direction from an Authorised Officer.
- (7) Council may exempt the owner of any farming property from the requirements of sub clause (2) upon written application to Council. Council may grant an exemption depending on the circumstances.

## PROPOSED NEW DEFINITIONS

To ensure that the Community Local Law No. 2 (Amendment) is clear and concise, new definitions to define the meaning of the “Droving of Livestock” and “Movement of Livestock” as follows are proposed:

***droving of livestock***

Means driving livestock in or through the municipal district or from one location to another for the purpose of changing their grazing area outside the local farming district or for the purposes of sale or relocation after sale but does not include the normal movement of livestock.

***movement of livestock***

Means movement of stock (during daylight hours and not less than 1km per hr) between adjoining or adjacent paddocks or properties as part of normal farming practices.

## TRADING CODE OF PRACTICE

The Trading Code of Practice was created in 2008 and the last review was completed in 2013/14. The Trading Code of Practice has been developed to regulate commercial activity on our footpaths by providing for a continuous accessible path of travel from the building or property line. The Code has been designed to ensure the shopping experience remains as enjoyable as possible for all who live, work and invest in the municipality. The Code provides guidance to traders on how they may use the public footpaths in an equitable and safe way.

Council has an obligation to regulate and control activities and events on Council land to ensure no detriment is caused to the amenity of the neighborhood or cause a risk or nuisance to a person. Council has developed the Code to ensure that all persons who require a permit before carrying out an activity or event on Council land understand the minimum acceptable standards under which they operate.

The Trading Code of Practice clearly outlines requirements to permit holders on the rules on putting items on the footpaths. Incorporating this document allows council to enforce the Trading Code of Practice under the Local Law.

The Trading Code of Practice has been reviewed in 2020 and updated to;

- Reflect legislative changes to the Tobacco Act 1987 for outdoor drinking and dining
- Update the clauses to be in line with the Local Law No.2 2017
- Update the formatting to reflect Councils Design and Writing Style Guide
- Make the document more reader friendly and easily understood by permit holders.

The Trading Code of Practice has been reviewed by Council's Public Health & Regulatory Services, Engineering, Planning and Building departments.

The Trading Code of Practice has been restructured to break-up text into more streamlined sections and create flow.

**PART C - Amendments compared to the current Local Law**

<b>New definitions</b>		<b>Reasons for amendment to the Local Law</b>
<b>droving of livestock</b>	means driving livestock in or through the municipal district or from one location to another for the purpose of changing their grazing area outside the local farming district or for the purposes of sale or relocation after sale but does not include the normal movement of livestock.	to define the meaning of 'droving of livestock' to reflect the proposed changes to clause 79
<b>movement of livestock</b>	means movement of stock (during daylight hours and not less than 1km per hr) between adjoining or adjacent paddocks or properties as part of normal farming practices.	to define the meaning of 'movement of livestock' to reflect the proposed changes to clause 79

				Reasons for the amendments to the Local Law		
Clause Number		Clause Title	Summary of clause	Retain	Status	Summary and explanation of charges
Old	New					
53(1)	53(1)	Dangerous and unsightly land	The owner and occupier of land must not allow their land to be kept in a manner that it constitutes a fire hazard or is unsightly or detrimental to the amenity of the neighbourhood	Yes	Amended	Changed grass or weeds in excess of <b>100mm</b> to <b>250mm</b> in height and removed reference to the Country Fire Authority Act 1958. During a review it was recommended by Authorised Officers that 100m in reference to unsightly land is too short and 250mm is more appropriate.
55(1)		Open air burning	Discharge of nuisance and dangerous materials from domestic chimney or appliance	No	Deleted	This is already covered in Clause 54 - The emission of offensive material, odour and noise
55(2)	55(1)	Open air burning	Open air burning is not permitted in commercial and residential areas	Yes	Amended	Added <b>without a permit</b> and <b>industrial</b> . Gives Authorised Officers the power to issue permits for exceptional circumstances, such as properties that are within the restricted zone but are 100 metres or more from a neighbouring residence. Added industrial due to previous complaints to Council about people burning off large amounts of rubbish in these areas.

	55(2)	Open air burning	Property owners can apply for a conditional permit to burn in a restricted zone if there are exceptional circumstances.		New	Gives Authorised Officers the power to issue permits, as above. Reference to new maps that specify restricted zones
55(3) and 55(4)	55(3)(a) and 55(3)(b)	Open air burning	The above clause does not apply to rural properties or when people are burning materials for cooking or heating purposes	Yes	Amended	Consolidated clauses together to make the exemptions clearer to follow
	55(3)(c)	Open air burning	Where a conditional permit has been granted property owners can burn in a restricted zone		New	Inserted to make it clear that where a permit has been granted clause 55(1) does not apply
	55(4)(a)	Open air burning	Specifies that no open air burning is permitted on Total Fire Ban days		New	Inserted to make it clearer to understand that burning off on Total Fire Ban days is not permitted, even on rural properties
	55(4)(b)	Open air burning	Specifies that no open air burning is permitted during the Fire Danger Period		New	Inserted to make it clearer to understand that a permit must be obtained to burn off during the Fire Danger Period, even on rural properties

			unless a permit has been granted			
	55(5)	Open air burning	A person must extinguish an open air fire when directed to do so		New	Gives Authorised Officers and emergency services personnel power to direct a person to immediately extinguish a fire
	55(6)	Open air burning	Burning of dead animals is not allowed	Yes	Amended	Added the word <b>carcass</b> to make it clearer that cooking meat is still permitted. Changed Department of Economic Development, Jobs, Transport and Resources to <b>Department of Jobs, Precincts and Regions</b> due to a name change.
79	79	Moving and droving of livestock on a road reserve	Prohibits droving of livestock. Allows people to apply for a permit to move stock. Moving stock between two properties is not permitted provided conditions are complied with.	Yes	Amended	Changed title from <b>Moving of livestock on a road reserve</b> to <b>Droving and moving of livestock on a road reserve</b> . Proposed to add seven additional clauses that will assist Authorised Officers in compliance and enforcement of the Local Law in regards to the droving and movement of livestock.