

NILLUMBIK SHIRE COUNCIL

FIREWORKS LOCAL LAW 2019

PART 1 – PRELIMINARY

1. Local Law

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

2. Objectives

The objectives of this Local Law 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.

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.

“**CFA**” – means the Country Fire Authority.

“**declared fire danger period**”- means the declaration made under section 4 of the *Country Fire Authority Act 1958*.

“**public notice**” means a notice published in a newspaper generally circulating in the municipal district of the Council chosen for the purpose and a notice on the Council’s website.

“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 – CONTROLS APPLYING TO FIREWORKS

7. Permit requirements

- (1) A person must not without a permit discharge any fireworks on or from private property outside the urban growth boundary.
- (2) An application for a permit must be submitted to Council not less than 60 days before the proposed discharge of fireworks.

8. Information required on an application for permit

A person applying for a permit must provide the following information with the application:

- (a) a site plan of the land, showing all existing buildings, all vegetation, the firing points for the types of fireworks to be discharged, the distances of firing points from adjoining land, access roads and where the audience will be located;
- (b) a risk management plan that assesses the risk associated with discharging fireworks from the intended location, including:
 - an assessment of the risk of fire on the intended location and adjoining land and how those risks will be managed;
 - the risk of harm to people, domestic animals, livestock and wildlife from the noise caused by the fireworks to be used and how those risks will be managed; and
 - an emergency evacuation plan that will apply if there needs to be emergency evacuation from the land;
- (c) any initiative to be applied by the applicant to reduce harm to domestic animals, livestock and wildlife on land within 1.5km of the land where fireworks will be discharged or fireworks displayed;
- (d) evidence that the fire protection measures and separation distances prescribed by the *Dangerous Goods (Explosives) Regulations 2011* are complied with;
- (e) a copy of the licence issued by Worksafe Victoria for the person to conduct fireworks displays;
- (f) a copy of the notice provided to Worksafe and the Country Fire Authority advising of the intention to discharge fireworks on the land;
- (g) whether any temporary advertising signs will be placed on Council land or roads and that they comply with Council's Amenity Local Law and *Signage Policy*;

- (h) a certificate of currency in the name of the occupier that shows adequate public liability insurance is in place for the event; and
- (i) any other information required by an Authorised Officer to make a proper assessment of the application.

9. Notification requirements

- (1) Upon receiving an application Council will, on behalf of the applicant:
 - (a) notify by registered mail all occupiers of land within 1.5km of the land where it is intended to discharge the fireworks;
 - (b) notify by registered mail any other person Council considers could be directly affected by the proposed discharge of fireworks; and
 - (c) give public notice advising of the application that includes details about the location and the time and duration of the discharge of fireworks.
- (2) In addition to any fees or charges to be paid under clause 14, the applicant will pay to the Council the costs of notifications required under this provision.

10. Criteria for assessing applications

In determining whether to grant a permit, an Authorised Officer must consider whether:

- (a) the information submitted with the application under clause 8 is satisfactory;
- (b) the identified risks have been adequately assessed and responded to;
- (c) adequate measures have been taken to manage the risk to livestock on adjoining or nearby properties;
- (d) any other permits or consents from Council are required;
- (e) any additional requirements of the CFA that have been made;
- (f) any comments that have been made in response to the notifications given under clause 9; and
- (g) any other matters relevant to the circumstances of the application.

11. Conditions on a permit

- (1) The permit may contain conditions such as:
 - (a) compliance with any requirements or conditions applied by the CFA;
 - (b) prescribing the times during which the discharge of fireworks can occur;
 - (c) prohibiting the discharge of fireworks from occurring if unpredictable weather conditions, such as winds in excess of 10 knots occur; and
 - (d) compliance with any other permits or consents that may be required for community events in the Nillumbik Shire.

12. Prohibition on Council issuing permits

Council must not grant a permit under clause 7:

- (a) during the declared fire danger period; or

- (b) after 1 November or the declared fire danger period, whichever is earlier, and before 30 March or the end of the declared fire danger period, whichever is the later.

PART 3 – ADMINISTRATION

13. Permits

- (1) An application for a permit must be in a form approved by the Council and accompanied by the fee prescribed by Council.
- (2) The Council may require an applicant to supply additional information or to give public notice of the application.
- (3) A permit may be issued subject to conditions.
- (4) A person must comply with the conditions of a permit issued to them.

14. Fees and Charges

The Council may, from time to time, by resolution determine the fees and charges, guarantees or bonds to apply under this Local Law which may include an administrative or processing fee or charge and the Council must give reasonable public notice of any such resolution.

15. 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.

16. 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.

17. 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.

18. 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.

19. Delegation

The powers of the Council under this Local Law to:

- (a) impound an item under clause 18;
- (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

20. 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.

21. 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.

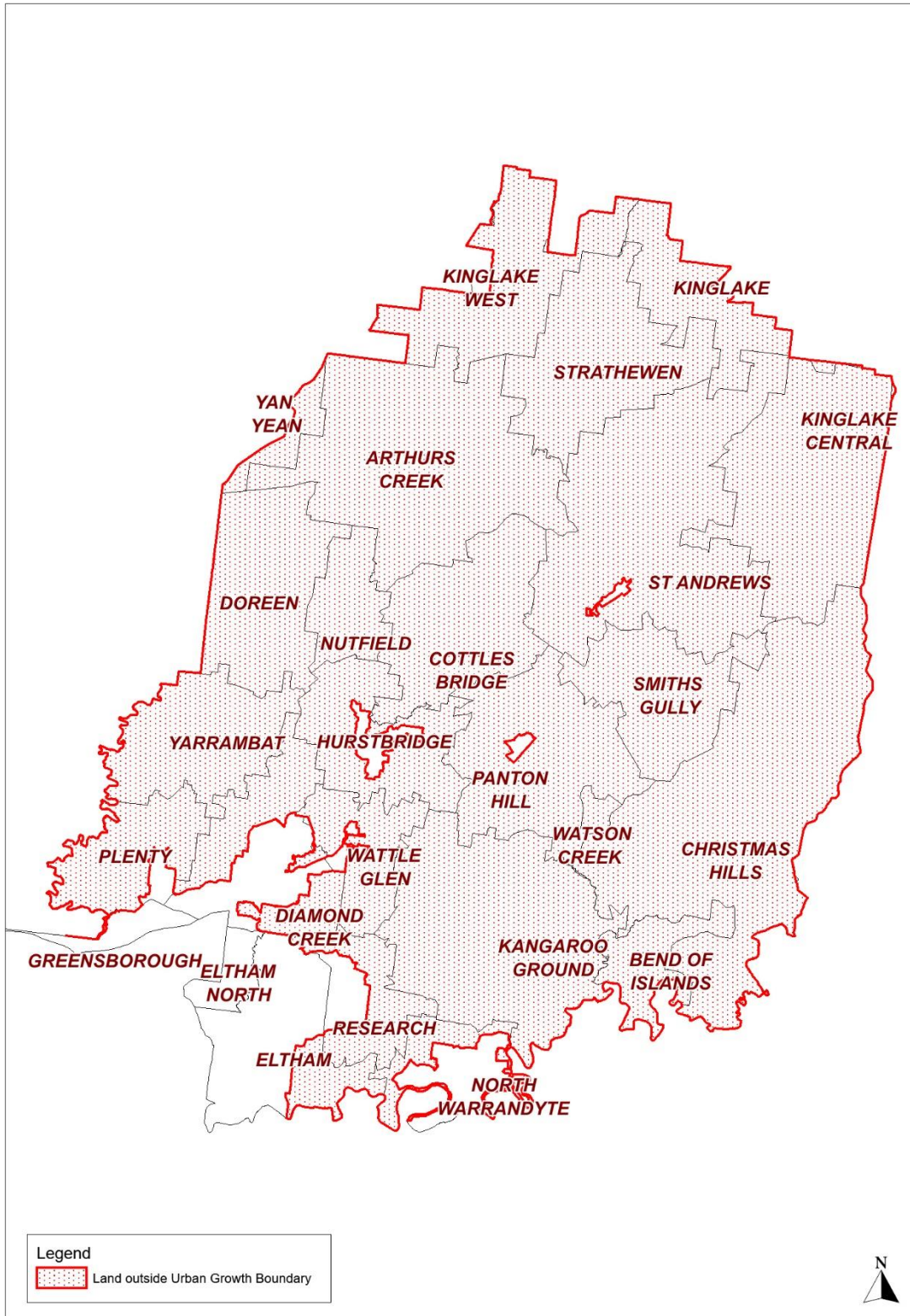
22. Penalties

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

FIREWORKS LOCAL LAW

SCHEDULE 1

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



FIREWORKS LOCAL LAW

SCHEDULE 2 – 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		
13	Failing to comply with conditions of a permit		
15	Failing to comply with a direction of an authorised officer		
16	Failing to comply with a Notice to Comply		

DRAFT

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.

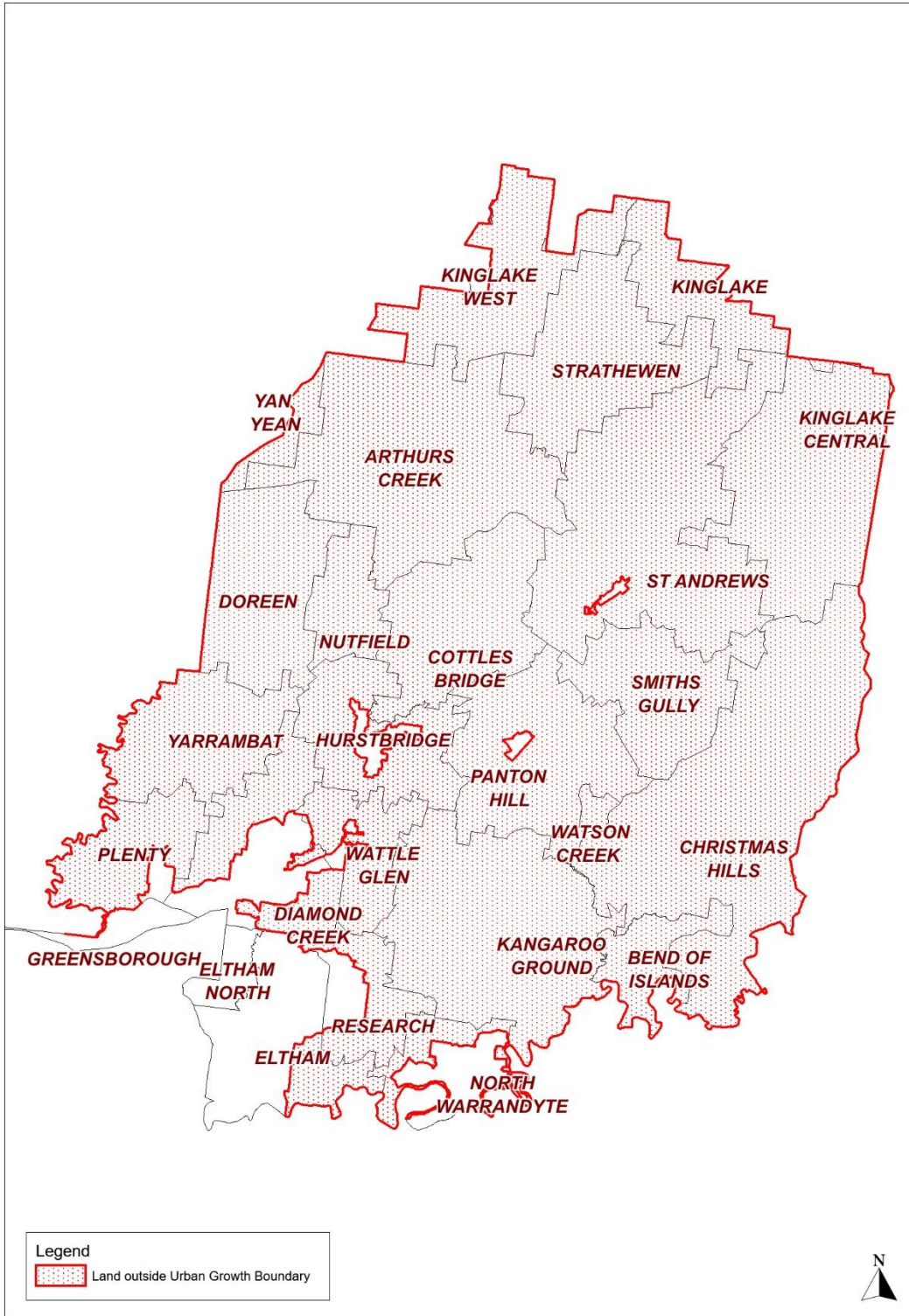
15. Penalties

- (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		

DRAFT

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</p>

	<p>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 both the <i>Fireworks Local Law</i> and the <i>Prohibition of Fireworks Local Law</i>.</p>
<p><i>Benchmarking with adjoining Councils</i></p>	<p>There are few councils with the same characteristics as Nillumbik Shire – a peri urban/high fire risk area, so the</p>

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, along with notifications in libraries and other Council facilities about the proposed Local Law/s will be used</p>	

	<p>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</p>

	<p>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>
--	--