

26 June 2003

**PROPOSED AMENDMENTS TO THE ENVIRONMENT LOCAL
LAW NO 2 OF 1999****Committee** Environment, Community and Cultural Development Committee**Presenter** Cr Redwood**Purpose**

1. To update Council on the consideration of the submissions received by the Environment Local Law Review Submissions Committee and to seek endorsement to continue the formal statutory notification process in accordance with the provisions of the *Local Government Act 1989* (“the Act”).

Recommendation

2. That Council:
 - 2.1. modify the proposed Environment Local Law (General Amendment) Local Law 2002 (No. 1 of 2002) as follows:
 - 2.1.1. delete clause 2(b);
 - 2.1.2. delete clause 8(c) and insert:

“(c) in clause 1.9, after the definition of “Act” delete the definition of “Appropriate site” and insert the following definitions:

‘Activities Local Law’ means the Melbourne City Council **Activities Local Law 1999(No 1 of 1999)** as amended from time to time;

‘Appropriate site’ means a site approved by the Council for the storage of waste **and any re-useable containers.**”
 - 2.1.3. delete clause 9(a) and insert:

“(a) in clause 2.1(b) insert the word “and” after the word **“noise;”** at the end of the **third** dot point.”
 - 2.1.4. after clause 9(b) but before clause 10 insert a new clause 9(c):

“(c) In clause 2.1(b) after the third dot point insert a fourth dot point:

 - the generation of offensive odours and fumes.’.”
 - 2.1.5. amend clause 11(b) to read:

“2. Objectives of the Environment Management Plan

The objectives of the EMP are to:

(a)

(b)

(c) Facilitate and promote responsible land, water, atmosphere, noise and waste management throughout the *municipality*".

2.1.6. delete clauses 11(d) and 11(e) and insert:

“4. Prescribed Requirements of the Environment Management Plan for Non-Residential Premises

Note: The requirements detailed in this clause 4 are mandatory. An owner and an occupier of non-residential premises must comply with these requirements in the manner specified.

- 4.1. *waste including hard waste, green waste and recyclable material from any premises must only be collected on such days and at such times as are prescribed by the Council. (Category 1 offence)*
- 4.2. *deliveries of any goods to or collections of any goods from any premises must only be made on such days and at such times as are prescribed by the Council. (Category 1 offence)*
- 4.3. *waste containers and any re-useable containers must be stored within the premises, or at an appropriate site outside of collection periods. (Category 3 offence)*
- 4.4. *hard waste, green waste and containers with waste material and recyclable material must not be placed outside the premises for collection earlier than two hours prior to collection or such other period prior to collection as the Council considers reasonable having regard to the nature of the property and must either be replaced within the premises or at an appropriate site within one hour of collection or such other period as the Council considers reasonable having regard to the nature of the property. (Category 3 offence)*
- 4.5. *sufficient tobacco waste containers must be provided to contain all tobacco waste generated as a result of the use or operation of the premises. (Category 3 offence)*
- 4.6. *hazardous waste must not be placed on the roadside for collection regardless of the type of collection service employed. (Category 1 offence)*
- 4.7. *liquid waste must not be placed directly in a waste collection container. (Category 1 offence)*
- 4.8. *waste material must not be placed, emptied, swept, thrown or otherwise discharged onto a road or into a stormwater drain. (Category 2 offence)*
- 4.9. *waste material must not be incinerated or otherwise burned in the open on any premises. (Category 2 offence)*

5. Prescribed Requirements of the Environment Management Plan for Residential Premises

Note: The requirements detailed in this clause 5 are mandatory. An owner and an occupier of residential premises must comply with these requirements in the manner specified

- 5.1. *waste* including *hard waste*, *green waste* and *recyclable material* from any *premises* must only be collected on such days and at such times as are *prescribed* by the *Council*. **(Category 1 offence)**
- 5.2. *waste material* and *recyclable material* must be stored in a container approved by the *Council* for such purposes.
- 5.3. *waste containers* and any re-useable containers must be stored within the *premises*, or at an appropriate site outside of collection periods. **(Category 3 offence)**
- 5.4. *hard waste*, *green waste* and containers with *waste material* and *recyclable material* must not be placed outside the *premises* for collection earlier than 6.00pm the evening before the collection day and must be replaced within 24 hours of the collection period.
- 5.5. *hazardous waste* must not be placed on the roadside for collection regardless of the type of collection service employed. **(Category 1 offence)**
- 5.6. *liquid waste* must not be placed directly into a waste collection container. **(Category 1 offence)**
- 5.7. *waste material* must not be poured, emptied, swept, thrown or otherwise discharged onto a *road* or into a stormwater drain. **(Category 2 offence)**
- 5.8. *waste material* must not be incinerated or otherwise burned in the open on any premises. **(Category 2 offence)**

6. Council Guidelines

- 6.1. in addition to any Performance Requirements and Prescribed Requirements, any guidelines *prescribed* by the *Council* for:
 - 6.1.1 the storage and collection of waste;
 - 6.1.2 the burning of material in the open;
 - 6.1.3 the use of open fires;
 - 6.1.4 the management of noise; or
 - 6.1.5 any other matter that it considers appropriate

must be complied with.”

- 2.2. consider the report prepared for Council by the Allen Consulting Group Pty Ltd in relation to its review of the Environment Local Law (General Amendment) Local Law 2002 to ensure the proposed amendments comply with the National Competition Policy principles, particularly the recommendation that the exercise of any discretion does not unreasonably restrict commercial activities within the municipality with respect to:

- 2.2.1. prescribing times during which waste may be collected;
 - 2.2.2. prescribing times during which deliveries may be made;
 - 2.2.3. prescribing persons or classes of persons exempted from the requirement to obtain a permit; and
 - 2.2.4. prescribing areas within the municipality to which a particular clause or clauses of the local law apply.
- 2.3. make the Environment Local Law (General Amendment) Local Law 2002 as amended;
 - 2.4. advise all submitters of Council's decision in relation to this matter and provide submitters with written reasons for its decision, being the reasons identified in the attached schedule;
 - 2.5. give notice in the Government Gazette and publish a notice in the "Melbourne Times" and the "Age" newspapers stating the matters specified in S 119(3) of the Act relating to the Environment Local Law (General Amendment) Local Law 2002; and
 - 2.6. by instrument of delegation sealed by the Council pursuant to Sections 98(1) and 98(3) of the *Local Government Act 1989* ("the Act"), delegate to the Chief Executive Officer, or person from time to time acting in that position, its powers, duties and functions under Part 5 of the Act including the power to sub-delegate to a member of Council staff and without limitation:
 - 2.6.1. all of the powers, functions and duties to be performed by Council pursuant to the Environment Local Law (General Amendment) Local Law 2002; and
 - 2.6.2. the power to approve Policy Operating Statements that support the operation and enforcement of the Environment Local Law and any other acts for which Council has enforcement responsibilities.

Council Report Attachment:

1. Environment, Community and Cultural Development Committee, Agenda Item 5.10, 16 June 2003

**ENVIRONMENT, COMMUNITY AND
CULTURAL DEVELOPMENT COMMITTEE
REPORT COVER SHEET**

Agenda Item 5.10

16 June 2003

**PROPOSED AMENDMENTS TO THE ENVIRONMENT LOCAL
LAW NO 2 OF 1999**

Committee Environment Local Law (General Amendment) Local Law 2002 (Submissions) Committee

Presenter Terry Makings, Chair, Environment Local Law (General Amendment) Local Law 2002 (Submissions) Committee.

Purpose

To update the Environment, Community and Cultural Development Committee about submissions received by the Environment Local Law Review Submissions Committee and to seek endorsement to continue the formal statutory notification process in accordance with the provisions of the *Local Government Act 1989* (“the Act”).

Time Frame

The Local Government Act (“The Act”) sets out in detail the procedures to be followed by Councils in relation to the preparation of local laws. If the proposed amendments to the Environment Local Law are endorsed by the Environment, Community and Cultural Development Committee and subsequently by the Council at its meeting on Thursday, 26 June 2003, it proposed to publish a notice in the Government Gazette and a public notice in The Age in accordance with the requirements of the Act on Thursday, 10 July 2003.

Finance

There are no direct financial implications for Council in the recommendations of this report.

Legal

Part 5 of the *Local Government Act 1989* contains provisions relating to the making of local laws. In particular section 111(1) provides that a Council may 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 *Local Government Act 1989* or under any other Act.

The procedure for making a local law is detailed in section 119 of the Act. Council has complied with all the requirements in this section.

Sustainability

Connected and Accessible City

If Council decided to enforce times when goods cannot be collected or delivered, extra pressure could be placed on the road network as trucks could enter the city in greater numbers during morning peak.

Inclusive and Engaging City

New provisions in the ELL should lead to less noise impacts for CBD residents. Measures to improve the prolific littering of cigarette butts should improve city amenity. Changes to the ELL are also likely to lead to less demand for butt bins which would improve municipal amenity.

Innovative and Vital Business City

There are no significant sustainability impacts.

Environmentally Responsible City

There will be a likely reduction in noise impacts and a continuing focus on management of systems that impact on the adjoining public highway and properties. The ELL as a whole promotes sustainable waste management practice.

Recommendation

That the Submissions Committee, having taken into consideration the submissions made in writing, and other relevant material, recommend that the Environment, Community and Cultural Development Committee recommend Council:

- modify the proposed Environment Local Law (General Amendment) Local Law 2002 (No. 1 of 2002) as follows:
 - delete clause 2(b);
 - delete clause 8(c) and insert:

“(c) in clause 1.9, after the definition of “Act” delete the definition of “Appropriate site” and insert the following definitions:

‘Activities Local Law’ means the Melbourne City Council **Activities Local Law 1999(No 1 of 1999)** as amended from time to time;

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 - delete clause 9(a) and insert:

“(a) in clause 2.1(b) insert the word “and” after the word **“noise;”** at the end of the **third** dot point.”
 - after clause 9(b) but before clause 10 insert a new clause 9(c):

“(c) In clause 2.1(b) after the third dot point insert a fourth dot point:

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 - amend clause 11(b) to read:

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- 4.3. waste containers and any re-useable containers must be stored within the *premises*, or at an appropriate site outside of collection periods. **(Category 3 offence)**
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- 5.2. waste material and *recyclable material* must be stored in a container approved by the *Council* for such purposes.

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- 6.1. in addition to any Performance Requirements and Prescribed Requirements, any guidelines *prescribed* by the *Council* for:
 - 6.1.1 the storage and collection of waste;
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 - 6.1.3 the use of open fires;
 - 6.1.4 the management of noise; or
 - 6.1.5 any other matter that it considers appropriate

must be complied with.”

- consider the report prepared for Council by the Allen Consulting Group Pty Ltd in relation to its review of the Environment Local Law (General Amendment) Local Law 2002 to ensure the proposed amendments comply with the National Competition Policy principles, particularly the recommendation that the exercise of any discretion does not unreasonably restrict commercial activities within the municipality with respect to:
 - prescribing times during which waste may be collected;
 - prescribing times during which deliveries may be made;
 - prescribing persons or classes of persons exempted from the requirement to obtain a permit; and
 - prescribing areas within the municipality to which a particular clause or clauses of the local law apply.
- make the Environment Local Law (General Amendment) Local Law 2002 as amended;
- advise all submitters of Council’s decision in relation to this matter and provide submitters with written reasons for its decision, being the reasons identified in the attached schedule;
- give notice in the Government Gazette and publish a notice in the “Melbourne Times” and the “Age” newspapers stating the matters specified in S 119(3) of the Act relating to the Environment Local Law (General Amendment) Local Law 2002; and

- by instrument of delegation sealed by the Council pursuant to Sections 98(1) and 98(3) of *the Local Government Act 1989* (“the Act”), delegate to the Chief Executive Officer, or person from time to time acting in that position, its powers, duties and functions under Part 5 of the Act including the power to sub-delegate to a member of Council staff and without limitation:
 - all of the powers, functions and duties to be performed by Council pursuant to the Environment Local Law (General Amendment) Local Law 2002; and
 - the power to approve Policy Operating Statements that support the operation and enforcement of the Environment Local Law and any other acts for which Council has enforcement responsibilities.

Attachments:

1. Environment Local Law (General Amendment) Local Law 2002
2. Review Scope of Environment Local Law 1999 (No 2 of 1999) with Tracked Changes
3. Summary Table of Submissions Received
4. Copy of National Competition Policy Report – Allen Consulting Group Pty Ltd

16 June 2003

PROPOSED AMENDMENTS TO THE ENVIRONMENT LOCAL LAW NO 2 OF 1999

Committee Environment Local Law (General Amendment) Local Law 2002 (Submissions)
Committee

Presenter Terry Makings, Chair, Environment Local Law (General Amendment) Local Law 2002
(Submissions) Committee.

Purpose

1. To update the Environment, Community and Cultural Development Committee about submissions received by the Environment Local Law Review Submissions Committee and to seek endorsement to continue the formal statutory notification process in accordance with the provisions of the *Local Government Act 1989* ("the Act").

Background

2. On 3 December 2002 the Environment, Community and Cultural Development Committee was briefed on the current review of the *Environment Local Law* ("ELL") with the matter proceeding to Council on 19 December 2002. Endorsement was provided by the Committee to commence the formal statutory notification and submission process in accordance with the provisions of the *Local Government Act 1989* ("the Act").
3. The Environment Local Law (General Amendment) Local Law 2002 (Submissions) Committee was established for the purpose of considering any written submissions received in relation to the proposal, hearing any persons wishing to be heard in support of them, and reporting back with recommendations to Council. Appointed to the Committee were the Manager Governance Services, the Group Manager Engineering Services, the Group Manager Sustainable Regulatory Services and the Principal Officer Street Activity.
4. Council received 10 written submissions in relation to the proposed amendments to the ELL (see Attachment Three for a summary of submissions). A number of the amendments to the ELL relate to noise management. Similar clauses have been entered into the Activities Local Law (ALL) amendments.

The Proposed Amendments to the ELL

5. The draft ELL amendment that was released for public consultation proposed three main changes to the Environment Local Law. These were:

Cigarette Litter

- 5.1. "Sufficient tobacco waste containers must be provided to contain all tobacco waste generated as a result of the use or operation of the commercial premises." [Environment Management Plan - new clause 5.4].

- 5.1.1. This clause was designed to encourage building owners/occupiers to take greater responsibility for cigarette butts discarded by employees, customers and other users of the building. Cigarette butts have been identified as a major litter concern given that the majority of non-residential buildings are now "smoke free".

Delivery of waste material

- 5.2. *“Waste including hard waste, green waste and recyclable material from commercial premises must only be collected on such days and at such times as are prescribed by the Council.”* [Environment Management Plan – new clause 4.1]

- 5.2.1. This clause was designed to allow Council to prescribe times when commercial deliveries can and cannot take place.

Dealing with Nuisances

- 5.3. *“In relation to commercial premises all necessary steps must be taken to ensure any adverse impact on the amenity of the adjoining areas arising from:*

(a) nuisances caused or constituted by the storage and disposal of waste and recyclable material; or

(b) noise and emissions;

as a result of the use or operation of commercial premises is controlled and prevented”. [Environment Management Plan - new clause 3.7].

“The delivery of any items or things to any premises or collections from premises must not cause any nuisance or disturb the amenity of the area.

For the purpose of 3.7 and 5.4, the amenity of the area will be considered to be disturbed where any relevant noise can be heard in a habitable room in a residential premises regardless of whether any door or window giving access to the room is open”. [Environment Management Plan – new clause 5.4]

- 5.3.1. This clause was designed to require premises to take steps to ensure there is no adverse effect on the amenity relating to noise from their activities.

National Competition Policy (NCP) Guidelines

6. It is a requirement under sub-clause 5(1) of the Commonwealth Government’s *Competition Principles Agreement* that all new and existing legislation (including Acts, enactments, Ordinances or regulations) must not impose undue competitive restrictions.
7. In April 2003, following community consultation, Council appointed the Allen Consulting Group to test all proposed amendments to the Environment Local Law against National Competition Policy Guidelines. The principle of the ‘competition test’ is that legislation must not restrict competition unless it can be demonstrated that the benefits to the community outweigh the cost of doing so and the objectives of the legislation can only be achieved through restriction. All proposed amendments were subjected to the ‘competition test’ the results of which are attached in a report from the Allen Consulting Group (see Attachment Four).
8. The major recommendations from the report are that firstly, the proposed clause 5.4 was unnecessarily restrictive and secondly, that the objectives of the amending local law should be amended to more clearly reflect the intention of the local law. Moreover, discretion should be exercised in the application of the local laws in terms of policy development and enforcement. In effect, The Allen Consulting Group advised Council to exercise caution in applying the local law to ensure it does not unreasonably restrict commercial activities particularly with respect to prescribing waste collection and delivery times, enforcing the excessive noise provisions and prescribing permit exemptions.

Issues

Submissions – Stakeholder Response to Proposed Amendments

9. Most of the submitters responded to proposed clauses relating to noise management. Some submissions put the view that Council needs to provide prescribed days and times for waste collection services, and these should be included in the amended ELL. For example, one submitter proposed that Council adopt the list of days and times for waste collection, as recommended in EPA Guidelines. Resident submitters also raised concerns about a need to keep logbooks as part of Council's evidentiary requirements for late night noise disruption.
10. The possible prescription of waste delivery and collection times is a sensitive issue for members of the waste management industry. Submissions received by two waste collection service companies focused on the potential for increased hazards if restrictions or changes are made to the current operational hours for waste collection and delivery. In their view, issues of concern also related to OH&S, service quality, industrial relations and possible financial cost.
11. Changes to regulations concerning tobacco waste receptacles were generally supported. The Property Council (Victoria) wrote seeking an integrated approach that will tackle the problem of butt litter across the areas of education, enforcement, infrastructure, incentives and communications.
12. The submitters also made other less major comments and suggestions regarding the proposed amendment. For example, they raised issues concerning the storage of containers on the street without Council permission and suggested alteration to wording to make the meaning clearer.

Response to Stakeholder Submissions

13. The proposed changes to the ELL give Council the flexibility to prescribe the collection and delivery times for products in particular areas through a policy mechanism if it is considered necessary. The proposal is that Council retains this provision in the proposed amendment to the ELL. A further amendment, sought by some stakeholders through the submission process, would involve stating specific times during which the collection and movement of goods is prohibited. This further amendment is not supported. One reason for rejecting specific times in the ELL is that it would reduce policy flexibility. That is, Council would have to undergo a complete re-advertising process if it decided at a later time to further amend the times or confine their application to certain areas.
14. Council has commenced discussions with the Waste Management Association of Victoria regarding the possible introduction of time restrictions on the entry of trucks into CBD laneways and streets. These tentative discussions have been based upon a possible restriction of entry of waste management trucks between the hours of midnight to 6am on weekdays and 11pm to 7am on weekends and public holidays. These are the restrictions currently placed on CityWide when collecting residential waste within the municipality.
15. If Council was to introduce time restrictions it may be preferable to restrict access to certain laneways rather than a blanket ban across the whole CBD. This would enable Council to pinpoint particular areas where there are known residential/ commercial delivery conflicts and to assess the effect of the changes on this smaller scale. However, applying such a restriction to only one part of the municipality raises NCP issues which will need to be taken into consideration in making any final determination.
16. Some other amendments have been included. The most important inclusion is a provision that requires reusable containers used for solids and liquids (eg. bread crates, beer kegs) be kept on site (ie. as opposed to laneways) – unless stored off-site with Council's permission. This extends the current requirement, which relates to waste containers only.

Conclusion – Recommended Changes to the Exhibited Amending Environment Local Law

17. Following consideration of the National Competition Policy Review, it is recommended that the following two clauses from the exhibited amending local law be deleted. These are:
 - 17.1 clause 2 (b), which is an objective within the local law that specifies – “provide standards and conditions for certain activities in relation to the physical and visual environment within the municipality”. The reason given for the proposed deletion is that it provides an overview of the amendments rather than stating the objective behind Council’s regulation,
 - 17.2 clause 5.4, second paragraph which specifies “for the purposed of 3.7 and 5.4, the amenity of the area will be considered to be disturbed where any relevant noise can be heard in a habitable room in a residential premises regardless of whether any door or window giving access to the room is open”. The reason given for the proposed deletion is that the clause is considered onerous with the potential to be in breach of NCP principles.
18. Following consideration of the submissions received, it is recommended that the following three major changes be made to the exhibited amending local law. These are:
 - 18.1 Delete the clause numbered 5.4 in clause 11(e) of the amending local law and create a new clause 4.2 which provides “*deliveries of any goods to or collections of any goods from any premises must only be made on such days and at such times as are prescribed by Council*”. (*Category One offence*);
 - 18.1.1. This clause broadens the previous first part of clause 5.4 by providing Council with a mechanism to prescribe delivery and collection times. The clause previously read, “delivery of any items or things to any premises or collections from premises must not cause any nuisance or disturb the amenity of the area”. The new clause can also be seen as an extension to clause 4.1 because it would allow Council to prescribe times for all deliveries and collections of goods from premises – not just waste collection vehicles;
 - 18.2 Inclusion of an amendment to clause 4.3 of the Environment Management Plan that adds the words “*and any re-useable containers*” after the words “waste containers”;
 - 18.1.2. The amendment to this clause is designed to broaden an initial requirement that waste containers be stored within premises (unless street storage permission is obtained by Council) so as it can apply to items such as bread crates and beer kegs;
 - 18.3 Inclusion of a new objective to read, “*facilitate and promote responsible land, water, atmosphere, noise and waste management throughout the municipality*”; and
 - 18.1.3. This new objective replaces the one deleted as a result of the National Competition Policy review.

Consultation

19. The Council’s proposal to amend its *Environment Local Law 1999 (No. 2 of 1999)* was published in a notice in the Government Gazette and a public notice in *The Age* in accordance with the requirements of the Act on Thursday, 9 January 2003.
20. Copies of the proposed *Environment Local Law* were made available from Council during the submissions period.
21. Meetings regarding the amendments to the ELL were held with the Property Council, the Victorian Waste Management Association, waste service providers (at a forum held on 19 February), David Jones P/L, representing the Central City Executive and the Transport Workers Union.

Recommendation

22. That the Submissions Committee, having taken into consideration the submissions made in writing, and other relevant material, recommend that the Environment, Community and Cultural Development Committee recommend Council:

22.1. modify the proposed Environment Local Law (General Amendment) Local Law 2002 (No. 1 of 2002) as follows:

22.1.1. delete clause 2(b);

22.1.2. delete clause 8(c) and insert:

“(c) in clause 1.9, after the definition of “Act” delete the definition of “Appropriate site” and insert the following definitions:

‘*Activities Local Law*’ means the Melbourne City Council **Activities Local Law 1999(No 1 of 1999)** as amended from time to time;

‘*Appropriate site*’ means a site approved by the Council for the storage of waste **and any re-useable containers.**”

22.1.3. delete clause 9(a) and insert:

“(a) in clause 2.1(b) insert the word “and” after the word **“noise;”** at the end of the **third** dot point.”

22.1.4. after clause 9(b) but before clause 10 insert a new clause 9(c):

“(c) In clause 2.1(b) after the third dot point insert a fourth dot point:

- the generation of offensive odours and fumes.’.”

22.1.5. amend clause 11(b) to read:

“2. Objectives of the Environment Management Plan

The objectives of the EMP are to:

(a)

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(c) Facilitate and promote responsible land, water, atmosphere, noise and waste management throughout the *municipality*”.

22.1.6. delete clauses 11(d) and 11(e) and insert:

“4. Prescribed Requirements of the Environment Management Plan for Non-Residential Premises

Note: The requirements detailed in this clause 4 are mandatory. An owner and an occupier of non-residential premises must comply with these requirements in the manner specified.

4.1. waste including *hard waste, green waste and recyclable material* from any *premises* must only be collected on such days and at such times as are *prescribed* by the *Council*. **(Category 1 offence)**

- 4.2. deliveries of any goods to or collections of any goods from any *premises* must only be made on such days and at such times as are *prescribed* by the *Council*. **(Category 1 offence)**
- 4.3. waste containers and any re-useable containers must be stored within the *premises*, or at an appropriate site outside of collection periods. **(Category 3 offence)**
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5. Prescribed Requirements of the Environment Management Plan for Residential Premises

Note: The requirements detailed in this clause 5 are mandatory. An owner and an occupier of residential premises must comply with these requirements in the manner specified

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- 5.3. waste containers and any re-useable containers must be stored within the premises, or at an appropriate site outside of collection periods. **(Category 3 offence)**
- 5.4. *hard waste, green waste* and containers with waste material and *recyclable material* must not be placed outside the *premises* for collection earlier than 6.00 pm the evening before the collection day and must be replaced within 24 hours of the collection period.

- 5.5. *hazardous waste* must not be placed on the roadside for collection regardless of the type of collection service employed. **(Category 1 offence)**
- 5.6. *liquid waste* must not be placed directly into a waste collection container. **(Category 1 offence)**
- 5.7. *waste* material must not be poured, emptied, swept, thrown or otherwise discharged onto a *road* or into a stormwater drain. **(Category 2 offence)**
- 5.8. *waste* material must not be incinerated or otherwise burned in the open on any premises. **(Category 2 offence)**

6. Council Guidelines

- 6.1. in addition to any Performance Requirements and Prescribed Requirements, any guidelines *prescribed* by the *Council* for:
 - 6.1.1 the storage and collection of waste;
 - 6.1.2 the burning of material in the open;
 - 6.1.3 the use of open fires;
 - 6.1.4 the management of noise; or
 - 6.1.5 any other matter that it considers appropriatemust be complied with.”
- 22.2. consider the report prepared for Council by the Allen Consulting Group Pty Ltd in relation to its review of the Environment Local Law (General Amendment) Local Law 2002 to ensure the proposed amendments comply with the National Competition Policy principles, particularly the recommendation that the exercise of any discretion does not unreasonably restrict commercial activities within the municipality with respect to:
 - 22.2.1. prescribing times during which waste may be collected;
 - 22.2.2. prescribing times during which deliveries may be made;
 - 22.2.3. prescribing persons or classes of persons exempted from the requirement to obtain a permit; and
 - 22.2.4. prescribing areas within the municipality to which a particular clause or clauses of the local law apply.
- 22.3. make the Environment Local Law (General Amendment) Local Law 2002 as amended;
- 22.4. advise all submitters of Council’s decision in relation to this matter and provide submitters with written reasons for its decision, being the reasons identified in the attached schedule;
- 22.5. give notice in the Government Gazette and publish a notice in the “Melbourne Times” and the “Age” newspapers stating the matters specified in S 119(3) of the Act relating to the Environment Local Law (General Amendment) Local Law 2002; and

- 22.6. by instrument of delegation sealed by the Council pursuant to Sections 98(1) and 98(3) of the *Local Government Act 1989* (“the Act”), delegate to the Chief Executive Officer, or person from time to time acting in that position, its powers, duties and functions under Part 5 of the Act including the power to sub-delegate to a member of Council staff and without limitation:
- 22.6.1. all of the powers, functions and duties to be performed by Council pursuant to the Environment Local Law (General Amendment) Local Law 2002; and
 - 22.6.2. the power to approve Policy Operating Statements that support the operation and enforcement of the Environment Local Law and any other acts for which Council has enforcement responsibilities.

MELBOURNE CITY COUNCIL

ENVIRONMENT LOCAL LAW (GENERAL AMENDMENT) LOCAL LAW 2002

(NO. 1 OF 2002)

PART 1
PRELIMINARY

Title

1. This Local Law is called the "Environment Local Law (General Amendment) Local Law 2002".

Objectives

2. The objectives of this Local Law are to:
 - (a) control protect and maintain the amenity of the *municipality*;
 - (b) amend the prescribed and performance requirements set out in the *Environment Management Plan* to ensure enhanced compliance and a better understanding of the *Environment Management Plan*.
 - (c) provide for the peace, order and good government of the municipality.

Authorising Provision

3. This Local Law is made under Section 111(1) of the Local Government Act 1989 ("the Act").

Application

4. This Local Law applies throughout the municipal district.

Commencement

5. This Local Law commences to operate from the day following its making.

Revocation

6. Unless sooner revoked this Local Law ceases to operate on 30 June 2009;

Definitions

7. In this Local Law, unless the context or subject matter indicates otherwise,
 - "Council" means the Melbourne City Council.
 - "Municipality" means the municipal district of the Council.

“Principal Local Law” means the **Environment Local Law 1999** (No. 2 of 1999).

**PART 2
GENERAL**

Amendments

8. Part 1 of the Principal Local Law is amended in the manner indicated:

- (a) delete clause 1.3 and insert

"How does this Local Law fit with City Plan 2010?"

- 1.3 This Local Law supports City Plan 2010 by contributing to Council's long term and responsible approach to the ongoing health, vitality, prosperity, security and welfare of the city's residents, businesses and environment.

Note: City Plan 2010 is the Council's primary planning policy that provides broad future strategic direction for the City. It is Council's most important strategic document which contains strategic direction and objectives for the City as a whole including some specific opportunities."

- (b) delete clause 1.8 and insert

"1.8 Subject to clauses 1.8A and 1.8B this Local Law applies throughout the whole of the *municipality*.

1.8A Clauses 2.3 and 2.4 do not apply to *premises* during the period when any *building works* are being carried out at the *premises* provided that a *Construction Management Plan* approved by Council for the *premises* is in place.

Are there any exemptions from this Local Law?

1.8B The *Council* may *prescribe* specified *persons*, *premises* or areas within the *municipality* to be exempt from all or any of the provisions of this Local Law for a specified time and on specified conditions."

- (c) in clause 1.9, after the definition of "Act" delete the definition of "Appropriate site" and insert the following definitions:

"Activities Local Law' means the Melbourne City Council Activities Local Law 1999 (No. 1 of 1999) as amended from time to time"

"Appropriate site' means a site approved by the Council for the storage of waste and any re-useable containers."

- (d) in clause 1.9, after the definition of "Authorised officer" but before the definition of "Council" insert

"*Building works*" has the same meaning as in the *Activities Local Law*.

'*Construction Management Plan*' has the same meaning as in the *Activities Local Law 1999*".

- (e) in clause 1.9, after the definition of "Premises" but before the definition of "Recyclable material" insert

"*Prescribe and Prescribed*" includes decided or specified by the *Council*."

- (f) in clause 1.9 after the definition of "Recyclable material" but before the definition of "Waste" insert

"*Tobacco Waste*" includes all *waste* and litter produced by any tobacco product or items associated with such tobacco products.

Tobacco Waste Container means a receptacle approved by the *Council* for the collection of *tobacco waste*."

9. Part 2 of the Principal Local Law is amended in the manner indicated

- (a) in clause 2.1(b) insert the word "and" after the word "noise;" at the end of the third dot point.
- (b) in clause 2.1(b) delete the words *the keeping of animals; and*
- (c) in clause 2.1(b) after the third dot point insert a fourth dot point:

"• the generation of offensive odours and fumes."

10. Part 5 of the Principal Local Law is amended in the manner indicated

- (a) delete clause 5.8 and insert

"5.8 The penalties fixed for an infringement notice under this Local Law are as follows:

- (a) where the offence is a failure to comply with a Category 1 requirement of the *Environment Management Plan*, the penalty is \$2,000;
- (b) where the offence is a failure to comply with a Category 2 requirement of the *Environment Management Plan*, the penalty is \$1,000.00;
- (c) where the offence is a failure to comply with a Category 3 requirement of the *Environment Management Plan*, the penalty is \$500.00;
- (d) where the offence is a failure to comply with a *Direction to Vary* (clause 4.8), the penalty is \$500.00;

- (e) where the offence is a failure to comply with a *Notice to Comply* (clause 5.9), the penalty is \$500.00;
 - (f) for all other offences, the penalty is \$500.00."
- (b) after clause 5.11 but before clause 5.12 insert
- “5.11A (1) A *notice to comply* must specify the time and date by which the *person* specified in the *notice to comply* must comply with the directions in clause 5.11.
- (2) The time required by a *notice to comply* 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 necessary items;
 - (d) climatic conditions;
 - (e) the degree of risk or potential risk; and
 - (f) any other relevant factor.

- (a) after clause 5.12 insert

“Power of *authorised officer* to act in urgent circumstances

- 5.12A (1) Any *authorised officer* may in urgent circumstances arising as a result of a failure to comply with this Local Law, take action to remove, remedy or rectify a situation without the necessity to serve a *notice to comply* provided:
- (a) he or she considered the circumstances or situation to be sufficiently urgent and that the time involved or difficulties associated with the serving of a *notice to comply*, may place a *person, animal, property* or thing at risk or in danger; and
 - (b) details of the circumstances and remedying action are forwarded as soon as practicable to the *person* on whose behalf the action was taken.
- (2) The action taken by an *authorised officer* under 5.12A(1) must not extend beyond what is necessary to cause the immediate abatement of or to minimise the risk or danger involved.

11. The *Environment Management Plan* under the Principal Local Law is amended in the manner indicated

- (a) After clause 1 but before clause 2 insert

"Note: Practical models providing assistance as to how an *owner* or *occupier* or *premises* can comply with the requirements of the *Environment Management Plan* are available from the Front Desk Town Hall Swanston Street Melbourne. Please telephone the *Council* for further information"

- (b) delete clause 2 and insert

"2. Objectives of the Environment Management Plan

The objectives of the EMP are to:

- (a) set performance standards designed to maintain a high level of community amenity and the ecosystems that support it;
- (b) facilitate and promote a safe, clean and healthy environment for all people living, working in and visiting the *municipality*.
- (c) facilitate and promote responsible land, water, atmosphere, noise and *waste* management throughout the *municipality*".

- (c) delete clause 3 and insert

"3. Performance Requirements of the Environment Management Plan

Note: This clause sets out performance standards. An *owner* or *occupier* is required to comply with such standards but the manner in which compliance is achieved is at the discretion of the *owner* or *occupier*. Contact the *Council* if you require any information on how you can ensure compliance with the performance requirements.

- 3.1 *Waste* material must at all times be stored so as to prevent leakage, be watertight and be impervious to rodents and insects. (Category 3 offence).
- 3.2 *Waste* material must at all times be stored in such a way that it does not detrimentally affect the neighbourhood by reason of smell, visual pollution, air pollution, noise pollution and the like. (Category 3 offence).
- 3.3 All necessary steps must be taken to ensure that all *recyclable material* and *green waste* is separated from other *waste* material. (Category 3 offence).
- 3.4 The area:
 - (a) immediately surrounding the container in which the *waste* material is stored; and
 - (b) immediately adjacent to the *premises*

must be maintained in a clean and hygienic state. (**Category 3 offence**).

3.5 Any equipment used on the *premises* from which gas emissions may occur must be regularly and properly serviced and maintained. (**Category 2 offence**).

3.6 The stormwater drainage connection from the *premises* must be maintained in good order and repair and free from blockages. (**Category 3 offence**).

3.7 In relation to *premises* all necessary steps must be taken to ensure any adverse impact on the amenity of the adjoining areas arising from:

(a) *nuisances* caused or constituted by the storage and disposal of *waste* and *recyclable material*; or

(b) noise and emissions,

as a result of the use or operation of *premises* is controlled and prevented. (**Category 1 offence**)."

(d) delete clause 4 and insert

"4. Prescribed Requirements of the Environment Management Plan for Non Residential premises

Note: The requirements detailed in this clause 4 are mandatory. An owner and an occupier must comply with these requirements in the manner specified.

4.1 *Waste* including *hard waste*, *green waste* and *recyclable material* from any *premises* must only be collected on such days and at such times as are *prescribed* by the *Council*. (**Category 1 offence**)

4.2 Deliveries of any goods to or collections of any goods from any *premises* must only be made on such days and at such times as are *prescribed* by the *Council*. (**Category 1 offence**)

4.3 Waste containers and any re-useable containers must be stored within the *premises*, or at an *appropriate site* outside of collection periods. (**Category 3 offence**)

4.4 *Hard waste*, *green waste* and containers with *waste* material and *recyclable material* must not be placed outside the *premises* for collection earlier than two hours prior to collection or such other period prior to collection as the *Council* considers reasonable having regard to the nature of the property and must either be replaced within the *premises* or at an *appropriate site* within one hour of collection or

such other period as the *Council* considers reasonable having regard to the nature of the property. **(Category 3 offence).**

- 4.5 Sufficient *tobacco waste containers* must be provided to contain all *tobacco waste* generated as a result of the use or operation of the *premises*. **(Category 3 offence).**
- 4.6 *Hazardous waste* must not be placed on the roadside for collection regardless of the type of collection service employed. **(Category 1 offence).**
- 4.7 *Liquid waste* must not be placed directly in a *waste* collection container. **(Category 1 offence).**
- 4.8 Waste material must not be poured, emptied, swept, thrown or otherwise discharged onto a *road* or into a stormwater drain. **(Category 2 offence).**
- 4.9 Waste material must not be incinerated or otherwise burned in the open on any *premises*. **(Category 2 offence).**

5. Prescribed Requirements of the Environment Management Plan for Residential Premises

- 5.1 *Waste* including *hard waste*, *green waste* and *recyclable material* from any premises must only be collected on such days and at such times as are prescribed by the Council. **(Category 1 offence).**
- 5.2 Waste material and *recyclable material* must be stored in a container approved by the *Council* for such purposes.
- 5.3 Waste containers and any re-useable containers must be stored within the *premises*, or at an *appropriate site* outside of collection periods. **(Category 3 offence).**
- 5.4 *Hard waste*, *green waste* and containers with *waste* material and *recyclable material* must not be placed outside the *premises* for collection earlier than 6.00pm the evening before the collection day and must be replaced within 24 hours of the collection period.
- 5.5 *Hazardous waste* must not be placed on the roadside for collection regardless of the type of collection service employed. **(Category 1 offence).**
- 5.6 *Liquid waste* must not be placed directly into a *waste* collection container. **(Category 1 offence).**
- 5.7 Waste material must not be poured, emptied, swept, thrown or otherwise discharged onto a *road* or into a stormwater drain. **(Category 2 offence).**

- 5.8 Waste material must not be incinerated or otherwise burned in the open on any *premises*. (**Category 2 offence**).

6. Council Guidelines

- 6.1 In addition to any Performance Requirements and Prescribed Requirements, any guidelines *prescribed* by the *Council* for:

- 6.1.1 the storage and collection of *waste*;
- 6.1.2 the burning of material in the open;
- 6.1.3 the use of open fires;
- 6.1.4 the management of noise; or
- 6.1.5 any other matter that it considers appropriate

must be complied with."

This document is issued by the Melbourne City Council.

.....
Michael Malouf

Chief Executive Officer
and the Melbourne City Council's duly appointed delegate.

**Attachment 2
Agenda Item 5.10
Environment, Community and Cultural Development
Committee
16 June 2003**

**MELBOURNE CITY COUNCIL
ENVIRONMENT LOCAL LAW 1999
(NO.2 OF 1999)**

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MELBOURNE CITY COUNCIL
ENVIRONMENT LOCAL LAW 1999
(No. 2 of 1999)

PART 1
PRELIMINARY

Title

- 1.1 This Local Law is called the "Environment Local Law 1999".

What are the objectives of this Local Law?

- 1.2 The objectives of this Local Law are to:
- (a) provide for the peace, order and good government of the *municipality*;
 - (b) control, protect and conserve the environment;
 - (c) control, protect and maintain the amenity of the *municipality*;
 - (d) provide standards and conditions for certain activities in relation to the physical and visual environment within the *municipality*;
 - (e) adopt, apply and ensure compliance with the *Council's Environment Management Plan*; and
 - (f) revoke other Local Laws of the *Council*.

How does this Local Law fit with City Plan 2010?

- 1.3 This Local Law supports City Plan 2010 ~~by promoting and achieving responsible land management and environment quality throughout the *municipality* by contributing to Council's long term and responsible approach to the ongoing health, vitality, prosperity, security and welfare of the city's residents, businesses and environment.~~

Note: City Plan is the Council's Municipal Strategic Statement that forms a part of the Council's Planning Scheme. City Plan 2010 is the Council's primary planning policy that provides broad future strategic direction for the City. It is Council's most important strategic document which contains strategic direction and objectives for the City as a whole including some specific opportunities.

What authorises this Local Law?

- 1.4 This Local Law is made under the provisions of Part 5 of the **Local Government Act 1989**.

When does this Local Law commence?

- 1.5 This Local Law commences on the first day of July 1999.

Repeal of Local Laws

- 1.6 From the commencement of this Local Law the following Local Laws are repealed:
- Administrative Arrangements Local Law 1995 (No. 1 of 1995);
 - Delegations of Powers Local Law 1991 (No. 1 of 1991);
 - Disposal of Refuse Local Law 1992 (No. 9 of 1992);
 - Infringement Notice Local Law 1990 (No. 8 of 1990).
 - Miscellaneous Amendments Local Law 1994 (No. 4 of 1994);
 - Open Air Burning and Incinerator Local Law 1992 (No. 1 of 1992);
 - Permits, Services and Fees (Amendment) Local Law 1993 (No. 1 of 1993);
 - Permits, Services and Fees (Amendment) Local Law 1990 (No. 11 of 1990);
 - Permits, Services and Fees (Amendment) Local Law 1992 (No. 13 of 1992);
 - Permits, Services and Fees Local Law (No. 4 of 1990);
 - Stables Local Law 1992 (No. 18 of 1992);
- 1.7 The repeal of a Local Law by clause 1.6 does not revive any By-Law or Local Law previously repealed or affect any notice or consent given or any business, matter or thing commenced, made or done under the repealed Local Law.

To what part of the *municipality* does this Local Law apply?

1.8 ~~This Local Law applies throughout the whole of the *municipality*~~ Subject to clauses 1.8A and 1.8B this Local Law applies throughout the whole of the *municipality*.

1.8A Clauses 2.3 and 2.4 do not apply to *premises* during the period when any *building works* are being carried out at the *premises* provided that a *Construction Management Plan* approved by Council for the *premises* is in place.-

Are there any exemptions from this Local Law?

1.8B The *Council* may *prescribe* specified *persons*, *premises* or areas within the *municipality* to be exempt from all or any of the provisions of this Local Law for a specified time and on specified conditions.

Definitions

1.9 The words identified in italics throughout this Local Law & *Environment Management Plan* are intended to have the following meaning:

“*Act*” means the **Local Government Act 1989**.

“*Activities Local Law*” means the Melbourne City Council **Activities Local Law 1999 (No. 1 of 1999)** as amended from time to time.

“*Appropriate site*” means a site approved by the *Council* for the storage of *waste* and any re-useable containers.

“*Authorised officer*” means a *person* appointed by the *Council* to be an *authorised officer* under section 224 of the *Act*.

“*Building works*” has the same meaning as in the *Activities Local Law*.

“*Construction Management Plan*” has the same meaning as in the *Activities Local Law 1999*.

“*Council*” means the Melbourne City Council.

“*Direction to Vary*” is a direction given under clause 4.1 of this Local Law.

“*Environment Management Plan*” means the document incorporated into this Local Law by clause 2.2 of this Local Law.

“*Green Waste*” includes:

- (a) manageable bundles of vines, creepers and weeds;
- (b) leaves, lawn clippings, flowers, branches, prunings or trunks not greater than 20cm in diameter;
- (c) prunings tied in bundles of no more than one metre in length and thirty centimetres in diameter.

"Hard Waste" includes white goods, broken furniture, electrical goods, hot water services, televisions and mattresses up to a maximum of one cubic metre per household, but does not include car parts or building materials.

"Hazardous waste" includes all kitchen, bathroom, workshop, garden, commercial and industrial chemicals such as pharmaceuticals, paints, poisons and motor fluids.

"Liquid Waste" includes grey water, sewerage, oil used for cooking purposes and *hazardous waste* that is also in a liquid form;

"Municipality" means the municipal district of the *Council*.

"Notice to Comply" is a notice given under clause 5.9 of this Local Law.

the *"Occupier"* of *premises* means the following:

- (a) a *person* having the charge, management or control of the *premises*, and
- (b) in the case of *premises* that are let out in separate occupancies or a lodging house that is let out to lodgers, the *person* receiving the rent from the tenants or lodgers.

the *"Owner"* of *premises* means the following:

- (a) where the *premises* are Crown land, the *owner* of the *premises* is the lessee or licensee of the land from the Crown,
- (b) where the *premises* are other than Crown land, the *owner* of the *premises* is:
 - (i) every *person* who is jointly or severally entitled to the freehold estate of the land, and
 - (ii) every such *person* who is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits of the land, whether as beneficial *owner*, trustee, mortgagee in possession or otherwise.

"Person" includes an individual, a corporation, an association incorporated under the **Associations Incorporation Act 1981**, a partnership and an unincorporated association.

"Premises" includes the whole or part of any land, building or building under construction.

"Prescribe and Prescribed requirements " includes decided or specified by the *Council*.

"Recyclable material" includes glass bottles and jars, aluminium and steel cans, gable top and square cartons, plastic bottles identified as being recyclable and paper cardboard, but does not include ceramics, window glass, mirrors, light globes, pyrex, waxed cardboard, batteries, plastic bags and clingwrap.

"Tobacco Waste" includes all waste and litter produced by any tobacco product or items associated with such tobacco products.

"Tobacco Waste Container" means a receptacle approved by the Council for the collection of tobacco waste".

"Waste" has the same meaning as in the **Environment Protection Act 1970**.

Notes in this Local Law

- 1.10 Introductions to Parts, headings and notes are explanatory notes and do not form part of this Local Law. They are provided to assist understanding.

PART 2

ENVIRONMENT MANAGEMENT PLAN

Introduction: This Part contains provisions that aim to promote responsible land management throughout the *municipality* via the *Council's Environment Management Plan* which sets performance standards designed to involve the least burden and the greatest advantage on the community. The *Environment Management Plan* is incorporated into this Local Law.

What is the *Environment Management Plan*

2.1 The *Environment Management Plan*:

- (a) was adopted by the *Council* as the *Environment Management Plan* for the purposes of this Local Law,
- (b) sets Objectives, Performance Requirements and Prescribed Requirements for activities that may affect the environment of the neighbourhood in which the activities are conducted and may include:
 - *waste* management and disposal;
 - burning of material in the open and open fires;
 - the generation of noise; and
 - the generation of offensive odours and fumes.

~~□ the keeping of animals, and~~
- (c) is available for inspection at the Town Hall Information Counter and all *Council Service Centres*.

2.2 The whole of the *Environment Management Plan* is incorporated into and forms part of this Local Law.

How does the *Environment Management Plan* apply to *premises*?

2.3 Unless the *Environment Management Plan* is varied in relation to specific *premises* under Parts Three or Four of this Local Law, the *Environment Management Plan* applies to all *premises* within the *municipality*.

2.4 Subject to clause 2.5, the *occupier* of *premises* must, in relation to those *premises*:

- (a) comply with the Performance Requirements and Prescribed Requirements of the *Environment Management Plan*,

- (b) ensure compliance with the Performance Requirements and Prescribed Requirements of the *Environment Management Plan*, and
- (c) not allow a *person* to breach the Performance Requirements and Prescribed Requirements of the *Environment Management Plan*.

2.5 Where:

- (a) the *occupier* of *premises* cannot, after reasonable enquiry, be located, or
- (b) the *occupier* no longer occupies the *premises*, or
- (c) the *premises* are unoccupied,

then the *owner* of the *premises* must, in relation to those *premises*:

- (d) comply with the Performance Requirements and Prescribed Requirements of the *Environment Management Plan*,
- (e) ensure compliance with the Performance Requirements and Prescribed Requirements of the *Environment Management Plan*, and
- (f) not allow a *person* to breach the Performance Requirements and Prescribed Requirements of the *Environment Management Plan*.

Amending the *Environment Management Plan*

2.6 The *Council* may amend the *Environment Management Plan* from time to time.

2.7 An amendment to the *Environment Management Plan* does not take effect until notice of the *Council's* decision to amend the *Environment Management Plan* is published in the Government Gazette.

PART 3

VARIATIONS TO THE *ENVIRONMENT MANAGEMENT PLAN*

Introduction: This Part contains provisions to allow for variations to be made to the *Environment Management Plan* in relation to specific *premises* at the request of the *owner* or *occupier* of the *premises*.

Application for a variation to the *Environment Management Plan* by an *owner* or *occupier*

3.1 Where the *owner* or the *occupier* of *premises* believes that, because of the nature of the activities conducted at the *premises*, the *Environment Management Plan* applying to his *premises* is not appropriate, the *owner* or *occupier* may apply to the *Council* to vary the *Environment Management Plan* that applies to his *premises*.

How is an application for variation made?

3.2 Where an application to vary the *Environment Management Plan* is made by the *occupier* of the *premises*, the application must be accompanied by evidence that the *owner* of the *premises* consents to the variation of the *Environment Management Plan*.

3.3 An application under clause 3.1 must be in a form approved by the *Council* and be accompanied by the fee (if any) determined by the *Council*.

3.4 The *Council* may from time to time set or alter the fee to apply to an application under clause 3.1.

3.5 The *Council* may waive, reduce or alter the fee with or without conditions.

3.6 The *Council* may require a *person* making an application under clause 3.1 to:

- (a) give notice of the application to *persons* whom the *Council* considers may be affected by the grant of the variation, or
- (b) publish notice of the application in a newspaper circulating generally within the *municipality*.

3.7 The *Council* may require an applicant to provide such information as required and to provide additional information before dealing with an application under clause 3.1.

What matters will the *Council* take into account?

- 3.8 In considering whether to vary the *Environment Management Plan* in relation to the applicant's *premises*, the *Council* may consider:
- (a) the reason or reasons given by the applicant for making the application,
 - (b) any report on the application by an *authorised officer*,
 - (c) any submission made by a *person* to whom notice of the application was given,
 - (d) the applicant's particular circumstances,
 - (e) the nature of the activities conducted on the applicant's *premises*,
 - (f) the environment of the neighbourhood within which the applicant's *premises* are located, and
 - (g) any other matter the *Council* considers relevant.

The *Council* may grant permission subject to conditions

- 3.9 A variation to the *Environment Management Plan* in relation to the applicant's *premises* may be granted subject to such conditions as the *Council* determines, including conditions relating to:
- (a) the payment of a fee or charge,
 - (b) a standard to be applied,
 - (c) a time limit to be applied, specifying either the duration, commencement or completion date,
 - (d) the linking of the variation to the happening of an event, and
 - (e) the rectification, remedying or restoration of a situation or circumstance.

What is the effect of the *Council* granting a variation to the *Environment Management Plan*?

- 3.10 Upon the *Council* granting a variation to the *Environment Management Plan* in relation to the applicant's *premises*, the *Environment Management Plan* applying to the applicant's *premises* is the *Environment Management Plan* in its varied form.
- 3.11 The provisions of clauses 2.4 and 2.5 apply to the *owner* and the *occupier* of the *premises* as if the reference to the *Environment Management Plan* means the *Environment Management Plan* in its varied form.

3.12 The *Council* must:

- (a) keep a record of all variations granted under this Part, and
- (b) make the record available to be inspected by members of the public.

PART 4

VARIATION OF THE *ENVIRONMENT MANAGEMENT PLAN* BY AN *AUTHORISED OFFICER*

Introduction: This Part contains provisions that allow for variations to be made to the *Environment Management Plan* in relation to specific *premises* at the direction of an *authorised officer*.

Direction to vary the Environment Management Plan by an authorised officer

- 4.1 Where, because of the nature of the activities conducted on *premises*, an *authorised officer* considers that the *Environment Management Plan* applying to those *premises* does not adequately protect the environment in the vicinity of the *premises*, the *authorised officer* may give to the *owner* and the *occupier* of the *premises* a *Direction to Vary* in accordance with this Part.
- 4.2 A *Direction to Vary* under clause 4.1 must be in writing and be in a form approved by the *Council*.
- 4.3 A *Direction to Vary* under clause 4.1 may require the *owner* and the *occupier* to:
- (a) give reasons in the manner specified and within a specified time as to why the *Environment Management Plan* applying to the *premises* should not be varied in the manner specified in the *Direction to Vary*, or
 - (b) submit to the *Council* in the manner specified and within a specified time an alternative *Environment Management Plan* to substitute for the *Environment Management Plan* applying to the *premises*.
- 4.4 The times specified in a *Direction to Vary* under clause 4.1 must be reasonable in the circumstances and what will be reasonable will depend on the nature of the requirement being placed on the *person* receiving the *Direction to Vary*, but should take into account:
- (a) the amount of work required to achieve compliance,
 - (b) the degree of difficulty in achieving compliance,
 - (c) the availability of resource materials and expertise to achieve compliance,
 - (d) the impact of the *Direction to Vary* on the *person* receiving the *Direction to Vary*, and
 - (e) any other relevant factor.

What is the effect of a *Direction to Vary* under clause 4.3(a)?

- 4.5 If a *Direction to Vary* under clause 4.1 requires the *person* receiving the *Direction to Vary* to give reasons in accordance with clause 4.3(a), the *person* receiving the *Direction to Vary* must give the reasons in the manner specified and within the time specified.
- 4.6 If:
- (a) no reasons are given to the *authorised officer* in accordance with clause 4.5, or
 - (b) the reasons given are not in the manner specified or the time specified in the *Direction to Vary*, or
 - (c) in the opinion of the *authorised officer*, the reasons given are not sufficient to not vary the *Environment Management Plan* in the manner specified in the *Direction to Vary*,
- the *Environment Management Plan* applying to the *premises* is deemed to be varied in the manner specified in the *Direction to Vary*.
- 4.7 The provisions of clauses 2.4 and 2.5 apply to the *owner* and the *occupier* of the *premises* referred to in clause 4.6 as if the reference to the *Environment Management Plan* means the *Environment Management Plan* in its varied form.

What is the effect of a *Direction to Vary* under clause 4.3(b)?

- 4.8 If a *Direction to Vary* under clause 4.1 requires the *person* receiving the *Direction to Vary* to submit to the *Council* an alternative *Environment Management Plan*, the *person* receiving the *Direction to Vary* must submit to the *Council* an alternative *Environment Management Plan* in the manner specified and within the time specified.
- 4.9 A *person* who fails to comply with clause 4.8 is guilty of an offence.

How many times may *Directions to Vary* be given in relation to particular *premises*?

- 4.10 An *authorised officer* may give more than one *Direction to Vary* under clause 4.1 in relation to *premises* and compliance with one *Direction to Vary* does not preclude the *authorised officer* or another *authorised officer* from giving another *Direction to Vary* under clause 4.1 should, in the opinion of the *authorised officer*, the circumstances warrant it.

Can a *person* appeal against a *Direction to Vary*?

- 4.11 A *person* who is aggrieved about being given a *Direction to Vary* under clause 4.1 may appeal in writing to the *Council* to be heard and may make a written submission for consideration by the *Council*.
- 4.12 An appeal under clause 4.11 must be made within 7 days of being given the *Direction to Vary*.
- 4.13 The *Council* must consider any written submission made to it under clause 4.11 (provided the application is made within 7 days of the *Direction to Vary* being given) and then make its determination in writing.
- 4.14 If an appeal is made under clause 4.11, the *Direction to Vary* which is the subject of the appeal (including any time limits specified in the *Direction to Vary*) does not take effect until the *Council* has given a written determination under clause 4.13.

PART 5

ENFORCEMENT

Introduction: This Part provides a means for enforcing this Local Law.

Offences

5.1 A *person* who:

- (a) fails to comply with this Local Law (including the *Environment Management Plan* incorporated into this Local Law),
- (b) fails to comply with a condition of a variation granted under this Local Law, or
- (c) knowingly submits erroneous or misleading information in an application or an appeal made under this Local Law,

is guilty of an offence.

Court fines

5.2 A *person* who is guilty of an offence is liable to a penalty:

- (a) for the offence, not exceeding \$2,000.00, and
- (b) for a continuing offence, not exceeding \$200.00 for each day after the conviction for an offence during which the contravention continues.

Infringement Notices

5.3 As an alternative to prosecution, an *authorised officer* may serve an infringement notice on a *person* who:

- (a) has done one of the things described in clause 5.1, or
- (b) is reasonably suspected of having done one of the things described in clause 5.1.

5.4 A *person* served with an infringement notice may pay the penalty specified in the notice to the cashier of the *Council*, within 28 days of service, failing which a prosecution can be instituted against that *person*.

5.5 Any *person* served with an infringement notice is entitled to disregard the notice and defend any subsequent prosecution in court.

- 5.6 The *Council* may, following consideration of correspondence from any *person* served with an infringement notice, waive the notice (even if the penalty has been paid).
- 5.7 If the penalty shown on the infringement notice is paid in the manner described in clause 5.4 or before the *Council* issues a Charge and Summons in respect of the offence, no further proceedings may be taken in respect of the offence.
- 5.8 The penalties fixed for an infringement notice under this Local Law are as follows:
- (a) where the offence is a failure to comply with a Category 1 requirement of the *Environment Management Plan*, the penalty is ~~\$12,000.00~~;
 - (b) where the offence is a failure to comply with a Category 2 requirement of the *Environment Management Plan*, the penalty is ~~\$500~~1,000.00;
 - (c) where the offence is a failure to comply with a Category 3 requirement of the *Environment Management Plan*, the penalty is ~~\$100~~500.00;
 - (d) where the offence is a failure to comply with a *Direction to Vary* (clause 4.8), the penalty is \$500.00;
 - (e) where the offence is a failure to comply with a *Notice to Comply* (clause 5.9), the penalty is \$500.00;
 - (df) for all other offences, the penalty is ~~\$1,000~~100.00 ~~\$1,000~~500.00.

Note: The Environment Management Plan contains notes which specify whether a requirement is a Category 1 requirement, a Category 2 requirement or a Category 3 requirement. By referring to the notes contained in the Environment Management Plan a person can ascertain what the infringement notice penalty is should there be a failure to comply with the requirement.

Notices to comply

- 5.9 Either as an alternative or in addition to an infringement notice, an *authorised officer* may serve a *Notice to Comply* under this clause on a *person* who the *authorised officer* reasonably suspects to be in breach of this Local Law.
- 5.10 A *Notice to Comply* under clause 5.9 must be in writing and be in a form approved by the *Council*.
- 5.11 A *Notice to Comply* must do one or more of the following things:
- (a) direct the *person* to comply with the Local Law,
 - (b) direct the *person* to stop within such time as specified in the notice the conduct which constitutes the breach of the Local Law,

- (c) direct the *person* to deliver up to the *authorised officer* or to some specified *person* or some specified location any item or property of the *person* which constitutes the breach of the Local Law,
- (d) direct the *person* to carry out the works specified in the notice within the time specified in the notice.

5.11A (1) A notice to comply must specify the time and date by which the *person* specified in the *notice to comply* must comply with the directions in clause 5.11.

(2) The time required by a *notice to comply* must be reasonable in the circumstances having regard to:

- (a) the amount of work involved; and
- (b) the degree of difficulty; and
- (c) the availability of necessary materials or other necessary items; and
- (d) climatic conditions; and
- (e) the degree of risk or potential risk; and
- (f) any other relevant factor.

5.12 A *person* served with a *Notice to Comply* under clause 5.9 must comply with a direction contained in the notice.

Power of authorised officer to act in urgent circumstances

5.12A (1) Any authorised officer may in urgent circumstances arising as a result of a failure to comply with this Local Law, take action to remove, remedy or rectify a situation without the necessity to serve a *notice to comply* provided:

- (a) he or she considered the circumstances or situation to be sufficiently urgent and that the time involved or difficulties associated with the serving of a *notice to comply*, may place a *person, animal, property* or thing at risk or in danger; and
- (b) details of the circumstances and remedying action are forwarded as soon as practicable to the *person* on whose behalf the action was taken.

(2) The action taken by an *authorised officer* under 5.12A(1) must not extend beyond what is necessary to cause the immediate abatement of or to minimise the risk or danger involved.

Offences by Corporations

- 5.13 If a *person* charged with an offence against this Local Law is a corporation, any *person* who is concerned or takes part in the management of that corporation may be charged with the same offence.
- 5.14 If the corporation is convicted of an offence against this Local Law, a *person* charged under clause 5.13 with the same offence may also be convicted of the offence and is liable to the penalty for that offence unless that *person* proves that the act or omission constituting the offence took place without his or her knowledge or consent.

PART 6

DELEGATIONS

- 6.1 The *Council* may by instrument of delegation delegate each of the powers, functions and duties under this Local Law to any member of its staff.
- 6.2 A reference in an instrument of delegation to a delegate by way of the delegate's position with the *Council* includes:
- (a) a *person* authorised to carry out the powers, duties and functions of that position at the *Council*,
 - (b) a *person* acting in that capacity, or
 - (c) if that position at the *Council* ceases to exist, any *person* exercising any power, duty or function which was previously a power, duty or function of the previous position.

This document is issued by the Melbourne City Council.

The **COMMON SEAL** of the **MELBOURNE**)
CITY COUNCIL was affixed hereto)
in accordance with the **Conduct of**)
Meetings Local Law 1996)

.....
Lord Mayor

.....
Chief Executive Officer

No. 2 of 1999

I certify that this is a true copy of a Local Law made by the Melbourne City Council on 22 June, 1999, in accordance with the requirements of section 119 of the Local Government Act 1989.

The notices required to be given by section 119(2) of the Act were given in the Government Gazette No. S 62 of 5 May, 1999, at page No. 3 and in "The Age" newspaper on 30 May, 1999.

The notices required to be given by section 119(3) of the Act were given in the Government Gazette No. S96 of 30 June, 1999 at page No. 3 and in "The Age" newspaper on 30 June, 1999.

A copy of the Local Law was sent to the Minister for Local Government on , 1999.

The Local Law came into operation on 1 July, 1999, and will expire on 1 July, 2009, (being the day 10 years after the day on which it came into operation, as stipulated in section 122 of the Act).

M. MALOUF
Chief Executive Officer

**The City of Melbourne's
Environment Management Plan
Under the Environment Local Law 1999**

**CONTENTS THE ENVIRONMENT MANAGEMENT PLAN
UNDER THE ENVIRONMENT LOCAL LAW
1999**

- 1 Purpose of the Environment Management Plan
- 2 Objectives of the Environment Management Plan
- 3 Performance Requirements of the Environment Management Plan
- 4 Prescribed Requirements of the Environment Management Plan

THE ENVIRONMENT MANAGEMENT PLAN UNDER THE ENVIRONMENT LOCAL LAW 1999

1 Purpose of the Environment Management Plan

The Environment Management Plan ("EMP") for the City of Melbourne is the cornerstone of the Council's Environment Local Law. The intention is to provide a better urban environment for the *municipality* by setting out specific commitments for *owners* and *occupiers* of *premises* through the EMP. It allows for variations to the EMP as it applies to particular *premises* to suit individual situations.

Note: Practical models providing assistance as to how an owner or occupier or premises can comply with the requirements of the Environment Management Plan are available from the Front Desk Town Hall Swanston Street, Melbourne. Please telephone the Council for further information.

2 Objectives of the Environment Management Plan

The objectives of the EMP are to:

- (a) promote responsible land management and environment quality throughout the *municipality* in the avoidance, creation, storage and disposal of *waste* set performance standards designed to involve the least burden and the greatest advantage on the *maintain a high level of community amenity and the ecosystems that support it;*
- (b) facilitate and promote a safe, cleaner and more pleasant healthy environment for all persons *people living, working in and visiting the municipality.;*
- (c) facilitate and promote responsible land, water, atmosphere, noise and *waste* management throughout the *municipality.*

3 Performance Requirements of the Environment Management Plan

Note: This clause sets out performance standards. An owner or occupier is required to comply with such standards but the manner in which compliance is achieved is at the discretion of the owner or occupier. Contact the Council if you require any information on how you can ensure compliance with the performance requirements.

- 3.1 *Waste* material must be stored in a container approved of by the Council for such purpose and in such a way that it does not detrimentally affect the neighbourhood by reason of smell, visual pollution, air pollution and the like. *Waste* material must be stored so as to prevent leakage, be watertight and be impervious to rodents and insects. (Category 3 offence).

- 3.2 ~~Waste material must be stored so as to be impervious to rodents and insects, in such a way that it does not detrimentally affect the neighbourhood by reason of smell, visual pollution, air pollution, noise pollution and the like. (Category 3 offence).~~
- 3.3 ~~The owner and occupier of premises must accept and demonstrate responsibility for the cleanliness of the area immediately adjacent to the premises. All necessary steps must be taken to ensure that all recyclable material and green waste is separated from other waste material. (Category 3 offence).~~
- 3.34 ~~Waste material must be collected from commercial and industrial premises in a way that does not detrimentally affect the neighbourhood by reason of the time or manner of collection. The area:~~
- (a) ~~immediately surrounding the container in which the waste material is stored; and~~
- (b) ~~immediately adjacent to the premises~~
- ~~must be maintained in a clean and hygienic state. (Category 3 offence).~~
- 3.45 ~~The owner and occupier of premises must accept and demonstrate responsibility for gas emissions (including carbon dioxide) generated on the premises or gas emissions that result from the use of the premises. Any equipment used on the premises from which gas emissions may occur must be regularly and properly serviced and maintained. (Category 2 offence).~~
- 3.56 ~~The owner and occupier of premises must ensure that the stormwater drainage connection from the premises remains in good order and repair and free from blockages. The stormwater drainage connection from the premises must be maintained in good order and repair and free from blockages. (Category 3 offence).~~
- 3.7 ~~The owner and occupier of premises must maximise the recycling of waste material so as to reduce the amount of waste being transported to landfill. In relation to any premises all necessary steps must be taken to ensure any adverse impact on the amenity of the adjoining areas arising from:~~
- (a) ~~nuisances caused or constituted by the storage and disposal of waste and recyclable material; or~~
- (b) ~~noise and emissions~~
- ~~as a result of the use or operation of any premises is controlled and prevented. (Category 1 offence).~~

4 Prescribed Requirements of the Environment Management Plan

Note: The requirements detailed in this clauses 4 and 5 are mandatory. An owner and an occupier must comply with these requirements in the manner specified.

~~4.2 Hard waste, green waste and containers with waste material and recyclable material from a residential property must not be placed outside the premises for collection earlier than 6.00pm the evening before collection day and be replaced within 24 hours of the collection period. 3~~

~~4.24.1 Hard waste, green waste and containers with waste material and recyclable material from a commercial or industrial property must not be placed outside the premises for collection earlier than two hours prior to collection or such other period prior to collection as the Council considers reasonable having regard to the nature of the property and must either be replaced within the premises or at an appropriate site within 1 hour of collection or such other period as the Council considers reasonable having regard to the nature of the property. Waste including hard waste, green waste and recyclable material from any premises must only be collected on such days and at such times as are prescribed by the Council. (Category 1 offence)~~

~~4.2 Waste containers must be stored within the premises, or at an appropriate site outside of collection periods. (Category 3 offence) Deliveries of any goods to or collections of any goods from any premises must only be made on such days and at such times as are prescribed by the Council. (Category 1 offence)~~

~~4.3 Hazardous waste must not be placed on the roadside for collection regardless of the type of collection service employed. Waste containers and any re-useable containers must be stored within the premises, or at an appropriate site outside of collection periods. (Category 3 offence)~~

~~4.4 Liquid waste must not be poured directly into a waste collection container. (Category 1 offence). Hard waste, green waste and containers with waste material and recyclable material from a property must not be place doutside the premises for collection earlier than two hours prior to collection or such other period prior to collection as the Council considers reasonable having regard to the nature of the property and must either be replaced within the premises or at an appropriate site within one hour of collection or such other period as the Council considers reasonable having regard to the nature of the property. (Category 3 offence)~~

~~4.5 Waste material must not be poured, emptied, swept, thrown or otherwise discharged onto a road or into a stormwater drain. (Category 2 offence). Sufficient tobacco waste containers must be provided to contain all tobacco waste generated as a result of the use or operation of the premises. (Category 3 offence)~~

~~4.6 Waste material must not be incinerated or otherwise burned in the open on any premises. (Category 2 offence). Hazardous waste must not be placed on the roadside for collection regardless of the type of collection service employed. (Category 1 offence)~~

4.7 *Liquid waste must not be placed directly in a waste collection container. (Category 1 offence)*

4.8 *Waste material must not be poured, emptied, swept, thrown or otherwise discharged onto a road or into a stormwater drain. (Category 2 offence)*

4.9 *Waste material must not be incinerated or otherwise burned in the open on any premises. (Category 2 offence)*

5 **Prescribed Requirements of the Environment Management Plan for Commercial/Residential Premises**

5.1 *Waste including hard waste, green waste and recyclable material from any premises must only be collected on such days and at such times as are prescribed by the Council. (Category 1 offence)*

~~5.22 *Hard waste, green waste and containers with waste material and recyclable material from a commercial or industrial property must not be placed outside the premises for collection earlier than two hours prior to collection or such other period prior to collection as the Council considers reasonable having regard to the nature of the property and must either be replaced within the premises or at an appropriate site within one hour of collection or such other period as the Council considers reasonable having regard to the nature of the property. (Category 3 offence). Waste material and recyclable material must be stored in a container approved by the Council for such purposes.*~~

~~5.33 *Sufficient tobacco waste containers must be provided to contain all tobacco waste generated as a result of the use or operation of the commercial premises. (Category 3 offence). Waste containers and any re-useable containers must be stored within the premises, or at an appropriate site outside of collection periods. (Category 3 offence)*~~

~~5.4 *Delivery of any to premises or collections from premises must not cause any nuisance or disturb the amenity of the area. Hard waste, green waste and containers with waste material and recyclable material from a property must not be placed outside the premises for collection earlier than 6.00pm the evening before the collection day and must be replaced within 24 hours of the collection period. (Category offence).*~~

5.5 *Hazardous waste must not be placed on the roadside for collection regardless of the type of collection service employed. (Category 1 offence)*

5.6 *Liquid waste must not be placed directly into a waste collection container. (Category 1 offence)*

5.7 *Waste material must not be poured, emptied, swept, thrown or otherwise discharged onto a road or into a stormwater drain. (Category 2 offence)*

5.8 *Waste material must not be incinerated or otherwise burned in the open on any premises. (Category 2 offence)*

6. Prescribed Requirements of the Environment Management Plan for Residential Premises

~~6.1 Hard waste, green waste and containers with waste material and recyclable material from a residential property must not be placed outside the premises for collection earlier than 6.00pm the evening before the collection day and must be replaced within 24 hours of the collection period. (Category 3 offence).~~

~~6.2 Waste material recyclable material from a residential property must be stored in a container approved by the Council such purpose. (Category 3 offence).~~

6. Council Guidelines

~~6.1 In addition to any Performance Requirements and Prescribed Requirements, any guidelines prescribed by the Council for:~~

~~6.1.1 the storage and collection of waste;~~

~~6.1.2 the burning of material in the open;~~

~~6.1.3 the use of open fires;~~

~~6.1.4 the management of noise; or~~

~~6.1.5 any other matter that it considers appropriate; or~~

~~must be complied with.~~

This document is issued by the Melbourne City Council.

.....

Michael Malouf

Chief Executive Officer

And the Melbourne City Council's duly appointed delegate.

Summary Table of Submissions Received

Environment Local Law (General Amendment) Local Law 2002 (No. 1 of 2002)

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
<p>Objectives 2. (c) amend the prescribed and performance requirements set out in the Environment Management Plan to ensure enhanced compliance and a better understanding of the Environment Management Plan.</p>	<ul style="list-style-type: none"> • The Environment Protection Authority suggest amendment of the objective to read: “Amend the prescribed and performance requirements set out in the Environment Management Plan (EMP) to ensure <u>greater awareness, understanding and compliance of the EMP.</u>” 	<ul style="list-style-type: none"> • Wording reviewed and is considered sufficient. 	<ul style="list-style-type: none"> • No change to existing provision required.
<p>2 (b) provide standards and conditions for certain activities in relation to the physical and visual environment within the municipality;</p>		<ul style="list-style-type: none"> • The National Competition Policy review has highlighted that sub-clause 2(b) provides an overview of the intended amendments rather than a clear articulation of the objectives behind Council regulation. 	<ul style="list-style-type: none"> • Delete clause 2(b).
<p>Application 4. This Local Law applies throughout the municipal district.</p>	<ul style="list-style-type: none"> • Ms Kaye Oddie suggested amending the clause to replace ‘municipal district’ with ‘municipality’. 	<ul style="list-style-type: none"> • Comments noted but no change considered necessary. 	<ul style="list-style-type: none"> • No change to existing provision required.

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
<p>8(b) Exemptions to the Local Law</p>	<ul style="list-style-type: none"> Collex want clarification on proposed new clause 1.8B of the ELL, as certain companies could gain unfair competitive advantages. 	<ul style="list-style-type: none"> Council’s granting of exemptions to the ELL will be subject to strict assessment. Imposition of times can potentially restrict competition by adversely limiting commercial operations within the municipality relative to other municipalities. The National Competition Policy review recommends: ‘to ensure consistency with NCP Principles, consideration will be needed to ensure that waste collection times do not unreasonably restrict commercial activities within the municipality.’ The clause is intended to ensure maximum flexibility in applying the provisions of the local law so that it can be appropriately applied to residential, mixed use, commercial and industrial zones within the municipality. 	<ul style="list-style-type: none"> The supporting ELL operational policy will be required to detail the mechanisms that will limit or restrict activities at particular sites.
	<ul style="list-style-type: none"> Victorian Waste Management Association wants clarification on Clause 1.8B of the ELL, as some operators could receive unfair commercial advantage. 	<ul style="list-style-type: none"> Council’s granting of exemptions to the ELL will be subject to strict assessment. Imposition of times can potentially restrict competition by adversely limiting commercial operations within the municipality relative to other municipalities. The National Competition Policy review recommends: ‘to ensure consistency with NCP Principles, consideration will be needed to ensure that waste collection times do not unreasonably restrict commercial activities within the municipality.’ 	<ul style="list-style-type: none"> No change to existing provision required.

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
<p>8(c) consequential change</p> <p>Definition of ‘appropriate site’</p>	<ul style="list-style-type: none"> Relates to comment by Collex regarding mobile garbage storage. 	<ul style="list-style-type: none"> The change in wording of clause 4.2 of the Environment Management Plan needs to be reflected in this definition. 	<ul style="list-style-type: none"> In clause 8(c) amend the definition of “Appropriate site” to read: “Appropriate site” means a site approved by the Council for the storage of waste and reusable containers.
<p>8(e)</p> <p>Definition of ‘Prescribe’</p>	<ul style="list-style-type: none"> J&A McGuire and G&K Chandler suggest the definition of “prescribe” requires a specification of the requirements, including days and times. Clause 4.1 of EMP also requires prescribed times for waste collection. 	<ul style="list-style-type: none"> The changes to the ELL give Council the flexibility to prescribe commercial collection times in particular areas if it is considered necessary through a policy mechanism. It is unwieldy to introduce times in the ELL itself since re-advertisement processes would need to be entered into each time it was proposed to change them. Imposition of times can potentially restrict competition by adversely limiting commercial operations within the municipality relative to other municipalities. The National Competition Policy review recommends: ‘to ensure consistency with NCP Principles, consideration will be needed to ensure that waste collection times do not unreasonably restrict commercial activities within the municipality.’ 	<ul style="list-style-type: none"> No change to existing provision required because there are no prescribed times for waste collection in the ELL.

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
<p>9</p> <p>What is the Environment Management Plan</p>	<ul style="list-style-type: none"> • The Environment Protection Authority suggests expansion of Clause 2.1 (b) which sets out the activities that may affect the environment: <p>Delete ‘waste management and disposal and replace with:</p> <ul style="list-style-type: none"> ▪ Waste management (solid and liquid); ▪ Waste disposal (solid and liquid); <p>And add:</p> <ul style="list-style-type: none"> • Generation of odour and fumes. 	<ul style="list-style-type: none"> • Definition of ‘waste’ under the Environment Protection Act, as referred to in the ELL is inclusive of solid and liquid wastes. • Agree to include ‘Generation of odour and fumes’ as this is the intention of the Environment Local Law. 	<ul style="list-style-type: none"> • In clause 9 insert an additional amendment after (b) as follows: <p>‘(c) in clause 2.1(b) insert a fourth dot point as follows:</p> <p>“the generation of offensive odours and fumes.”’</p>
<p>9(a) consequential change</p>	<ul style="list-style-type: none"> • Related to the Environment Protection Authority’s suggested expansion of clause 2.1 (b). 	<ul style="list-style-type: none"> • Agree, amendment required. 	<ul style="list-style-type: none"> • In clause 9(a) amend to read as follows: <p>‘(a) in clause 2.1(b) insert the word “and” after the word “noise” in the <u>third</u> dot point.’</p>

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
<p>9</p> <p>Part 2 Environment Management Plan</p>	<ul style="list-style-type: none"> J&A McGuire and G&K Chandler suggest consideration should be made to including Prescribed Requirements for permissible times/days for waste collection in Part 2 of ELL, rather than containing these requirements in the Environment Management Plan only. 	<ul style="list-style-type: none"> There are currently no times for waste collection in the ELL. If these were introduced it would make sense to put them as part of the Environment Management Plan because the generic Plan currently holds all of the other business and resident requirements. Imposition of times can potentially restrict competition by adversely limiting commercial operations within the municipality relative to other municipalities. The National Competition Policy review recommends: ‘to ensure consistency with NCP Principles, consideration will be needed to ensure that waste collection times do not unreasonably restrict commercial activities within the municipality.’ 	<ul style="list-style-type: none"> No change to existing provision required because there are no prescribed times for waste collection in the ELL.
<p>10(c)</p>	<ul style="list-style-type: none"> The Environment Protection Authority suggested amending clause 5.12A (1) (a) to read: “he or she considered the circumstances or situations to be sufficiently urgent and that the time involved or difficulties associated with the serving of a notice to comply, may place a person, animal, property, environment or thing at risk or in danger;” 	<ul style="list-style-type: none"> Not considered necessary. 	<ul style="list-style-type: none"> No change to existing provision required.
<p>11(b)</p> <p>Objectives of the Environment Management Plan</p>	<ul style="list-style-type: none"> The Environment Protection Authority suggested amending clause 2(b) to include a reference to noise as follows: “facilitate and promote responsible land, water, atmosphere, noise and waste management throughout the municipality.” 	<ul style="list-style-type: none"> Agree. Noise management is an important component of the ELL. 	<ul style="list-style-type: none"> In clause 11(b) relating to the Objectives of the Environment Management Plan, include the word “noise” after the word “atmosphere”.

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
<p>11(c) Performance Requirements of the Environment Management Plan</p>	<ul style="list-style-type: none"> Victorian Waste Management Association stated that in relation to the Performance Requirements of the Environment Management Plan, “It needs to be made clear in this section that the onus is on the owner/occupier to ensure compliance, not the contractor for example proper storage of waste material - overfilling or odour cannot be the contractor’s responsibility.” 	<ul style="list-style-type: none"> Comments noted. Agree that the onus must be on the owner/occupier to comply with the ELL. Clauses within the ELL regarding the responsibilities of the owner/occupier are considered sufficient. 	<ul style="list-style-type: none"> No change to existing provision required.
<p>11(c) Performance Requirements of the Environment Management Plan Storage of waste material</p>	<ul style="list-style-type: none"> Collex suggested that clarification is required on Clause 3.2 of the EMP. The owner/occupier of a commercial premises should be held accountable if lids are not placed correctly or if the container is overfilled (ie. this is not the contractors fault). 	<ul style="list-style-type: none"> Clause 3.2 reviewed and current wording is inclusive. All of section 3 of the Environment Management Plan places a requirement on the ‘owner/occupier’ to ‘comply with such standards’ – no reference here is made to the contractor performance. 	<ul style="list-style-type: none"> No change to existing provision required.
<p>11(c) Performance Requirements of the Environment Management Plan Control and prevention of nuisances.</p>	<ul style="list-style-type: none"> J&A McGuire and G&K Chandler state that Clause 3.7 of the Environment Management Plan is not supported as it is a ‘continuation of the archaic system of enforcement’. The performance requirements should contain objective and enforceable requirements that do not include proof of noise. 	<ul style="list-style-type: none"> The changes to the ELL give Council the flexibility to prescribe commercial collection times in particular areas if it is considered necessary through a policy mechanism. It is unwieldy to introduce times in the ELL itself since re-advertisement processes would need to be entered into each time it was proposed to change them. Currently logbooks are required as part of evidentiary requirements to prove that a nuisance has been committed. If a noise related prosecution is to be mounted this evidence is still required. 	<ul style="list-style-type: none"> No change to existing provision required.

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
<p>11(d)</p> <p>4.1 Delivering, storing and moving goods (that generates unlawful noise above the EPA Guidelines) including hard waste, green waste and recyclable material from all premises must only be loaded, moved, placed or collected on such days and as such times as are prescribed by the Council.</p>	<ul style="list-style-type: none"> • Ms Fiona McLeod recommends that if times limiting waste collection hours are introduced, these should be: <ul style="list-style-type: none"> - No earlier than 6.30am on weekdays, - No earlier than 9.00am on weekends, - No later than 11.00pm on Sunday evening 	<ul style="list-style-type: none"> • Recommended time prescriptions noted. • The changes to the ELL give Council the flexibility to prescribe commercial collection times in particular areas if it is considered necessary through a policy mechanism. It is unwieldy to introduce times in the ELL itself since re-advertisement processes would need to be entered into each time it was proposed to change them. • Imposition of times can potentially restrict competition by adversely limiting commercial operations within the municipality relative to other municipalities. • The National Competition Policy review recommends that ‘to ensure consistency with NCP Principles, consideration will be needed to ensure that waste collection times do not unreasonably restrict commercial activities within the municipality.’ 	<ul style="list-style-type: none"> • No change to existing provision required because there are no prescribed times for waste collection in the ELL.
<p>11(d)</p> <p>4.1 Delivering, storing and moving goods (that generates unlawful noise above the EPA Guidelines) including hard waste, green waste and recyclable material from all premises must only be loaded, moved, placed or collected on such days and as such times as are prescribed by the Council.</p> <p>(continued)</p>	<ul style="list-style-type: none"> • The Property Council stated that ‘In relation to the “delivery of items or things to any premises or collections from any premises” and “noise and emissions” that might cause a nuisance or disturb the amenity of an area, it is important to note that Melbourne is a 24-hour city and has a capital city role’ and that the ELL must not impact on the commercial and entertainment activities, which are at the heart of the city’s operations, particularly the CBD. 	<ul style="list-style-type: none"> • Comments noted. Agree that any change to existing arrangements must be informed by Council’s broader capital city role. • NCP report comments that to the extent that imposition of times may limit commercial activities then this represents a potential restriction on competition. 	<ul style="list-style-type: none"> • No change to existing provision required because there are no prescribed times for waste collection in the ELL.

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
	<ul style="list-style-type: none"> Collex suggested that clarification is required on 4.1 of the EMP: What is meant by ‘such days and at such times as are prescribed by Council.’ 	<ul style="list-style-type: none"> The amendments to the ELL give Council the flexibility to prescribe commercial collection times in particular areas if it is considered necessary. The ELL amendments themselves do not propose prescribed waste collection times. 	<ul style="list-style-type: none"> Delete clause 4.1 as it is covered by the proposed amendment 11(e) of the Environment Local Law (General Amendment) Local Law 2002 in relation to collection times.
<p>11(d) 4.1 Delivering, storing and moving goods (that generates unlawful noise above the EPA Guidelines) including hard waste, green waste and recyclable material from all premises must only be loaded, moved, placed or collected on such days and as such times as are prescribed by the Council. (continued)</p>	<ul style="list-style-type: none"> With respect to the potential for prescribed waste collection times to be introduced, Collex questioned the future of ‘commercial operators who cannot service clients who have a written contract’ and is concerned that these issues will be raised in court. 	<ul style="list-style-type: none"> Comments noted. If in the future Council proposes to prescribe times for commercial delivery/ pick-up, consultation will be conducted with the waste management industry. Imposition of times can potentially restrict competition by adversely limiting commercial operations within the municipality relative to other municipalities. The National Competition Policy review recommends that ‘to ensure consistency with NCP Principles, consideration will be needed to ensure that waste collection times do not unreasonably restrict commercial activities within the municipality.’ 	<ul style="list-style-type: none"> No change to existing provision required because there are no prescribed times for waste collection in the ELL.

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
	<ul style="list-style-type: none"> • Collex commented that if prescribed times are introduced, more vehicles will be introduced into the CBD over a shorter period to try to collect the customer base of each operator. This will create hazards: <ul style="list-style-type: none"> - More vehicles parked in streets awaiting entry to client premises - Diesel emissions intensified. - Parked vehicles will hamper the use of large on-site compactors. - Grease trap clean outs will be conducted at times of high pedestrian traffic and people eating breakfast. - Footpaths will have to be blocked off to protect the public whilst hoses are laid out. - Pedestrians will be forced to walk on roadways to move around operating waste vehicles. 	<ul style="list-style-type: none"> • Concerns regarding service quality, street congestion; environmental emissions; and OH&S are noted. 	<ul style="list-style-type: none"> • No change to existing provision required because there are no prescribed times for waste collection in the ELL.
<p>11(d) 4.1 Delivering, storing and moving goods (that generates unlawful noise above the EPA Guidelines) including hard waste, green waste and recyclable material from all premises must only be loaded, moved, placed or collected on such days and as such times as are prescribed by the Council.</p>	<ul style="list-style-type: none"> • J&A McGuire and G&K Chandler commented that whilst Clause 4 of the Environment Management Plan is an improvement, Clause 4.1 lacks a definition of “EPA guidelines”. 	<ul style="list-style-type: none"> • Reference to the EPA Guidelines in Clause 4.1 is not considered necessary. 	<ul style="list-style-type: none"> • Delete clause 4.1 as it is covered by the proposed amendment 11(e) of the Environment Local Law (General Amendment) Local Law 2002 in relation to collection times.

(continued)

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
	<ul style="list-style-type: none"> J&A McGuire and G&K Chandler made reference to the EPA Guidelines for Domestic Refuse Collection and Industrial Waste Collection, and requested that the Council adopt the EPA recommended list of days and times for waste collection. 	<ul style="list-style-type: none"> Comments noted. The changes to the ELL give Council the flexibility to prescribe commercial collection times in particular areas if it is considered necessary through a policy mechanism. It is unwieldy to introduce times in the ELL itself since re-advertisement processes would need to be entered into each time it was proposed to change them. 	<ul style="list-style-type: none"> No change to existing provision required.
	<ul style="list-style-type: none"> J&A McGuire and G&K Chandler noted that the Waste Management Association of Australia does not have a Policy relating to the permissible hours during which waste collection may be carried out. 	<ul style="list-style-type: none"> Noted – Council has been discussing these issues with the Victorian Waste Management Association and its members. 	<ul style="list-style-type: none"> No change to existing provision required.
<p>11(d) 4.1 Delivering, storing and moving goods (that generates unlawful noise above the EPA Guidelines) including hard waste, green waste and recyclable material from all premises must only be loaded, moved, placed or collected on such days and as such times as are prescribed by the Council. (continued)</p>	<ul style="list-style-type: none"> The Victorian Waste Management Association, on behalf of industry opposes prescribed days and times for waste collection. It is submitted that operations can take place without causing unreasonable noise. 	<ul style="list-style-type: none"> Noted. Council will consult further with the waste management industry if it proposes to introduce policy that prescribes waste collection times for any part of the municipality. Imposition of times can potentially restrict competition by adversely limiting commercial operations within the municipality relative to other municipalities. The National Competition Policy review recommends that ‘to ensure consistency with NCP Principles, consideration will be needed to ensure that waste collection times do not unreasonably restrict commercial activities within the municipality.’ 	<ul style="list-style-type: none"> No change to existing provision required because there are no prescribed times for waste collection in the ELL.

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
	<ul style="list-style-type: none"> The Victorian Waste Management Association commented that there is a contradiction between Clause 4.1 and 5.1 regarding “delivery” versus “removal or collection”. 	<ul style="list-style-type: none"> Agree that wording is not consistent. 	<ul style="list-style-type: none"> Delete clause 4.1 as it is covered by the proposed amendment 11(e) of the Environment Local Law (General Amendment) Local Law 2002 in relation to collection times.
	<ul style="list-style-type: none"> The Victorian Waste Management Association stated that “any change to a law, which may bring about a change to operational methodology, should not cause problems with safety, industrial relations, service or commercial arrangements.” 	<ul style="list-style-type: none"> Concerns regarding safety, industrial relations, service and commercial arrangements are noted. 	<ul style="list-style-type: none"> No change to existing provision required.
<p>11(d) 4.1 Delivering, storing and moving goods (that generates unlawful noise above the EPA Guidelines) including hard waste, green waste and recyclable material from all premises must only be loaded, moved, placed or collected on such days and as such times as are prescribed by the Council. (continued)</p>	<ul style="list-style-type: none"> The Victorian Waste Management Association commented that Clause 4.1 contradicts Clause 5.1, as Clause 4.1 refers to EPA Guidelines and unlawful noise, whereas Clause 5.1 does not. 	<ul style="list-style-type: none"> Agree that clarification is required for 4.1 and 5.1. To remove the contradiction it is proposed to delete Part 4 of the EMP – requirements relating to both residential and non-residential premises – but incorporate the clauses 4.1 to 4.6 under the headings: 5. Prescribed Requirements of the Environment Management Plan for Non-residential Premises. 6. Prescribed Requirements of the Environment Management Plan for Residential Premises. Note: When Clause 4 is removed, re-numbering of subsequent clauses is required. (ie. Clauses 5 and 6 above, will become 4 and 5 respectively, and so on). 	<ul style="list-style-type: none"> Delete the proposed amendment 11(d) but incorporate clauses 4.2 to 4.6 into 11(e). Delete clause 4.1 as it is covered by the proposed amendment 11(e). Subsequent re-numbering required.

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
	<ul style="list-style-type: none"> • The Victorian Waste Management Association questioned whether Council had conducted a traffic management study. • According to the Victorian Waste Management Association, the Victoria Police wish to be informed of any issues that may cause traffic concerns. 	<ul style="list-style-type: none"> • Comments noted. No traffic study has been conducted. If prescriptions on commercial delivery/ pick-up times are proposed Council will investigate traffic issues and discuss possible ramifications with the relevant authorities. 	<ul style="list-style-type: none"> • No change to existing provision required.
<p>11(d) 4.1 Delivering, storing and moving goods (that generates unlawful noise above the EPA Guidelines) including hard waste, green waste and recyclable material from all premises must only be loaded, moved, placed or collected on such days and as such times as are prescribed by the Council.</p> <p>(continued)</p>	<ul style="list-style-type: none"> • The Victorian Waste Management Association highlights concerns related to: <ul style="list-style-type: none"> - Vehicle congestion; - Increased vehicle emissions; - Access to bins; - Odour emissions from grease trap pump outs; - Safety concerns relating to grease trap pump outs; - Increased costs to all; and - the potential for complaints resulting from the proposed changes. • The Environment Protection Authority suggested deleting the heading ‘Noise Management’ before clause 4.1. 	<ul style="list-style-type: none"> • Comments noted. If prescriptions on commercial pick up/ delivery times are proposed, these issues will be examined. • Agree – heading unnecessary, however proposed amendment 11(d) is to be deleted. 	<ul style="list-style-type: none"> • No change to existing provision required. • No change to existing provision required.

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
	<ul style="list-style-type: none"> The Environment Protection Authority suggested Clause 4.1 be amended to refer to the EPA Noise Control Guidelines. 	<ul style="list-style-type: none"> Reference to the EPA Guidelines in Clause 4.1 is not considered necessary. 	<ul style="list-style-type: none"> Delete clause 4.1 as it is covered by the proposed amendment 11(e) of the Environment Local Law (General Amendment) Local Law 2002 in relation to collection times.
	<ul style="list-style-type: none"> CityWide Service Solutions is supportive of the Council's 'desire to introduce by laws to control the hours of operation relating to the waste and recycling collection'. 	<ul style="list-style-type: none"> General comments noted. 	<ul style="list-style-type: none"> No change to existing provision required.

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
<p>11(d)</p> <p>4.1 Delivering, storing and moving goods (that generates unlawful noise above the EPA Guidelines) including hard waste, green waste and recyclable material from all premises must only be loaded, moved, placed or collected on such days and as such times as are prescribed by the Council.</p> <p>(continued)</p>	<ul style="list-style-type: none"> CityWide Service Solutions state that any change to the current operational hours which restrict or change the current services provided by CityWide could result in issues relating to OH&S, service quality, industrial relations and financial implications. 	<ul style="list-style-type: none"> Concerns regarding OH&S, service quality, industrial relations and financial implications are noted. The amendments to the ELL give Council the flexibility to prescribe commercial collection times in particular areas if it is considered necessary. This would be done through establishing a Council policy on the matter. The ELL amendments themselves do not propose prescribed waste collection times. If in the future Council proposes to prescribe times for commercial delivery/ pick-up, consultation will be conducted with the waste management industry. Imposition of times can potentially restrict competition by adversely limiting commercial operations within the municipality relative to other municipalities. The National Competition Policy review recommends: ‘to ensure consistency with NCP Principles, consideration will be needed to ensure that waste collection times do not unreasonably restrict commercial activities within the municipality.’ 	<ul style="list-style-type: none"> No change to existing provision required because there are no prescribed times for waste collection in the ELL.
	<ul style="list-style-type: none"> CityWide Service Solutions requests that Council fully consult with CityWide prior to changing any operational times. 	<ul style="list-style-type: none"> Agree. If there were to be any changes to Council’s current policy on waste collection, these would be developed in consultation with waste collection companies. 	<ul style="list-style-type: none"> No change to existing provision required.

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
11(d) 4. Performance Requirements of the Environment Management Plan	<ul style="list-style-type: none"> Ms. Kaye Oddie commented that clause 4 of the Environment Management Plan should be amended to include “non-commercial” premises that do not fall within the definitions of “commercial” or “residential” (eg. Religious premises, institutional premises, private/non-commercial clubs). 	<ul style="list-style-type: none"> Agree, but no change required as proposed amendment 11(d) is to be deleted. 	<ul style="list-style-type: none"> No change to existing provision required.
11 (d) 4.2 Waste containers must be stored within the premises, or at an appropriate site outside of collection periods.	<ul style="list-style-type: none"> Collex highlighted the storage of mobile garbage bins in laneways as an issue requiring clarification. (ie. How does the ELL apply to owner/occupiers who store mobile garbage bins in laneways?) Ms Kaye Oddie suggested the need for a new heading titled ‘Waste Management’ above Clause 4.2. 	<ul style="list-style-type: none"> Proposed amendment: 4.2 of the EMP requires ‘Waste containers must be stored within the premises, or at an appropriate site outside of collection periods’. Should the storage of mobile garbage bins in laneways continue outside this criterion, there to represent non-compliance with the Environment Local Law. Owners/ occupiers will still be able to apply for a variation to the ELL to allow laneway storage in circumstances where no storage space is available within their site. The submitter’s reference to mobile garbage bins raises the issue that this clause shouldn’t only refer to “waste containers”. Council believes the inclusion in this clause of “reusable containers” will clarify the situation. Heading not required, as ‘Noise Management’ heading will be deleted. 	<ul style="list-style-type: none"> No change to existing provision required. In clause 11(d), part 4.2 include the words “and reusable” after the word “Waste”. No change to existing provision required.

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
<p>11(d)</p> <p>4.4 Liquid waste must not be poured directly into a waste collection container.</p>	<ul style="list-style-type: none"> The Victorian Waste Management Association suggests that Clause 4.4 requires further clarification: “Liquids in drums such as paint and oil should also be prevented from going into bins.” 	<ul style="list-style-type: none"> Agree. Under current provision liquid waste cannot be poured into waste containers. However a drum containing liquid waste may still be placed in a bin. The provision (4.4 of amending document) should be altered. 	<ul style="list-style-type: none"> In clause 11(d), part 4.4 replace the word “poured” with the word “placed”.
<p>11(d)</p> <p>4.5 Waste material must not be poured, emptied, swept, thrown or otherwise discharged onto a stormwater drain.</p>	<ul style="list-style-type: none"> Ms. Kaye Oddie suggests that Clause 4.5 of the Environment Management Plan – should be amended to include the integral parts of a “road” (eg. Footpath, nature strip, etc.) to comply with its full meaning as a “road reservation”. 	<ul style="list-style-type: none"> Definition of ‘road’ under the Local Government Act as referred to in the ELL is inclusive. 	<ul style="list-style-type: none"> No change to existing provision required.
<p>11(e)</p> <p>5. Performance Requirements of the Environment Management Plan for Commercial Premises</p>	<ul style="list-style-type: none"> Ms. Kaye Oddie commented that clause 5 of the Environment Management Plan should be amended to include “non-commercial” premises that do not fall within the definitions of “commercial” or “residential” (eg. Religious premises, institutional premises, private/non-commercial clubs). 	<ul style="list-style-type: none"> Agree. Wording needs to be reviewed. 	<ul style="list-style-type: none"> In clause 11(e), in the heading replace “Commercial Premises” with “Non-Residential Premises”.

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
<p>11(e)</p> <p>5.1 Waste including Hard waste, green waste material and recyclable material from any premises must only be collected on such days and at such times as are prescribed by the Council.'</p>	<ul style="list-style-type: none"> The Victorian Waste Management Association commented that there is a contradiction between Clause 4.1 and 5.1 regarding "delivery" versus "removal or collection". 	<ul style="list-style-type: none"> Agree that wording is not consistent. 	<ul style="list-style-type: none"> Delete clause 4.1 as it is covered by the proposed amendment 11(e) of the Environment Local Law (General Amendment) Local Law 2002 in relation to collection times.
<p>11(e)</p> <p>5.2</p> <p>This clause refers to the responsibilities on commercial premises for placing waste containers for collection.</p>	<ul style="list-style-type: none"> Victorian Waste Management Association recommends that responsibility needs to be clarified in Clause 5.2. 'Bins will be left out if clients are not available to put them away. The contractor cannot gain access to premises on all occasions to put bins away.' 	<ul style="list-style-type: none"> Under the generic Environment Management Plan responsibility for storing bins outside of collection times currently rests with the property owner/ occupier. Proposed amendments to the ELL do not seek to change this arrangement. 	<ul style="list-style-type: none"> No change to existing provision required.
<p>11(e)</p> <p>5.3 Sufficient tobacco waste containers must be provided to contain all tobacco waste generated as a result of the use or operation of the commercial premises.</p>	<ul style="list-style-type: none"> Eastenders 'strongly support the proposed amendments' regarding tobacco waste containers, and 'urge the earliest implementation of this provision'. The Property Council requests a definition for 'sufficient tobacco waste containers' (ie. Number, placement and type of container). 	<ul style="list-style-type: none"> General comments noted. If approved by Council, all amendments will be implemented as soon as possible. It is very difficult to define 'sufficient' in this situation other than by stating that there must be enough to contain the tobacco litter generated in the immediate vicinity of the building concerned. 	<ul style="list-style-type: none"> No change to existing provision required No change to existing provision required.

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
<p>11(e) 5.3 Sufficient tobacco waste containers must be provided to contain all tobacco waste generated as a result of the use or operation of the commercial premises.</p>	<ul style="list-style-type: none"> The Property Council requests that Council consider the costs of providing bins and the servicing and maintenance of these facilities. 	<ul style="list-style-type: none"> Noted. In many cases, existing cleaning arrangements will be adequate to deal with the amount of tobacco waste generated. 	<ul style="list-style-type: none"> No change to existing provision required.
	<ul style="list-style-type: none"> The Property Council suggests that behavioural issues need to be addressed. Council needs to work with industry and other stakeholders to educate smokers to take personal responsibility for disposing of waste. If this was done, it may not be necessary to have a section (in the ELL) specifically targeted at cigarette butts. 	<ul style="list-style-type: none"> Agree. Communication plan is currently being developed. 	<ul style="list-style-type: none"> No change to existing provision required.
<p>11(e) 5.3 Sufficient tobacco waste containers must be provided to contain all tobacco waste generated as a result of the use or operation of the commercial premises.</p>	<ul style="list-style-type: none"> The Property Council commented that tobacco waste is also a health issue and that ‘the provision of smoking facilities, including disposal options could be viewed as condoning smoking, thus becoming a potential liability’. These provisions also need to ‘support an organisation’s existing Occupational Health and Safety policies’. 	<ul style="list-style-type: none"> Noted. Council experience suggests that there may be no relationship between where people smoke and the availability of litter containers but this issue will be monitored. 	<ul style="list-style-type: none"> No change to existing provision required.
	<ul style="list-style-type: none"> Ms Kaye Oddie noted that it is ‘pleasing to see the expansion of the provisions and the tightening of requirements’ in the ELL. ‘Of particular note is the inclusion of tobacco waste.’ 	<ul style="list-style-type: none"> Comments noted. 	<ul style="list-style-type: none"> No change to existing provision required.

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
<p>11(e) 5.4 This clause refers to control and prevention of nuisances.</p>	<ul style="list-style-type: none"> J&A McGuire and G&K Chandler state that the clause achieves very little, as it reverts to the requirement of proof of nuisance to be effective. 	<ul style="list-style-type: none"> Comments noted and agreed. Amended Clause 5.4 is considered to be ineffective and impractical to implement. The National Competition Policy (NCP) review highlighted that clause 5.4 is “extremely onerous and likely to restrict a significant amount of commercial deliveries within the municipality.” As the ELL already contains a definition of nuisance, “then additional clarification seems superfluous.” The NCP review advises that “this amendment is likely to restrict competition and may potentially be in breach of NCP principles”. The NCP review recommends deleting the words: “For the purposes of clause 3.7 and 5.4, the amenity of the area will be considered to be disturbed where any relevant noise can be heard in a habitable room in a residential premises regardless of whether any door or window giving access to the room is open.” 	<ul style="list-style-type: none"> In clause 11(e) delete the second paragraph of clause 5.4.
<p>11(e) 6.2 ‘Waste material recyclable material from a residential property must be stored in a container approved by the Council such purposes.’</p>	<ul style="list-style-type: none"> Ms Kaye Oddie suggested inserting the words ‘and’ before the word recyclable and ‘for’ before the word ‘such’. Amend the words ‘container’ and ‘purpose’ to plural. 	<ul style="list-style-type: none"> Agree. 	<ul style="list-style-type: none"> In clause 11(e) amend the clause to read as follows: “6.2 Waste material and recyclable material must be stored in a container approved by the Council for such purposes.”

Other Comments

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
3.1	<ul style="list-style-type: none"> Carlton Residents Association suggested amending the clause to “his premises” to make gender neutral. 	<ul style="list-style-type: none"> Not part of amendment but will take into account in future. 	<ul style="list-style-type: none"> No change at this stage
General	<ul style="list-style-type: none"> The Carlton Residents Association generally ‘would like to commend the planned changes’ with the proviso that the next review result in the local laws being communicated ‘more effectively in plain English’. 	<ul style="list-style-type: none"> General comments noted. 	
General	<ul style="list-style-type: none"> The Carlton Residents Association suggested focus group discussions would have been useful for generating more ideas. 	<ul style="list-style-type: none"> Comment noted. 	<ul style="list-style-type: none"> Council will consider the use of focus groups in future Local Law reviews.
General	<ul style="list-style-type: none"> Collex commented that ‘Onus surely must be on the owner/occupier of the premises to be consistent with the ELL’ and that the ‘only variance will occur when the operator does not have any access to the clients premises to replace the container’. 	<ul style="list-style-type: none"> Comments noted. Agree that the onus must be on the owner/occupier to comply with the ELL. Clauses within the ELL regarding the responsibilities of the owner/occupier are considered sufficient. 	<ul style="list-style-type: none"> No change to existing provision required.
General	<ul style="list-style-type: none"> Collex is supportive of Council’s desire to ‘effectively address the issue’, but ‘more time is needed in this process, to provide an amenable outcome for all parties’. 	<ul style="list-style-type: none"> General comments noted. Council believes that sufficient time was made available for all stakeholders in the submission process. Council is committed to further consultation with waste contractors if specific waste collection times are proposed. 	<ul style="list-style-type: none"> No change to existing provision required.
General	<ul style="list-style-type: none"> J&A McGuire and G&K Chandler stated that the requirement for residents to keep logbooks (to record noise events) ‘is entirely unsatisfactory’. 	<ul style="list-style-type: none"> Currently logbooks are required as part of evidentiary requirements to prove that a nuisance has been committed. If a noise related prosecution is to be mounted this evidence is still required. 	<ul style="list-style-type: none"> No change to existing provision required.

Proposed Amendment No. and Description	Submissions	Analysis	Recommendation
General	<ul style="list-style-type: none"> J&A McGuire and G&K Chandler stated that Council's method of dealing with noise issues 'as part of an overall Environment Local Law is' supported, provided it includes clearly stated times and days for the permitted collection of rubbish' and 'effective and workable enforcement mechanisms'. Incorporation of Environment Management Plan into ELL is a good way of codifying the necessary regulation. 	<ul style="list-style-type: none"> General comments noted. Council has not resolved to prescribe times when waste collection cannot take place but the ELL changes provide a mechanism for introducing these if deemed necessary. 	<ul style="list-style-type: none"> No change to existing provision required.
General	<ul style="list-style-type: none"> The Property Council stated that generally, the proposed changes fail to develop an 'integrated approach that will tackle the problem of butt litter across the areas of education, enforcement, infrastructure, incentives and communications.' 	<ul style="list-style-type: none"> Comment noted. Council is developing a separate communication plan regarding cigarette litter that is being integrated with existing enforcement and education. 	<ul style="list-style-type: none"> No change to existing provision required.
General	<ul style="list-style-type: none"> The Property Council stated that it must be recognised that the city is dynamic place with constant change. Building activity, which is seen as a key indicator of economic growth, should not be put at risk by undue regulation. 	<ul style="list-style-type: none"> Comments noted. Agree that economic growth is important to the municipality. 	<ul style="list-style-type: none"> No change to existing provision required.
General	<ul style="list-style-type: none"> Ms Kaye Oddie questioned the next stage of the process and the estimated timeframe in approving the ELL. 	<ul style="list-style-type: none"> Questions noted. 	<ul style="list-style-type: none"> The timeframe for completion of the review is 30 June 2003.
General	<ul style="list-style-type: none"> The EPA has 'no objection to the proposed amendments' however has identified opportunities to 'strengthen' the local law. (See individual comments above). 	<ul style="list-style-type: none"> Support noted. 	<ul style="list-style-type: none"> No change to existing provision required.

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Prepared for the
Melbourne City Council

**Proposed Amendments to the
Activities Local Law and the
Environment Local Law**

National Competition Policy

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Abbreviations

CoAG	Council of Australian Governments
CPA	Competition Principles Agreement
MCC	Melbourne City Council
NCP	National Competition Policy
NCC	National Competition Council

Executive Summary

The Melbourne City Council (MCC) has committed to reviewing the *Activities Local Law 1999* and the *Environment Local Law 1999* every two years to ensure that the Local Laws remain current and responsive to community needs and activities.

Following an extensive review and consultation process, the MCC prepared a number of amendments to the *Activities Local Law (General Amendment) Local Law 2002* and the *Environment Local Law (General Amendment) Local Law 2002*. As part of the review process, the MCC engaged The Allen Consulting Group in March 2003 to conduct a National Competition Policy (NCP) review of these amendments.

The Allen Consulting Group's assessment has highlighted that some of the stated objectives of the Local Laws provide an overview of the intended amendments rather than a clear articulation of the objectives behind MCC regulation. To be consistent with NCP requirements, the objectives of the Local Laws should be amended to reflect only the true objectives of the proposed amendments.

RECOMMENDATION

The objectives of the Local Laws should be amended to delete the components within sub-clause 2(a) and (c) of the Activities Local Law, and sub-clause 2(b) of the Environment Local Law that refer to means rather than objectives.

In relation to restrictions on competition, The Allen Consulting Group found that the *Activities Local Law* contains three clauses that may potentially restrict competition, sub-clause 15(d), which restricts building works between certain hours, sub-clause 17 (b) which prohibits repairing vehicles on a road except under specific circumstances, and sub-clause 17 (c) which clarifies what constitutes a disturbance to the amenity resulting from a delivery. The proposed amendments in sub-clause 17 (c) are mirrored in the sub-clause 11 (e) in the proposed amendments to the *Environment Local Law*.

As the proposed amendments to the Local Laws are likely to apply uniformly to all commercial activities they represent a potential competitive restriction only for commercial activities that are competing across municipalities not within the municipality of the MCC. Therefore, while sub-clause 17 (b) may impose additional costs on road-side repair businesses it is unlikely to have any significant impact on competition for these services within the MCC municipality.

The restrictions on building works contained in sub-clause 15(d) could potentially restrict competition, with a key stakeholder expressing a desire for Saturday work to be able to commence at 7 am rather than 8 am. However, as businesses can apply for a permit to allow for building works outside of the proposed times and given the relative lack of concern raised during stakeholder consultation, The Allen Consulting group has concluded that this sub-clause is not a material restriction on competition.

Furthermore, The Allen Consulting Group believes that the costs associated this sub-clause are likely to be small and are unlikely to exceed the benefits to residents of protecting their amenity from noise and disturbances from building works.

In relation to noise disturbances caused by deliveries, The Allen Consulting Group does not believe that the public benefit test justifies the proposed clarification of what constitutes a disturbance contained in sub-clause 17 (c) of the *Activities Local Law* and sub-clause 11 (e) of the *Environment Local Law*. As nuisance is already defined in both Local Laws and given the proposed amendment goes beyond any ordinary common meaning of 'nuisance' The Allen Consulting Group has concluded that the proposed clarification is superfluous and unnecessarily restrictive on commercial delivery activities.

RECOMMENDATION

The MCC should delete from sub-clause 17 (c) of the proposed amendments to the Activities Local Laws the words "For the purposes of clause 3.7 and 5.4, the amenity of the area will be considered to be disturbed where any relevant noise can be heard in a habitable room in residential premises regardless of whether any door or window giving access to the room is open." And the MCC should delete from sub-clause 11 (e) of the proposed amendments to the Environment Local Laws the words, "For the purposes of clause 11.8, the amenity of the area will be considered to be disturbed where any relevant noise can be heard in a habitable room in residential premises regardless of whether any door or window giving access to the room is open."

The Allen Consulting Group has concluded that the remaining amendments to the *Activities Local Law* and the *Environment Local Law* are consistent with NCP principles. The Group does however, recognise that many of the proposed amendments impose costs on commercial operations in the MCC municipality. While regulatory costs of themselves do not necessarily restrict competition, should they be excessive then the Local Laws will reduce the benefits associated with competition. As the majority of these costs relate to the cost of acquiring a permit, which can range from \$50 to \$150 or from \$5 plus per day depending on the permit, these costs are not considered sufficiently significant to warrant further amendment to the Local Laws.

Both the *Activities Local Law* and the *Environment Local Law* afford significant discretion to the MCC and the administration of that discretion could potentially impose restrictions on competition. For example, restricting collection and delivery times beyond current proposed times could significantly impact on commercial businesses within the CBD and impose greater costs than benefits, ie it may not pass the NCP public benefit test. To be consistent with NCP principles, the administration of the Local Laws, including discretion relating to collection and delivery times, must not restrict competition or if restrictions are necessary then the benefits must outweigh the costs.

RECOMMENDATION

The MCC should ensure that discretion afforded by the proposed amendments to the Activities Local Laws and the Environment Local Laws is exercised in a manner consistent with NCP Principles.

The Allen Consulting Group has concluded that:

- the objectives of the Local Laws should be amended to reflect objectives rather than means;
- that clarification of what constitutes a 'disturbance to the amenity resulting from deliveries' should be deleted from the proposed amendments to both Local Laws;
- all other proposed amendments do not contain any material restrictions on competition; and
- discretion afforded by the proposed amendments should also be administered in a manner which is consistent with NCP principles.

Chapter One

Introduction

This chapter provides background information on the Activities Local Law and the Environment Local Law and background information on the terms of reference for this review.

1.1 Background to Local Laws

In 1997, the Melbourne City Council (MCC) began a review of all of its Local Laws. In 1998, the framework for the review was broadened to ensure the review was carried out in accordance with *State Government Guidelines for Review of Local Law Restrictions on Competition, and the National Competition Policy Principles*.¹

In early 1999, the review resulted in twenty-five Local Laws being repealed and replaced by the *Activities Local Law 1999* and the *Environment Local Law 1999*.

At the time of the making the *Activities Local Law* and the *Environment Local Law* the MCC committed to reviewing the Local Laws every two years to ensure that the laws remain current and responsive to community needs and activities.

In May 2002, the MCC reconvened the original Steering Committee, which was established in 1998, to oversee the review of the Local Laws. Additionally, both Local Laws were referred to a Submissions Committee as part of the statutory submissions process required to be undertaken when Local Laws are proposed.² The Steering Committee found that the *Activities Local Law* was seen as effective but that the following areas were identified for revision:

- behaviour – relating to protection of trees and camping in public places;
- consumption of alcohol – relating to alcohol consumption in prescribed places;
- street trading and special events – relating to the requirement for permits;
- building works – relating to nuisance abatement and the specification of exclusion times for building works;
- dilapidated, dangerous and unsightly premises – relating to remedying building in a dilapidated state
- collection of waste from commercial premises and delivery times – relating to the times in which collection can take place; and
- enforcement and penalties.

¹ As advised by MCC in Agenda Item 5.4, Planning, Development and Services Committee Report Cover Sheet: Activities Local Law Review 2002, 5 December 2002.

² This process was conducted pursuant to the provisions of section 223 of the *Local Government Act 1989*.

At the same time, the Submissions Committee for the *Environment Local Law (General Amendment) Local Law 2002* considered written submissions received on proposed amendments to the *Environment Local Law* in relation to:

- cigarette litter – relating to tobacco waste containers;
- waste management – relating to storage of waste;
- noise management – relating to limits on noise from commercial activities; and
- controls on deliveries and collections – relating to exclusion times.

1.2 Background to the National Competition Policy Review

As part of the review of the *Activities Local Law (General Amendment) Local Law 2002* and the *Environment Local Law (General Amendment) Local Law 2002*, the MCC engaged The Allen Consulting Group in March 2003 to conduct a National Competition Policy (NCP) review. Specifically, the MCC has asked The Allen Consulting Group to undertake the following tasks:

- review the proposed amendments to determine if any of the amendments 'restrict competition';
- if so, advise as to the level of review required to be undertaken; and
- undertake any necessary review.

These terms of reference are address in the following chapters.

Chapter Two

Principles Underlying this National Competition Policy Review

This chapter outlines the National Competition Policy principles and the framework used to assess the proposed amendments to the Local Laws.

In April 1995, the Commonwealth, State and Territory Governments signed the inter-governmental *Competition Principles Agreement (CPA)*, committing themselves to ensuring that new and existing legislation does not impose undue competitive restrictions:

“The guiding principle is that legislation (including Acts, enactments, Ordinances or regulations) should not restrict competition unless it can be demonstrated that:

- a) the benefits of the restriction to the community as a whole outweigh the costs; and
- b) the objectives of the legislation can only be achieved by restricting competition.”

Sub-cl. 5(1) *Competition Principles Agreement*

The *CPA* extends to all forms of legislation, including the proposed amendments to the Melbourne City Council’s *Activities Local Law* and the *Environment Local Law*.

The ‘competition test’ is intended to establish whether restrictions on competition remain necessary, through an assessment of the costs and benefits of current and alternative means of achieving policy objectives.

As the competition test is built on the presumption that restrictions to competitive economic behaviour impose costs on the community, the burden of proof is on the MCC, and those who support the competitive restrictions, to establish the public interest case for the retention or enactment of legislation which restricts competition.³

To this end, NCP acknowledges that competition is not an end in itself; that while, in general, the introduction of competition will deliver benefits to the consumer, there are situations where community welfare will be better served by not effecting particular competition reforms. That is, competition is to be implemented to the extent that the benefits that will be realised from competition outweigh the costs.

Sub-clause 1(3) of the *CPA* provides for considerations other than strictly economic criteria in assessing public benefit in circumstances where, on balance, there is a net benefit for the community. It sets out the circumstances in which the weighing up process is called for, and also some of the factors which need to be taken into account in making the decision:

³ See Independent Committee of Inquiry, *National Competition Policy*, AGPS, Canberra, 1993, p.206.

“Without limiting the matters that may be taken into account, where this Agreement calls:

- (a) for the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action; or
- (b) for the merits or appropriateness of a particular policy or course of action to be determined; or
- (c) for an assessment of the most effective means of achieving a policy objective;

the following matters shall, where relevant, be taken into account:

- (a) government legislation and policies relating to ecologically sustainable development;
- (b) social welfare and equity considerations, including community service obligations;
- (c) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- (d) economic and regional development, including employment and investment growth;
- (e) the interests of consumers generally or of a class of consumers;
- (f) the competitiveness of Australian businesses; and
- (g) the efficient allocation of resources.”

This is called the ‘public interest’ test. The National Competition Council (NCC) emphasises that the public interest test is not exclusive or prescriptive. Rather, it provides a list of indicative factors the MCC could look at in considering the benefits and costs of particular actions, while not excluding consideration of any other matters in assessing the public interest.

If, on balance, the costs of restrictions on competition in the legislation outweigh the benefits then the restrictive legislative provisions should not be retained. Even if, on balance, there are net benefits arising from restrictions, the legislation should only be retained in its current form if its objectives cannot be achieved more efficiently through other means, including non-legislative approaches.

Chapter Three

Objectives of Local Laws

This chapter clarifies the objectives of the Local Laws in the context of the National Competition Policy.

3.1 Stated Objectives

A key component of the NCP review is to clarify the objectives of the Local Laws. This clarification will inform the NCP review of the intensions of the provisions contained within the Local Laws and should restrictions be identified it will allow for an assessment of alternatives to achieve MCC's policy objectives without restricting competition.

The stated objective of the *Activities Local Law (General Amendment) Local Law 2002* is to:

- preserve the visual amenity of the municipality district by controlling and managing those activities that may result in buildings being defaced or damaged;
- protect and prevent damage to trees on or in public places;
- prevent and suppress nuisances which may adversely affect the enjoyment of life within the municipal district by regulating and managing noise, refuse and other issues resulting from building works and other commercial activities; and
- provide for the peace, order and good governance of the municipality.

The stated objectives of the *Environment Local Law (General Amendment) Local Law 2002* are to:

- control protect and maintain the amenity of the Municipality;
- provide standards and conditions for certain activities in relation to the physical and visual environment within the municipality;
- amend the prescribed and performance requirements set out in the Environment Management Plan to ensure enhanced compliance and a better understanding of the Environment Management Plan; and
- provide for the peace, order and good government of the municipality.

3.2 Appropriateness of the Stated Objectives

For the purpose of the NCP review, it is not sufficient to simply consider the stated objectives as the true objectives. The rationale for government intervention and ruling making that restricts competition should be designed to address market failure. For example, The Council of Australian Governments (CoAG) has publicly stated that government interventions in markets should generally be restricted to situations of market failure and

that each regulatory regime should be targeted on the relevant market failure or failures.⁴

Market failures may arise under a number of conditions including:

- *public goods* — these goods will tend to be under-produced because they are non-excludable (ie, people who have purchased the good cannot stop others using it up) and non-rivalrous (ie, the good is not used up with use). Common examples include aspects of the natural environment and national defence;
- *externalities* — these are positive or negative impacts of market transactions which are not reflected in prices, and so lead to non-optimal levels of production and consumption. In effect, externalities are impacts on unrelated third parties. Pollution is commonly cited as a negative externality (because third parties suffer from its production) and education is often cited as an example of a positive externality (because third parties can benefit from another person's increased knowledge);
- *natural monopolies* — where the costs of establishment, resources or infrastructure mean that setting up competition is socially wasteful. Because a natural monopoly is socially optimal but not necessarily in the interests of all players in the market, governments may decide to regulate in the public interest; and
- *information asymmetries* — where information is not evenly distributed throughout the community. Traditionally this has meant that firms have had complete (or high) information and consumers have correspondingly very little.

The Local Laws are designed to address externalities associated with use of public places, the environment, the visual or aural amenity of residents and businesses within the municipality as well as information asymmetries. For example, addressing externalities by preventing damage to trees, maintaining peace and order, or suppressing nuisances that may adversely affect enjoyment of life and reducing information asymmetries by outlining in detail the MCC's *Environment Management Plan*.

While the objectives of the Local Laws are relatively straight-forward, The Allen Consulting Group has often found through conducting numerous NCP reviews that stated objectives can sometimes refer to means rather than articulating true objectives. This is particularly so for the *Activities Local Law* which discusses means in:

- sub-clause 2(a) "...by controlling and managing those activities that may result in *buildings* being defaced or damaged."; and
- sub-clause 2(c) "... by regulating and managing noise, refuse and other issues resulting from *building works* and other commercial activities."

This is also the case for the *Environment Local Law*, which discusses means in:

- sub-clause 2(b) "provide standards and conditions for certain activities in relation to the physical and visual environment within the *municipality*."

⁴ Council of Australian Governments, *Report of Task Force on Other Issues in the Reform of Government Trading Enterprises*, released as part of the first CoAG communique, 1991, p.22.

To be consistent with NCP requirements, the objectives of the Local Laws should be amended to reflect the true objectives of the proposed amendments. The objectives should not overview the intended amendments to the Local Laws but rather they should provide a clear articulation of the objectives behind MCC regulation.

RECOMMENDATION

The objectives of the Local Laws should be amended to delete the components within sub-clauses 2(a) and (c) of the Activities Local Law, and sub-clause 2(b) of the Environment Local Law that refer to means rather than objectives.

If desired, alternative wording could be incorporated to replace the deleted sections, so long as any such additions reflected the true objectives of the proposed amendments.

Chapter Four

Assessments of Restrictions on Competition

This chapter provides an assessment of restrictions on competition contained within the proposed amendments to the Local Laws.

4.1 Potential Restrictions on Competition

The NCP competition test is intended to establish whether restrictions on competition resulting from the proposed amendments to the Local Laws are necessary and whether the benefits to the community associated with those restrictions outweigh the costs. To do this requires an assessment of actual restrictions on competition contained within the proposed amendments to the Local Laws.

In general, the Local Laws could be said to restrict competition if they satisfy the criteria set out in Table 4.1, which also highlights our preliminary assessment of restrictions contained within the Local Laws.

Table 4.1

POTENTIAL RESTRICTIONS ON COMPETITION RESULTING FROM LOCAL LAWS

Do the Local laws ...	Activities Local Laws	Environment Local Law
establish an outright prohibition of business activity?	No	No
establish or protect a monopoly?	No	No
provide for the licensing or registration of participants in a business activity?	Requires permits for tree removal, special events, street lighting, and discharge of material	No
allocate quotas/franchises?	No	No
require specific quality/technical standards for specific equipment?	No	No
establish price controls (including direct and indirect controls)?	No	No
nominate preferred customers or suppliers?	No	No
confer differential benefits on particular persons/entities?	No	No
provide for natural resource access/licensing?	No	No
establish participation limits (on overseas/interstate participants)?	No	No
establish barriers to entry or exit (often through licensing/registration)?	Require permits for certain activities	No
impose restrictions on business structure, form or ownership?	No	No
impose restrictions on business conduct?	Imposes regulatory costs on business activities	Imposes regulatory costs on business activities
impose potential impediments to innovation (eg, through quality standards)?	No	No
promote inefficient cross-subsidies between classes of goods and services?	No	No
promote efficiency losses through excessive regulation?	No	No

Source: The Allen Consulting Group

Table 4.1 highlights that the proposed amendments to the Local Laws contain a number of potential restrictions on competition. These restrictions require further assessment to consider whether they represent real or apparent restrictions and if real whether they represent minor or major restrictions on competition.

4.2 Activities Local Law

A number of clauses within the *Activities Local Law (General Amendment) Local Law 2002*, explicitly limit the scope of commercial activity within the municipality:

- sub-clause 15(d) states that except in the case of an emergency or in accordance with a permit, a person must not carry out building works or cause building works to be carried out unless the works are carried out on any day between the hours of: (i) 7.00am and 7.00pm Monday to Friday; and (ii) 8.00am and 3.00pm on Saturday; and
- sub-clause 17(b) states that, “Repairing Vehicles (11.2A) A person must not dismantle, paint, carry out maintenance or repair a vehicle on a road except where it is necessary to enable the vehicle to be removed or so that it can be driven away within one hour of a request by an authorised officer.”

To the extent that these clauses prohibit or limit periods in which commercial businesses can carry out building works then they restrict competition and may potentially be in breach of NCP principles.

A number of clauses within the *Activities Local Law (General Amendment) Local Law 2002* require permits to be obtained before certain activities, some of which may be commercial activities, can be performed. Sub-clauses include:

- | | |
|------------------|---|
| sub-clause 9(b) | “Protection of Trees — Unless in accordance with a permit a person must not in or on Council Land destroy, damage, remove or otherwise interfere with a tree or allow any person to destroy, damage, remove or otherwise interfere with a tree.” |
| sub-clause 12(b) | “Permit required for filming and special events — 5.6A Unless in accordance with a permit, a person must not in or on a road or Council Land: (a) conduct any special event or (b) conduct any filming where the film is for a commercial purpose, public exhibition or as part of a course conducted by a tertiary institution.” |
| sub-clause 13(a) | Unless in accordance with a permit a person must not install, alter or remove: (i) a pavement light; (ii) any object including a sign, tactile indicator or planter box on in or over a road; (iii) a fence, gate or retaining wall on or in a road; or (iv) an encroachment. |

sub-clause 17(a) Unless in accordance with a permit; or to do so is specifically authorised by and in accordance with legislation or approval issued under it, a person must not allow any material including dust, water, mud, concrete, paint, oil or chemicals to be blown, conveyed, deposited or discharged in, on or across any public place (whether from a building in the course of construction, alteration, demolition or otherwise).

Requiring a permit does not necessarily constitute a restriction on competition. However, if the granting of such permits were limited in number, for example, if there is a quota, or the permits are issued in a discriminatory fashion (eg, only certain businesses located inside CBD could apply), then these clauses could result in a restriction on competition.

As The Allen Consulting Group is not aware of administrative measures in relation to the issuing of permits that would restrict competition, we conclude that these sub-clauses do not in themselves restrict competition, particularly since the cost of acquiring a permit ranges from \$50 to \$150 or from \$5 plus per day depending on the permit. However, it is incumbent on the MCC to ensure that the issuing of permits does not result in unfair restrictions or advantages to competitors undertaking or intending to undertake commercial activities within the MCC municipality.

In addition to discretion afforded in issuing permits, the *Activities Local Law (General Amendment) Local Law 2002* also affords the MCC significant discretion in areas that could result in restrictions on competition. For example:

- Sub-clause 17(b) which prohibits causing excessive noise. Specifically it states, "Unless specifically authorised by and in accordance with legislation, a person must not in, on or over a public place or in premises adjacent to such a public place make or allow the making of a noise which:
 - (a) is capable of interfering with the reasonable comfort of any person who may be in the vicinity in that public place; or
 - (b) at a point:
 - (i) if the noise comes from premises adjacent to a public place:
 - a. not less than 3 metres from but outside and adjacent to the frontage of the premises; or
 - b. outside but near the rear boundary of the premises; or
 - c. outside but near the side boundary or extension of the side boundary of the premises; or
 - (ii) if the noise comes from a public place, not less than 3 metres from the source of the noise,

exceeds the designated sound level when measured on sound level measuring equipment."

- Sub-clause 17 (c) which states that waste including hard waste, green waste and recyclable material from any premises must only be collected on such days and at such times as are prescribed by the MCC and that delivery of any items or things to any premises or collections from any premises must not cause any nuisance or disturb the amenity of the area.
- Sub-clause 18(a) which states that the MCC may by written notice exempt any person or class of persons from the requirement to have a permit, either generally or at specified times; an exemption may be granted subject to conditions; a person must comply with the conditions of an exemption; and an exemption may be cancelled or corrected as if it were a permit.

Discretion afforded by the *Activities Local Law* could restrict competition if implemented in a discriminatory manner. As with issuing permits, the MCC will need to ensure that discretion afforded by the Local Laws is used in accordance with NCP principles.

By way of example, the MCC has advised that the times it proposes for collection and delivery are likely to be 6am to 11pm on weekdays and Saturday and between 8am and 11pm on Sunday and public holidays. These times are consistent with current residential waste collection, which is conducted by CityWide. To the extent that these times limit commercial activities, then this represents a restriction on competition and may potentially be in breach of NCP principles.

Finally, sub-clause 17 (c) provides for an additional definition of 'nuisance' by clarifying what constitutes a disturbance of the amenity resulting from deliveries to premises.

Sub-clause 17 (c) The delivery of any items or things to any premises or collections from any premises must not cause any nuisance or disturb the amenity of the area. Where the amenity of the area will be considered to be disturbed if any relevant noise can be heard in a habitable room in residential premises regardless of whether any door or window giving access to the room is open.

The Allen Consulting Group believes that the clarification of what constitutes a disturbance is extremely onerous and is likely to restrict a significant amount of commercial deliveries within the municipality. That is, the proposed amendments contain a threshold that only requires a noise to be heard in a residential premises regardless as to whether any door or window is open. It is therefore likely to result in a significant number of deliveries being in breach of the Local Law. This amendment is likely to restrict competition and may potentially be in breach of NCP principles.

4.3 Environment Local Law

The proposed amendment to the *Environment Local Law (General Amendment) Local Law 2002*, contain two clauses that afford the MCC discretion that could potentially restrict competition.

Sub-clause 11(d) and (e) of the *Environment Local Law (General Amendment) Local Law 2002* states that noise must be managed such that:

- delivering, storing and moving goods (that generates unlawful noise above the Environment Protection Authority guidelines) including hard waste, green waste and recyclable material from all premises must only be loaded, moved, placed or collected on such days and at such times as are prescribed by the MCC;
- waste including hard waste, green waste material and recyclable material from any premises must only be collected on such days and at such times as are prescribed by the MCC;
- hard waste, green waste and containers with waste material and recyclable material from a commercial or industrial property must not be placed outside the premises for collection earlier than two hours prior to collection or such other period prior to collection as the MCC considers reasonable having regard to the nature of the property and must either be replaced within the premises or at an appropriate site within one hour of collection or such other period as the MCC considers reasonable having regard to the nature of the property;
- the delivery of any items or things to any premises or collections from any premises must not cause any nuisance or disturb the amenity of the area; and
- where the amenity of the area will be considered to be disturbed if any relevant noise can be heard in a habitable room in residential premises regardless of whether any door or window giving access to the room is open.

As with some of the proposed amendments to the *Activities Local Law*, discretion is afforded to the MCC to determine the times in which waste collections can be made. To the extent that these times limit commercial activities, then this represents a potential restriction on competition. To ensure consistency with NCP principles, consideration will be needed to ensure that the waste collection times do not unreasonably restrict commercial activities within the municipality.

Also, the proposed clarification contained in sub-clause 11 (e) of what constitutes a disturbance of the amenity is extremely onerous and is likely to restrict a significant amount of commercial deliveries within the municipality. As with the proposed amendment to the *Activities Local Law*, this amendment is likely to restrict competition and may potentially be in breach of NCP principles.

4.4 Cost and Benefits of Restrictions

The *Activities Local Law* contains three sub-clauses that may potentially restrict competition:

- sub-clause 15(d) which restricts building works between certain hours;
- sub-clause 17 (b) which prohibits repairing vehicles on a road except under specific circumstances; and
- sub-clause 17 (c) which clarifies what constitutes a disturbance resulting from deliveries.

The *Environment Local Law* contains one sub-clause that is likely to restrict competition:

- sub-clause 11 (e) which clarifies what constitutes a disturbance resulting from deliveries.

The Allen Consulting Group understands that these sub-clauses will apply uniformly to all commercial activities and hence only represent a potential competitive restriction for commercial activities that are competing across municipalities not within the municipality of the MCC.⁵

For building works, the restrictions on work hours may impose a cost on building developers and potentially limit work hours and overtime for construction workers over a specific time period. The degree to which the times specified in sub-clause 15(d) represent a real and significant restriction on competition will depend on the extent to which building work is diverted away from the CBD to other areas of Melbourne or interstate.

The Allen Consulting Group's review of stakeholder consultation as part of the review of the *Activities Local Law* has not highlighted any such diversion. However, the Master Builders Association of Victoria has expressed a preference for Saturday work to be able to commence at 7 am rather than 8 am. Of concern to the Master Builders Association is that there may be additional costs for developers and the community if builders are forced to pay for an hour of idle time for workers who usually start at 7 am. Yet this concern is not specific to the proposed amendments, as sub-clause 15(d) is simply a restatement, in inclusive rather than exclusive terms, of the existing Local Law. As such, the proposed amendment does not represent an additional burden on business and if desired, businesses can apply for an out-of hours permit that would allow for building works outside of the proposed times in sub-clause 15(d).

While The Allen Consulting Group believes that sub-clause 15(d) is a potential restriction on competition, the relative lack of concern raised during stakeholder consultation and the potential to obtain an exemption from the restriction mean that the costs associated this sub-clause are likely to be small and are unlikely to exceed the benefits to residents of protecting amenity from noise and disturbances from building works.

For sub-clause 17 (b), which prohibits repairing vehicles on a road except under specific circumstances, The Allen Consulting Group believes that it also is unlikely to have any significant impact on competition. Commercial road side repair businesses tend to conduct their business activities at the customer's premises and as sub-clause 17 (b) will be applied uniformly, it will not restrict or disadvantage any business activity within the municipality. While it may add to the cost of these business activities, regulatory costs are not of themselves a restriction on competition. Provided costs are not excessive then this sub-clause is consistent with NCP principles.

For sub-clause 17 (c) of the *Activities Local Law* and sub-clause 11 (e) of the *Environment Local Law*, which both set out what constitutes a disturbance resulting from deliveries to premises, The Allen Consulting Group believes that this definition is extremely onerous and likely to unnecessarily restrict competition. The proposed amendments require only that noise be heard in residential premises for a breach of both Local Laws, regardless of whether

⁵ Should the MCC wish to apply the sub-clauses on a region by region basis within the municipality then consideration will be needed that such discretion is consistent with NCP principles.

the doors or windows are closed or open. Yet given that both Local Laws already contain a definition of nuisance, then additional clarification seems superfluous.

For the other proposed amendments to the Activities Local Law and the Environment Local Law, The Allen Consulting Group does not believe that there are any specific clauses that restrict competition. The Group does stress though, that many of the proposed amendments impose costs on commercial operations in the MCC municipality. Should these cost be excessive and unnecessary then they may adversely affect the efficiency of the commercial operations, which in turn may reduce the benefits associated with competition.

As already discussed, the proposed amendments afford significant discretion to the MCC and the administration of that discretion could potentially impose restrictions on competition. For example, restricting collection and delivery times beyond the current proposal of 6am to 11pm on weekdays and Saturday and between 8am and 11pm on Sunday and public holidays could significantly impact on commercial businesses within the CBD. Furthermore, it is unlikely that such restrictions on collection and delivery would pass the NCP public benefit test. To be consistent with NCP principles, the administration of the Local Laws, including discretion relating to collection and delivery times, must not restrict competition or if restrictions are necessary then the benefits must outweigh the costs.

RECOMMENDATION

The MCC should ensure that discretion afforded by the proposed amendments to the Activities Local Laws and the Environment Local Laws is exercised in a manner consistent with NCP Principles.

4.5 Offsetting Public Interest Benefit

The primary concern raised by stakeholders throughout the review of the Local Laws was noise relating to deliveries, collections, and while not explicitly stated, building works. As indicated by numerous submissions to the MCC, for example:

"Its important that residents are able to sleep without the noise of garbage trucks and glass recycling trucks before 9 am on Saturday morning."

Fiona McLeod, Resident, 7 January 2003

"We particularly welcome the proposal in Section 17 of the amending law (amending Section 11 of the basic law) to enable the Council to take action on various issues of noise".

Peter Matthews, EastEnders Inc, 14 February 2003

"The Councils method of dealing with the noise problem as part of an overall Environment Local Law is also supported, provided it includes clearly stated times and days for permitted collection of rubbish from premises, and effective and workable enforcement mechanisms."

J & A McGuire and G &K Chandler, Residents, 25 February 2003

At the same time, a number of stakeholders cautioned the MCC about imposing unnecessary restrictions on access and commercial operations, including:

"The Council must ensure that those local law clauses relating to nuisances, and noise and emissions, do not impact upon the interests of [commercial] activities."

Jennifer Cunich, Executive Director, Property Council, 28 February 2003

"Firstly, we support the City of Melbourne's desire to introduce by laws to control the hours of operation relating to the waste and recycling collection within the City of Melbourne....we urge you to fully consult us prior to changing any operational times."

Chris Ryan, Waste management Services, 25 February 2003

The Allen Consulting Group believes that the public interest is best served by engaging relevant stakeholders in the process of determining times in which commercial operations, like collection and deliveries, can take place. On balance, it would appear that the degree of stakeholder consultation conducted and the responses from that consultation indicates that the proposed times are broadly acceptable to residents and commercial operators. This indicates that the public benefit test is satisfied given the proposed restrictions of access times. However, it is questionable whether this test would be met should further restrictions be considered, particularly given the significant impact time restrictions could have on CBD commercial activities.

In relation to noise disturbances caused by deliveries, The Allen Consulting Group does not believe that the public benefit test justifies the proposed clarification of what constitutes a disturbance contained in sub-clause 17 (c) of the *Activities Local Law* and sub-clause 11 (e) of the *Environment Local Law*. As nuisance is already defined in both Local Laws and given the proposed amendment goes beyond any ordinary common meaning of 'nuisance' The Allen Consulting Group has concluded that the proposed clarification is superfluous and unnecessarily restrictive on commercial delivery activities.

RECOMMENDATION

The MCC should delete from sub-clause 17 (c) of the proposed amendments to the Activities Local Laws the words "For the purposes of clause 3.7 and 5.4, the amenity of the area will be considered to be disturbed where any relevant noise can be heard in a habitable room in residential premises regardless of whether any door or window giving access to the room is open." And the MCC should delete from sub-clause 11 (e) of the proposed amendments to the Environment Local Laws the words, "For the purposes of clause 11.8, the amenity of the area will be considered to be disturbed where any relevant noise can be heard in a habitable room in residential premises regardless of whether any door or window giving access to the room is open."

4.6 Alternatives to Delivering Local Law Objectives

Given that the scope for restriction on competition is not believed to be significant, The Allen Consulting Group has not considered in detail alternative regulatory options to achieve the objectives of the legislation. Our assessment is that the proposed approach is the best manner in which to achieve the objectives of the Local Laws while eliminating or minimizing any restrictions on competition. In the absence of any identified significant

restrictions on competition, no further consideration of alternatives is believed necessary.

4.7 Conclusion

Having reviewed the proposed amendments to the *Activities Local Law* and the *Environment Local Law*, The Allen Consulting Group has concluded that:

- the objectives of the Local Laws should be amended to reflect objectives rather than means;
- that clarification of what constitutes a 'disturbance to the amenity resulting from deliveries' should be deleted from the proposed amendments to both Local Laws;
- all other proposed amendments do not contain any material restrictions on competition; and
- discretion afforded by the proposed amendments should also be administered in a manner which is consistent with NCP principles.

FINANCE ATTACHMENT

PROPOSED AMENDMENTS TO THE ENVIRONMENT LOCAL LAW NO 2 OF 1999

There are no direct financial implications for Council in the recommendations of this report.

Joe Groher
Manager Financial Services

LEGAL ATTACHMENT

PROPOSED AMENDMENTS TO THE ENVIRONMENT LOCAL LAW NO 2 OF 1999

Part 5 of the *Local Government Act 1989* (“the Act”) contains the relevant provisions relating to the making of local laws. In particular section 111(1) of the Act provides that a Council may 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 Act or under any other Act.

It is noted that section 111 of the Act also provides that a local law must not be inconsistent with any Act or regulation. It also provides that Council must not make a local law which duplicates or is inconsistent with the planning scheme in force in the municipal district.

The procedure for making a local law is detailed in section 119 of the Act. Council has complied with all the requirements in this section.

Section 123 of the Act provides that a local law may be revoked in whole or in part by the Governor in Council by an Order in Council on the recommendation of the Minister. In deciding whether to recommend that a local law be revoked, the Minister must consider certain matters including whether there is a substantial breach of any of the matters specified in Schedule 8 of the Act.

Schedule 8 of the Act lists specific principles which apply to local laws. All proposed amendments to the *Environment Local Law* must comply with Schedule 8. Clause 2(j) of Schedule 8 provides a local law must not:

- (j) *restrict competition unless it can be demonstrated that –*
 - (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.*

Council has conducted an independent National Competition Policy review of the proposed amendments to the *Environment Local Law* and the recommendations contained in the report have been taken into consideration in this report.

Alison Lyon
Manager Governance Services