



# AUSTRALIAN FOOD SOVEREIGNTY ALLIANCE

**Submission on Draft General Local Law No. 2 – Community Amenity and Municipal Places**

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**Prepared by**

*Australian Food Sovereignty Alliance*

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**In accordance with section 223 (1) (a)(iv) of the Local Government Act 2018 we wish to appear in person at the meeting scheduled for 16 December 2019 to be heard in support of the submission.**

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## About the Australian Food Sovereignty Alliance (AFSA)

The Australian Food Sovereignty Alliance (AFSA) is a farmer-led civil society organisation made up of organisations and individuals working together towards a food system in which people can create, manage, and choose their food and agriculture systems. AFSA is an independent organisation not aligned with any political party. We have around 700 farmer, individual, and organisational members, with approximately 40% of our members being farmers.

AFSA provides a balanced voice to represent farmers. We connect small- and medium-scale Australian farmers for farmer-to-farmer knowledge sharing, work with all levels of government for scale-appropriate and consistent regulations and standards for agriculture, and advocate for fair pricing for those selling to the domestic market.

We are part of a robust global network of civil society organisations involved in food sovereignty and food security policy development and advocacy. We are members of the International Planning Committee for Food Sovereignty (IPC), La Via Campesina – the global movement of peasant farmers, and Urgenci: the International Network for Community-Supported Agriculture, and work regularly with Slow Food International and many of its Australian chapters. We are active participants in many meetings of the various governing bodies of the Food & Agriculture Organisation (FAO) of the UN, and the Australasian representative on the Civil Society Mechanism (CSM), which relates to the UN Committee on World Food Security (CFS).

Our vision is to enable regenerative and agroecological farming businesses to thrive. Australians care now more than ever about the way their food is produced, including its social and environmental impacts. Food produced on small- and medium-scale regenerative farms is increasingly in demand, and government is bound to heed changing community expectations and facilitate and encourage the growth and viability of regenerative agriculture, thereby protecting the environment and human and animal health.

As a key stakeholder and representative body of small- and medium-scale producers Australia-wide, AFSA welcomes the opportunity to provide a submission on Hepburn Shire's Draft General Local Law No 2 – Community Amenity and Municipal Places.

## Summary of Concerns

AFSA's concerns with the draft local law relate primarily to those laws that impact on peoples' ability within the Shire to determine their own food systems. Our concerns are grounded in lack of genuine democratic process in the drafting period – the manner in which Hepburn Shire Council ("the Council") endeavoured to consult with the community – and further extend to the substance of the amendments that are contrary to the public's right to food sovereignty.

Food sovereignty asserts the right of peoples to nourishing and culturally appropriate food produced and distributed in ecologically sound and ethical ways, and their right to collectively determine their own food and agriculture systems.

It is puzzling that a Council as progressive as Hepburn, often held up as an example of best practice, is seeking to curtail peoples' freedoms when it comes to food production or collection.

As well as referring to other relevant local and state legislation (both in Australia and in other countries), we will here draw Council's attention to the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas ("the Declaration"), ratified in New York in October 2018.<sup>1</sup>

While it is not common in Australia to refer to smallholders or others as 'peasants', the Declaration defines peasants thusly: **any person who engages or who seeks to engage alone, or in association with others or as a community, in small-scale agricultural production for subsistence and/or for the market**, and who relies significantly, though not necessarily exclusively, on family or household labour and other non-monetized ways of organizing labour, and who has a special dependency on and attachment to the land. (1.1) [...] **The present Declaration also applies to indigenous peoples and local communities working on the land, transhumant, nomadic, and semi-nomadic communities, and the landless engaged in the above-mentioned activities.** (1.3)

As such, there are many people in Hepburn Shire who fall under the definition of peasants, and we argue that many of the proposed new or amended legislation under the draft local law will have a negative impact on peasants and Indigenous Peoples.

## Recommendations

### Recommendation 1

There should be no law on the removal of flowers, vegetation, or fruit from road reserves/council land.  
Should Council believe there is a need for guidelines for the removal of vegetation, there should be an open and transparent consultation process with the residents of the Shire to determine whether the need is genuine or merely speculative, and then should guidelines be written, they should be drafted with full democratic participation of peasants and Indigenous Peoples and their representative bodies.

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<sup>1</sup> <http://www.fao.org/news/story/en/item/1175208/icode/>

<b>Recommendation 2</b>	<p>There should be no law restricting the planting of trees or vegetation on nature strips or other areas that fall under the definition of ‘road’ in this draft local law.</p> <p>Should Council believe there is a need for guidelines for the planting of vegetation, there should be an open and transparent consultation process with the residents of the Shire to determine whether the need is genuine or merely speculative, and then should guidelines be written, they should be drafted with full democratic participation of peasants and Indigenous Peoples and their representative bodies.</p>
<b>Recommendation 3</b>	<p>That the proposed change in definition of ‘Public Place’ is abandoned, and that existing legislation is reviewed to ensure none infringes on the rights of peasants and other people working in rural areas to trade freely in community-based commercialization systems.</p>
<b>Recommendation 4</b>	<p>That ‘Part 3 – Animals and Birds’ of the local law is reviewed to ensure it does not infringe on the rights of peasants and other people working in rural areas.</p>
<b>Recommendation 5</b>	<p>That ‘Part 4.1 – Incinerators and Open Fires’ of the local law is reviewed to create an exemption for the creation of biochar and bonechar.</p>
<b>Recommendation 6</b>	<p>That the local law is reviewed to ensure it does not infringe on the rights of peasants and other people working in rural areas, and that salvaging is explicitly valued as one measure to combat and mitigate climate change.</p> <p>Should Council believe there is a need for guidelines to maintain the safety of those salvaging materials from the tip or roadsides, there should be an open and transparent consultation process with the residents of the Shire to determine whether the need is genuine or merely speculative, and then should guidelines be written, they should be drafted with full democratic participation of peasants and Indigenous Peoples and their representative bodies.</p>

## Right to participate in decision making

The Declaration asserts that ‘Without disregarding specific legislation on indigenous peoples, before adopting and implementing legislation and policies, international agreements and other decision-making processes that may affect the rights of peasants and other people working in rural areas, **States shall consult and cooperate in good faith with peasants and other people working in rural areas through their own representative institutions**, engaging with and seeking the support of peasants and other people working in rural areas **who could be affected by decisions before those decisions are made**, and responding to their contributions, **taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation** of individuals and groups in associated decision-making processes. (2.3)’ We note that while local businesses in Vincent Street, Daylesford, were consulted, no peasants or Indigenous Peoples or their representative organisations were approached.

## Firewood, Flowers and Fruit Collection

*A person must not, without a permit, remove firewood, including dead trees and fallen branches, flowers, other vegetation or fruit from a road reserve or Council land, unless permitted to do so by Council signage.*

Currently, local councils have responsibility for firewood collection on council land. They can ban it outright, permit it for a fee/with a permit, or allow it without any restrictions. DELWP is responsible for firewood collection in state parks. There are existing laws on removing native vegetation (eg morel mushrooms) from State/National parks.

We query the rationale behind this new proposed law. What community risk is it trying to address? In relation to firewood, is it an attempt to curtail people collecting firewood to sell commercially? Of a large-scale commercial operation that is understandable, but given the fire risk and last years' fires at Hepburn, surely the thinning out of dead trees and fallen branches is to be encouraged.

In relation to the collection of flowers or fruit, is this intended to be an anti-foraging law? If so, what is the risk that Council is trying to address? Without understanding the driver behind this new law, it is perceived as a draconian curtailment on peoples' right to food sovereignty and security. Blackberries, mushrooms, edible plants on the commons have and always should be an available food source for anyone with the initiative to collect them.

According to the Declaration, 'Peasants and other people working in rural areas have the right to have access to and to use in a sustainable manner the natural resources present in their communities that are required to enjoy adequate living conditions, in accordance with article 28 of the present Declaration. **They also have the right to participate in the management of these resources.** (5.1)'

'Peasants and other people living in rural areas have the right to land, individually and/or collectively, in accordance with article 28 of the present Declaration, including **the right to have access to, sustainably use and manage land and the water bodies, coastal seas, fisheries, pastures and forests therein, to achieve an adequate standard of living**, to have a place to live in security, peace and dignity and to develop their cultures. (17.1)'

We therefore submit that this proposed law is withdrawn. Should Council still wish to develop guidelines for the safe and ecologically-sound collection of firewood or local foraging, AFSA and other organisations in the community would be happy to participate in their development.

## Planting Vegetation on Roads

*A person must not, without a permit, or in accordance a council plan or policy relating to planting vegetation on roads, being a document incorporated by reference into this Local Law, plant any trees or other vegetation on any part of a road.*

Across Victoria nature strips have always only ever been regulated by local councils. Sometimes growing food on nature strips has been permitted or tacitly tolerated, sometimes not. In Hepburn, the proposed law is new – there have been no legal restrictions in place to date.

Our concern with this proposed law is that “road” includes nature strips, a valuable place to grow vegetables and herbs. We note that other Australian Councils permit this (most recently the City of Ballarat<sup>2</sup>) and suggest Hepburn show the initiative to embrace what is starting to be viewed as best practice around Australia and follow suit.<sup>3</sup>

Some local councils permit nature strip alteration outright, subject to safety criteria (such as Yarra Ranges shire, under its “Nature Strips and Roadsides Guidelines”). Others require a permit to be procured or a fee to be paid (Ballarat charges \$20 under its “Nature Strip Alteration Policy”). It is no secret that with agriculture being impacted by climate change, local fruit and vegetables will become increasingly more important to people’s food security. As such, growing food on roadsides should be encouraged, not restricted.

The Declaration asserts that ‘Peasants and other people working in rural areas have the right to adequate food and the fundamental right to be free from hunger. This includes the right to produce food and the right to adequate nutrition, which guarantee the possibility of enjoying the highest degree of physical, emotional and intellectual development. (15.1)’ Restricting peoples’ right to grow food on nature strips would be a violation of this right.

## Trading in a Public Place

*A person must not without a permit: (a) sell, offer or display for sale any goods or services from a public place; or (b) erect, place or in any other way, leave any structure or physical thing in a public place for the purposes of selling, displaying or offering for sale any goods or services.*

While the drafting of this local law is no different from its equivalent in the existing local law, the proposed expansion of the definition of “public place” is problematic. We also query how this law is expected to work in light of the Victorian Government’s explicit support for artisanal agriculture and the enablement of farm gate sales, recently reflected in an express commitment to “collaboratively support and encourage artisan producers wishing to develop farm gate or retail opportunities, so visitors and directly experience the artisan narrative and purchase product from the source”.<sup>4</sup>

The proposed new definition of “public place” includes all public land, not just Council land, and this widens the existing curtailment and limits peoples’ right to be enterprising and sell produce grown or harvested from their properties. We query what the permit process will be, and the fee associated with it, and have concerns it will restrict trade unnecessarily. Will it capture people who choose to sell produce from outside their homes (farm gates or otherwise) and place signage directing people to their lemons, honey, and eggs for instance? We would remind the Council of the community contempt that

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<sup>2</sup> <https://www.thecourier.com.au/story/5895034/on-the-verge-new-nature-strip-veggie-garden-in-ballarat/>

<sup>3</sup> <https://www.domain.com.au/living/the-communities-across-australia-creating-food-forests-and-guerilla-gardens-20171117-gzmrmy/>

<sup>4</sup> Refer Agriculture Victoria’s “Artisanal Sector Roadmap”

[http://agriculture.vic.gov.au/\\_data/assets/pdf\\_file/0011/433199/Artisanal-sector-roadmap.pdf](http://agriculture.vic.gov.au/_data/assets/pdf_file/0011/433199/Artisanal-sector-roadmap.pdf)

similar governing bodies receive when undue bureaucracy visits such trading locations and roadside stalls.<sup>5</sup>

We would also suggest that any council regulation in this space should be scale appropriate. We note the current permit fee for selling goods on public land is \$186 in the Daylesford CBD and \$93 in all other areas. In applying for such a permit, a copy of public liability insurance must also be supplied. There is a key difference between popup roadside stalls manned by 2 or 3 people selling commercial loads of fruit and flowers in the one day, as opposed to a farmgate with a small stand and an honesty box selling produce from the farm, or a basket of lemons for 20c each just outside someone's front gate. We note in the US the slow dawning realization that lemonade stands had been inadvertently caught in regulations rendering them illegal. More than 15 US states have subsequently passed laws "legalizing" lemonade stands<sup>6</sup>. Forbid that we should end up in such a ridiculous position here whether it relates to lemonade, honey, sacks of spuds or free-range eggs.

According to the Declaration, peasants '**also have the right to engage freely, individually and/or collectively, in association with others or as a community, in traditional ways of farming, fishing, livestock rearing and forestry and to develop community-based commercialisation systems.**' (16.1)

and

States shall take all appropriate measures to ensure that their rural development, agricultural, environmental, trade and investment policies and programmes contribute effectively to protecting and strengthening local livelihood options and to the transition to sustainable modes of agricultural production. **States shall stimulate sustainable production, including agroecological and organic production, whenever possible, and facilitate direct farmer-to-consumer sales.** (16.4)

## Animal Numbers

*Section 3.1 of the proposed local law details new numbers for the keeping of animals and birds.*

Currently, the most substantive difference we can see between the original local law and the draft local law is to reduce the number of cats on any size property in the Shire in response to community concerns about the impact of cats on native wildlife. However, we note with concern other species that would be more tightly controlled by Council without clear justification for the consequential negative impact on residents' food sovereignty.

We also note the undefined language in the local law (original and draft) that refers to 'residential area' and 'non-residential area' rather than zones as per the Victorian Planning Provisions (VPP). This imprecision leaves open to interpretation what is a 'residential area' or not – are the growing number of 20-acre lifestyle blocks around the Shire 'residential areas'? What about a 2ha block on the edge of a township with no neighbours in sight or sound, though zoned residential? Is a farm with a house on it a residential area, given that people reside on the farm?

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<sup>5</sup> <https://www.abc.net.au/news/2014-12-23/bunbury-girls-lemonade-stand-closed-by-council/5985992>

<sup>6</sup> "Lemonade Stands are Apparently Illegal in Most of the United States – What Kind of Insanity is This?" June 20, 2019 <https://www.delish.com/food/a28118328/lemonade-stands-illegal-in-most-us-states/>

The draft law proposes re-categorisation from two areas (built up and non-built up) to four (with the first three categories based on land size rather than residential/non-residential land). Apart from the Council noting that the community strongly believes cat numbers should be reduced, it is unclear why all the other animals listed have been roped in for further curtailment.

The effect is to greatly limit animals from which meat, produce, or fibre can be sourced. This will in turn restrict people's ability to source food and fibre from their own animals and does not allow for any flexibility in the event of breeding animals (poultry particularly).

As above, with the predicted impact of climate change on agriculture more and more people will seek to be self-reliant or will be relying on their local community to source their meat and animal products. The stocking rates should therefore not be decreased for what seems purely on the grounds of amenity or perceived nuisance.

Perhaps one of the oddest provisions in the local law is to limit the keeping of poultry to no more than 20 birds, even on rural properties outside of residential zones, which is in contradiction to the Victorian Planning Provisions (VPP), which allow up to 100 poultry in the farming zone before a permit is required. Further to this oddity is the statement that 'no permit is required' for pigs outside of 'residential areas', although the VPP was revised last year and explicitly requires permits for any number of pigs, with streamlined guidelines for low density mobile outdoor pig farms.<sup>7</sup>

Regarding the UN position on traditional animal husbandry practices, the Declaration asserts that 'States shall take appropriate measures to promote and protect the traditional knowledge, innovation and practices of peasants and other people working rural areas, including traditional agrarian, pastoral, forestry, fisheries, livestock and agroecological systems relevant to the conservation and sustainable use of biological diversity. (20.2)'

## Incinerators and Open Air Fires

### *Section 4.1 of the draft local law extends the existing community safety provisions relating to incinerators and open air fires*

The proposed new drafting for this law extends into already regulated territory on Crown land. For example the Forests Act 1958 (Vic) regulates campfires and burning off, and restricts fires being lit in certain areas.

There are many practitioners of permaculture, regenerative agriculture, and agroecology in Hepburn Shire, and the increasing manufacturing of biochar and bonechar is a feature of many of these closed loop systems. In the case of bonechar, spent bones are pyrolised in a retort at very high temperatures to maintain their carbon, potassium, magnesium, and phosphorus, and after activation in compost or compost teas, the bonechar is used as a natural fertiliser to grow crops of food.

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<sup>7</sup> [http://agriculture.vic.gov.au/\\_data/assets/pdf\\_file/0010/421300/PSAI-pig-farm-planning-permit-guidelines-2018.pdf](http://agriculture.vic.gov.au/_data/assets/pdf_file/0010/421300/PSAI-pig-farm-planning-permit-guidelines-2018.pdf)

The current local law already bans the burning of 'food waste', and the draft local law maintains this prohibition. We would argue that this is in opposition to promoting good practices of closed loop farming and homesteading.

## Scavenging

*A person must not, without a permit search through or remove any articles of rubbish, recyclables or items from a Transfer Station or left for collection in a public place.*

We note that this provision is not substantially different from the current local law that requires a permit to salvage materials from the tip or from roadside collection ('in a public place'). This barrier to using resources in the Shire goes against decades of a well-established cultural practice of re-using, upcycling, and re-purposing materials that might otherwise have ended up in landfill. Barriers to reducing emissions and a low-carbon lifestyle fly in the face of the Council's 2019 declaration of a climate emergency and pioneering project to achieve zero net emissions by 2030.

Legislation that creates barriers to the re-use of secondhand materials is not only contrary to responding to the climate emergency, it diminishes the community's capacity to resource themselves affordably.

We will offer a case study to illustrate the importance of salvaging materials from the tip or roadside when it comes to local small-scale farmers and homesteaders. At Jonai Farms in Eganstown, Stuart Jonas is a well-known salvager and up-cycler of secondhand materials, many of which he accesses currently from the tip. One example of an excellent resource for the farm that Stuart has developed is a solar pump to pump water over 100m to the top of the ancient volcano on which the farm sits. This pump (and two others in other locations) was built from an 80-year-old piston pump sourced at auction online, a treadmill motor and secondhand solar panels salvaged from the tip. It burns no fossil fuels and provides secure access to water for the farm's livestock at low cost to the farm, enabling Jonai Farms to build a resilient non-capitalist system reliant on labour rather than expensive capital inputs, and the solidarity economy that includes their CSA (community-supported agriculture).

The Declaration asserts that 'States shall comply with their respective international obligations to combat climate change. **Peasants and other people working rural areas have the right to contribute to the design and implementation of national and local climate change adaptation and mitigation policies**, including through the use of practices and traditional knowledge. (18.3)'

## Mitigation of Risk - Hepburn Shire Council

In reviewing the draft local law, we time and again queried the risk that was trying to be addressed. Not only the risk to members of the shire which we have touched on above, but what was the express risk to the Council that was trying to be addressed under the draft local law?

If Council has concerns around public liability, it should be noted it has the protection of legislation. Under the Wrongs Act 1958 (Vic) ("Act") public authorities such as local councils are given ample protection from being held liable for negligence. Sections 83 and 84 of the Act clearly protect public

authorities such as councils by listing strict criteria that a plaintiff must establish to pin legal liability on the public authority. To date, cases against such public authorities have been largely unsuccessful unless the public authority has a high level of managerial control over the situation that contains a risk of harm.<sup>8</sup> In other words, the more control a local council assumes over an issue or area, the greater the risk of that council being found in breach of a duty of care. To put it another way, councils risk increasing their duty of care when they increase control over their constituents.

## Conclusion

As President of AFSA, one of the authors of this submission is also a local resident and farmer, who has long held our Shire and Council in esteem, and considered local residents fortunate to live somewhere with a Council with vision and foresight to respond to the deep challenges of our times – climate change and the negative impacts of industrial agriculture foremost amongst them. In fact, we have cited a number of Hepburn Shire Council's initiatives as examples of what an 'ideal council' could look like, such as the work on a Premium Produce Food Hub that has resulted in the recent advertising for an Artisan Agriculture Facilitation Specialist.

The current proposal for the amendments to the Local Law No. 2 go against many decades of progressive work in this Shire, and are anything but the work of an ideal council, stripping the community of our right to determine our own food system and disabling our efforts to live affordable low-carbon climate-positive lifestyles. We believe that is not the intention of the proposed amendments, and that there is still time to re-write the Local Law No. 2 to better reflect the community's needs, interests, and commitment to combating climate change and working together for a better future for all.

We look forward to further discussions on the draft local law and welcome the opportunity to meet in person again if desired.

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<sup>8</sup> In *Crimmins v Stevedoring Finance Committee (1999) 200 CLR 1* the relevant public authority was found to have breached its duty of care to encourage safe working, on the basis that it had control over contracts of employment, conditions of workers and employees. However, in *Graham Barclay Oysters Pty Ltd v Ryan (2002) 211 CLR 540* the Great Lakes Council was found not have owed a duty of care in relation to consumers of contaminated oysters harvested from a lake within its local authority remit.

## About Food Sovereignty

*“Food sovereignty asserts the right of peoples to nourishing and culturally-appropriate food produced and distributed in ecologically-sound and ethical ways, and their right to collectively determine their own food and agriculture systems.”<sup>9</sup>*

The core of food sovereignty lies in the following principles:

- Food is a human need and a basic right, rather than a commodity.
- Food systems should be democratically constructed, responding to diverse social, cultural and environmental conditions.
- Food systems should be based on a strong commitment to social justice: for farmers, food system workers, and the most vulnerable members of our society who experience food insecurity.
- Resilient food systems require long-term environmental sustainability, transitioning away from dependence on fossil fuels and chemical inputs.
- Resilient and sustainable food systems will be more localised and regionalised.
- Trade in food and agricultural products can enhance economic and social well-being but should be conducted on the basis of international solidarity, respecting and not undermining the food sovereignty ambitions of other peoples and countries.<sup>10</sup>

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<sup>9</sup> The Australian Food Sovereignty Alliance, <<https://afsa.org.au/?s=food+sovereignty+>>.

<sup>10</sup> Patel, R. (2009). What does food sovereignty look like? *Journal of Peasant Studies*, 36(3), 663-671.