

LOCAL LAW MAKING POLICY

SCOPE

This policy applies to the making of all local laws including model, other, interim or subordinate local laws.

LEGISLATION

Section 29(1) of the Local Government Act 2009 provides powers for a Local Government to make a process in relation to making a local law. This policy reflects that Council process.

The process applies to the making of all local laws as defined in section 26(3) as a local law and includes an interim local law, a subordinate local law, a local law or model local law.

OBJECTIVE

To provide a detailed process for the adoption of local laws in compliance with the legislated requirements.

DEFINITIONS

Anti-Competitive Provision	A provision, regulations or practices tending or intended to suppress economic competition
Local Law	Local law, model local law, other local law, interim local law or subordinate local law

POLICY

PRINCIPLES

The Local Government Principles set out in the Local Government Act 2009 must be applied when undertaking processes related to the making of Local Laws. These principles are:

- (a) transparent and effective processes, and decision-making in the public interest
- (b) sustainable development and management of assets and infrastructure, and delivery of effective services
- (c) democratic representation, social inclusion and meaningful community engagement
- (d) good governance of, and by, local government
- (e) ethical and legal behaviour of councillors and local government employees

KEY CONSIDERATIONS

The following must be applied when reviewing, renewing or making a new local law:

- Ensure the local law is the most appropriate solution to the specific issue
- Consider if the issue could be dealt with in other ways rather than regulation
- Canvas the community's interest in the proposed local law
- Develop an appropriate community engagement process

LOCAL LAW MAKING

Making a local law that incorporates a model local law

The process (model local law making process) stated in this policy must be used to make a local law that incorporates a model local law into the local laws of the local government.

- Step 1 By resolution, propose to incorporate the model local law.
- Step 2 If the model local law contains an anti-competitive provision, comply with the procedures prescribed under a regulation for the review of anti-competitive provisions.
- Step 3 If there is an existing local law about a matter in the model local law that would be inconsistent with the matter in the model local law—amend or repeal the existing local law so that there is no inconsistency.
- Step 4 By resolution, incorporate the model local law.
- Step 5 Let the public know that the local law has been made, by publishing notice of the making of the local law in accordance with the requirements of section 29B(1) to (4) inclusive of the *Local Government Act 2009*.
- Step 6 As soon as practicable after the notice is published in the gazette, ensure that a copy of the local law may be inspected and purchased at the local government's public office.
- Step 7 Within 14 days after the notice is published in the gazette, give the Minister –
- (a) a copy of the notice; and
 - (b) a copy of the local law in electronic form; and
 - (c) if the local law contains 1 or more anti-competitive provisions—
 - (i) advice of each anti-competitive provision; and
 - (ii) the reasons for their inclusion
- Step 8 Update the local government's register of its local laws.

Making an "other" Local Law

The process (other local law making process) stated in this policy must be used to make a local law (a proposed local law) other than—

- (a) a model local law; or
- (b) an interim local law; or

(c) a subordinate local law

- Step 1 By resolution, propose to make the proposed local law.
- Step 2 Consult with relevant government entities about the overall State interest in the proposed local law.
- Step 3 Consult with the public about the proposed local law for at least 21 days (the consultation period) by—
- (a) publishing a notice (a consultation notice) about the proposed local law at least once in a newspaper circulating generally in the local government's area; and
 - (b) displaying the consultation notice in a conspicuous place at the local government's public office from the first day of the consultation period until the end of the last day of the consultation period; and
 - (c) making a copy of the proposed local law available for inspection at the local government's public office during the consultation period; and
 - (d) making copies of the proposed local law available for purchase at the local government's public office during the consultation period.

The consultation notice must state the following—

- (a) the name of the proposed local law; and
- (b) the purpose and general effect of the proposed local law; and
- (c) the length of the consultation period and the first and last days of the period; and
- (d) that written submissions by any person supporting or objecting to the proposed local law may be made and given to the local government on or before the last day of the consultation period stating—
 - (i) the grounds of the submission; and
 - (ii) the facts and circumstances relied on in support of the grounds.

If the local government decides, by resolution, that the proposed local law only amends an existing local law to make an insubstantial change, the local government may proceed to step 6 without satisfying step 3 or step 5.

- Step 4 If the proposed local law contains an anti-competitive provision, comply with the procedures prescribed under a regulation for the review of anti-competitive provisions. For avoidance of doubt, step 3, and this step 4, may be undertaken contemporaneously.
- Step 5 Accept and consider every submission properly made to the local government.
- A submission is properly made to the local government if it —
- (a) is the written submission of any person about the proposed local law; and
 - (b) states—
 - (i) the grounds of the submission; and
 - (ii) the facts and circumstances relied on in support of the grounds; and

- (c) is given to the local government on or before the last day of the consultation period.

Step 6 By resolution, decide whether to—

- (a) proceed with the making of the proposed local law as advertised; or
- (b) proceed with the making of the proposed local law with amendments; or
- (c) make the proposed local law as advertised; or
- (d) make the proposed local law with amendments; or
- (e) not proceed with the making of the proposed local law.

If the local government resolves to proceed with the making of the proposed local law with amendments, and the amendments are substantial, the local government may again —

- (a) consult with the public at step 3; and
- (b) accept and consider every submission properly made to the local government at step 5.

For the avoidance of doubt, if an amendment changes an anti-competitive provision, the local government must again comply with the procedures prescribed under a regulation for the review of anti-competitive provisions for the amended anti-competitive provision.

Step 7 Let the public know that the local law has been made, by publishing notice of the making of the local law in accordance with the requirements of section 29B(1) to (4) inclusive of the *Local Government Act 2009*.

Step 8 As soon as practicable after the notice is published in the gazette, ensure that a copy of the local law may be inspected and purchased at the local government's public office.

Step 9 Within 14 days after the notice is published in the gazette, give the Minister—

- (a) a copy of the notice; and
- (b) a copy of the local law in electronic form; and
- (c) if the local law contains 1 or more anti-competitive provisions—
 - (i) advice of each anti-competitive provision; and
 - (ii) the reasons for their inclusion.

Step 10 Update the local government's register of its local laws.

Making an Interim Local Law

The process (interim local law making process) stated in this policy must be used to make an interim local law. An interim local law will only have effect of 6 months or less).

Step 1 By resolution, propose to make the proposed local law and its expiry date.

Step 2 Consult with relevant government entities about the overall State interest in the

proposed local law.

- Step 3 If the proposed local law contains an anti-competitive provision, comply with the procedures prescribed under a regulation for the review of anti-competitive provisions. For avoidance of doubt, step 2, and this step 3, may be undertaken contemporaneously.
- Step 4 By resolution, decide whether to—
- make the proposed interim local law with or without amendments; or
 - not proceed with the making of the proposed interim local law.
- Step 5 Let the public know that the local law has been made, by publishing notice of the making of the local law in accordance with the requirements of section 29B(1) to (4) inclusive of the *Local Government Act 2009*.
- Step 6 As soon as practicable after the notice is published in the gazette, ensure that a copy of the local law may be inspected and purchased at the local government's public office
- Step 7 Within 14 days after the notice is published in the gazette, give the Minister—
- a copy of the notice; and
 - a copy of the local law in electronic form; and
 - if the local law contains 1 or more anti-competitive provisions—
 - advice of each anti-competitive provision; and the reasons for their inclusion.
- Step 8 Update the local government's register of its local laws.

Making a Subordinate Local Law

The process (subordinate local law making process) stated in this policy must be used to make a subordinate local law (a proposed subordinate local law).

The local government may start the process for making a subordinate local law even though the process for making the local law (including a model local law) on which the subordinate local law is to be based (the proposed authorising law) has not finished.

The local government may use steps 1 to 5 of the subordinate local law making process (other than actually making the subordinate local law) before the proposed authorising law is made if –

- (a) in making the proposed authorising law, the local government has to satisfy—
- (i) the model local law making process; or
 - (ii) the other local law making process; and
- (b) if the proposed authorising law is made under the other local law making process— the notice about the subordinate local law under step 2 of the subordinate local law making process is published no earlier than the notice about the proposed authorising law under step 3 of the other local law making process is published.

For the avoidance of doubt, a subordinate local law made by the local government using the process detailed in this resolution may provide for the local government to, from time to time, by resolution,

reference or incorporate information.

For example, under the *Local Government Regulation 2012* –

- (a) the identification guidelines for the identification of anti-competitive provisions are a document made by the department and available for inspection on the department's website; and
- (b) the public interest test procedures are a document made by the department and available for inspection on the department's website.

Step 1 By resolution, propose to make the proposed subordinate local law.

Step 2 Consult with the public about the proposed subordinate local law for at least 21 days (the consultation period) by—

- (a) publishing a notice (also a consultation notice) about the proposed subordinate local law at least once in a newspaper circulating generally in the local government's area; and
- (b) displaying the consultation notice in a conspicuous place in the local government's public office from the first day of the consultation period until the end of the last day of the consultation period; and
- (c) making a copy of the proposed subordinate local law available for inspection at the local government's public office during the consultation period; and
- (d) making copies of the proposed subordinate local law available for purchase at the local government's public office during the consultation period.

The consultation notice must state the following—

- (a) the name of the proposed subordinate local law; and
- (b) the name of—
 - (i) the local law allowing the proposed subordinate local law to be made; or
 - (ii) if the local government has started the process for making a subordinate local law even though the process for making the proposed authorising law on which the subordinate local law is to be based has not finished — the proposed authorising law; and
- (c) the purpose and general effect of the proposed subordinate local law; and
- (d) the length of the consultation period and the first and last days of the period; and
- (e) that written submissions by any person supporting or objecting to the proposed subordinate local law may be made and given to the local government on or before the last day of the consultation period stating—
 - (i) the grounds of the submission; and
 - (ii) the facts and circumstances relied on in support of the grounds.

If the local government decides, by resolution, that the proposed subordinate local law only amends an existing subordinate local law to make an insubstantial change, and the amendment does not affect an anti-competitive provision, the local government may proceed to step 5 without satisfying any of step 2 to step 4

inclusive.

- Step 3 If the proposed subordinate local law contains an anti-competitive provision, comply with the procedures prescribed under a regulation for the review of anti-competitive provisions. For avoidance of doubt, step 2, and this step 3, may be undertaken contemporaneously.
- Step 4 Accept and consider every submission properly made to the local government.
A submission is properly made to the local government if it—
- (a) is the written submission of any person about the proposed subordinate local law; and
 - (b) states—
 - (i) the grounds of the submission; and
 - (ii) the facts and circumstances relied on in support of the grounds; and
 - (c) is given to the local government on or before the last day of the consultation period.
- Step 5 By resolution, decide whether to—
- (a) proceed with the making of the proposed subordinate local law as advertised; or
 - (b) proceed with the making of the proposed subordinate local law with amendments; or
 - (c) make the proposed subordinate local law as advertised; or
 - (d) make the proposed subordinate local law with amendments; or
 - (e) not proceed with the making of the proposed subordinate local law.
- If the local government resolves to proceed with the making of the proposed subordinate local law with amendments, and the amendments are substantial, the local government may again —
- (a) consult with the public at step 2; and
 - (b) accept and consider every submission properly made to the local government at step 4.
- For the avoidance of doubt, if an amendment changes an anti-competitive provision, the local government must again comply with the procedures prescribed under a regulation for the review of anti-competitive provisions for the amended anti-competitive provision.
- Step 6 Let the public know that the subordinate local law has been made, by publishing notice of the making of the subordinate local law in accordance with the requirements of section 29B(1) to (4) inclusive of the *Local Government Act 2009*.
- Step 7 As soon as practicable after the notice is published in the gazette, ensure that a copy of the subordinate local law may be inspected and purchased at the local government's public office.
- Step 8 Within 14 days after the notice is published in the gazette, give the Minister—

- (a) a copy of the notice; and
- (b) a copy of the subordinate local law in electronic form; and
- (c) if the subordinate local law contains 1 or more anti-competitive provisions—
 - (i) advice of each anti-competitive provision; and
 - (ii) the reasons for their inclusion.

Step 9 Update the local government's register of its local laws.

PROCEDURE

Procedures as approved and issued by the Chief Executive Officer, and subject to further revision, amendment and issue under the authority of the Chief Executive Officer.

CERTIFICATION



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CHIEF EXECUTIVE OFFICER
BANANA SHIRE COUNCIL

9/9/20

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DATE