

Local Law Making Process Policy

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Related Documents	<i>Please see below</i>

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Local Law Making Process Policy

1. POLICY OBJECTIVES/PURPOSE:

Section 29 of the *Local Government Act 2009* (LGA09) enables local governments to decide their own process for making a local law, providing any mandatory requirements specified by the relevant legislation (including subordinate legislation) are complied with.

This includes a clear obligation for Councils to ensure that the local law making process is consistent with the principles provided by Section 4(2) of the LGA09, namely (inter alia):

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

Council must also ensure that its local laws are drafted in compliance with the guidelines issued by the Parliamentary Counsel under the *Legislative Standards Act 1992*.

The process contained in this policy satisfies the related legislative requirements, including the local government principles and any mandatory local law making steps.

Western Downs Regional Council Local Law Making Process

The process applies to the making of -

- (i) Each local law that incorporates only a model local law;
- (ii) Each local law that is an interim local law;
- (iii) Each 'other' local law (includes new local laws developed independently by a local government, local laws that incorporate a model local law with amendments, Amending local laws, Repealing local laws and Consolidating local laws); and
- (iv) Each local law that is a subordinate local law (includes new subordinate local laws developed independently by a local government, subordinate local laws based on a Model Subordinate Local Law, and Amending, Repealing and Consolidating Subordinate Local Laws);

Making a Local Law that is an Adopted Model Local Law

The process (model local law making process) stated in this resolution must be used to make a local law that is an adopted model local law.

- Step 1 - By resolution, propose to adopt 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 contained in the model local law that is inconsistent with the matter in the model local law - amend or repeal the existing local law so that there is no inconsistency and then by resolution:-
 - (a) adopt the model local law.

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- Step 4 - Let the public know that the local law has been made, by publishing a 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 5 - 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 6 - 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 one or more anti-competitive provisions:-
 - (i) advice of each anti-competitive provision; and
 - (ii) the reasons for their inclusion.
- Step 7 - 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 resolution must be used to make a local law that is an adopted interim local law.

- Step 1 - By resolution, propose to adopt the interim local law.
- Step 2 - Consult with relevant government entities about the overall State interest in the proposed interim local law if the interim local law does not incorporate a model local law only or is not a subordinate local law.
- Step 3 - By resolution, Council must decide whether to:-
- (a) adopt and make the proposed interim local law and if there is an existing local law about the matter that is inconsistent with what is adopted, amend or repeal the existing local law so that there is no inconsistency for the period of effect of the interim local law (amendment or repeal of the inconsistent law may be done in the same instrument adopting the local law); or
 - (b) proceed with the making of the proposed interim local law with amendments; or
 - (c) not proceed with the making of the proposed interim local law.

Interim local laws are valid for six (6) months or less and must contain an expiry provision.

If Council resolves to proceed with the making of the interim local law but not to set an expiry date for the interim local law, the use of the interim local law making process is to be discontinued and the proposed adoption of the local law with amendments must then be progressed using the "other local law making process" (provided below), commencing at Step 2.

If the Council resolves to adopt and make the interim local law with or without amendments, continue this process at Step 4.

- Step 4 - Let the public know that the interim local law has been made by publishing a notice of the making of the local law in the gazette, fully complying with the requirements set out in Section 29B(3) of the *Local Government Act 2009*, and on the local government's website, fully complying with the requirements set out in Section 29B(4) of the *Local Government Act 2009*, within one (1) month after the day when the local government made the resolution.

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Step 5 - As soon as practicable after the notice is published in the gazette, ensure that a copy of the interim local law may be inspected and purchased at each of Council's Customer Service Centres and be viewed and downloaded from the Council's website.

Step 6 - 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 interim local law in electronic form.

Step 7 - Update the local government's register of its local laws.

NB - If an interim local law is not then made (either with or without change) as a local law, the expiry of an interim local law that amended or repealed a local law revives the previous form of the local law and any associated subordinate local law - s30 *Local Government Act 2009*.

Making an "Other" Local Law

The process (other local law making process) stated in this resolution must be used to make a local law (a proposed local law) including:-

- (a) a new local law developed independently by a local government; or
- (b) a local law which incorporates a model local law with amendments;
- (c) an amending local law;
- (d) a repealing local law;
- (e) a consolidating local law

but not the following:-

- (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.

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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, having full regard for the principles provided by Section 4(2) of the LGA09, the local government may proceed to Step 6 without satisfying Step 3 or Step 5.

If the local government decides, by resolution, that the proposed local law only amends an existing local law to make an insubstantial administrative change or a legislative reference amendment to maintain currency, and these proposed amendments do not change an anti-competitive provision, the local government may proceed to Step 6 without satisfying Step 2 to Step 5.¹²

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 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

¹ It is a proviso that Council only need provide details of any proposed amendments if undertaking the 'minor amendment' making process, to the Department of Local Government (Regional Office). This process would not require a State Interest Check (SIC) involving other State Agencies, however the Minister for Local Government is the Minister responsible for approving Local Laws and therefore the Department of Local Government (Regional Office) is to be consulted regarding all proposed amendments prior to the making of these amendments.

² The Department of Local Government (Regional Office) have advised that any amendment made to an adopted Model Local Law by Council, regardless of how insubstantial it is in nature, or whether it only serves to update legislative references already contained in the original Model Local Law, will mean that the amended version of the Local Law can no longer be considered a Model Local Law.

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- (b) proceed with the making of the proposed local law with amendments; or
- (c) make the proposed 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 a 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 one 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.

NB - Amending/Repealing/Consolidating Local and Subordinate Local Laws:-

- (a) An amending or repealing local law can only amend or repeal a local law and an amending or repealing subordinate local law can only amend or repeal a subordinate local law.
- (b) A subordinate local law ceases to have effect if the authorising local law is repealed.
- (c) If a local law replaces another local law, the replacement local law must contain the provision that repeals the existing local law.
- (d) To amend an existing local law, the new local law should specifically omit any inconsistent material, i.e. amendment is not to be achieved by overwriting the existing local law.
- (e) A local law that amends another local law must contain a provision that states the name of the local law that is to be amended.
- (f) When making a local law that amends another local law, Council should follow the same practice as an Act of the Queensland Parliament.

(DLGP Guidelines for Drafting Local Laws: 4 April 2016)

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- (g) Local government may prepare and adopt a consolidated version of a local law or subordinate local law which accurately combines a local government's local law or subordinate local law as it was originally made, with all the amendments made to the local law or subordinate local law since the local law or subordinate local law was originally made.
- (h) Once adopted by Council, the consolidated version of the local law is taken to be the local law in the absence of evidence to the contrary.
- (i) Within seven (7) days after Council adopts the consolidated version of the local law, Council must give a copy of the consolidated version to the Minister. (Preferably an electronic version).

(s32 Local Government Act 2009)

Making a Subordinate Local Law

The process (subordinate local law making process) stated in this resolution 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* 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 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

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- (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) make the proposed subordinate local law as advertised; or
- (b) make the proposed subordinate local law with amendments; or
- (c) 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:-

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- (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 a 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 one (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.

RELATED LEGISLATION

Local Government Act 2009 (LGA09)

Local Government and Other Legislation Amending Act 2012 (LGOLA 2012)

Local Government Regulation 2012

Transport Operations (Road Use Management) Act 1995 (TORUM)

Legislative Standards Act 1992

Acts Interpretation Act 1954

RELATED DOCUMENTS (LOCAL LAWS, POLICIES, DELEGATIONS, ETC)

- 1 Under Section 66(3)(a) to (j) of the *Transport Operations (Road Use Management) Act 1995*, Council is required to request the permission of the Chief Executive - Department of Transport and Main Roads (DTMR) to make local laws on State Controlled Roads (SCRs) in the Western Downs Regional Council Local Government Area (LGA) for all WDRC Local and Subordinate Local laws adopted in 2011. The current approval has several conditions attached which must be adhered to. **Refer Doc No. 1682522 File Ref: 20/7/2.**

Should Council propose to make additional local laws which will impact SCRs in the WDRC LGA, permission specific to the content of the proposed local law and relevant SCRs will need to be applied for.

- 2 A suggested process for undertaking the State-Interest Check stage is recommended to local governments in the Department of Local Government and Planning (DLGP) '***A Guideline for State Government Agencies reviewing local law proposals***'.
- 3 Section 38 of the *Local Government Act 2009* states that a local law must not be made that contains an anti-competitive provision unless the anti-competitive review procedures prescribed under the *Local Government Regulation 2012* have been complied with and a public interest test is undertaken if necessary. A local law that is contrary to this has no effect. Refer to ***The National Competition***

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Policy (NCP) Guidelines to assist in identifying possible anti-competitive provisions in proposed local and subordinate local laws.

PIT Guidelines for conducting public interest tests on possible anti-competitive provisions in local laws and subordinate local laws have also been made available by the Department of Local Government (DLG).

- 4 The Chief Executive Officer (WDRC) may be delegated the authority to approve the content of Public Interest (PIT) Plans by Council but not to approve PIT Process or the content of the final PIT reports, which must be presented to Council for approval and adoption.
- 5 Council's Community Engagement Policy, Guidelines and Toolkit should also be referred to with regard to developing a community consultation plan for approval by Council.
- 6 For all new adopted local laws and subordinate local laws, relevant delegations from Council to the CEO and from the CEO to appropriately qualified Officers/Contractors where required/permissible must be prepared and submitted to Council for adoption and added to Council's Register of Delegations.

(Refer WDRC Standard Work Practice - Delegated Power & the Appointment of Statutory Authorised Persons and Administrative Authorised Officers)

- 7 In accordance with Section 305 of the *Local Government Regulation 2012*, the Register of Delegations contains:-
 - (1) For Section 260(1) of the Act, the particulars prescribed for a register of delegations are -
 - (a) the name or title of the person, or the name of the committee, to whom powers are delegated; and
 - (b) a description of the powers delegated, including provisions under a Local Government Act permitting or requiring the exercise of the powers; and
 - (c) if the delegation was by the local government - a summary of the resolution by which powers are delegated, including:-
 - (i) the date of the resolution; and
 - (ii) a summary of any conditions to which the delegation is subject; and
 - (iii) if the resolution is numbered, it's number.
 - (2) The Chief Executive Officer may include any other information in the register the Chief Executive Officer considers appropriate.

ATTACHMENTS

Nil

DEFINITIONS

- Local Laws:** Under the *Local Government Act 2009*, the Queensland Government provides powers to local governments to develop and adopt local laws to assist with the administration and execution of their legislative roles and functions. Local laws when made by a Local Government Authority are laws which apply within its local government area. Local laws are statutory instruments of law and are ultimately enforceable through the Courts.
- Model Local Laws:** Are proposed by the Minister for Local Government to cover issues that are common to many local governments.
- Other Local Laws:** Are local laws that are independently made by Local Governments to deal with an issue in their local area. Other local laws also include laws which amend or repeal existing local laws.

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Interim Local Laws: Are typically introduced to address cases of immediate public health and safety risks or where there is a concern that action may be taken during public consultation to make the law, which would defeat the purpose of introducing the law. Community engagement is not required prior to making an interim Local Law. Interim local laws do not require a review for anti-competitive provisions. Interim local laws are adopted for a limited period of six months or less while the Local Government conducts public consultation before introducing the law permanently.

Local Government Act 2009 - Section 30:

- 30 Expiry of interim local law revives previous law
- (1) This section applies if -
- (a) an interim local law amends or repeals a local law; and
 - (b) the interim local law expires; and
 - (c) the interim local law is not made (either with or without change) as a local law.
- (2) When the interim local law expires -
- (a) the local law is revived in its previous form; and
 - (b) any subordinate local law or provision of a subordinate local law that stopped having effect because the local law was amended or repealed, is revived in its previous form.
- (3) The previous form of a local law, subordinate local law, or provision of a subordinate local law, is the form it was in immediately before the interim local law commenced.
- (4) This section does not affect anything that was done or suffered under the interim local law before it expired.
- (5) This section applies despite the Acts Interpretation Act 1954, Section 19.

Subordinate Local Laws: Are made under a power provided for in a Local Law and provide the detailed information required for the operation of a Local Law. Subordinate local laws need to be read in conjunction with the Local Law under which they are made.

Anti-Competitive Provisions: Proposed local and subordinate local laws must be assessed under the 11 criteria provided in the NCP Guidelines to determine whether they contain possible anti-competitive components.

PIT: If anti-competitive provisions are identified, the local government then conducts a public interest test (PIT) to address the anti-competitive components. The PIT is conducted in three stages:-

- public interest test plan
- public interest test
- public interest rest report

The Council must resolve whether to implement the recommendations of the PIT report prior to making a local law.

State Interest Check: Under the Act, a State Interest Check is required when making a Local Law unless it is a model local law or a subordinate local law. Local Governments conduct State Interest Checks directly with State agencies.

Community Consultation: Council advises the public that a Local Law is proposed and undertakes community consultation consistent with its Community Engagement Policy. Council's minimum Local Law consultation period is 21 days.

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Council must consider every properly made community submission and all stakeholder feedback on a proposed local law and respond appropriately including amending the local law if necessary.

REVIEW TRIGGER

List of factors which require the policy to be reviewed:-

- Change in legislation affecting this policy.