

LOCAL LAW MAKING PROCESS

Introduction

For the purposes of Section 29 (1) of the *Local Government Act 2009 (LGA 2009)*, Yarrabah Aboriginal Shire Council has resolved to adopt the processes outlined below for the making of Council's local laws.

The processes detailed:

- a) Various apply to the making of each local law —
 - (i) Made by adopting a model local law; and
 - (ii) Made by other than the adoption of a model local law; and
 - (iii) That is a subordinate local law; but
- b) Does not apply to a local law that is an interim local law.

Making a Local Law by Adopting a Model Local Law

The process used to make a local law by adopting a model local law will be as set out below.

- 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 *LGR 2012* for the review of anti-competitive provisions. (See Section 38 (1), *LGA 2009* and Section 15 (2) and (3), *LGR 2012*. These procedures are those contained in the document *National Competition Policy: Guidelines for Conducting Reviews on Anti-competitive Provisions in Local Laws* available on the website of the Department of Infrastructure, Local Government and Planning. (For convenience, these procedures are also summarised in Appendix A to this document.) Depending on the nature of the anti-competitive provision contained in the local law, compliance with these procedures may involve consultation with relevant businesses about the anti-competitive provisions.)
- Step 3 — By resolution —
 - a) Adopt the model local law; and
 - b) 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; or
 - c) Decide not to adopt the model local law.

If the model local law contains an anti-competitive provision and is adopted, include in the resolution which adopts the model local law a note/record that the law contains anti-competitive provisions (as per procedures set down in *National Competition Policy: Guidelines for Conducting Reviews on Anti-competitive Provisions in Local Laws*).

Note that the repeal of an existing local law can be achieved by the adoption of a specific repealing local law. While alternatives exist, it is not sufficient to simply resolve to repeal an existing local law without including the repeal

provision in a new local law. In adopting a specific repealing local law, it is important that Council first resolve (if correct) that there are no relevant government entities with which it is necessary to consult about overall State interest in the repealing local law.

- 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 the Government Gazette and on Council's website in accordance with the requirements of Section 29B (1), (2), (3) and (4), *LGA 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 Council's public office.
- Step 6 — Within 14 days of the publication of the notice in the Government Gazette, give the Minister —
 - a) A copy of the notice; and
 - b) A copy of the local law in electronic form.
- Step 7 — Update Council's register of its local laws (as per Section 31 (1) and (2), *LGA 2009* and Section 14, *LGA 2012*).

Making a Local Law by other than the Adoption of a Model Local Law

The process used to make a local law which is not an interim local law or subordinate local law and which is made by other than the adoption of a model local law, will be as set out below.

- 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.

If Council decides, by resolution, that the proposed local law only amends an existing local law to make an insubstantial change, Council may proceed to Step 4 without completing Step 3.
- 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 Yarrabah Shire; and
 - b) Displaying the consultation notice in a conspicuous place at Council'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 Council's public office during the consultation period; and
 - d) Making copies of the proposed local law available for purchase at Council's public office during the consultation period; and
 - e) Running at least three public workshops on the proposed local law explaining what is intended and collecting comments and feedback from the public.

The consultation notice must state the following —

- f) The name of the proposed local law; and
- g) The purpose and general effect of the proposed local law; and
- h) The length of the consultation period and the first and last days of the period; and
- i) That written or (by appointment) oral submissions by any person supporting or objecting to the proposed local law may be made and given to Council 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 as support for the grounds.

The three public workshops conducted as part of the consultation process must be —

- j) Conducted on three separate days and at three different times of day; and
- k) Attended by sufficient Council staff to allow the adequate delivery of information and capture of comments and feedback; and
- l) Conducted in a manner which encourages comment and feedback; and
- m) Of sufficient duration to adequately deal with the business to be covered – a condition which is particularly relevant if a single workshop is used to address consultation requirements around more than one proposed local law or subordinate local law.

Step 4 — If the proposed local law contains an anti-competitive provision, comply with the procedures prescribed under *LGR 2012* for the review of anti-competitive provisions. (See Section 38 (1), *LGA 2009* and Section 15 (2) and (3), *LGR 2012*. These procedures are those contained in the document *National Competition Policy: Guidelines for Conducting Reviews on Anti-competitive Provisions in Local Laws* available on the website of the Department of Infrastructure, Local Government and Planning. (For convenience, these procedures are also summarised in Appendix A to this document.) Depending on the nature of the anti-competitive provision contained in the local law, compliance with these procedures may involve consultation with relevant businesses about the anti-competitive provisions.)

For avoidance of doubt, it is stated that the consultation components of Step 3, and this step, may be undertaken at the same time.

Step 5 — Accept and consider every submission properly made to Council.

A submission is properly made to Council if it —

- a) Was made as a comment at a workshop conducted for the purpose of consultation; or
- b) Is the written submission of any person about the proposed local law; and
- c) Is given to Council on or before the last day of the consultation period; and
- d) In the case of written submissions, states —
 - (i) The grounds of the submission; and
 - (ii) The facts and circumstances relied on as support for the grounds.

Step 6 — By resolution —

- a) Make the proposed local law as advertised; or
- b) Make the proposed local law with amendments; and
- c) 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; or
- d) Decide not to make the proposed local law.

If the proposed local law contains an anti-competitive provision and is made, include in the resolution which makes the local law a note/record that the law contains anti-competitive provisions (as per procedures set down in *National Competition Policy: Guidelines for Conducting Reviews on Anti-competitive Provisions in Local Laws*).

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

- e) Consult with the public as at Step 3; and
- f) Accept and consider every submission properly made as at Step 5.

For the avoidance of doubt, if an amendment changes an anti-competitive provision, Council must again comply with the procedures prescribed under *LGR 2012* for the review of anti-competitive provisions for the amended anti-competitive provision only.

Note that the repeal of an existing local law can be achieved by the adoption of a specific repealing local law. While alternatives exist, it is not sufficient to simply resolve to repeal an existing local law without including the repeal provision in a new local law. In adopting a specific repealing local law, it is important that Council first resolve (if correct) that there are no relevant government entities with which it is necessary to consult about overall State interest in the repealing local law.

- 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 the Government Gazette and on Council's website in accordance with the requirements of Section 29B (1), (2), (3) and (4), *LGA 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 Council's public office.
- Step 9 — Within 14 days of the publication of the notice in the Government Gazette, give the Minister —
 - a) A copy of the notice; and
 - b) A copy of the local law in electronic form.
- Step 10 — Update Council's register of its local laws (as per Section 31 (1) and (2), *LGA 2009* and Section 14, *LGA 2012*).

Making a Local Law which is a Subordinate Local Law

The process used to make a local law that is a subordinate local law will be as set out below.

Council may start the process for making a subordinate local law even though the process for making the local law on which the subordinate local law is to be based (the proposed authorising law) has not finished. Specifically, Council may undertake Step 1 through to Step 4 inclusive of this process for the making of a subordinate local law (so that the process is complete up to but not including actually making the subordinate local law) before the proposed authorising law is made if —

- a) Making the proposed authorising law, Council has to follow —
 - (i) The process for making a local law by adopting a model local law; or
 - (ii) The process for making a local law other than by the adoption of a model local law; and
- b) If the proposed authorising law is made using the process for making a local law other than by the adoption of a model local law — the notice about the proposed making of a subordinate local law under Step 2 of this process (the subordinate local law making process) is published no earlier than the publication of the notice about the proposed making of the authorising local law.

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

If Council decides, by resolution, that the proposed subordinate local law only amends an existing subordinate local law to make an insubstantial change, Council may proceed to Step 3 without completing Step 2.

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 Yarrabah Shire; and
- b) Displaying the consultation notice in a conspicuous place in Council'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 Council's public office during the consultation period; and
- d) Making copies of the proposed subordinate local law available for purchase at Council's public office during the consultation period; and
- e) Running at least three public workshops on the proposed subordinate local law explaining what is intended and collecting comments and feedback from the public.

The consultation notice must state the following —

- f) The name of the proposed subordinate local law; and
- g) The name of —
 - (i) The local law allowing the proposed subordinate local law to be made; or

- (ii) If Council has started the process for making the subordinate local law even though the process for making its proposed authorising law has not finished — the proposed authorising law; and
- h) The purpose and general effect of the proposed subordinate local law; and
- i) The length of the consultation period and the first and last days of the period; and
- j) That written or (by appointment) oral submissions by any person supporting or objecting to the proposed subordinate local law may be made and given to Council 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 as support for the grounds.

The three public workshops conducted as part of the consultation process must be —

- k) Conducted on three separate days and at three different times of day; and
- l) Attended by sufficient Council staff to allow the adequate delivery of information and capture of comments and feedback; and
- m) Conducted in a manner which encourages comment and feedback; and
- n) Of sufficient duration to adequately deal with the business to be covered — a condition which is particularly relevant if a single workshop is used to address consultation requirements around more than one proposed local law or subordinate local law.

It should be noted that while legislation does not require that the process used for adopting a model local law include public consultation (and while the suggested process for doing so – given above – similarly does not include public consultation), the adoption of a model local law necessarily goes hand-in-hand with the making of a subordinate local law as dealt with here. This close association means that public consultation as part of the process of making a subordinate local law which draws its authority from an adopted model local law is likely to range across matters associated with both the model local law and the subordinate local law.

Step 3 — If the subordinate local law contains an anti-competitive provision, comply with the procedures prescribed under *LGR 2012* for the review of anti-competitive provisions. (See Section 38 (1), *LGA 2009* and Section 15 (2) and (3), *LGR 2012*. These procedures are those contained in the document *National Competition Policy: Guidelines for Conducting Reviews on Anti-competitive Provisions in Local Laws* available on the website of the Department of Infrastructure, Local Government and Planning. (For convenience, these procedures are also summarised in Appendix A to this document.) Depending on the nature of the anti-competitive provision contained in the local law, compliance with these procedures may involve consultation with relevant businesses about the anti-competitive provisions.)

For avoidance of doubt, it is stated that the consultation components of Step 2, and this step, may be undertaken at the same time.

Step 4 — Accept and consider every submission properly made to Council.

A submission is properly made to Council if it —

- a) Was made as a comment at a workshop conducted for the purpose of consultation; or
- b) Is the written submission of any person about the proposed local law; and
- c) Is given to Council on or before the last day of the consultation period; and
- d) In the case of written submissions, states —
 - (iii) The grounds of the submission; and
 - (iv) The facts and circumstances relied on as support for the grounds.

Step 5 — By resolution —

- a) Make the proposed subordinate local law as advertised; or
- b) Make the proposed subordinate local law with amendments; or
- c) Decide not to make the proposed local law.

If the proposed subordinate local law contains an anti-competitive provision and is made, include in the resolution which makes the subordinate local law a note/record that the law contains anti-competitive provisions (as per procedures set down in *National Competition Policy: Guidelines for Conducting Reviews on Anti-competitive Provisions in Local Laws*).

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

- d) Consult with the public as at Step 2; and
- e) Accept and consider every submission properly made as at Step 4.

For the avoidance of doubt, if an amendment changes an anti-competitive provision, Council must again comply with the procedures prescribed under *LGR 2012* for the review of anti-competitive provisions for the amended anti-competitive provision only.

Note that the repeal of an existing subordinate local law can be achieved by the adoption of a specific repealing local law. While alternatives exist, it is not sufficient to simply resolve to repeal an existing local law without including the repeal provision in a new local law. In adopting a specific repealing local law, it is important that Council first resolve (if correct) that there are no relevant government entities with which it is necessary to consult about overall State interest in the repealing local law.

Step 6 — Let the public know that the subordinate local law has been made, by publishing a notice of the making of the local law in the Government Gazette and on Council's website in accordance with the requirements of Section 29B (1), (2), (3) and (4), *LGA 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 Council's public office.

Step 8 — Within 14 days of the publication of the notice in the Government Gazette, give the Minister —

- f) A copy of the notice; and
- g) A copy of the local law in electronic form.

Step 9 — Update Council's register of its local laws (as per Section 31 (1) and (2), *LGA 2009* and Section 14, *LGA 2012*).

Appendix A

Process for Review of Anti-competitive Provisions in a Local Law as extracted from *National Competition Policy: Guidelines for Conducting Reviews on Anti-competitive Provisions in Local Laws*

The process for undertaking a review of anti-competitive provisions in a local law is set out below. The following process must be undertaken when making local laws, subordinate local laws and model local laws.

