

PLANNING & ENVIRONMENT COMMITTEE	6
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10 AUGUST 2011	6
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CAIRNS REGIONAL COUNCIL MODEL LOCAL LAWS AND
SUBORDINATE LOCAL LAWS PROJECT AND CONSULTATION
OUTCOMES

K Gilvear: 1/11/5 : #3192459

RECOMMENDATION:

That Council resolves:

1. To note the report titled 'Consultation Outcomes Report' included at Attachment 1; and
2. To note the amendments made to Subordinate Local Laws No 1 – 6 inclusive as described in marked up drafts included at Attachment 2; and
3. To adopt the Public Interest Test Report at Attachment 3; and
4. To note that the following sections of the proposed Subordinate Local Laws are anti-competitive provisions:

Subordinate Local Law No 1 (Administration) 2011

S7: Approvals that are non-transferable

S9: Prescribed public place activities

S11: Matters regarding prescribed activities

Subordinate Local Law No 2 (Animal Management) 2011

S16: Conditions regarding sale of animals

Subordinate Local Law No 3 (Community and Environment Management) 2011

S11: Prescribed Noise Standards

Subordinate Local Law No 4 (Local Government Controlled Areas, Facilities and Roads) 2011

S5: Prohibited and restricted activities

S8: Opening hours for local government areas

Subordinate Local Law No 5 (Parking) 2011

S7: Parking Permits

Subordinate Local Law No 6 (Bathing Reserves) 2011

S5: Prohibition or restriction of aquatic equipment

AND to resolve that these anti-competitive provisions are to be retained in full as –

- a. **The benefits of these provisions to the community as a whole outweigh the costs; and**
- b. **The most appropriate way of achieving the purposes of the proposed subordinate local laws is by restricting competition in the manner provided in these provisions**

having regard to the local government duty of good rule and government of the Cairns Regional Council area; and

5. **That the following local laws have been reviewed and have been identified as redundant local laws, to be effective only to and including 31 December 2011:**

Cairns City Council Local Law No 1 (Administration)
Cairns City Council Local Law No 2 (Meetings)
Cairns City Council Local Law No 3 (Public Conveniences)
Cairns City Council Local Law No 4 (Gates and Grids)
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Cairns City Council Local Law No 26 (Parks and Reserves)
Cairns City Council Local Law No 27 (Commercial Recreation Activities)
Cairns City Council Local Law No 28 (Control of Advertising)
Cairns City Council Local Law No 29 (Swimming Pools)
Cairns City Council Use of Lake Morris Local Law 2001
Cairns City Council Riding Bicycles, Wheeled Recreational Devices and Wheeled Toys Local Law 2003
Cairns City Council Keeping, Control and Impounding of Animals Local Law 2003

Cairns City Council Esplanade Local Law 2004
Cairns City Council Distribution of Business Advertising Publications and Touting Local Law 2004
Douglas Shire Council Local Law No 2 (Administration)
Douglas Shire Council Local Law No 3 (Encroachments and Projections)
Douglas Shire Council Local Law No 5 (Domestic Water Carriers)
Douglas Shire Council Local Law No 6 (Control of Nuisances)
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Douglas Shire Council Local Law No 57 (Regulated Parking) 2001
Douglas Shire Council Local Law No 58 (Roads) 2002
Douglas Shire Council Local Law No 59 (Commercial Use of Roads) 2002;
and

6. That the following subordinate local laws have been reviewed and have been identified as redundant subordinate local laws, to be effective only to and including 31 December 2011:

Cairns City Council Local Law Policy No 5 (Parks and Reserves)
Cairns City Council Use of Lake Morris Subordinate Local Law 2001
Cairns City Council Riding Bicycles, Wheeled Recreational Devices and Wheeled Toys Subordinate Local Law 2003
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Douglas Shire Council Subordinate Local Law No 57 (Regulated Parking) 2001
Douglas Shire Council Subordinate Local Law No 58 (Roads) 2002
Douglas Shire Council Subordinate Local Law No 59 (Commercial Use of Roads) 2002; and

7. To adopt:

- a. Model Local Law No 1 (Administration) to be known as Local Law No 1 (Administration) 2011; and
- b. Model Local Law No 2 (Animal Management) to be known as Local Law No 2 (Animal Management) 2011; and
- c. Model Local Law No 3 (Community and Environment Management) to be known as Local Law No 3 (Community and Environment Management) 2011; and
- d. Model Local Law No 4 (Local Government Controlled Areas, Facilities and Roads) to be known as Local Law No 4 (Local Government Controlled Areas, Facilities and Roads) 2011; and
- e. Model Local Law No 5 (Parking) to be known as Local Law No 5 (Parking); and
- f. Model Local Law No 6 (Bathing Reserves) to be known as Local Law No 6 (Bathing Reserves); and

8. That the commencement date for the local laws is to be 1 January 2012; and

9. To make, in the revised form included in Attachment 4:

- a. Subordinate Local Law No 1 (Administration) 2011; and
- b. Subordinate Local Law No 2 (Animal Management) 2011; and
- c. Subordinate Local Law No 3 (Community Health and Environment Management) 2011; and
- d. Subordinate Local Law No 4 (Local Government Controlled Areas, Facilities and Roads) 2011; and
- e. Subordinate Local Law No 5 (Parking) 2011; and
- f. Subordinate Local Law No 6 (Bathing Reserves) 2011; and

10. That the commencement date for the subordinate local laws is to be 1 January 2012; and
11. To propose to make such General or other Policies as may be required to provide additional clarity to the requirements of Local and / or Subordinate Local Laws prior to 1 January 2011;
12. To request Officers prepare a Report and Recommendations to Council for presentation before 1 January 2011 in regard to necessary Delegations and Authorisations pursuant to Local Laws 1 – 6 and Subordinate Local Laws 1 – 6.

INTRODUCTION:

Councils affected by amalgamation and / or boundary changes after the local government elections held in March 2008 are required to consolidate their current suite of local and subordinate local laws.

Officers have been working on the Local Laws Project since February 2010 and are seeking Council's endorsement of:

1. Community Consultation Outcomes; and
2. Public Interest Test Report; and
3. Model Local Laws and Subordinate Local Laws 1 to 6.

BACKGROUND:

In accordance with the *Local Government Reform Implementation Regulation 2008*, Cairns Regional Council commenced preparation of a "new suite" of Local Laws to replace 72 existing Local Laws initially implemented in the former Cairns City and Douglas Shire areas ('the Project') in early 2010.

Model Local Laws and draft Subordinate Local Laws were developed through 2010 and early 2011. In February 2011, Council endorsed a Consultation Strategy for the project, and in April 2011, formalised arrangements for consultation. A Public Interest Test Plan and Iconic Impact Assessment Reports were also endorsed.

Consultation commenced on 18 April 2011, and concluded on 26 May 2011. Consultation activities included:

- Public notices in the Port Douglas & Mossman Gazette, Cairns Post and Innisfail Advocate;
- Information on Council's web page, including links to reports, documents and Model Local Laws and draft Subordinate Local Laws;
- Drop In Sessions from Cow Bay to Bramston Beach between 19 April 2011 and 20 May 2011.

Following completion of public consultation, officers have:

1. Reviewed submissions lodged during the consultation period, including written, verbal advice and other informal feedback received from internal departments;
2. Commenced internal training and information sessions with various parts of the organisation, during which further feedback in regard to the draft Subordinate Local Laws has been received;
3. Worked with Council's legal advisor in regard to technical revisions or amendments to the draft package required to respond to submissions made, and to ensure that practical issues are taken into account.

COMMENT:

For the Cairns Regional Council area, the Local Laws Project has involved a review of existing provisions within 72 Local and Subordinate Local Laws for the former Cairns City and Douglas Shire areas. These existing local and subordinate local laws have continued in full force and effect in accordance with the repealed *Local Government Act 1993*, the *Local Government Act 2009* and the *Local Government Reform Implementation Regulation 2008*.

The existing Local Laws regulate a range of activities, including:

- Animal Management
- Vegetation Clearing / Management
- Outdoor Dining
- Activities on Roads
- Advertising Signage.

In reviewing these existing local laws and in working to implement 'new' local laws, Council has resolved to utilise the Model Local Laws and Subordinate Local Laws developed by the Department of Local Government and Planning for use across the State.

This process involves the completion of the following steps:

Step	Description
1	Decide to adopt a model local law
2	Develop supporting subordinate local law
3	Decide on Community Engagement Strategy for proposed Model Local Law and Subordinate Local Law and review for anti-competitive provisions (including the public interest test process if required)
4	Consider results of consultation
5	Resolve to adopt Model Local Law and Subordinate Local Law
6	Public Notices regarding adoption of Local Laws
7	Provide relevant information to Minister, make copies of the Local Laws available for inspection and purchase, and update Local Law Register

To date, Council has progressed with Steps 1 to 3 outlined above.

The Project must be completed by 31 December 2011.

As articulated within the Consultation Outcomes Report included for reference at **Attachment 1**, Council undertook consultation regarding the draft Local Laws and Subordinate Local Laws from 18 April to 26 May 2011. Additional consultation occurred during, and subsequent to, this period with Officers within Council, and other stakeholders as required. This additional consultation is also considered within the Consultation Outcomes Report.

Community participants in the consultation program undertaken represented a range of groups and organisations, including landowners, residents and business owners. Engagement was undertaken via:

- a. Twelve (12) community drop-in sessions;
- b. Newspaper advertisements within the Port Douglas and Mossman Gazette, the Cairns Post and the Innisfail Advocate; and
- c. Updates and information placed on Council's website.

Fourteen (14) residents attended community drop-in sessions, and provided informal comment, whilst fifteen (15) formal written submissions were also received. A range of internal submissions were received during consultation also, regarding a range of opportunities to improve the draft Subordinate Local Laws to ensure continued operational effectiveness.

Written submissions focussed, by and large, upon the provision within former-draft Subordinate Local Law No 2 (Animal Management), which permitted keeping of bee hive/s on a lot larger than 800m². Whilst there was support for the overt 'permission' for bee keeping in urban areas, a significant number of submissions raised concern that:

- i. Bees should be permitted on allotments smaller than 800m²;
- ii. Pursuant to the Queensland *Apiaries Act 1982* and *Apiaries Regulation 1998*, the State has prepared a Code of Practice for the keeping of bees, and a regulatory framework within which such bee keeping is managed. Additional levels and layers in regulation cause confusion and concern, and should be avoided.

Following the conclusion of consultation for the project, and consideration of the outcomes of that consultation, the following recommendations are made:

1. A number of relatively minor, operational amendments are required to ensure appropriate consistency, clarity and certainty within the draft Subordinate Local Laws;
2. Current standards for noise in the Esplanade and surrounding locality should be maintained. Amendments to the draft Subordinate Local Laws are recommended to ensure maintenance of these standards;

3. Draft Subordinate Local Law No 1 and Subordinate Local Law No 3 be revised to provide a prohibition on the cleaning of and / or disposal of fish remains in and around marine areas, including boat ramps, creek beds, beaches and jetties;
4. The keeping of bees be removed from Draft Subordinate Local Law No 2 and issues associated with the keeping of bees be dealt with in accordance with relevant State Legislation and associated Codes of Practice.

In addition, it is noted that legal advice sought and provided regarding the draft Subordinate Local Laws package has revealed that Council's capacity to deal with abandoned cars, animals and other large debris on road reserves has to be carefully considered. That is, Council currently relies upon its local laws and provisions within the *Transport Operations (Road Use Management) Act* (Qld) to enable collection and disposal of cars, animals and the like on roads, both Council controlled and State controlled, in the region. The new Local Laws framework will not permit reliance upon the *Transport Operations (Road Use Management) Act* provisions without significant amendment (requiring additional expense and time). In those circumstances, Council officers have:

- Made revisions to the draft Subordinate Local Laws to enable continued collection of abandoned cars, animals and the like on Council controlled road reserves; and
- Commenced discussions with officers from the Department of Transport and Main Roads with a view of reaching an agreement to enable Council's continued collection of abandoned cars, animals and large debris from State controlled road reserves.

A further report will be provided to Council in coming months providing confirmation of an agreement or plan of action to address this issue prior to the commencement of the new Local Laws and Subordinate Local Laws on 1 January 2012.

Marked up copies of the amended Subordinate Local Laws are included for reference in **Attachment 2** to this Report.

In conjunction with the completion of consultation for the project, a Public Interest Test Plan was prepared and released for public consideration and comment. No submissions were received in respect to this Plan, nor in respect to any anti-competitive provisions within the draft Local Laws and Subordinate Local Laws as proposed. To this end, in conjunction with Council's legal representative on this project, a Public Interest Test Report has been prepared, confirming relevant considerations in regard to anti-competitive provisions, and recommending maintenance of all anti-competitive provisions within the draft Subordinate Local Laws as proposed. A copy of this Public Interest Test Report is included for reference in **Attachment 3** to this Report.

Following the completion of consultation, and consideration of the submissions made, it is recommended that Council resolve to adopt Local Laws 1 – 6, and Subordinate Local Laws 1 – 6, to be effective on and from 1 January 2012. This delay in implementation will enable Officers to ensure that all necessary operational issues are in place prior to the commencement date.

A summary of the objective for each of the Local Laws proposed is provided below for reference:

LOCAL LAW	OBJECTIVE
<p><i>Cairns Regional Council Local Law No 1 (Administration) 2011</i></p> <p><i>Cairns Regional Council Subordinate Local Law No 1 (Administration) 2011</i></p>	<p>To provide a legal and procedural framework for the administration, implementation and enforcement of Council's Local Laws, Subordinate Local Laws and specified regulatory powers under legislation and to provide for a range of miscellaneous administrative matters.</p>
<p><i>Cairns Regional Council Local Law No 2 (Animal Management) 2011</i></p> <p><i>Cairns Regional Council Subordinate Local Law No 2 (Animal Management) 2011</i></p>	<p>To provide for the management of animals in the Cairns Regional Council area by:</p> <ul style="list-style-type: none"> - Minimising risks to community health, safety and amenity; - Reducing environmental harm or environmental nuisance; - Supporting animal owners to keep their animals in a manner that is consistent with current community expectations.
<p><i>Cairns Regional Council Local Law No 3 (Community and Environment Management) 2011</i></p> <p><i>Cairns Regional Council Subordinate Local Law No 3 (Community and Environment Management)</i></p>	<p>To protect community health, safety and amenity and the environmental values of the region.</p>
<p><i>Cairns Regional Council Local Law No 4 (Local Government Controlled Areas, Facilities and Roads) 2011</i></p> <p><i>Cairns Regional Council Subordinate Local Law No 4 (Local Government Controlled Areas, Facilities and Roads) 2011</i></p>	<p>To protect the health and safety of people utilising Council controlled areas, facilities, infrastructure and roads.</p> <p>To regulate the use of Council controlled land, facilities, infrastructure and roads to prevent property damage or loss of amenity or nuisance.</p> <p>To preserve features of the natural and built environment and other aspects of the amenity of Council controlled land, facilities, infrastructure and roads.</p>
<p><i>Cairns Regional Council Local Law No 5 (Parking) 2011</i></p> <p><i>Cairns Regional Council Subordinate Local Law No 5 (Parking) 2011</i></p>	<p>To provide for an appropriate level of regulation for parking within the Cairns Region, to ensure maintenance of appropriate service standards and amenity for users and residents.</p>

<i>Cairns Regional Council Local Law No 6 (Bathing Reserves) 2011</i>	To enhance public safety and convenience within bathing reserves placed under council control through orderly management and regulation of activities within these areas.
<i>Cairns Regional Council Subordinate Local Law No 6 (Bathing Reserves) 2011</i>	

It is noted that since commencement of this Project, the State has repealed the Iconic Queensland Places Act 2008. As a consequence, there is no longer a requirement to finalise any assessment of the impact of the proposed Local Laws on Iconic Values of the former Douglas Shire locality.

Notwithstanding, Officers note that assessments of the potential impact of the proposed Local Laws on Iconic Values have been undertaken (refer Officers Report to Council, Agenda Item 3, Planning & Environment Committee Meeting, 13 April 2011). It is likely that the proposed Local Laws and Subordinate Local Laws will have minimal, if any, impact on the continued maintenance of declared Iconic Values within the former Douglas Shire, in circumstances whereby:

- Iconic Local Laws will continue until 31 December 2011;
- Proposed Local Laws and Subordinate Local Laws, by and large, continue a similar regime of regulation for the former Douglas Shire Council locality as has existed for some time, albeit in a smaller number of Laws;
- Vegetation management and protection will continue to be regulated by Local Law until 31 December 2011. Officers are continuing to prepare a Temporary Local Planning Instrument to replace local laws as a regulatory tool for vegetation within the entire Cairns Region. A report on this issue will be prepared for consideration by Council in August / September 2011.

In regard to the repeal of Council's existing Local Laws, it is recommended that no formal Repealing Local Law be prepared, as:

1. The *Local Government Act 2009* and associated regulations require completion of formal consultation, state interest checks and associated tasks prior to the implementation of any such Repealing Local Law. Completion of this process is likely to incur additional cost, and delay project completion for some months; and
2. All current Cairns City and Douglas Shire Local Laws will be automatically 'repealed' by virtue of provisions within the *Local Government Act 2009* and associated regulations on 31 December 2011.

CONSIDERATIONS:

Corporate and Operational Plans:

The Local Laws Project is aligned with the following Goal within Council's Corporate Plan:

Goal 6: Striving for Organisational Excellence

Objectives: To ensure that Council is open, accountable, ethical and financially responsible. Recognise that Council plays a leadership role for our immediate communities and for the wider region and will strive to represent our community's needs and expectations.

6.7 Consistently perform better, deliver on our objectives and operate sustainably.

Statutory:

Local Laws are made and administered by local authorities in Queensland in accordance with the *Local Government Act 2009*. For Council's affected by amalgamation or boundary realignment, the *Local Government Reform Implementation Regulation* also requires review of existing local laws and implementation of 'new' Local Laws (or re-application of certain existing laws) on or before 31 December 2011.

Policy:

Consultation for the Local Laws Project has been completed in compliance with Community Engagement General Policy No 1:05:01.

The Project commenced in 2010, and has been undertaken in compliance with a number of Council resolutions.

Financial and Risk:

The Project is managed by Officers within Planning & Environment, providing opportunities for retention of in house 'corporate knowledge', and reducing costs associated with the Project. One consultant (on a casual basis) has been involved in the Project since 2010.

If Council does not review its existing Local Laws, and work to implement new Local Laws by 31 December 2011, there is a risk that regulation of a range of activities with potential impacts on amenity, health and wellbeing of residents within the region is lost.

CONSULTATION:

Consultation in regard to the proposed actions has been undertaken within Council, specifically:

- Councillors via a Workshop in May 2010;
- Executive Team;
- Officers involved in use of existing local laws for regulatory and / or enforcement functions;
- Officers within Planning Strategies and Development Assessment in regard to the interface between regulation by local law and / or planning scheme.

In addition, Officers have been involved in ongoing discussions with representatives from Tablelands Regional Council, Cassowary Coast Regional Council, Cook Shire Council and the Far North Regional Organisation of Councils in regard to the Project. These discussions have been vital in terms of information sharing, opportunities for reduction in costs associated with the Project, and investigations regarding consistency in approach between various Councils in respect to Local Laws. Both Tablelands Regional Council and Cassowary Coast Regional Council are utilising the Model Local and Subordinate Local Law framework for their Local Laws moving forward. Cook Shire Council has recently completed a review of its local laws, and as it is not an 'amalgamated council', is not required to complete a further review by 31 December 2011.

Following completion of community consultation in late May 2011, Officers throughout the organisation were involved in a series of Local Laws Training Sessions, considering specific operational issues associated with each Local Law and Subordinate Local Law.

Consultation has commenced and continues to be undertaken with officers from the Department of Transport and Main Roads in regard to abandoned vehicles, animals and the like on State controlled roads.

OPTIONS:

Council may:

- A. Resolve not to note the Community Consultation Outcomes Report, Public Interest Test Report, revised Draft Local Laws and not adopt the proposed Local Laws and Subordinate Local Laws; or
- B. Resolve to note the Community Consultation Outcomes Report, Public Interest Test Report, revised Draft Local Laws and resolve to adopt the proposed Local Laws and Subordinate Local Laws.

CONCLUSION:

It is recommended that Council resolves to:

1. To note the report titled 'Consultation Outcomes Report' included at Attachment 1; and
2. To note the amendments made to Subordinate Local Laws No 1 – 6 inclusive as described in marked up drafts included at Attachment 2; and
3. To adopt the Public Interest Test Report at Attachment 3; and
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- a. The benefits of these provisions to the community as a whole outweigh the costs; and
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having regard to the local government duty of good rule and government of the Cairns Regional Council area; and

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 - b. Model Local Law No 2 (Animal Management) to be known as Local Law No 2 (Animal Management) 2011; and
 - c. Model Local Law No 3 (Community and Environment Management) to be known as Local Law No 3 (Community and Environment Management) 2011; and
 - d. Model Local Law No 4 (Local Government Controlled Areas, Facilities and Roads) to be known as Local Law No 4 (Local Government Controlled Areas, Facilities and Roads) 2011; and
 - e. Model Local Law No 5 (Parking) to be known as Local Law No 5 (Parking); and
 - f. Model Local Law No 6 (Bathing Reserves) to be known as Local Law No 6 (Bathing Reserves); and
8. That the commencement date for the local laws is to be 1 January 2012; and
9. To make, in the revised form included in Attachment 4:
 - a. Subordinate Local Law No 1 (Administration) 2011; and
 - b. Subordinate Local Law No 2 (Animal Management) 2011; and
 - c. Subordinate Local Law No 3 (Community Health and Environment Management) 2011; and
 - d. Subordinate Local Law No 4 (Local Government Controlled Areas, Facilities and Roads) 2011; and
 - e. Subordinate Local Law No 5 (Parking) 2011; and
 - f. Subordinate Local Law No 6 (Bathing Reserves) 2011; and
10. That the commencement date for the subordinate local laws is to be 1 January 2012; and
11. To propose to make such General or other Policies as may be required to provide additional clarity to the requirements of Local and / or Subordinate Local Laws prior to 1 January 2011;
12. To request Officers prepare a Report and Recommendations to Council for presentation before 1 January 2011 in regard to necessary Delegations and Authorisations pursuant to Local Laws 1 – 6 and Subordinate Local Laws 1 – 6.

ATTACHMENTS:

Attachment 1: Consultation Outcomes Report

Attachment 2: Marked Up Amended Subordinate Local Laws No 1 – 6

Attachment 3: Public Interest Test Report

Attachment 4: Revised Subordinate Local Laws 1 - 6

<< Attachments available on website>>

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