

12.4.3 Making of Council By-Laws

Folder ID: 2116

Appendix:

12.4D By-Laws - Numbers 1 to 7

12.4E National Competition Policy Reports for each By-Law

12.4F Reports to the Legislative Review Committee for each By-Law

12.4G Instrument of Delegation for By-Laws 1 and 3 to 7

12.4H Certificate of Validity for each By-Law

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Executive Summary

Report highlights

- The review of Council's By-Laws has been completed and Council is now required to 'make' the new By-Laws, as the current By-Laws automatically expire 1 January 2016.
- Public consultation was undertaken as required by Section 249 of the Local Government Act (the Act). A notice was placed in each of the Bunyip, Leader and Herald Newspapers on Wednesday 5 August 2015. The draft By-Laws were made available at both Council Offices, all of Council's libraries and on the Council's website. No submissions were received in response to the public consultation undertaken.
- Section 249 (3) of the Act specifies that By-Laws cannot be made unless at least two thirds of the Members of Council are present and vote on the resolution.
- Immediately following the Council's adoption of the By-Laws, the Chief Executive Officer (CEO) is required to sign two copies of the By-Laws along with a copy of the reports for the By-Laws to be submitted to the Legislative Review Committee.
- This must occur within six (6) Parliamentary sitting days of the Council's adoption of the By-Laws.
- A copy of the By-Laws must also be forwarded to the Government Printer for inclusion in the Gazette following the Council meeting at which the By-Laws are adopted.
- As part of this process it is also recommended that the Council by resolution sets the expiation fees for breaches and authority for relevant staff to issue permits under the By-Laws.
- The Council is then able to make available a separate register to be kept of all By-Laws made or adopted by the Council.

Budget Impact

Estimated Cost: **\$5000**

This includes the costs involved in having the proposed By-Laws drafted by Council's Lawyers. Other associated costs include any separate incidental legal advice and payment of public consultation costs (including newspaper advertising and Government Gazette Notices) as required by the Council's Public Consultation Policy and the Act.

Future ongoing operating costs: **Nil**

Is this budgeted? **Yes**

Yes

Sufficient Funds?

Yes

Recommendation

That:

1. Pursuant to Section 246 of the Local Government Act 1999:

1.1. There being at least two-thirds of the members of Council present; and

1.2. Having considered the

- Permits and Penalties By-Law 2015;
- Moveable Signs By-Law 2015;
- Roads By-Law 2015;
- Local Government Land By-Law 2015;
- Dogs By-Law 2015;
- Cats By-Law 2015; and
- Nuisances Caused by Building Sites By-Law 2015 (together, the By-Laws)

(reproduced as Items 1 to 7 of Appendix 12.4D on the agenda for the meeting of Council held on 22 September 2015) in light of the National Competition Policy and the Report prepared on the National Competition Policy with respect to the By-Laws (reproduced as Items 1 to 7 of Appendix 12.4E on the agenda for the meeting of Council held on 22 September 2015); and

1.3. Having considered all submissions and recommendations made on the By-Laws, Council makes the By-Laws in exercise of the powers contained in the Acts Interpretation Act 1915, Dog and Cat Management Act 1995, Local Government Act 1999 and Local Government Act 1934.

2. The Chief Executive Officer be authorised to sign the By-Laws as made by Council.

3. The Chief Executive Officer be authorised to publish notice of the making of the By-Laws in The Bunyip, The Leader and The Herald newspapers circulating in the area of the Council.

4. The Chief Executive Officer be authorised to arrange for the By-Laws to be published in the Government Gazette.

5. The report to the Legislative Review Committee on the By-Laws (reproduced as Items 1 to 7 of Appendix 12.4F on the agenda for the meeting of Council held on 22 September 2015), be adopted and be signed by the Chief Executive Officer on Council's behalf.

6. The Chief Executive Officer be authorised to arrange for the By-Laws and all other necessary documentation to be provided to the Legislative Review Committee.

Delegations under Council By-Laws

7. In exercise of the power contained in Section 44 of the *Local Government Act 1999* and Section 14C of the *Acts Interpretation Act 1915*, the powers and functions under the following By-Laws and specified in the proposed Instruments of Delegation for By-Laws contained in Items 1 to 6 of Appendix 12.4G to this report are hereby delegated this 22 September 2015 to the person occupying the office of Chief Executive Officer, or any person acting in the position of Chief Executive Officer and effective on the date on which the By-Laws come into operation, subject to the conditions and or limitations

specified herein or in the Schedule of Conditions in the proposed Instruments of Delegation for the By-Laws:

- Permits and Penalties By-Law 2015;
- Roads By-Law 2015;
- Local Government Land By-Law 2015;
- Dogs By-Law 2015;
- Cats By-Law 2015; and
- Nuisances Caused by Building Sites By-Law 2015.

8. The Chief Executive Officer is authorised to sub-delegate these powers to other employees of the Council as the Chief Executive Officer considers fit and in accordance with the relevant legislation unless otherwise indicated herein or in the Schedule of Conditions contained in the proposed Instruments of Delegation for the By-Laws.

Expiation Fees Under By-Laws

9. That in accordance with Section 246(5) of the *Local Government Act 1999* and Section 14C of the *Acts Interpretation Act 1915*, Council sets expiation fees for alleged offences against Clause 6.1 of Council's *Permits and Penalties By-Law 2015* (committed by virtue of a breach, contravention or failure to comply with the below By-Laws) in accordance with the amounts specified in the below table, effective on the date on which the By-Laws come into operation:

By-Law	Expiation Fee
Permits and Penalties By-Law 2015	\$187.50
Movable Signs By-Law 2015	\$187.50
Roads By-Law 2015	\$187.50
Local Government Land By-Law 2015	\$187.50
Dogs By-Law 2015	\$187.50
Cats By-Law 2015	\$187.50
Nuisances Caused By Building Sites By-Law 2015	\$187.50

Reasons for the decision

Pursuant to Section 246 of the Local Government Act 199, the Council is required to review its By-Laws every seven (7) years. This report outlines the process undertaken to date which satisfies the Council's statutory obligations and requirements in regards to the reviewing of its By-Laws.

Detailed Report

Purpose

The Review of Council By-Laws has been completed and Council is now required to make the new By-Laws.

Background

The Council's current By-Laws automatically expire on 1 January 2016 and a review has been conducted in preparation for making the current By-Law replacements. The review process is established by the *Local Government Act, 1999* (the Act).

To enable Council to continue to enforce the By-Law regulatory powers, it is necessary to make replacement By-Laws before the expiry date. The long lead time is driven by the mandatory public consultation, Government Gazette schedule and allowing time for consideration by the State Government's Legislative Review Committee.

The draft By-Laws were considered by the Council at its meeting 28 July 2015. At this meeting the Council resolved to endorse the draft By-Laws and undertake the public consultation process.

History

Council Meeting 21 August 2007 minute book number 2007/260
Council Meeting 2 November 2007 minute book number 2007/352
Council Meeting 28 August 2015 minute book number 2015/240

Discussion/Analysis

It is proposed that Council make 7 new By-Laws:

By-Law No.1. Permits and Penalties;
By-Law No.2. Moveable signs;
By-Law No.3. Roads;
By-Law No.4. Local Government Land;
By-Law No.5. Dogs;
By-Law No.6. Cats; and
By-Law No.7. Nuisances Caused by Building Sites.

Public consultation was undertaken as required by Section 249 of the Act. A notice was placed in the Bunyip, Leader and Herald Newspapers on Wednesday 5 August 2015. The draft By-Laws were made available at both Council Offices, all of Council's libraries and on the Council's website. No submissions were received in response to the public consultation undertaken.

Now that the public consultation process has been undertaken, Council can resolve to 'make' the new By-Laws. Once the resolution has been passed, it should be noted in the minutes that an absolute majority voted in favour of the resolution, or otherwise that it was carried unanimously. It is noted that Section 249 (3) of the Act specifies that By-Laws cannot be made unless two thirds of the Members of Council are present and vote on the resolution.

Immediately following the Council's adoption of the By-Laws, the Chief Executive Officer (CEO) is required to sign two copies of the By-Laws. In addition to this the CEO must also sign a copy of the reports for the By-Laws to be submitted to the Legislative Review Committee.

This must occur within six (6) Parliamentary sitting days of the Council's adoption of the By-Laws and therefore the signed By-Laws and Legislative Review Committee report must be forwarded immediately following the Council meeting.

A copy of the By-Laws must also be forwarded to the Government Printer for inclusion in the Gazette following the Council meeting at which the By-Laws are adopted.

A notice of the making of the By-Laws must also be published in a newspaper circulating in the area of the Council pursuant to Section 249(7) of the Local Government Act 1999. Council will therefore publish a copy in all three (3) new papers that circulate within the area.

In order to finalise all the necessary processes it is also appropriate for Council to set by resolution expiation fees for breaches of the By-Laws as these are not set within the By-Laws themselves. If the Council does not set expiation fees, offences against the By-Laws will only be able to be dealt with by prosecution.

The Council also needs to consider authorising certain employees of the Council to grant permits under the By-Laws via resolution. Absent such a resolution, any permission required under the By-Laws can only be granted by the Elected Body of Council itself. To have the Elected Body administer the permit process would be both cumbersome and time consuming for the community and cause unnecessary delays. It is therefore considered that the following officers of the Council be authorised to issue permits under the By-Laws:

- General Inspector(s);
- Environmental Health Officer;
- Statutory Planning Staff;
- Manager - Development Services; and
- General Manager – Strategy and Development.

The setting of the expiation fees for breaches and authority to issue permits under the By-Laws is therefore also recommended to be established as part of this process to avoid Council having to consider further separate reports with respect to these two (2) matters.

Once all the above has taken place the Council is required to undertake the following:

- The Council is required pursuant to Section 252 of the Act to make available a separate register to be kept of all By-Laws made or adopted by the Council; and
- In accordance with Section 132 of the Act, the Council must make its By-Laws available on the internet.

Conclusion

Finalising the review of the By-Laws and 'making' the By-Laws ensures that the Council has fulfilled its statutory obligations and allows the replacement By-Laws to supersede those that will automatically expire on 1 January 2016. The Council must resolve to make the new By-Laws and note in the minutes that an absolute majority of the Elected Members of Council voted in favour of the resolution contained within this report.

References

Legislation

Local Government Act, 1999
Dog and Cat Management Act, 1995

Council Policies

Public Consultation Policy
Order Making Policy
By-Laws Numbers 1-7

Strategic Plan

Political Context