

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
2.11 Considering and deciding on different Local Law Approaches.	<ul style="list-style-type: none"> Council needs to consider different regulatory approaches and be clear about which approach it is adopting. Council should be satisfied that the regulatory approach adopted is consistent throughout all materials relied on by Council – including material incorporated by reference. 	<ul style="list-style-type: none"> Council should understand and be able to articulate the regulatory approach or approaches it is adopting. It should have an understanding of why the particular approach is relevant to its community. If the approach adopted is different to that of neighbouring or like Councils, Council should be able to explain why this needs to be the case. Council should be able to demonstrate that the stated approach is consistent across all relevant documents: the Local Law, incorporated documents and any other documents. 	<ul style="list-style-type: none"> The Local Law Community Impact Statement should explain the regulatory approach adopted by Council and explain why this approach is relevant. Whether the approach is consistent with neighbouring and like Councils and, if not why not, would be explained.
2.12 The least burden/greatest advantage test.	<ul style="list-style-type: none"> Council is obliged to ensure that the regulatory approach it adopts involves the least burden or the greatest advantage to its community. 	<ul style="list-style-type: none"> Council needs to make an explicit attempt to assess the costs of proposed Local Laws against the benefits. This could possibly be done using a tool like the Business Cost Calculator. 	<ul style="list-style-type: none"> The Local Law Community Impact Statement should include the results of an assessment of the burden of the proposed Local Law compared to its advantage.

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2.13 Possible restriction of competition by Local Laws	<ul style="list-style-type: none"> Council's Local Laws must not restrict competition unless Council can demonstrate: <ul style="list-style-type: none"> – the benefits outweigh the costs – there is no other way of achieving the objective. This also applies to policies and guidelines supporting Local Laws. 	<ul style="list-style-type: none"> Council needs to assess each relevant Local Law provision in accordance with the competition test. The assessment needs to extend to any Council policies or guidelines and other material (such as permit conditions) supporting the Local Law. 	<ul style="list-style-type: none"> A review in accordance with National Competition Principles and a statement of whether a Local Law restricts competition and if so, that the benefits outweigh the costs should be included in the Local Law Community Impact Statement.

Understanding some mechanisms related to Local Laws

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
3.1 Application of the Local Law	<ul style="list-style-type: none"> Under section 116 of the Act, Council can decide the times, extent, cases, etc. to which a Local Law applies. If Council wants to decide these matters, it needs to explicitly do so. If Council wishes to reserve the right to determine matters provided for by section 116, the Local Law should: <ul style="list-style-type: none"> – specifically reserve that right – specify the circumstances under which determination may be triggered – specify conditions which will apply – specify that Council will make the decision. 	<ul style="list-style-type: none"> It is preferable that section 116 be read and applied strictly. If it is contemplated that exceptions may apply, these should be specifically set out in the Local Law. If matters are required to be in accordance with a standard or approved process, etc., then the standard or approval process should be explicitly spelled out. 	
3.2 Enforcement – General considerations	<ul style="list-style-type: none"> The mechanisms used to enforce Local Laws will impact on the effectiveness of the Local Laws. 		

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3.3 Notices/ cautions/ warnings	<ul style="list-style-type: none"> • Council needs to be clear about and clearly articulate what it is trying to achieve when it uses mechanisms such as notices to comply, cautions and warnings. • Council needs to be clear about the intended consequences of these mechanisms – particularly whether failure to comply creates another offence. • Council needs to be extremely clear about whether it is creating its own procedures or using procedures – such as official warnings – under the <i>Infringements Act 2006</i>. 	<ul style="list-style-type: none"> • Council should give active consideration to levels of penalties set. • Any variation in penalty levels between Council and its neighbours or like Councils should be explained. 	<ul style="list-style-type: none"> • Any variation between penalties adopted by Council and those adopted by its neighbouring or like Councils should be explained in the Local Law Community Impact Statement.
3.4 Penalties	<ul style="list-style-type: none"> • Council needs to comply strictly with legislative provisions related to penalties including the fact that the maximum effective penalty allowed under a Local Law is 20 penalty units. • Council also needs to comply with the <i>Attorney-General's Guidelines to the Infringements Act 2006</i>. 	<ul style="list-style-type: none"> • Council should give active consideration to levels of penalties set. • Any variation in penalty levels between Council and its neighbours or like Councils should be explained. 	<ul style="list-style-type: none"> • Any variation between penalties adopted by Council and those adopted by its neighbouring or like Councils should be explained in the Local Law Community Impact Statement.



Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
3.5 Infringement notices	<ul style="list-style-type: none"> • Council needs to understand and be aware that the: <ul style="list-style-type: none"> – form – content – service – review – withdrawal • of <i>Infringement Notices</i> are all governed by the <i>Infringements Act 2006</i> and the regulations made under that Act. • These matters cannot be set by Council, the CEO or any officer or person. A Local Law is invalid to the extent it purports to change this. • Council does need to put in place procedures for review. • These do not necessarily need to be in the Local Law but details of the procedure should be readily available to the public. 		
3.6 Permits and licences	<p>Council processes and conditions in relation to permits need to be consistent.</p>	<ul style="list-style-type: none"> • To achieve consistency, Council needs to be clear on its own requirements in relation to permits and permit conditions. • Council needs to address issues such as: <ul style="list-style-type: none"> – exactly what is being permitted – whether the permit is within Council's jurisdiction – the conditions – who has authority to issue the permit – the effect of a breach of permit • Council processes and conditions in relation to permits need to reflect a consistent 'whole of Council' approach. 	

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
3.7 Purposes and conditions of permits, licences, etc.	<ul style="list-style-type: none"> The legislation presumes that the purposes for which permits, etc., will be issued and the conditions on which they will be issued will be set out in the Local Law, not held in reserve. The conditions set out: <ul style="list-style-type: none"> – should be reasonable having regard to all the circumstances – should not include matters which cannot be complied with, such as joint named insurance – must not be utilised as an opportunity for Council to avoid liabilities which would otherwise exist. 	<ul style="list-style-type: none"> A Local Law should commit Council to a defined procedure and outcome in relation to permits. This achieves transparency and accountability. Ideally, the Local Law will set out clearly: <ul style="list-style-type: none"> – a form (or forms, if they vary with differing types of permit) of application for permit showing the information required to be provided by applicants – the factors Council will take into account in assessing an application – the conditions on which a permit will be issued – the consequences of breach or failure to comply with conditions – the circumstances under which a permit may be refused – the circumstances under which a permit may be cancelled or modified – the process that will be adopted to implement these matters and the timeline which will be adopted – the rights of an applicant to a review of the decision in relation to conditions or refusal. If these matters are not set out in the Local Law itself, they should at least be set out in a document (or documents) incorporated into the Local Law and available on Council's website. Where it is not possible to set out conditions fully because, for example, they will be subject to a site inspection, this should be spelled out. Where the final conditions will be a mix of standard conditions and conditions determined as a result of a process such as site inspection, the standard conditions should be set out. Similar Councils should require similar conditions in like circumstances. If the conditions required by one Council differ from those of its neighbours or like Councils, an explanation is required. 	<ul style="list-style-type: none"> A Local Law Community Impact Statement should include an explanation of: <ul style="list-style-type: none"> – why the particular permit conditions are required – why any particular conditions cannot be spelled out in the Local Law – unless the Local Law spells out the process, an explanation of the process by which conditions will be determined – if conditions vary from those of neighbouring or like Councils, why that is the case.

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
3.8 Fees in relation to permits, etc.	A Local Law may contain a provision stating that Council may set fees by resolution.		
3.9 Provisions for imposing fees			
3.10 Reduction, waiver or refund of fee			
3.11 Practices in relation to fees – summary	<ul style="list-style-type: none"> • Council needs to ensure that it complies with minimum legislative requirements in relation to fees. • Sections 113(2) and (3) of the Act call for the insertion of provisions into the Local Law that create the framework for dealing with fees. • This framework should be created by Council. 	<ul style="list-style-type: none"> • Council should be able to demonstrate that setting of fees and related matters such as waiver or reduction is a transparent process with predictable outcomes. • If persons are to be exempted from fees, for example, the circumstances under which this will happen and the matters that will be taken into account need to be set out. • Significant differences in the level of fees between Council and its neighbours or like Councils need to be explained. 	<ul style="list-style-type: none"> • Any significant variance between Council's fees and those of its neighbouring or like Councils should be explained in the Local Law Community Impact Statement.
3.12 Delegations and authorisations and discretions	<ul style="list-style-type: none"> • Council needs to understand whether it is using the Local Law to delegate or relying on a general power of delegation. • 'Authorised officer' is different to a 'delegate.' • Council must understand clearly: <ul style="list-style-type: none"> – what powers and functions it is delegating or what authorisations it is granting; – to whom or what positions; and – under which provision of the legislation. 		

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
3.13 Review and appeal provisions	<ul style="list-style-type: none"> If infringement notices are issued, the review provisions of the <i>Infringements Act 2006</i> are operative and need to be followed rigorously For other decisions of Council or officers, Local Laws need to provide review mechanisms that should be clear and transparent. Council needs to be clear about which review process it is following. If Council's own review processes closely mirror those provided under the <i>Infringements Act 2006</i> there will be greater understanding, consistency and transparency. 	<ul style="list-style-type: none"> Transparency and accountability require that the review process be set out fully so that all parties are aware of it. The process must be set out in the Local Law – or in a document that is incorporated into and available with the Local Law. It should not be set out in an internal guidelines or other document not available to the public. Council needs to be as committed to the process as the affected party. 	

Drafting and reviewing the draft of Local Laws

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
4.1 Reference materials	<ul style="list-style-type: none"> Council must have regard to the <i>Interpretation of Legislation Act 1984</i> that has rules about how Local Laws will be interpreted, as well as the <i>Local Government Act 1989</i>. Council would be wise to refer to the Guidelines on Statutory Rules issued by the Office of the Chief Parliamentary Counsel. 		
4.2 <i>Interpretation of Legislation Act 1984</i>	<ul style="list-style-type: none"> Existing provisions of legislation such as the <i>Interpretation of Legislation Act 1984</i>, should be utilised where possible. For example, if a word or phrase is defined in enabling legislation or in the <i>Interpretation of Legislation Act 1984</i>, that definition should be accepted in the Local Law. If a different definition is required, it is preferable to use a different word or phrase and define it. If the <i>Interpretation of Legislation Act 1984</i> states how a provision is to be interpreted, such as singular including plural, there is no need to repeat that in the Local Law. It is already the law and repeating it is simply duplicating existing legislation. 		
4.3 The Format of Local Laws	<ul style="list-style-type: none"> There is no set format for Local Laws. The predominant criteria should be clarity and accessibility. This commences with having a planned outline. 		
4.4 Referring to penalties in a Local Law	<ul style="list-style-type: none"> The <i>Sentencing Act 1991</i> provides a convenient method of referring to penalties in Local Laws and it should be used. 		

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
4.5 The style and language of authorising Acts	<ul style="list-style-type: none"> The language of Local Laws must be consistent with the Act. 		
4.6 Drafting standards and principles	<ul style="list-style-type: none"> Local Laws must comply with current drafting practice. 		
4.7 Limit to objectives	<ul style="list-style-type: none"> Local Laws must set out their objective in the Local Law and not exceed the objective. 		

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
4.8 Incorporating material by reference	<ul style="list-style-type: none"> Many Councils incorporate material (such as policies, codes and guidelines) into their Local Laws by reference. Incorporation by reference is a potentially complex area. It needs to be handled carefully if it is to be legally effective in adding material to Local Laws. Council needs to have a clear view of issues such as: <ul style="list-style-type: none"> whether Council means to incorporate a document or just refer to it which version and which part of the document is incorporated the implications of the document being amended. Documents that are incorporated effectively form part of the Local Law and need to be as readily available as the Local Law. 	<ul style="list-style-type: none"> Serious consideration needs to be given to whether a Local Law should be complete within itself or rely on incorporated material. If the latter, consideration needs to be given to the extent. A factor in this will be the availability of the incorporated material. To put it beyond doubt that a document is being incorporated by reference, it is suggested that an appropriate form of words, including name and version, is used to identify the document. If only part of a document is relevant, then that part only should be incorporated. This can be done by referring explicitly to the part in question. Council needs to specify which version of the document is being incorporated – earlier, current or ‘from time to time.’ Unless ‘from time to time’ is specified, the incorporated document cannot be updated without updating the Local Law. An amended document is not effective to update until it is gazetted. It is suggested that incorporated documents must be in existence at the time the Local Law is made. If this is not the case, then at a minimum, the Local Law should provide that a document is not incorporated until a process is conducted under section 223, and the document is gazetted. Incorporated documents must be as available as the Local Law – for example, on Council’s website. 	

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
4.9 Performance standards or prescriptive?	<ul style="list-style-type: none"> It is a legal requirement that, wherever appropriate, a Local Law be expressed in terms of performance standards rather than prescribed details 	<ul style="list-style-type: none"> Council needs to make a deliberate decision to adopt a performance-based approach. If a performance-based approach is not appropriate, this should be explained. 	<ul style="list-style-type: none"> If a performance-based approach has not been adopted in respect of provisions or a range of provisions, the Local Law Community Impact Statement should include an explanation as to why this was not appropriate or possible.
4.10 Expressed plainly	Local Laws should be in Plain English.	<ul style="list-style-type: none"> Council needs to adopt a 'Plain English' policy in respect of all its documents and then apply that to its Local Laws and related documents. Council should refer to website resources found by a search of 'Plain English.' 	
4.11 Not exceed powers	Council's Local Law must not exceed the powers of the Act(s) under which it is made.		
4.12 Not retrospective	A Local Law must not have retrospective effect.		
4.13 Tax, fees, fine or penalty	<ul style="list-style-type: none"> There must be specific authority in the enabling Act to impose a tax, fee, fine or penalty. No legislation allows Council to impose imprisonment. 	<ul style="list-style-type: none"> In the relevant provision of the Local Law: <ul style="list-style-type: none"> any charge should be accurately described as either a fee or a charge or a fare or rent. there should not be a generic clause authorising Council to '... by resolution determine a fee, charge, fare or rent in respect of any matter under this Local Law ...' It is preferable to have a specific clause in respect of each item as it occurs in the Local Law – permit fee, impounding charge, etc. 	

Appendix 1

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4.14 Not shift onus of proof	<ul style="list-style-type: none"> A Local Law must not reverse the onus of proof unless there is specific authority in the enabling Act. The <i>Local Government Act 1989</i> does not provide authority to reverse onus of proof. Other Acts under which Council is able to make Local Laws are unlikely to provide authority. 		
4.15 No further delegation	<ul style="list-style-type: none"> A Local Law cannot normally delegate powers beyond the limit set by the enabling Act. 		
4.16 No unexpected or unusual use of powers	<ul style="list-style-type: none"> Local Laws must not misuse the powers granted by the Act under which they are made. This would include extending powers to unusual lengths or adopting artificial interpretations of provisions. 		
4.17 Reviewing the draft	<ul style="list-style-type: none"> Council needs to review its draft Local Law. A review against similar Local Laws of neighbouring or like Councils is also good practice. The Charter of Human Rights requires that the draft be reviewed. National Competition Principles require that the draft be reviewed. 		

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
4.18 Reviewing the draft – neighbouring and like councils	<ul style="list-style-type: none"> Council should compare its proposed Local Law with those of its neighbours and those of similar (like) Councils. 	<ul style="list-style-type: none"> ★ 	<ul style="list-style-type: none"> The Local Law Community Impact Statement should detail those neighbouring and like Councils whose Local Laws have been compared. The statement should detail the points of comparison. Significant differences between Council's proposed Local Law and those of its neighbours or like Councils should be explained.
4.19 Reviewing the draft – <i>Charter of Human Rights</i>	<ul style="list-style-type: none"> The <i>Charter of Human Rights</i> requires that Local Laws not be incompatible with Human Rights. A thorough and detailed review is the only way of establishing this. The Charter applies to all materials such as policies, guidelines and manuals used in conjunction with the Local Law. 	<ul style="list-style-type: none"> Council needs to undertake a review of its proposed Local Law in accordance with the procedures laid out in this manual. The review results would be made available to the community. 	<ul style="list-style-type: none"> A Local Law Community Impact Statement should include results of a review for compatibility with the <i>Charter of Human Rights</i>, that is, whether any rights are engaged and justifying any limitations on rights.



Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
4.20 Reviewing the draft – other provisions of Schedule 8	<ul style="list-style-type: none"> Schedule 8 has a number of other provisions that would require the draft Local Law to be reviewed. These include: <ul style="list-style-type: none"> – principles of justice and fairness; – absence of undue trespass on rights; and – absence of undue reliance on administrative decisions These provisions pre-date the <i>Charter of Human Rights</i>. The review against the Charter of Human Rights should ensure compliance with the provisions. 		
4.21 Reviewing the draft – principles of justice and fairness			
4.22 Reviewing the draft – undue trespass on rights			
4.23 Reviewing the draft – undue dependence on administrative decisions			
4.24 Reviewing the draft – National Competition Principles	<ul style="list-style-type: none"> Draft Local Laws must be reviewed to ensure they do not breach National Competition Principles. 		

Communicating and consulting on the draft

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
5.1 Starting communication	<ul style="list-style-type: none"> Council needs to start communication and consultation on its proposed Local Law well before the statutory section 223 process. Council needs to take responses into account and needs to be prepared to make changes to its draft as a result of consultation. 	★	✓
5.2 Identifying and communicating with affected parties	<ul style="list-style-type: none"> To communicate effectively, Council needs to identify and make contact with affected parties. 	★	✓
5.3 Consultation meetings	<ul style="list-style-type: none"> It is suggested Council convene one or more consultation meetings prior to the section 223 process being commenced. 	★	<ul style="list-style-type: none"> The Local Law Community Impact Statement should include: <ul style="list-style-type: none"> the response obtained as a result of community consultation any adjustments to the proposed Local Law made as a result.
5.4 Public notice	<ul style="list-style-type: none"> Council must give public notice of its intention to make a Local Law. The notice must include the 'purpose and general purport' of the Local Law. 	★	✓
5.5 Considering submissions	<ul style="list-style-type: none"> Council is obliged to consider all submissions made. Council is not obliged to adopt the submissions but genuine consideration should be given and demonstrated. Council should adopt a two-stage process to avoid considering submissions at the same meeting at which it is proposed to adopt the Local Law. 	★	<ul style="list-style-type: none"> The final version of the Local Law Community Impact Statement should include a copy of Council's replies to submissions whether accepted or otherwise.

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
5.6 Making amendments	<ul style="list-style-type: none"> If Council makes substantial amendments to the proposed Local Law after public notice is given, Council will need to consider whether public notice needs to be given again. 	★	✓

Making Local Laws

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
6.1 Resolution	<ul style="list-style-type: none"> Council makes the Local Law by ordinary resolution. 	★	✓
6.2 Commencement	<ul style="list-style-type: none"> The Local Law comes into operation on the day Council makes it, unless the Local Law itself expresses a different date. 		
6.3 Stay of operation	<ul style="list-style-type: none"> While it does not affect the validity of a Local Law, a failure to make the Local Law available may effectively operate to prevent the Local Law being used. 		

Implementing Local Laws

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
7.1 Gazetting and giving notice	<ul style="list-style-type: none"> As well as gazetting and giving public notice of the intention to make a Local Law, Council must gazette and give public notice of the fact that it has made the Local Law. Council must also send a copy to the Minister for Local Government. 		
7.2 Ancillary materials, forms, guidelines, etc.	<ul style="list-style-type: none"> If Council wishes to rely on material that is not incorporated into the Local Law, it needs to be prepared to explain why. That material needs to be readily available to the public. 		
7.3 Authorisations and delegations	<ul style="list-style-type: none"> Council can only effectively act through staff who are either authorised or have appropriate delegated powers. It is critical Council makes sure delegations and authorisations are in place. 		

Accessibility and communication

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
8.1 Availability of Local Laws.	Local Laws must be: <ul style="list-style-type: none"> • printed • available for inspection • available for purchase • on Council's website • in consolidated form. 		
8.2 Availability of materials incorporated by reference into the Local Law.	<ul style="list-style-type: none"> • Council needs to ensure that material incorporated by reference into the Local Law is available to the same extent and in the same ways (for example, on Council's website) as the Local Law itself, preferably alongside or linked to the Local Law. 		
8.3 Education campaigns.	<ul style="list-style-type: none"> • Council should consider active steps such as education campaigns and mail outs to affected groups in order to publicise Local Laws. 		

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
8.4 Publication and availability of Local Law and related material	<ul style="list-style-type: none"> Local Laws and related material must be available for inspection on request. 	<p>Council should ensure:</p> <ul style="list-style-type: none"> the Local Law, all incorporated materials, and any materials that are not incorporated but are relied upon by Council are available on Council's website, all such materials must also be available in hard copy. This could be achieved by having copies 'in stock'. This is effectively a legislative requirement in respect of the Local Law itself; Council must maintain printed copies, if Council does not wish to maintain stocked copies, service centre and other relevant staff must have the training and resources to print relevant material from the Council website on request, no charge should be made for printing from the website – since it is only an alternative to the requirement to have material in stock. The only charge should be if a person wants to take a copy of material. 	
8.5 Availability of materials on Council website.	<p>Council's Local Law must be available on Council's website</p>	<ul style="list-style-type: none"> For consistency, Council's website should include: <ul style="list-style-type: none"> the Local Law in current and consolidated format any material incorporated by reference into the Local Law under section 112 any other material Council relies on or takes into account in relation to the Local Law including guidelines, etc. 	

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
8.6 Website protocols	<ul style="list-style-type: none"> It is not sufficient for Local Laws and related materials to be summarised or buried on Council's website. These materials need to be able to be found easily and in full. 	<ul style="list-style-type: none"> To provide adequate access to Local Laws, Council's website needs to have a menu item 'Local Laws' immediately visible on the Home Page of the website. 'Immediately visible' means that the viewer should not have to take any further action – such as clicking on an 'accessibility menu' in order to see the reference. The menu item 'Local Laws' must link directly to a listing of Council's Local Law(s). If Council has more than one Local Law, the listing should provide a description of the contents of each Local Law. Such a description could be developed/extracted from the statement of objectives of the Local Law. It should be sufficiently detailed to enable a person to identify which Local Law deals with a topic in which they are interested. From the listings page, a person should be able to open a copy of each Local Law in its entirety. The linkage to each Local Law must also include a linkage to all material incorporated by reference into the Local Law. The linkage to Local Laws should include a further linkage to a listing of all permits required under that Local Law – specifying the operative clause of the Local Law which requires the permit. In respect of each permit required there should be access to: <ul style="list-style-type: none"> an application for permit form standard conditions of permit (Unless these are contained in full in the Local Law; even then it would not hurt to have them separately available) permit fees, charges, deposits and any other relevant material. 	

Enforcement – Personnel & practices

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
9.1 Authorised officers	<ul style="list-style-type: none"> To take action under a Local Law, Council will need to appoint 'authorised officers' in accordance with section 224 of the Act. The formalities of authorisation must be complied with. 	<ul style="list-style-type: none"> Achieving the outcome 	<ul style="list-style-type: none"> Local Law Community Impact Statement
9.2 Requirements placed on authorised officers – identity cards	<ul style="list-style-type: none"> Authorised officers must present their identity card on request. 		
9.3 Powers of authorised officers	<ul style="list-style-type: none"> Authorised officers have extensive powers, including power of entry. Powers must be exercised with caution and within authority. 	<ul style="list-style-type: none"> Council needs to have training in place for authorised officers. A manual and reference guide is essential for authorised officers. 	
9.4 Understanding enforcement action – Local Law or Infringements Act?	<ul style="list-style-type: none"> It is critical that persons instituting and following up enforcement action understand whether they are acting under the Local Law or the <i>Infringements Act 2006</i>. 		
9.5 Notices to comply and other actions under Local Laws	<ul style="list-style-type: none"> A notice to comply must follow the form, process and procedure set out in the Local Law if it is to be effective. 		

Appendix 1



Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
9.6 Appeal and review provisions	<ul style="list-style-type: none"> Council must very clearly differentiate between an appeal or review process as specified under the Local Law and a review under the <i>Infringements Act 2006</i>. In both cases, the processes set out must be followed exactly. 		
9.7 Having an opinion – section 42 of the <i>Interpretation of Legislation Act 1984</i>	<ul style="list-style-type: none"> Unless Council deliberately provides otherwise, it will be bound by the opinion of a delegate. 		
9.8 Infringement notices – <i>Infringements Act 2006</i> requirements	<ul style="list-style-type: none"> <i>The Infringements Act 2006</i> sets out extensive provisions related to the issuing of Infringement Notices. Council cannot use its Local Laws to modify these provisions. Council must comply with the provisions. 		
9.9 <i>Infringements Act 2006</i> reviews	<ul style="list-style-type: none"> <i>The Infringements Act 2006</i> has extensive provisions in respect of requests for review and the conduct of reviews under that Act. These provisions must also be followed. 		

Review

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
10.1 Need for review of Local Laws	<ul style="list-style-type: none"> • Council will periodically need to review the ongoing need for, success of, and need for additional Local Laws. • The frequency of this review will be determined by Council's commitment to the community in its Local Law Community Impact Statement but may be supplemented by ad hoc reviews. 	★	✓
10.2 Areas for review	<ul style="list-style-type: none"> • Council will have its own unique knowledge of what aspects of Local Laws need to be reviewed. • At a minimum issues should include: <ul style="list-style-type: none"> – whether there is still a problem to address – whether the objectives are being met – if the impacts are as expected – if the Local Law is still the most appropriate approach. 	★	✓

Amending a Local Law

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
11.1 Means of amending	<ul style="list-style-type: none"> • Local Laws can only be amended in the same way as they are made. • Councils need to be alert to 'unofficial' amendments by officers. 	★	✓

Sunset

Heading	Outcome	Achieving the outcome	Local Law Community Impact Statement
12.1 The expiration of Local Laws	<ul style="list-style-type: none"> A Local Law expires after 10 years – whether or not it has been amended in the meantime. 		
12.2 Renewal of the Local Law	<ul style="list-style-type: none"> The only way to 'renew' a Local Law is to make a new one. It is recommended that Council starts this process not less than a year in advance. 		

14 APPENDIX 2 – The Local Law Community Impact Statement (LLCIS) - samples.

14.1 Contents of Appendix 2

This Appendix 2 contains:

14.1.1 Explanation

Local Law Community Impact Statement Explanation that gives a brief explanation of the contents of the fields which need to be completed by Council.

14.1.2 Sample

Local Law Community Impact Statement Sample that gives an example of the sorts of wording a Council might use in the Statement.

14.1.3 Template

Local Law Community Impact Statement Template that is a blank form of Statement for Councils to use.

14.2 Developing & completing a LLCIS

It is emphasised that Councils are free to develop their own form of explanatory document like the Local Law Community Impact Statement in whatever format and layout they choose. The following documents are intended as an aid only. They should not be slavishly followed. In particular, the wording of the completed Statement should be Council's own wording that addresses its unique circumstances.

[Name of Municipality]

Local Law Community Impact Statement

[Name or other identification of proposed Local Law]

Council provides the following information to the community in respect of the proposed Local Law.

PART A – General comments

Background

[This section might include the general context of the proposed Local Law, for example, whether the Local Law is new or the proposal results from the ‘sunsetting’ of an existing Local Law. It might be explained whether the proposed Local Law is a comprehensive ‘omnibus’ type law or whether it is one of a number of Local Laws.]

A brief outline of the process used to achieve a proposed draft Local Law – who was involved, the timeline, etc. might be inserted here or could appear in the Council Meeting Agenda report.]

Objectives

The objectives of the proposed Local Law are set out in the draft of the Local Law. *[Any additional comment about objectives could be made here]*

PART B – Comments on proposed Local Law overall³⁷

Measures of success of proposed Local Law

[2.3³⁸ Set out clear indicators by which Council will measure the success of the Local Law for example, reduction in complaints, reduction in instances of problem, etc.]

Set out the frequency with which success will be measured and reported on to the community.]

Existing legislation that might be used instead

[2.6 Indicate other legislation that has been identified which touches on issues dealt with by the proposed Local Law and explain why these provisions are not suitable to resolve the problem.]

³⁷ The contents of this part will vary according to the conclusions reached by Council. If specific findings are made in respect of some provisions, these might best be reported in Part C against that provision. Similarly, if there are specific exceptions – for example, a problem addressed by the Local Law is of great community interest so Council proposes to report on success more frequently – that might be addressed specifically in Part C.

³⁸ References are to the relevant section of ‘Guidelines for Local Laws: Manual’

State legislation more appropriate	<i>[2.7 If Council is of the view that State Government legislation is more appropriate to deal with the problem, then it should not propose a Local Law to deal with the issue. This may lead to questions from the community as to why a matter is not covered by the Local Law and this should be explained.]</i>
Overlap of existing legislation	<i>[2.8 Identify existing legislation on any issue covered by the proposed Local Law and clarify why it does not overlap, duplicate or cause inconsistency with that legislation. That is, while the legislation and proposed Local Law may address the same topic, they deal with different aspects.]</i>
Overlap of planning scheme	<i>[2.9 As for legislation.]</i>
Risk assessment	<i>[2.10 The results of any risk assessment (that is, a report) undertaken should be attached. To the extent that the risk assessment report addresses issues, reference can be made in this table rather than reiterating the risk assessment report.]</i>
Legislative approach adopted	<i>[2.11 A brief explanation of the regulatory approach adopted by Council should be given and whether that approach is consistent throughout the entire proposed Local Law. Whether the approach adopted is consistent with neighbouring and like Councils could be addressed here or in the comparison section (4.18).]</i>
Restriction of competition	<i>[2.13 The results of a review in accordance with National Competition Principles should be attached.]</i>
Penalties	<i>[3.4 Any variation between the penalty levels adopted by Council compared to that of its neighbours or like Councils should be explained either here or in the comparison section (4.18).]</i>
Permits	<i>[3.7 If the proposed Local Law has a generic provision dealing with permits, this section should be used to briefly explain: why permit conditions are required, why any conditions are not spelled out, the process by which conditions will be determined, and if conditions vary from neighbouring or like Councils, why that is the case. If the proposed Local Law has permit requirements within specific provisions, a similar explanation should be provided in Part C against each provision.]</i>
Fees	<i>[3.11 Significant differences between the level of fees to be adopted by Council (if set out in the proposed Local Law) and those of neighbouring or like Councils should be explained either here or in the comparison section (4.18).]</i>
Performance standards or prescriptive	<i>[4.9 If Council has not adopted a performance-based approach in the drafting of the proposed Local Law, it should give a brief explanation here of why that is the case. Alternatively, Part C may be used to explain why particular provisions do not use a performance-based approach.]</i>

Appendix 2

Comparison with neighbouring and like Councils	<i>[4.18 Council should detail those Councils whose Local Laws have been compared, the points of comparison and the result of the comparison.]</i>
Charter of Human Rights	<i>[4.19 The results of a review for compatibility with the Charter of Human Rights should either be set out here or attached. The results should specify whether any rights are engaged and justify any limitation on rights.]</i>
Consultation meetings	<i>[5.3 Council should set out the response(s) obtained as a result of community consultation and any adjustments made to the proposed Local Law as a result.]</i>
Submissions	<i>[5.5 Copies of Council's reply to submissions received should be attached.]</i>

[Name of Municipality]

Local Law Community Impact Statement

[Name or other identification of proposed Local Law]

Part C – Comments on specific parts or provisions of the proposed Local Law³⁹

Clause(s), section or part of Local Law	<i>[Operative provisions only, that is, preliminary or explanatory provisions do not need to be addressed unless the explanation helps in understanding. Where provisions within a part deal with a related issue, it may be more appropriate to address the part as a whole rather than the individual provisions.]</i>
Description or heading(s)	<i>[The Local Law Community Impact Statement will be read in conjunction with the draft Local Law. The purpose of this listing is to identify the relevant provision, not reiterate it.]</i>
The problem the provision is intended to address	<p><i>[2.1 Some problems will be obvious from the Local Law provision. Others will not. It is better to err on the side of explaining the obvious. For example, not everyone would immediately appreciate that a person living in a caravan on their own land or that having a back gate opening onto a reserve is a problem. Why this is a problem needs to be explained.</i></p> <p><i>Articulating the problem will help with accurate drafting, for example, an absolute prohibition on 'using any part of premises to store second hand goods' would catch a collector of first edition books or even a philatelist – possibly not what was intended.</i></p> <p><i>Differentiate between the fact giving rise to the problem and the problem. For example, the fact is driving of vehicles on reserves. The problem is damage to reserves. A related problem may be risk of injury from driving vehicles among spectators.]</i></p>
Description of the problem	<i>[2.1 Why is it a problem? What is the evidence? How big a problem? – for example, how many ratepayers inconvenienced, cost to Council (ratepayers), etc. Who causes the problem?]</i>
Council objective	<i>[2.2 Why is it a Council problem? A number of objectives may be involved: protection of Council assets, safety of public, public amenity. A reasonably specific objective is to be preferred. Words such as 'amenity' or 'safety' should be sufficiently qualified to relate them to a specific objective.]</i>

³⁹ This part appears on a separate page because a page will be required for each part or provision of the proposed Local Law addressed.

Appendix 2

Where is Council's objective set out?	<i>[2.2 The objective may be set out in the Council Plan, or a policy document, or the results of a risk assessment that has been adopted by Council, etc.]</i>
How does proposed Local Law provision help achieve objectives?	<i>[2.2 Will it remove an impediment? Is it a direct solution – for example, requiring a notice or permit so Council can exercise control or will it make something an offence that will enable enforcement action to be taken?]</i>

City of Eastwood Local Law Community Impact Statement - November 2009

Proposed: Eastwood General Local Law 2010.

Council provides the following information to the community in respect of the proposed Local Law.

PART A – General comments

Background

Council's *General Local Law 2002* expires on 28 February 2010. In November, 2008, Council appointed a Local Law Review Committee to review the 2002 Local Law. The proposed *Eastwood General Local Law 2010* is the result of that review.

The proposed Local Law contains all of Council's Local Law requirements except those relating to meeting procedures and use of the common seal. Those requirements are contained in the *Eastwood Local Law (Meeting Procedures and Other Matters) 2006* which is due to expire in 2015.

The proposed Local Law has been reviewed by Council's solicitors who confirm that it complies with all regulatory requirements.

Objectives

The overall objectives of the proposed Local Law are set out in the draft of the Local Law. For most provisions, the objective is obvious from the wording of the provision but additional information about the specific objectives behind provisions is provided in PART C of this report.

PART B – Comments on proposed Local Law overall⁴⁰

Measures of success of proposed Local Law

Council will measure the success of the Local Law as follows:

- The level of unrecovered costs of damage to Council property.
- The surveyed level of community satisfaction with community safety resulting from the Local Laws.
- Success in reducing nuisance or inconvenience in relation to shopping trolleys, building works and animals.
- Cost to the community of fees once these are set by Council.

Council will report annually to the community on the operation of the Local Law.

⁴⁰ The contents of this part will vary according to the conclusions reached by Council. If specific findings are made in respect of some provisions, these might best be reported in Part C against that provision. Similarly, if there are specific exceptions – for example, a problem addressed by the Local Law is of great community interest so Council proposes to report on success more frequently – that might be addressed specifically in Part C.

Appendix 2

Existing legislation that might be used instead	In respect of noise emanating from building sites, Council has considered use of the <i>Environment Protection Act 1970</i> (EPA) and regulations as an alternative to provisions in the proposed Local Law. The EPA provisions, however, require giving of prior notice and the duration of enforcement action is limited.
State legislation more appropriate	Council is of the view that each of the problems identified in relation to the proposed Local Law is a Council problem and that, accordingly, the provisions of the proposed Local Law are an appropriate solution.
Overlap of existing legislation	Existing State legislation deals with the following issues which are also dealt with by the proposed Local Law: <ul style="list-style-type: none"> • Noise: <i>Environment Protection Act 1970</i> • Works in Roads: <i>Road Management Act 2004</i> • Graffiti: <i>Graffiti Prevention Act 2007</i>. Council believes the provisions of the proposed Local Law supplement the State legislation without duplicating, overlapping or creating any inconsistency.
Overlap of planning scheme	Council does not believe any provision of the proposed Local Law overlaps, duplicates or creates any inconsistency with any planning scheme.
Risk assessment	Council has adopted a risk management approach to the review and development of the proposed Local Law. Attached is a report detailing the results of a risk assessment conducted by Council. In respect of each substantive provision of the proposed Local Law the report details the problem, the rating of the severity of the problem according to the frequency and consequences (assuming no Local Law was in place either now or in the future) and the reduction in rating that is anticipated as a result of the Local Law.
Legislative approach adopted	Council believes in the minimum imposition on the community with Local Laws. The proposed Local Law reflects this approach by providing for: <ul style="list-style-type: none"> • reasonable penalties • minimum possible number of provisions which create offences • where possible, provision for permits rather than prohibition of activities • reasonable and appropriate permit conditions which in the main are set out in the proposed Local Law • reasonable enforcement procedures including provision for the giving of warnings where appropriate, provision of an internal review process for infringement notices and refusal of permits.
Restriction of competition	Council has conducted a review of the proposed Local Law in accordance with National Competition Principles. The results of that review are attached.

Penalties

Council has compared the general level of penalties provided for in the proposed Local Law with those of its neighbouring Councils X and Y and with Council Z that has a similar profile to the City of Eastwood. The penalty for all offences under the proposed Local Law (except for building) is 2 penalty units (\$200). This is the same as Councils X and Z and less than Council Y which has a minimum penalty level of 3 penalty units. Council feels that a base level of 2 penalty units is sufficient to act as a deterrent for most offences if there is appropriate enforcement vigilance.

For breaches of Council's Building Site Code of Practice, the proposed Local Law provides a penalty of 10 penalty units. This is similar to Council X but higher than Council Y. Council Z does not have a similar provision. The level of building activity in the municipality, while welcomed, is a source of considerable inconvenience to ratepayers and cost to Council – damage to assets, enforcement costs, etc. – unless builders are prepared to act responsibly. A higher penalty level is necessary to achieve this where builders persistently do not respond to warnings.

Permits

A number of provisions in the proposed Local Law require permits for various activities. As far as possible, Council has standardised its requirements for applications for permits and the conditions on which permits are issued or refused. As a result, Council has been able to gather all provisions related to permits in a single part (Part 9) of the proposed Local Law. Part 9 sets out a generic set of permit conditions. The generic conditions allow delegated officers to make determinations and impose final conditions as follows:

- Works in or on roads – whether a traffic management plan is required.
- Insurance – whether because of the magnitude or nature of the risk, an insurance level of greater than Council's minimum is required to be provided by the applicant.

Both these matters vary depending on circumstances and cannot be fixed in generic conditions.

The proposed permit conditions are similar in scope to those of Councils X, Y & Z with the exception that Council Z has a requirement for joint named insurance in all cases. Council does not believe this can be justified and believes Council Z will remove this requirement when it reviews its Local Law.

Fees

The proposed Local Law allows Council to set fees annually and this will be done as part of the budget process. Council does not expect to radically depart from the level of fees under the existing Local Law which are in line with Councils X, Y & Z.

Performance standards or prescriptive

Where appropriate and possible, Council has adopted a performance-based approach to Local Law provisions. For example, detailed prescriptive requirements regarding the housing of poultry and livestock have been replaced with requirements designed to ensure clean, healthy and secure environments. These have been supplemented by 'deemed to comply' provisions to give the community some guidance.

Appendix 2

Comparison with neighbouring and like Councils	Council has compared the proposed Local Law with the existing Local Laws of Councils X, Y and Z. Comparisons have been made on: Scope of provisions, approach to enforcement, review procedures, fees, penalties and permit conditions. On each of these points the results are:
Charter of Human Rights	Council has assessed the proposed Local Law for compatibility with the Charter of Human Rights and Responsibilities. A report of this assessment is attached. In summary, Council found that the few provisions that engaged human rights – mainly to do with restricting movement of people – were justified by the need to maintain safety for the whole community.
Consultation meetings	In the process of developing the proposed Local Law, Council held two meetings to consult with stakeholders. A report on the results of those meetings is attached.
Submissions	In response to the public notice of the proposed Local Law, Council received 8 written submissions. These were considered at Council's meeting of (date) and 5 parties were heard in person. Attached is Council's response to those submissions.

Council Local Law Community Impact Statement - date

Proposed: Local Law

Part C – Comments on specific parts or provisions of the Proposed Local Law⁴¹

[Name of Municipality]

Local Law Community Impact Statement

[Name or other identification of proposed Local Law]

Council provides the following information to the community in respect of the proposed Local Law.

PART A – General comments

Background

Objectives

The objectives of the proposed Local Law are set out in the draft of the Local Law.

PART B – Comments on proposed Local Law overall

Measures of success of proposed Local Law	
Existing legislation which might be used instead	
State legislation more appropriate	

⁴¹ Complete a page for each substantive provision (or part) of the proposed Local Law.

Appendix 2

GUIDELINES FOR LOCAL LAWS MANUAL

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Overlap of existing legislation	
Overlap of planning scheme	
Risk assessment	
Legislative approach adopted	
Restriction of competition	
Penalties	
Permits	
Fees	
Performance standards or prescriptive	
Comparison with neighbouring and like councils	
Charter of Human Rights	
Consultation meetings	
Submissions	

[Name of Municipality]

Local Law Community Impact Statement

[Name or other identification of proposed Local Law]

Part C – Comments on specific parts or Provisions of the Proposed Local Law

Clause(s), section or part of Local Law	
Description or heading(s)	
The problem the provision is intended to address	
Description of the problem	
Council objective	
Where is Council's objective set out?	
How does proposed Local Law provision help achieve objectives?	

PROJECT TEAM

Chris Newman	Local Government Victoria
Paul Hedger	Compliant Systems
Natalie Dowling	Local Government Victoria

IMPLEMENTATION COMMITTEE

Alison Kingston	Bass Coast Shire Council
Alison Lyon	Municipal Association of Victoria
Steven Morrison	Whitehorse City Council
Tim Presnell	Local Government Victoria
Peter Shelton	Greater Dandenong City Council
Michael Tonta	Whittlesea City Council
Ken Waixel	Bayside City Council