

Solicitor’s Certificate – Section 74(1) *Local Government Act 2020*

**Southern Grampians Shire Council
Community Local Law No. 1 of 2022**

The Southern Grampians Shire Council (**Council**) is proposing to make Community Local Law No. 1 of 2022 (**proposed Local Law**).

I have been asked to provide a certificate under s 74(1) of the *Local Government Act 2020* (**Act**) in respect of the proposed Local Law.

In accordance with s 74(1) of the Act, I have assessed the proposed Local Law for consistency with the local law requirements, as outlined in the following table.

| Local Law Requirement | Consistent |
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| <p>A local law must not be inconsistent with any Act (including the <i>Charter of Human Rights and Responsibilities Act 2006</i>) or regulations.</p> | <p>Yes.</p> <p>As at the date of this certificate, the proposed Local Law does not overlap or conflict with, or duplicate, existing legislation. The proposed Local Law is therefore not inconsistent with any Act or regulations, nor, with respect to the <i>Sex Work Decriminalisation Act 2022</i> does it undermine the objectives of that Act.</p> <p>The proposed Local Law has been reviewed for compatibility with the <i>Charter of Human Rights and Responsibilities Act 2006</i> (Charter). The proposed Local Law engages a number of rights, including the rights to:</p> <ul style="list-style-type: none"> • freedom of thought, conscience, religion and belief (see cls 57(1), 57(5), 57(13), 57(16), 59(1)(l), 64(1) and 89(1)); • freedom of expression (see cls 59(1)(l), 60(1), 64(1), 65(1) and 84(1)(d)); • peaceful assembly (see cls 57(13), 57(15), 57(16), 59(1)(q) and 64(1)); • enjoy cultural rights (see cls 46, 47, 57(1) and 57(5)); and • not be deprived of their property (see cl 25). <p>Each of these matters has been assessed and it has been determined that:</p> <ul style="list-style-type: none"> • most activities which engage the Charter can be conducted with a permit issued by Council; and • each limit, if any, is proportionate and can be demonstrably justified taking into account the matters set out in s 7 of the Charter. <p>The proposed Local Law, having been reviewed for compatibility with the Charter, is therefore considered to be compatible with the Charter.</p> |
| <p>A local law must not duplicate or be inconsistent with a planning scheme that is in force in the municipal district.</p> | <p>Yes.</p> <p>The proposed Local Law is drafted so as not to operate where it concerns matters which are otherwise addressed under the Southern Grampians Planning Scheme.</p> |
| <p>A local law for or with respect to the issuing of film permits must not be inconsistent with the film friendly principles.</p> | <p>Yes.</p> <p>Not applicable – the proposed Local Law does not address film permits.</p> |

| Local Law Requirement | Consistent |
|---|---|
| <p>A local law must not exceed the power to make local laws conferred by this Act or any other authorising Act.</p> | <p>Yes.</p> <p>I consider the activities sought to be regulated by the proposed Local Law to be matters for or with respect to which Council has a function or power under the Act and other Acts. The proposed Local Law is therefore consistent with, and does not exceed, the scope of Council's powers to make Local Laws under the Act.</p> |
| <p>A local law must be consistent with the objectives of this Act or any other authorising Act.</p> | <p>Yes.</p> <p>I consider the activities sought to be regulated by the proposed Local Law to be matters of municipal concern and matters that have been reasonably understood to be within the province of municipal government because they affect the safety, amenity, welfare and good government of the municipal district and its inhabitants and are consistent with the overarching governance principles set out in s 9 of the Act.</p> <p>The proposed Local Law furthers the objects of accountable, transparent, collaborative and efficient operations of Council in a manner that engages with the municipal community and its needs.</p> |
| <p>A local law must be expressed as clearly and unambiguously as is reasonably possible.</p> | <p>Yes.</p> <p>The proposed Local Law is as clear and unambiguous as is reasonably possible. The purpose of each of its provisions and the means adopted to implement the purpose is discernible from the provision itself.</p> <p>This certificate has not sought to interrogate Council as to whether the purpose of each of the proposed Local Law provisions as drafted, and the manner in which the proposed Local Law seeks to implement those purposes, is as Council had intended them to be when drafting the proposed Local Law. This certificate assumes that Council is aware of the purpose behind each provision and has familiarised itself with, and accepts the manner in which, that purpose is implemented by the Local Law.</p> |
| <p>Unless there is clear and express power to do so under this Act or any other authorising Act, a local law must not—</p> <p>(i) seek to have a retrospective effect; or</p> <p>(ii) impose any tax, fee, fine, imprisonment or other penalty; or</p> <p>(iii) authorise the sub-delegation of powers delegated under the local law.</p> | <p>Yes.</p> <p>The proposed Local Law:</p> <ul style="list-style-type: none"> • does not seek to have retrospective effect; • makes provision for the imposition of penalties in respect of offences that are created, which penalties are: <ul style="list-style-type: none"> ○ consistent with s 79 of the Act; ○ similar in nature when compared to like councils; and ○ sufficient to act as a deterrent for most offences while also reflecting the seriousness of those offences; • makes provision for the setting and imposition of fees in a manner that is consistent with s 77 of the Act; and • does not authorise the sub-delegation of any powers. |
| <p>A local law must comply with any details prescribed in the regulations relating to the preparation and content of local laws.</p> | <p>Yes.</p> <p>No regulations relating to the preparation and content of local laws have, at the time of preparing this certification, been made.</p> |



This certificate is only valid as at the date below. I cannot predict what may occur in future with respect to:

- a) amendments to the proposed Local Law that Council may make;
- b) other legislation that may be made or amended which brings the proposed Local Law into conflict or which overlaps with the proposed Local Law (including future regulations);
- c) a decision of a Superior Court which fundamentally changes the accepted principles or precedent regarding the inconsistency of laws;
- d) amendments to the Southern Grampians Planning Scheme which bring the proposed Local Law into conflict or which overlaps with the proposed Local Law; or
- e) the manner in which Council administers or makes decisions with respect to the granting of permits or exemptions under the proposed Local Law which may bring the proposed Local Law into conflict with other legislation.

I, Kate Emily Oliver, Partner at Maddocks, certify that I:

- am an Australian lawyer who has been admitted to the legal profession for at least 5 years;
- am not a Councillor of Council;
- have reviewed the proposed Local Law against the local law requirements; and
- am of the opinion that the proposed Local Law is consistent with the local law requirements set out in s 72 of the Act.

Signed by Kate Oliver
in Victoria on 15 December 2022

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