



Council Policy

Local Law Making Process

Corporate Plan Reference:	<i>Excellence as a Council</i>
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Introduction

In accordance with the *Local Government Act 2009*, this document sets out the procedure Noosa Council will use when making local laws. In particular when making:

- a) Model Local Laws;
- b) Other Local Laws; and or
- c) Subordinate Local Laws.

Relevant Sections of the *Local Government Act 2009*

Division 2 Making, recording and reviewing local laws

s28 Power to make a local law

- (1) *A local government may make and enforce any local law that is necessary or convenient for the good rule and local government of its local government area.*
- (2) *However, a local government must not make a local law—*
 - a) *that sets a penalty of more than 850 penalty units for each conviction of failing to comply*
 - b) *with a local law, including each conviction when there is more than 1 conviction for a continuing offence or repeat offence; or*
 - c) *that purports to stop a local law being amended or repealed in the future; or about a subject that is prohibited under division 3.*

s29 Local law making process

- (1) *A local government may decide its own process for making a local law to the extent that the process is not inconsistent with this part.*
- (2) *A local government makes a local law by passing a resolution to make the local law.*
- (3) *If a local government proposes to make a local law about a matter (the new local law) and there is an existing local law about the same matter that would be inconsistent with the new local law, the local government must amend or repeal the existing local law so that there is no inconsistency.*

Note— The new local law may include the amendment or repeal of the inconsistent law in the same instrument.

- (4) *An interim local law must include a provision stating when the law expires.*
- (5) *A local government must ensure its local laws are drafted in compliance with the guidelines issued by the Parliamentary Counsel under the Legislative Standards Act 1992, section 9 for local laws and subordinate local laws.*
- (6) *To remove any doubt, it is declared that a local government does not have to carry out any public consultation before making either of the following—*
 - a) *an interim local law;*
 - b) *a local law that only incorporates a model local law and does not contain an anticompetitive provision.*

How this procedure is to be used

The process identified in this document is to be used whenever the council decides to make a new local law (including a local law that amends an existing local law) unless the procedure is amended or replaced by a future council resolution.

Council can at any time make a resolution pursuant to section 29(1) of the *Local Government Act 2009* and decide on a different process for making a local law, provided the process complies with Chapter 1, Part 3 of the Act.

Part A - Introduction

For the purposes of section 29(1) of the *Local Government Act 2009*, the local government's process for making each local law of the local government is the process detailed below.

The process—

- (a) applies to the making of—
 - (i) each local law that incorporates a model local law; and
 - (ii) each local law that is a subordinate local law; and
 - (iii) each other local law; but
- (b) does not apply to a local law that is an interim local law.

Part B - Making a local law that incorporates a model local law

The process (model local law making process) stated in this Part B must be used to make a local law that incorporates a model local law into the local laws of the local government.

- Step 1 — By resolution, propose to incorporate the model local law.
- Step 2 — If the model local law contains an anti-competitive provision, comply with the procedures prescribed under a regulation for the review of anti-competitive provisions.
- Step 3 — If there is an existing local law about a matter in the model local law that would be inconsistent with the matter in the model local law—amend or repeal the existing local law so that there is no inconsistency.
- Step 4 — By resolution, incorporate the model local law.
- Step 5 — Let the public know that the local law has been made, by publishing notice of the making of the local law in accordance with the requirements of section 29B(1) to (4) inclusive of the *Local Government Act 2009*.
- Step 6 — As soon as practicable after the notice is published in the gazette, ensure that a copy of the local law may be inspected and purchased at the local government's public office.
- Step 7 — Within 14 days after the notice is published in the gazette, give the Minister—
 - (a) a copy of the notice; and
 - (b) a copy of the local law in electronic form; and
 - (c) if the local law contains 1 or more anti-competitive provisions—
 - (i) advice of each anti-competitive provision; and
 - (ii) the reasons for their inclusion.
- Step 8 — Update the local government's register of its local laws.

Part C - Making an “other” local law

The process (other local law making process) stated in this Part C must be used to make a local law (a proposed local law) other than—

- (a) a model local law; or
- (b) an interim local law; or
- (c) a subordinate local law.

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

Step 2 — Consult with relevant government entities about the overall State interest in the proposed local law.

Step 3 — Consult with the public about the proposed local law for at least 21 days (the consultation period) by—

- (a) publishing a notice (a consultation notice) about the proposed local law at least once in a newspaper circulating generally in the local government’s area; and
- (b) displaying the consultation notice in a conspicuous place at the local government’s public office from the first day of the consultation period until the end of the last day of the consultation period; and
- (c) making a copy of the proposed local law available for inspection at the local government’s public office during the consultation period; and
- (d) making copies of the proposed local law available for purchase at the local government’s public office during the consultation period.

The consultation notice must state the following—

- (a) the name of the proposed local law; and
- (b) the purpose and general effect of the proposed local law; and
- (c) the length of the consultation period and the first and last days of the period; and
- (d) that written submissions by any person supporting or objecting to the proposed local law may be made and given to the local government on or before the last day of the consultation period stating—
 - (i) the grounds of the submission; and
 - (ii) the facts and circumstances relied on in support of the grounds.

If the local government decides, by resolution, that the proposed local law only amends an existing local law to make an insubstantial change, the local government may proceed to step 6 without satisfying step 3 or step 5.

Step 4 — If the proposed local law contains an anti-competitive provision, comply with the procedures prescribed under a regulation for the review of anti-competitive provisions. For avoidance of doubt, step 3, and this step 4, may be undertaken contemporaneously.

- Step 5 — Accept and consider every submission properly made to the local government.
A submission is properly made to the local government if it —
- (a) is the written submission of any person about the proposed local law; and
 - (b) states—
 - (i) the grounds of the submission; and
 - (ii) the facts and circumstances relied on in support of the grounds; and
 - (c) is given to the local government on or before the last day of the consultation period.
- Step 6 By resolution, decide whether to—
- (a) proceed with the making of the proposed local law as advertised; or
 - (b) proceed with the making of the proposed local law with amendments; or
 - (c) make the proposed local law as advertised; or
 - (d) make the proposed local law with amendments; or
 - (e) not proceed with the making of the proposed local law.
- If the local government resolves to proceed with the making of the proposed local law with amendments, and the amendments are substantial, the local government may again —
- (a) consult with the public at step 3; and
 - (b) accept and consider every submission properly made to the local government at step 5.
- For the avoidance of doubt, if an amendment changes an anti-competitive provision, the local government must again comply with the procedures prescribed under a regulation for the review of anti-competitive provisions for the amended anti-competitive provision.
- Step 7 — Let the public know that the local law has been made, by publishing notice of the making of the local law in accordance with the requirements of section 29B(1) to (4) inclusive of the *Local Government Act 2009*.
- Step 8 — As soon as practicable after the notice is published in the gazette, ensure that a copy of the local law may be inspected and purchased at the local government's public office.
- Step 9 — Within 14 days after the notice is published in the gazette, give the Minister—
- (a) a copy of the notice; and
 - (b) a copy of the local law in electronic form; and
 - (c) if the local law contains 1 or more anti-competitive provisions—
 - (i) advice of each anti-competitive provision; and
 - (ii) the reasons for their inclusion.
- Step 10— Update the local government's register of its local laws.

Part D—Making a subordinate local law

The process (subordinate local law making process) stated in this Part D must be used to make a subordinate local law (a proposed subordinate local law).

The local government may start the process for making a subordinate local law even though the process for making the local law (including a model local law) on which the subordinate local law is to be based (the proposed authorising law) has not finished.

The local government may use steps 1 to 5 of the subordinate local law making process (other than actually making the subordinate local law) before the proposed authorising law is made if—

- (a) in making the proposed authorising law, the local government has to satisfy—
 - (i) the model local law making process; or
 - (ii) the other local law making process; and
- (b) if the proposed authorising law is made under the other local law making process— the notice about the subordinate local law under step 2 of the subordinate local law making process is published no earlier than the notice about the proposed authorising law under step 3 of the other local law making process is published.

For the avoidance of doubt, a subordinate local law made by the local government using the process detailed in this Part D may provide for the local government to, from time to time, by resolution, reference or incorporate information.

For example, under the *Local Government Regulation 2012*, the competition policy guidelines for the identification of anti-competitive provisions are a document made by the department and available for inspection on the department's website.

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

Step 2 — Consult with the public about the proposed subordinate local law for at least 21 days (the consultation period) by—

- (a) publishing a notice (also a consultation notice) about the proposed subordinate local law at least once in a newspaper circulating generally in the local government's area; and
- (b) displaying the consultation notice in a conspicuous place in the local government's public office from the first day of the consultation period until the end of the last day of the consultation period; and
- (c) making a copy of the proposed subordinate local law available for inspection at the local government's public office during the consultation period; and
- (d) making copies of the proposed subordinate local law available for purchase at the local government's public office during the consultation period.

The consultation notice must state the following—

- (a) the name of the proposed subordinate local law; and
- (b) the name of—
 - (i) the local law allowing the proposed subordinate local law to be made; or
 - (ii) if the local government has started the process for making a subordinate local law even though the process for making the proposed authorising law on which the subordinate local law is to be based has not finished — the proposed authorising law; and
- (c) the purpose and general effect of the proposed subordinate local law; and
- (d) the length of the consultation period and the first and last days of the period; and
- (e) that written submissions by any person supporting or objecting to the proposed subordinate local law may be made and given to the local government on or before the last day of the consultation period stating—
 - (i) the grounds of the submission; and
 - (ii) the facts and circumstances relied on in support of the grounds.

If the local government decides, by resolution, that the proposed subordinate local law only amends an existing subordinate local law to make an insubstantial change, and the amendment does not affect an anti-competitive provision, the local government may proceed to step 5 without satisfying any of step 2 to step 4 inclusive.

Step 3 — If the proposed subordinate local law contains an anti-competitive provision, comply with the procedures prescribed under a regulation for the review of anti-competitive provisions. For avoidance of doubt, step 2, and this step 3, may be undertaken contemporaneously.

Step 4 — Accept and consider every submission properly made to the local government.
A submission is properly made to the local government if it—

- (a) is the written submission of any person about the proposed subordinate local law; and
- (b) states—
 - (i) the grounds of the submission; and
 - (ii) the facts and circumstances relied on in support of the grounds; and
- (c) is given to the local government on or before the last day of the consultation period.

Step 5 — By resolution, decide whether to—

- (a) proceed with the making of the proposed subordinate local law as advertised; or
- (b) proceed with the making of the proposed subordinate local law with amendments; or
- (c) make the proposed subordinate local law as advertised; or
- (d) make the proposed subordinate local law with amendments; or
- (e) not proceed with the making of the proposed subordinate local law.

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

- (a) consult with the public at step 2; and
- (b) accept and consider every submission properly made to the local government at step 4.

For the avoidance of doubt, if an amendment changes an anti-competitive provision, the local government must again comply with the procedures prescribed under a regulation for the review of anti-competitive provisions for the amended anti-competitive provision.

Step 6 — Let the public know that the subordinate local law has been made, by publishing notice of the making of the subordinate local law in accordance with the requirements of section 29B(1) to (4) inclusive of the *Local Government Act 2009*.

Step 7 — As soon as practicable after the notice is published in the gazette, ensure that a copy of the subordinate local law may be inspected and purchased at the local government's public office.

- Step 8 — Within 14 days after the notice is published in the gazette, give the Minister—
- (a) a copy of the notice; and
 - (b) a copy of the subordinate local law in electronic form; and
 - (c) if the subordinate local law contains 1 or more anti-competitive provisions—
 - (i) advice of each anti-competitive provision; and
 - (ii) the reasons for their inclusion.
- Step 9 — Update the local government's register of its local laws.

Version control:

Version	Reason/ Trigger	Change (Y/N)	Endorsed/ Reviewed by	Date
1.0	New		Council	28/08/2014
2.0	Review	Y	Council	19/10/2017