

PLANNING AND ENVIRONMENT COMMITTEE	5
9 AUGUST 2023	

LOCAL LAW AMENDMENTS

71/3/1 | #7215473

RECOMMENDATION:

That Council:

1. Resolves to propose to make the amendments to each of the following local laws and subordinate local laws (“Proposed Local Law Amendments”):
 - a. *Local Law No. 1 (Administration) 2016;*
 - b. *Local Law No. 2 (Animal Management) 2016;*
 - c. *Subordinate Local Law No. 2 (Animal Management) 2019;*
 - d. *Local Law No. 3 (Community & Environment) 2016;*
 - e. *Subordinate Local Law No. 3 (Community & Environment) 2016;*
 - f. *Local Law No. 5 (Temporary Homes) 2016;*
 - g. *Local Law No. 6 (Camping Grounds, Caravan Parks and Share Facilities Accommodation) 2016;*
 - h. *Local Law No. 7 (Human Remains and Cemeteries) 2016;*
 - i. *Local Law No. 8 (Swimming Pools) 2016;*
 - j. *Local Law No. 9 (Temporary Entertainment Events) 2016;*
 - k. *Local Law No. 10 (Cane Railways) 2016;*
 - l. *Local Law No. 11 (Local Government Controlled Areas and Roads) 2016;*
 - m. *Subordinate Local Law No. 11 (Local Government Controlled Areas and Roads) 2016;*
 - n. *Local Law No. 12 (Parking) 2016;*
 - o. *Subordinate Local Law No. 12 (Parking) 2016; and*
 - p. *Local Law No. 14 (Town Water) 2016;*
2. Resolves to propose to make new *Local Law No. 15 (Waste Management) 2023* (“the New Local Law”);
3. Resolves to consult with relevant State government entities about the overall State interest in the Proposed Local Law Amendments and the New Local Law pursuant to section 29A of the *Local Government Act 2009* (“State Interest Check”);
4. Resolves to undertake public consultation in relation to the Proposed Local Law Amendments and the New Local Law contained in Attachment 1 in accordance with the process contained in this report;
5. Resolves to undertake consultation with regard to any anti-competitive provisions identified within the Proposed Local Law Amendments and the New Local Law through the Public Interest Test Plan; and

6. Notes that a further report will be provided following the completion of the State Interest Check and public consultation period and consideration of the submissions received throughout that period.

INTERESTED PARTIES:

- Department of State Development, Infrastructure, Local Government and Planning;
- The State of Queensland, including any Departments within the State Government that may be engaged pursuant to section 29A of the *Local Government Act 2009*; and
- Preston Law, in its capacity as legal adviser for Council.

Note: The identification of interested parties is provided on a best endeavours basis by Council Officers and may not be exhaustive.

EXECUTIVE SUMMARY:

The last complete review to Council's suite of local laws and subordinate local laws was completed in 2016.

It was determined that a review of the suite of local laws was required to ensure that the local laws were up to date and adequately meeting the needs of the community. Throughout the review, the objectives were to:

- ensure the local laws were relevant to the needs of Council and the community of Cairns;
- simplify and provide clarity where required;
- make improvements for regulation of key issues;
- ensure the local laws can be effectively administered and enforced; and
- ensure the local laws are consistent with current legislation.

This report seeks approval to formally commence the process of making the Proposed Local Law Amendments outlined as well as to commence the process to make new *Local Law No. 15 (Waste Management)*.

BACKGROUND:

Council Officers have undertaken a review of the following local laws through the Local Law Amendment Project ("the Project"):

- *Local Law No. 1 (Administration) 2016*;
- *Local Law No. 2 (Animal Management) 2016*;
- *Subordinate Local Law No. 2 (Animal Management) 2019*;
- *Local Law No. 3 (Community & Environment) 2016*;
- *Subordinate Local Law No. 3 (Community & Environment) 2016*;
- *Local Law No. 5 (Temporary Homes) 2016*;

- *Local Law No. 6 (Camping Grounds, Caravan Parks and Shared Facilities Accommodation) 2016;*
- *Local Law No. 7 (Human Remains and Cemeteries) 2016;*
- *Local Law No. 8 (Swimming Pools) 2016;*
- *Local Law No. 9 (Temporary Entertainment Events) 2016;*
- *Local Law No. 10 (Cane Railways) 2016;*
- *Local Law No. 11 (Local Government Controlled Areas and Roads) 2016;*
- *Subordinate Local Law No. 11 (Local Government Controlled Areas and Roads) 2016;*
- *Local Law No. 12 (Parking) 2016;*
- *Subordinate Local Law No. 12 (Parking) 2016;* and
- *Local Law No. 14 (Town Water) 2016.*

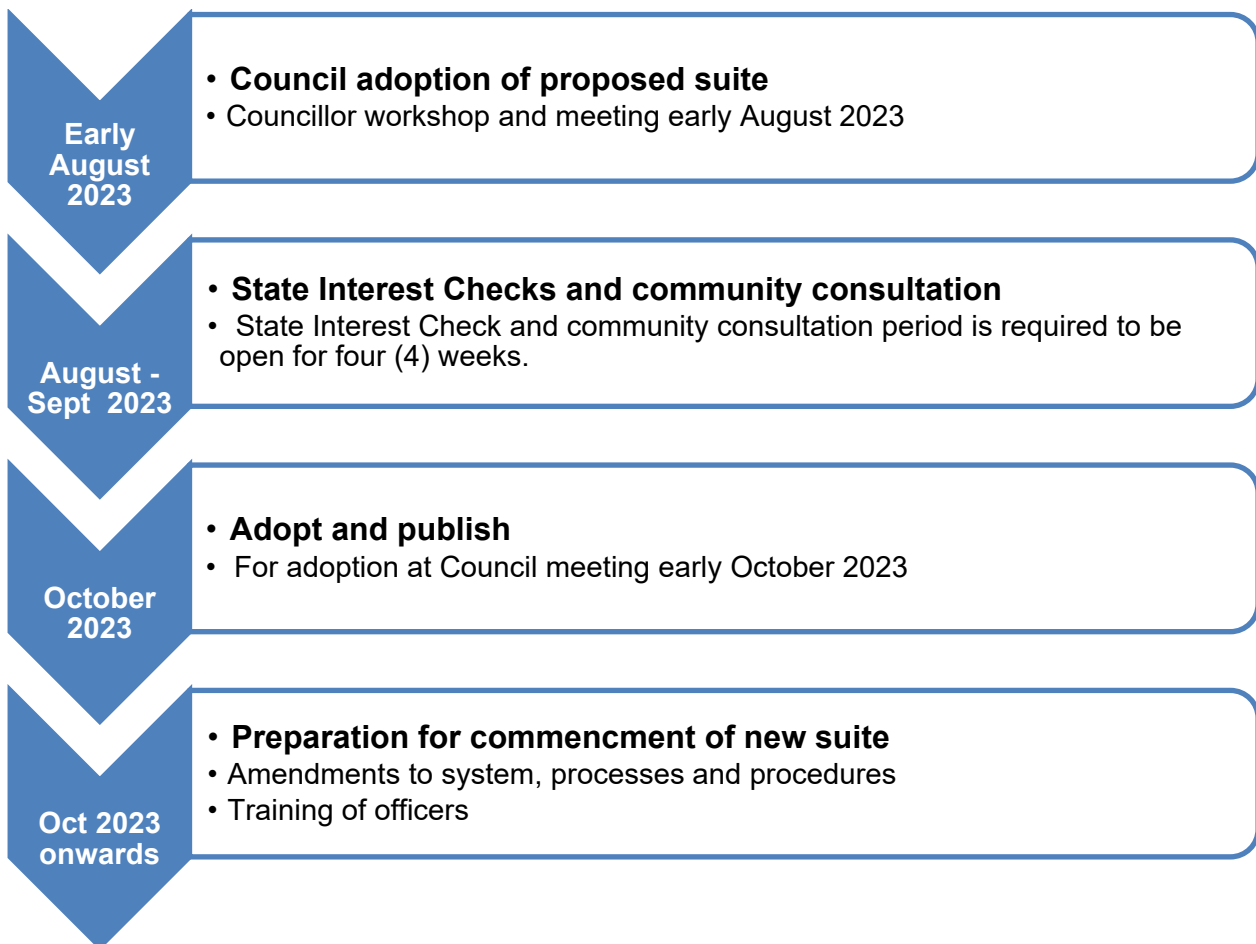
It was identified that there was a requirement to make a new local law regarding waste management due to a change in State legislation, as such, new *Local Law No. 15 (Waste Management) 2023* has been drafted (“the New Local Law”).

Council Officers consulted with Councillors on various topics and gained feedback from Council in relation to local law policy matters by completing six (6) Council workshops in 2022.

To complete the legal process of making the Proposed Local Law Amendments and the New Local law, there are several statutory requirements remaining as required by the *Local Government Act 2009* (“the Act”), as follows:

1. Undertaking a State interest check and consideration of submissions received from relevant State Departments;
2. Undertaking public consultation and consideration of submissions received;
3. Undertaking consultation of any identified anti-competitive provisions within the Proposed Local Law Amendments and the New Local Law, through the Public Interest Test Plan and consideration of submissions received;
4. Further Council resolution to adopt the Proposed Local Law Amendments and the New Local Law;
5. Publishing a Gazette Notice for the making of the Proposed Local Law Amendments and the New Local Law;
6. Providing copies to the Minister of the Gazette Notice and Proposed Local Law Amendments and the New Local Law; and
7. Updating Council’s local laws Register.

The following outlines the high level timeframes for completion of the above statutory requirements:



Designation of areas

In Council's current and previous Animal Management Local Laws, Council has designated "Dog Off-Leash Areas" and "Prohibited Areas for Animals" within its subordinate local law.

As part of the Project, Officers identified an alternative to listing these areas within the subordinate local laws. The proposed amendments to *Local Law No. 2 (Animal Management) 2016* will enable Council to designate those areas to allow for a more streamlined process to remove red tape when new areas are identified.

This process will require notification to the public and a Council resolution, but rather than being contained within the subordinate local law, Council will be able to advertise the areas on Council's website with maps and descriptions. This change will ensure that Council can update these areas when required through a more efficient and cost-effective process as opposed to retaining those areas within subordinate local laws.

Attached to this report at Attachment 2 is a list of the following mapped areas, and will, if the proposed amendments to designate these areas are adopted by Council, be contained within a Designated Register following the Local Law amendment process being finalised:

- Off-leash areas for dogs; and
- Prohibited areas for animals.

Many of these areas are already existing within *Subordinate Local Law No. 2 (Animal Management) 2016* ("Subordinate LL No. 2"), however there are some new areas that have been included.

The public notification requirement to designate the areas contained within Attachment 2 will be undertaken during the period of public consultation to be undertaken for this Project.

CONSULTATION:

Throughout this Project, internal stakeholders have been consulted regarding amendments required to the local laws. Councillors have also been consulted at certain stages of this Project regarding policy items for the proposed amendments to the local laws.

Public consultation

The *Local Government Act 2009* requires Council to carry out public consultation when amending or making a new local law. This process allows the community the opportunity to provide written submissions outlining their support, objection or feedback regarding any of the local laws being amended or made.

Council will undertake public consultation for a period of four (4) weeks commencing on Wednesday 16 August 2023 until close of business Wednesday 12 September 2023. The public consultation will include the following consultation tools, which includes standard requirements as well as additional tools proposed to be used:

Consultation tool	Standard	Additional
Public notice on Council's website	Y	
Public notice in newspaper	Y	
Draft local laws to be added to Council's website	Y	
Draft local laws available for viewing at Council office locations	Y	

Community Service Announcement: engagement open		Y
Have Your Say website page		Y
Facebook post: engagement open		Y
Media release: advice that engagement open		Y
Media release: engagement deadline approaching		Y
Facebook post: last chance to Have Your Say		Y

State Interest Checks

If Council resolves to adopt the proposed local laws in accordance with the recommendation of this report, Council is required to commence the State Interest Check process which will occur for a period of four (4) weeks simultaneously with the public consultation process.

The State Interest Check period involves providing a copy of the proposed local laws to each relevant State Department that may have an interest in considering the proposed amendments, to enable those Departments to consider the overall State interest in the Proposed Local Law Amendments and the New Local Law.

If there are submissions received through the State Interest Check period, Council Officers will review those submissions and consider whether any further amendments are required to be made to the local laws.

Anti-Competitive Review

Council is prevented from making a local law that contains an anti-competitive provision unless Council has complied with the procedures prescribed under a regulation for the review of possible anti-competitive provisions.

Section 15 of the *Local Government Regulation 2012* (“**Regulation**”) requires Council to undertake a review of its local laws and subordinate local laws regarding any identified anti-competitive provisions (“Public Interest Test”). This Public Interest Test has been conducted in accordance with the “National Competition Policy – Guidelines for Conducting Reviews on Anti-Competitive Provisions in Local Laws” and is contained in the Public Interest Test Plan attached as Attachment 3 to this report.

As part of Council’s Local Law Making Process, it is intended to also consult the public regarding the possible anti-competitive provisions as part of Council’s public consultation process for the Proposed Local Law Amendments and the New Local Law.

OPTIONS:

Option 1 : (Recommended)

1. Resolves to propose to make the amendments to each of the following local laws and subordinate local laws (“Proposed Local Law Amendments”):
 - a. *Local Law No. 1 (Administration) 2016;*
 - b. *Local Law No. 2 (Animal Management) 2016;*
 - c. *Subordinate Local Law No. 2 (Animal Management) 2019;*
 - d. *Local Law No. 3 (Community & Environment) 2016;*
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5. Resolves to undertake consultation with regard to any anti-competitive provisions identified within the Proposed Local Law Amendments and the New Local Law through the Public Interest Test Plan; and
6. Notes that a further report will be provided following the completion of the State Interest Check and public consultation period and consideration of the submissions received throughout that period.

Option 2:

That Council decides not to adopt the Proposed Local Law Amendments and New Local Law and retains the current suite of local laws.

CONSIDERATIONS:

Risk Management:

Reputation – The local laws have been reviewed and developed with the needs of the community in mind. This will be tested in the public consultation period where the community can provide feedback and submissions about the local laws.

Governance, accountability and ethical decision making – The local laws provide mechanisms for decision making on certain topics and provide some of Council's enforcement abilities. These provisions have been reviewed for consistency, fairness and transparency. Council officers have received advice from Preston Law to ensure that Council satisfies its obligations in this process.

Council Finance and the Local Economy:

The proposed local laws provide a clear and streamline application and assessment process for a variety of permit types which benefit the local economy including:

- commercial use activities on local government controlled areas and roads such as mobile and stationary roadside vending, sale of goods, market stalls, footpath dining and commercial filming and photography; and
- the operation of temporary entertainment events.

Community and Cultural Heritage:

The proposed local laws have been reviewed to ensure the best interests of the community, by:

- enhancing public safety;
- enhancing the use and enjoyment of local government controlled areas and roads through effective management and regulation of certain activities;
- streamlining application and assessment processes; and
- enhancing the amenity of the local government area.

Natural Environment:

The impacts and risks of harm to the natural environment can be minimised through the adoption of the proposed local laws which relate to a variety of matters including local pests, waste management, regulation of the treatment of human remains and town water.

Corporate and Operational Plans:

The proposed local laws and subordinate local laws align with each of the following focus area of Council's Corporate Plan:

Focus 1: Robust economy

The local laws regulate certain activities such as events and commercial use of Council land which supports business and growth in our region.

Focus 2: Natural assets

The local laws protect the environment and public health, safety and amenity as well as regulate certain services provided by Council in our region such as water and waste management ensuring Councils strategies regarding its natural assets can be achieved.

Focus 3: Design for Liveability

The local laws enable Cairns to be a better place to live by regulating certain behaviours, by promoting safety, harmony and good rule within the community.

Focus 4: Community & culture

The local laws provide an ability for the public to use Council controlled areas for certain activities such as sport, recreation, events, commercial use, private functions etc. The local laws also provide an ability to regulate the use of Council and private land for certain activities to ensure that our region meets the needs of the entire community.

Focus 5: Focused Council

Council's local laws set consistent standards for the entire region including providing the mechanism to issue permits and approvals on various topics. The review of these provisions ensures that assessments of applications for those permits and approvals are consistent and transparent.

Statutory:

Local laws are made and amended in accordance with the statutory process outlined in Chapter 3, Part 1 of the *Local Government Act 2009*. As Council has adopted a Local Law Making Process, this is used as the adopted statutory process and contained in Attachment 4 to this report.

Section 28 of the *Local Government Act 2009* permits Council to make and enforce any local law that is necessary or convenient for the good rule and local government of its local government area if certain criteria are met.

Human Rights Compatibility

Pursuant to the *Human Rights Act 2019* (Qld) (“the HR Act”), Council, as a ‘public entity’, is required to give proper consideration to relevant human rights when making decisions. Council is obligated not to make decisions which are incompatible with human rights unless those decisions are subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

Council Officers have considered the application of the HR Act with respect to the Proposed Local Law Amendments and the New Local Law. Council Officers consider that, to the extent the proposed amendments represent a limitation on the human rights of a person in the community, those limitations are reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

Specifically, in considering the Proposed Local Law Amendments and the New Local Law, the following factors in section 13(2) of the HR Act are relevant, being:

- a. The fact that the limitations are consistent with a free and democratic society based on human dignity, equality and freedom;
- b. The fact that the purpose of the limitation includes the preservation of the health and safety of the community as well as protection of the environment, ensuring that the expectations of the community are balanced with the rights of individuals and the limitations help to achieve the purpose;
- c. The fact that there are no less restrictive and reasonably available ways to achieve the purposes of the proposed amendments;
- d. The importance of the limitations being that Council, as the public entity responsible for the entire local government area, is able to make and enforce any local law that is necessary or convenient for the good rule and local government of its local government area. Consideration has been given to the importance of protecting the health and safety of the community, as well as the protection of the environment within which the community lives;
- e. Council Officers have, throughout the drafting of the proposed amendments, given consideration to the importance of preserving the human rights of the individual given the nature and extent of the limitations on the human right through the proposed amendments; and
- f. Has balanced those considerations in (d) and (e) and determined that the changes recommended by the Proposed Local Law Amendments and the New Local Law outweigh any harm that may be caused by the limitations imposed.

As such, Council Officers are of the view that the decision to propose to adopt the Proposed Local Law Amendments and the New Local Law are compatible with human rights.

Policy:

Council officers will undertake a review to the impacted general policies which are impacted by this project. These policies will be reviewed ready for the local laws to be implemented.

ATTACHMENTS:

All attachments are attached as a separate documents.

Attachment 1 – Local Laws and Subordinate Local Laws (DM#[7239562](#))

Attachment 2 – Designation of areas (DM#[7239561](#) and DM#[7239560](#))

Attachment 3 – Public Interest Test Plan (DM#[7243081](#))

Attachment 4 – Council's local law-making process (DM# [4571997](#))



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