

7 PROPOSED LOCAL LAW AMENDMENT – SHORT STAY LETTING – REVISED VERSION FOLLOWING PUBLIC CONSULTATION

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Environment and Sustainable Development Department

Index SUBJECT: 37.15 Local Law No. 1 Amendments – Short Stay Letting

Attachments

1. Administration (Amendment) Local Law (No.1) 2021
2. Administration (Amendment) Subordinate Local Law (No.1) 2021
3. List of likely anti-competitive provisions
4. Complaints procedure
5. First draft local law 2019 Plain English summary of requirements
6. First draft local law 2019 – Public Notification - Summary and Response to Key Issues
7. Sites and precincts proposed to be excluded from local law (*provided separately to this agenda*)

EXECUTIVE SUMMARY

Holiday houses have traditionally been part of the diversity of visitor accommodation in Noosa Shire and were predominantly scattered around the beaches and Noosa River. The advent of online booking platforms has however given rise to an increased number of permanent residential properties being purchased and used for short term accommodation, many being managed from a distance with no local presence, management structure or regulation.

The interchangeable use of most unit/ townhouse complexes and resorts between visitors and permanent residents, and the use of online booking platforms has also given rise to concerns, both for the residential amenity of permanent residents as well as the onsite letting agents.

A substantial proportion of submissions to both Noosa Plan 2020 and the first draft of the Short Stay Letting local law suggested, where a mix of tourists and permanent residents co-exist, the impact of short term accommodation on residential amenity was cause for concern and needed to be addressed.

Some of the key issues identified for the operation of short term accommodation include: lack of regulation and complaint management, and negative residential amenity impacts (noise, waste management, traffic issues, and safety).

In October 2019, to manage the ongoing effects of both existing and future short term accommodation Council publicly notified a draft local law for short stay letting. Over 574 submissions were received raising a number of issues with respect to the draft local law as well as a range of planning scheme matters. The draft local law was put on hold following public notification, pending the outcome of a state wide approach to managing short stay letting by the Queensland Government. With the advent of Covid-19 however, the state government's priorities changed and the matter was deferred.

As part of Council's adoption of Noosa Plan 2020, Council resolved to complete and introduce the local law for short stay letting.

A revised draft local law has now been prepared proposing a number of changes, having considered public submissions, legal advice, stakeholder engagement and internal staff review.

In addition to a number of smaller changes, for clarification purposes, the most significant changes can be summarised as:

- inclusion of home hosted accommodation as part of the prescribed activity requiring an approval under the local law;

- one off application requirement and annual renewal;
- removal of exemptions for properties using onsite letting agent and manager residing overnight, and instead exemptions introduced for visitor only sites and precincts identified in Noosa Plan 2020, motels, hotels and backpackers;
- removal of reference to cancelled or suspended approvals and convictions within the last 2 years and instead broaden to consideration of the applicant's history of operating short stay letting or home hosted accommodation at the premises or other premises, including any suspensions or cancellations;
- removal of body corporate approval for properties in community title schemes;
- removal of planning scheme matters the local law cannot regulate (occupancy and hours of use of outdoor areas);
- an expanded definition of a contact person;
- inclusion of a 30 minute response time to complaints (or response time required under onsite management agreement, whichever the lesser time) and reference back to compliance with code of conduct;
- further clarification that the use of the premises includes use of outdoor areas, including decks, balconies, swimming pools and spas and must not detrimentally affect residential amenity;
- further expansion and definition of residential amenity impacts and what constitutes unacceptable guest behaviour;
- removal of requirements that guests cannot legally park outside property boundary;
- consistency with *Information Privacy Act 2009* requirements for guest and complaints registers; and
- removal of overlap with body corporate responsibilities and bylaws for community title scheme properties regarding signage and garbage requirements.

In addition, a complaints procedure has been prepared which sits outside the local law.

The revised draft local law is now presented to Council for endorsement for the purpose of public notification and the preparation of a public interest test plan.

RECOMMENDATION

That Council note the report by the Principal Strategic Planner to the Planning & Environment Committee Meeting dated 9 March 2021 and:

- A. Resolve to make:
 - 1. Administration (Amendment) Local Law (No. 1) 2021 as contained in Attachment 1; and
 - 2. Administration (Amendment) Subordinate Local Law (No.1) 2021 as contained in Attachment 2;
- B. In accordance with Council's Local Law Making Policy, further consult with the public about the revised versions of Administration (Amendment) Local Law (No.1) 2021 and Administration (Amendment) Subordinate Local Law (No.1) 2021;
- C. Pursuant to section 257 of the *Local Government Act 2009*, delegate to the Chief Executive Officer its powers under section 38 of the Act and section 15 of the *Local Government Regulation 2012* to decide—
 - 1. how the public interest test of Administration (Amendment) Local Law (No. 1) 2021 contained in Attachment 1 and Administration (Amendment) Subordinate
 - 2. Local Law (No. 1) 2021 contained in Attachment 2 is to be conducted; and

3. the matters with which the public interest test report in relation to the local law and subordinate local law must deal; and
 4. the consultation process for the public interest test and how the process is to be used in the public interest test;
- D. Approve the complaints procedure contained in Attachment 4 for the purpose of providing a plain English explanation of the process for dealing with complaints;
- E. Refer the resource requirements for implementing the local law and proposed fees structure for applications and annual renewals to the FY2021/22 budget process;
- F. Allow resident letting agents for on-site managed complexes the ability to submit one application form for their entire letting pool, with the fees applied per property within the letting pool;
- G. Authorise the CEO to make minor amendments to the documents prior to public notification.
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REPORT

The purpose of this report is to present to Council a revised set of amendments to Local Law No. 1 (Administration) 2015 and Subordinate Local Law No. 1 (Administration) 2015 for the purpose of introducing a new prescribed activity requiring approval for short stay letting and home hosted accommodation.

1. Background

Holiday houses have traditionally been part of the diversity of visitor accommodation in Noosa Shire and were predominantly scattered around the beaches and Noosa River. Holiday houses were either permanently let for visitors or locked up and used by family and friends. Older units and townhouses in complexes were often used interchangeable for either visitor accommodation or permanent residents depending on the market and the property owner's intentions.

The advent of online booking platforms has however given rise to an increased number of permanent residential properties being purchased and used for short term accommodation, many being managed from a distance with no local presence, management structure or regulation.

This has resulted in the creep of short term accommodation and tourists into traditionally permanent residential areas. In addition, many traditional holiday homes are being short stay let when not in use, creating a higher intensity and turnover of guests than historically experienced.

The interchangeable use of most unit/townhouse complexes and resorts between visitors and permanent residents, and the use of online booking platforms has also given rise to concerns, both for the residential amenity of permanent residents as well as the onsite letting agents.

A substantial proportion of submissions to both Noosa Plan 2020 and the first draft local law suggested, where a mix of tourists and permanent residents co-exist, the impact of short term accommodation on residential amenity was cause for concern and needed to be addressed.

Some of the key issues identified for the operation of short term accommodation include:

- lack of local management
- lack of complaint resolution and process
- lack of regulation and enforcement
- number of guests and overcrowding
- frequency and turnover of guests
- noise disturbance
- times and use of outdoor space
- waste disposal and waste management
- number of vehicles and parking
- safety and security
- pets
- conflict between permanent residents and visitors

In an attempt to address these issues, Council resolved to take a two pronged approach by:

- regulating where short term accommodation is and isn't appropriate;
- regulating the ongoing operation of short term accommodation to manage the impacts on residential amenity of permanent residents.

With the introduction of Noosa Plan 2020, short term accommodation is no longer a consistent land use in the Low Density Residential zone. Short term accommodation is a consistent land use in the Medium and High Density Residential zones requiring impact assessment.

Notwithstanding this, Noosa Plan 2020 can only address new short term accommodation proposals. Properties currently operating short term accommodation, who can establish they have a lawful existing use right to do so, can continue to operate short term accommodation.

To manage the ongoing effects of both existing and future short term accommodation, Council proposed a second approach, being the introduction of a local law to regulate the approval of short stay letting.

2. First draft local law 2019

At its Special Meeting on 12 September 2019, Council resolved to publicly notify draft amendments to its local laws to introduce a new prescribed activity for short stay letting being:

- Administration (Amendment) Local Law (No. 2) 2019
- Administration (Amendment) Subordinate Local Law (No. 2) 2019

The main purpose of the local law was to manage the ongoing operation of short stay letting through requirements for a local contact management framework and code of conduct for guests.

A plain English version of the first draft local law 2019 requirements is outlined in Attachment 5.

2.1 Consultation and public notification on first draft local law 2019

Public notification on first draft local law 2019

The first draft local law was placed on public notification for just over 3 weeks from 18 October to 11 November 2019 concurrently with the revised draft of Noosa Plan 2020.

574 written submission were received which identified a range of issues relevant to both the draft local law and the draft Noosa Plan 2020.

The submissions raised numerous issues for further consideration in a revised version of the draft local law. The key issues have resulted in a number of proposed changes outlined in Attachment 6 and summarised in section 2.5 of this report.

Stakeholder consultation on first draft local law 2019

A stakeholder reference group consisting of approximately 32 real estate agents and property managers was held during the public consultation period for the draft Noosa Plan. This group provided a substantial amount of feedback on the planning scheme with regard to short term accommodation and made suggestions on how the issues associated with short stay letting could be better managed.

From this meeting, a smaller group of short stay letting agents were nominated to continue to work with Council officers on how best to manage the issues associated with short term letting. Council officers met with this smaller group of representatives on four occasions.

Local government consultation on first draft local law 2019

Consultation was undertaken with several local governments with similar approaches to dealing with short stay letting. In particular, the approaches undertaken by Mornington Peninsula Shire Council, Gold Coast City Council and the Whitsunday Regional Council informed the first draft local law.

State government consultation on first draft local law 2019

As required by the *Local Government Act 2009*, 18 state government agencies were notified of the amendments to Local Law No. 1 (Administration) to introduce short stay letting as a prescribed activity.

Seven state agencies responded raising no comments or issues with the first draft local law.

2.2 State government proposal to introduce state wide approach

Following public notification, the first draft local law was not progressed as the Queensland state government were proposing a state-wide approach for managing short stay letting. This was, however, deferred given other state priorities due to COVID19 in March / April 2020.

2.3 Council resolution to complete and introduce local law

At its meeting on 16 July 2020, as part of the adoption of Noosa Plan 2020, Council resolved to complete and introduce the local law for short stay letting, including an associated code of conduct.

As part of this process, the key issues raised in the public submissions to the first draft local law were reconsidered, further options analysis undertaken, targeted stakeholder engagement undertaken and further legal advice sought.

2.4 Key issues from submissions

Public submissions raised a number of issues which have been considered in the revised draft local law. The key issues resulting in proposed changes are summarised below with detailed response and recommendations outlined in Attachment 6:

- onerous annual approval requirements;
- home hosted accommodation should be included;
- onsite manager exemptions are inequitable and discriminatory;
- onsite managers with multiple management rights cannot meet overnight stay requirements;
- body corporate approval cannot be required to make an application under the local law;
- local law is duplicating planning scheme matters;
- contact person notice on community title properties is contrary to body corporate bylaws;
- contact person should include letting agents and the like;
- response time to complaints required;
- residential amenity and guest behaviour needs further clarification and expansion;
- can't prevent cars from being legally parked in the street;
- there is overlap with bylaws for community title scheme properties;
- a complaints procedure is required.

Other issues that **did not** result in changes are outlined in detail in Attachment 6 and summarised below:

- residents should be able to object to short stay letting applications;
- increase fees and allocate to infrastructure;
- mandate that qualified property agents manage short stay letting ;
- local law makes the contact person liable for actions and behaviour of others is not reasonable;
- additional requirements for safety, health, discrimination, state/ federal laws;
- employ security;
- residents should be notified of bookings;
- infringements to guests not approval holder;
- local law should be evaluated and monitored – this did not result in a change to the local law, but it will be evaluation and monitoring will be undertaken.

3 Revised draft local law

The revised draft local law is now proposed for further public consultation which has considered:

- submissions received during public notification of the first draft local law;
- targeted stakeholder engagement with letting agents, onsite managers and Noosa Short Term Accommodation Association (NSTAA) representatives;
- further State government agency consultation;
- other local government approaches;
- options analysis and assessment; and
- legal advice.

3.1 Key changes proposed

A number of smaller changes have been made for clarification purposes in addition to the following significant changes:

- inclusion of home hosted accommodation as part of the prescribed activity requiring an approval under the local law;
- one off application requirement and annual renewal;
- removal of exemptions for properties using onsite letting agent and manager resides overnight – and instead exemptions introduced for visitor only sites and precincts identified in Noosa Plan 2020 identified in Attachment 7, motels, hotels and backpackers;
- removal of reference to cancelled or suspended approvals and convictions within the last 2 years and instead broaden to consideration of the applicant's history of operating short stay letting or home hosted accommodation at the premises or other premises, including any suspensions or cancellations;
- removal of the requirement for body corporate approval for properties in community title schemes;
- removal of planning scheme matters the local law cannot regulate - of occupancy and hours of use of outdoor areas;
- an expanded definition of a contact person;
- inclusion of a 30 minute response time to complaints (or response time required under onsite management agreement, whichever the lesser time) and reference back to compliance with code of conduct;
- further clarification that the use of the premises includes use of outdoor areas, including decks, balconies, swimming pools and spas and must not detrimentally affect residential amenity;
- further expansion and definition of residential amenity impacts and what constitutes unacceptable guest behaviour;
- removal of requirements that guests cannot legally park outside property boundary;
- consistency with Information *Privacy Act 2009* requirements for guest and complaints registers; and
- removal of overlap with body corporate responsibilities and bylaws for community title scheme properties regarding signage and garbage requirements.

A complaints procedure sitting outside of the local law has also been prepared and is contained in Attachment 4.

3.2 Revised draft local law content

Application requirements

- applies to short stay letting and home hosted accommodation;
- one off annual application and annual renewal with **exemptions** for:
 - sites and precincts identified in Noosa Plan 2020 as visitor only;
 - holiday houses not being used for short term accommodation;
 - hotels, motels, backpacker's accommodation;
- site plan, floor plan, use of each room, number of persons per bedroom;

- statutory declaration confirming the premises is not used as a 'Party House';
- written confirmation of:
 - accepted development or development approval and compliance with conditions; or lawful existing use rights;
 - premises being structurally sound and in good repair;
 - a current pool safety certificate;
 - a current electrical safety certificate for smoke alarms;
- if for short stay letting, contact person's name and telephone number.

Criteria for assessment

- applicant is owner or authorised by the owner of the premises;
- operation of short stay letting is lawful;
- conditions of approval can be met;
- applicant's history of operating short stay letting or home hosted including any suspensions or cancellations at the premises or other premises;
- complies with development approval and relevant planning scheme;
- identification of a contact person.

Conditions of approval

- up to date contact person identified at all times -
 - available 24 hours 7 days;
 - located within 20 minutes of premises;
 - responsible for supervision, complaints and visitor queries;
 - responds to complaints within 30 minutes;
 - resolves complaints to satisfaction of requirements of code of conduct for guest behaviour;
- contact person notice for short stay letting (not required for home hosted accommodation) at front of property – if not in community titles scheme – otherwise in accordance with bylaws;
- must not affect residential amenity including noise, overlooking and light spill;
- must not constitute a nuisance including a noise nuisance;
- provision made for occupants to enter and leave premises without causing disturbance to adjoining residents;
- adequate provision made for parking of vehicles on the premises;
- public liability insurance;
- waste containers provided and cleaned;
- waste containers placed at kerb no longer than 24 hours if not in a community titles scheme - otherwise managed by body corporate;
- code of conduct displayed at premises and websites;
- maintain guest register – number of guests and dates;
- maintain complaints register – details of complaint and how resolved;
- registers to be available for inspection by Council;
- code of conduct for guest behaviour:
 - vehicles stored not to cause nuisance or inconvenience, parked on onsite if provided;
 - use of premises includes use of outdoor areas including outdoor deck, balcony, swimming pool or spa must not -
 - detrimentally affect residential amenity including noise, overlooking and light spill;
 - cause a nuisance including noise nuisance;
 - display unacceptable behaviour including:
 - loud aggressive behaviour;
 - yelling, screaming, arguing; or
 - excessively loud singing or clapping
 - create a level of noise in excess of acceptable described by Queensland legislation for environmental protection (noise);
 - no sleeping or camping in a tent, caravan, campervan or similar;

- pets must be managed and not cause a nuisance, including noise nuisance;
- store waste in containers; and
- grounds kept safe and tidy.

3.3 Legal advice

Legal advice was obtained on a number of matters and the proposed changes recommended in this report. Specifically, advice was sought and confirmed the following:

- Council is not prevented from further regulating a premises which may be considered to enjoy existing lawful use rights.
- Existing use rights and development approvals are not affected by the introduction of the local law and remain regardless of suspensions or cancellations of a local law approval. Notwithstanding this, if there are infringements against the local law, the use rights can be suspended for a period of time pending the remedying of compliance matters or the granting of a further local law approval.
- If the scale or intensity of the use materially increases it could be subject to further regulation by Noosa Plan 2020.
- The local law cannot regulate or duplicate planning scheme matters and therefore regulating the scale and intensity of short stay use such as maximum occupancy and times of use of outdoor areas cannot be included in the local law as these matters are planning scheme matters.
- While the local law should not ordinarily make a person responsible for actions or omissions over which the person may have no control, the local law is drafted consistent with the fundamental legislative principles regarding the approval holder's responsibilities. The process for enforcement under sections 17-19 in Local Law (Administration) No. 1 will be followed in this regard.
- The Body Corporate and Community Management Act (BCCMA) and the module regulations (being State laws) prevail over the local law. But, the BCCMA and the module regulations do not address the complaints time frame issue identified in the local law, so there is no inconsistency between the local law and the BCCMA / the module regulations.
- With regards to any conflict between the body corporate by-laws and the local law, section 180(1) of the BCCMA provides that where a by-law is inconsistent with another Act (which includes a local law), the Act prevails to the extent of inconsistency. Consequently, even if the body corporate's by-laws do address the complaints time frame, resulting in a conflict between the by-laws and the local law, the local law will prevail.
- In relation to the letting agent management agreement, it is contractual in nature. It is not a legislative instrument despite the fact that its creation is authorised by the BCCMA / the regulation modules. Accordingly, the local law overrides the management agreement.

3.4 Statutory process and public notification

The revised draft local law has been prepared following *Council's Local Law Making Policy* and requirements under the *Local Government Act 2009*.

Council's *Local Law Making Policy* provides that where following public notification of the first draft local law, if the proposed changes are substantial that further public consultation on the revised draft local law be undertaken.

A four week public notification is proposed for the revised draft local law.

Following this, submissions made during the public notification period will be considered and a final draft will be reported to Council for adoption, gazettal and commencement.

It is anticipated the local law will commence around July 2021, subject to finalisation and adoption of the final local law.

Public Interest Test Plan

The revised draft local law contains anti-competitive provisions requiring compliance with the

procedures under section 15 of the *Local Government Regulation 2012* and the *National Competition Policy*. A list of likely anti-competitive provisions has been compiled in Attachment 3 requiring a Public Interest Test Plan and Report to be prepared.

Council is obligated to consider these anti-competitive provisions during the local law making process in relation to the public interest. For example, it needs to be formally identified whether there are advantages in the public interest that on balance, outweigh the anticompetitive elements of the proposed provisions. The outcome of this review will be presented to Council following the public notification process.

The public interest test report is the document where the results of the public interest test are reported. It summarises the assessment of costs and benefits and presents the information in a format that allows Council to determine whether there is a net community benefit in retaining the restriction on competition (i.e. retaining the anti-competitive provisions). This will be reported to Council following public consultation.

3.5 Fees and resources for implementation

It is estimated at least 4880 properties are operating short stay letting or home hosted accommodation:

- 900 dwelling houses
- 3,900 units, townhouses and duplexes
- 80 home hosted dwellings

The number of owners that may short stay let their principal place of residence 4 times a year but no more than 60 days is difficult to estimate, but will be additional to these figures .

The number of properties will vary over time as some move in and out of short stay letting into permanent occupation and vice versa, and as short stay let and home hosted accommodation properties come forward for local law approval.

Approximately 1,241 of the unit/townhouses are proposed to be exempt from the local law including 807 properties in the Hastings Street mixed Use precinct and 434 properties on visitor only approved sites.

Anticipated Resource Requirements

The most resource intensive aspect of the local law will be during its implementation for the first three years as the initial one-off applications are submitted for assessment and approval. It is estimated around 3639 properties will require an application. During this three year implementation period, the additional workload is forecast to require up to three compliance/assessment officers plus full time administration support.

It is anticipated that the workload will reduce from year three (2024/25) onward following the finalisation of all initial one-off applications at which point Council will reassess its resourcing requirements. Consequently, the administration of the local law will require a mix of permanent and temporary staff.

It is proposed that the resourcing decisions on increases to the staff establishment be referred to the 2021/22 budget process along with all other new staff requests. In the interim, temporary staff resourcing will be engaged to support the immediate compliance and implementation aspects of the local law.

Cost Recovery Options

There are a number of options available to Council to recover any additional resourcing costs associated with administering the local law, which may include:

- the introduction of an application and renewal fee applied to the properties subject to the local law;
- general rates;
- funding under a levy or special rating charge; or
- a combination of the above.

Council has commenced its budget development process for the 2021/22 financial year, which includes adoption of any new fees and charges as well as price setting for general rates, levies and special charges. It is proposed that the assessment of funding options for the administration of the local law be referred to the 2021/22 budget process to ensure it is considered holistically with all other rates, fees and charges applicable to short stay accommodation.

4. Previous Council Consideration

Special Meeting Minutes 16 July 2020

NOOSA PLAN 2020 – PRESENTED FOR ADOPTION AND IMPLEMENTATION FOLLOWING MINISTERIAL APPROVAL

That Council note the report by the Director Environment & Sustainable Development to the Special Meeting dated 16 July 2020; and

- A. Adopt the Noosa Plan 2020 as amended as a result of State Interest Review and Ministerial Conditions, as per attachments 2 – 22 of the report;*
- B. Set a date of 31 July 2020 for commencement of the new scheme;*
- C. Authorise the CEO to make any minor amendments necessary to the Noosa Plan 2020 prior to commencement;*
- D. Publicly notify adoption of the scheme in accordance with requirements of the Planning Act;*
- E. Provide the Chief Executive of Department State Development, Manufacturing, Infrastructure and Planning a copy of the public notice;*
- F. Initiate a process to monitor over a two year period the effectiveness of the provisions in the Noosa Plan 2020 with regard to industrial land and industry precincts to ensure the provisions meet the objective of enabling the changing nature of businesses including increased diversity in key sectors and provision for multi-purpose flexible work;*
- G. Provide a report back to Council on this monitoring program including any associated recommended amendments to the Noosa Plan;*
- H. Monitor over the next 2 years the effectiveness of the provisions of the Noosa Plan 2020 in enabling the delivery of housing choice and affordability to meet the diverse needs of the community, specifically housing for those in our community on low incomes, with special needs or in identified groups in need of community and affordable housing;*
- I. Provide a report back to Council on this monitoring program including any associated recommended amendments to the Noosa Plan to strengthen the provisions towards these outcomes; and*
- J. Complete and introduce a Local Law for Short term letting, including the associated code of conduct to regulate short term letting.*

Special Meeting Minutes 12 September 2019

PROPOSED LOCAL LAW AMENDMENTS – SHORT STAY LETTING

That Council note the report by the Planner to the Special Meeting dated 12 September 2019 regarding Proposed Local Law Amendments – Short Stay Letting and:

- A. Propose to make:*
 - 1. Administration (Amendment) Local Law (No. 2) 2019 as provided at Attachment 1; and*
 - 2. Administration (Amendment) Subordinate Local Law (No. 2) 2019 as provided at Attachment 2;*
- B. In accordance with Council's Local Law Making Policy:*
 - 1. Consult with relevant government entities about the overall State interest in Administration (Amendment) Local Law (No. 2) 2019 in accordance with the Local*

- Government Act 2009 ("the Act"), section 29A(3) and delegate authority to the Chief Executive Officer to make changes in response to State comments; and*
2. *Consult with the public about Council's proposal to make Administration (Amendment) Local Law (No. 2) 2019 and Administration (Amendment) Subordinate Local Law (No. 2) 2019;*
- C. *Pursuant to section 257 of the Act, delegate to the Chief Executive Officer its powers under section 38 of the Act and section 15 of the Local Government Regulation 2012 to decide—*
1. *How the public interest test of Administration (Amendment) Local Law (No. 2) 2019 contained in Attachment 1 and Administration (Amendment) Subordinate Local Law (No. 2) 2019 contained in Attachment 2 is to be conducted; and*
 2. *The matters with which the public interest test report in relation to the local law and subordinate local law must deal; and*
 3. *The consultation process for the public interest test and how the process is to be used in the public interest test;*
- D. *Waiver the proposed application fee for a short stay letting approval under the proposed Local Law for a period of 6 months starting from the date of commencement of the Local Law for short stay letting.*
- E. *Authorise the CEO to make minor amendments to the documents prior to public notification.*

5. Finance

The preparation of the local law has required legal review at a cost to Council during the 2021/22 year.

As outlined in section 3.5, the implementation of the local law will require additional staff resourcing (including vehicles). This resourcing requirement will need to be funded for the 2021/22 year on an ongoing basis. Funding options, which may include fees and charge, general rates or levies, will need to be assessed through Council's budget process for the 2021/2022 financial year.

6. Risks & Opportunities

The revised draft local law provides an opportunity to better manage the ongoing operation of short stay letting and home hosted accommodation with a standard set of rules for the safety of guests, management of the property, complaints resolution and guest behaviour. Should the revised draft local law not proceed, short stay letting and home hosted accommodation will continue unregulated with further risk of impacting the residential amenity of permanent residential areas and guest safety.

There is a risk that property owners may not voluntarily respond to the approval requirements and continue to operate contrary to the local law requirements. This may also place an additional financial burden on Council in the initial 2-3 years of implementation until costs to Council are covered.

7. Consultation

7.1 State government consultation

A further 3 week consultation period was undertaken during late January/February 2021 with state agencies on Administration (Amendment) Local Law (No.1) 2021 due to the introduction of home hosted accommodation as part of the prescribed activity requiring an approval.

Twenty three state agencies were notified of the proposed local law. Seven response were received, five of which raised no comments on the draft local law.

Department of Energy and Public Works (Building Services)

The Department of Energy and Public Works (Building Services) have raised matters regarding the proposed local law definitions and the building classification definitions under the National Construction Code (NCC). They assert that the definitions may cause confusion to building

certifiers and is contrary to the Building Act 1975 because the local law purports to change one of the building assessment provisions.

Response

The local law does not change the effect of any relevant provisions of the NCC as the NCC deals with the classification of buildings and specific requirements about the undertaking of building work. The classification of a building is irrelevant in the context of the application of the local law.

The local law focuses on buildings used in a particular manner not the way a relevant building is actually constructed or the undertaking of building work in a building having a specific classification. Compliance with the relevant building assessment provisions is an entirely separate matter to the regulation of the ongoing use of the building after the completion of construction, in the matter contemplated in the local law.

No change is proposed in response to the state's comments.

Department of State Development, Infrastructure, Local Government and Planning

The Department of State Development, Infrastructure, Local Government and Planning (SDILGP) raised no state interests with regard to the revised draft local law, however suggested we consult state agencies further on the subordinate local law for areas of planning and building controls. They encourage Council to consult with SDILGP and the Department of Energy and Public Works (Building Services) for consistency with existing frameworks.

Response

Whilst Council is not obliged to consult with state agencies on the content of the subordinate local law, it will be forwarded to SDILGP and Building Services for comment during the public consultation period.

7.2 Stakeholder consultation on revised draft local law

As part of the review of the draft local law, further consultation was undertaken with a targeted stakeholder group of six representative including holiday letting agents, onsite managers and the Noosa Short Term Accommodation Association (NSTAA). Consultation included three workshops and further email consultation on possible directions for the local law, including the directions outlined in this report.

The revised draft local law was amended in response to some detailed comments raised by the NSTAA. Key concerns raised by the NSTAA can be summarised as:

- Exemptions – do not support exemptions
- Funding – Tourism levy should be considered
- Local law should having ongoing input from industry and residents with ongoing review
- Complaints procedures

The NSTAA will also have further opportunity to provide feedback during the public consultation period.

7.3 Public consultation

As noted in section 2.1 public consultation was undertaken on the 1st draft local law in late 2019 and targeted stakeholder consultation was undertaken with a group of residential letting agents, resort managers and the NSTAA in the preparation of the revised draft local law.

Further public consultation will be undertaken on the revised draft local law for an extended period of 4 weeks commencing late March/April subject to Council endorsement of the revised draft local law for public notification.

Notification will include public notices, your say webpage, Facebook notifications and media releases.

8. Internal Consultation

Consultation has been undertaken internally with Local Laws, Development Assessment, Economic Development, Strategic Planning, Governance and Chief Executive Officer in the preparation of the revised local laws.

Two Councillor workshops were also held on the matter and informed the preparation of this report and recommended changes to the revised draft local law.

Departments/Sections Consulted:

<input checked="" type="checkbox"/> Chief Executive Officer Executive Officer Executive Support	<input checked="" type="checkbox"/> Community Services Director Community Development Community Facilities Libraries & Galleries Local Laws Waste & Environmental Health	<input type="checkbox"/> Corporate Services Director Financial Services ICT Procurement & Fleet Property Revenue Services
<input checked="" type="checkbox"/> Executive Services Director Community Engagement Customer Service Governance People and Culture	<input checked="" type="checkbox"/> Environment & Sustainable Development Director Building & Plumbing Services Development Assessment Economic Development Environmental Services Strategic Land Use Planning	<input type="checkbox"/> Infrastructure Services Director Asset Management Buildings and Facilities Civil Operations Disaster Management Infrastructure Planning, Design and Delivery



Noosa Shire Council

Administration (Amendment) Local Law (No. 1) 2021

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www.noosa.qld.gov.au

*Noosa Shire Council
Administration (Amendment) Local Law (No. 1) 2021
2*

Contents

Part 1	Preliminary	3
	1. Short title	3
	2. Purpose	3
Part 2	Amendment of Noosa Shire Council Local Law No. 1 (Administration) 2015.....	3
	3. Local law amended	3
	4. Amendment of sch 1 (Dictionary).....	3
	5. Amendment of sch2 (Prescribed activities).....	4

*Noosa Shire Council
Administration (Amendment) Local Law (No. 1) 2021
3*

**Noosa Shire Council
Administration (Amendment) Local Law (No. 1) 2021**

Part 1 Preliminary

1. Short title

This local law may be cited as *Administration (Amendment) Local Law (No. 1) 2021*

2. Purpose

The purpose of this local law is to amend *Noosa Shire Council Local Law No. 1 (Administration) 2015*.

Part 2 Amendment of Noosa Shire Council Local Law No. 1 (Administration) 2015

3. Local law amended

This part amends *Noosa Shire Council Local Law No. 1 (Administration) 2015*.

4. Amendment of sch 1 (Dictionary)

- (1) Schedule 1, definition *shared facility accommodation*—
omit, insert—

'shared facility accommodation—

- (a) means accommodation occupied or available for occupation by residents, in return for payment, on the basis of residents sharing 1 or more of the following facilities—
- (i) dormitories or bedrooms;
 - (ii) toilets;
 - (iii) bathrooms, showers or other bathing facilities;
 - (iv) laundries;
 - (v) dining facilities;
 - (vi) cooking facilities;
 - (vii) recreation facilities; but
- (b) does not include any of the following—
- (i) short stay letting;
 - (ii) home hosted accommodation;
 - (iii) accommodation in a hotel;

*Noosa Shire Council
Administration (Amendment) Local Law (No. 1) 2021
4*

(iv) accommodation in a motel.’.

(2) Schedule 1—

insert—

‘short stay letting —

- (a) means the provision, or making available, of premises for use by 1 or more persons, other than the owner of the premises, for less than 3 consecutive months; but
- (b) does not include any of the following—
 - (i) shared facility accommodation;
 - (ii) home hosted accommodation;
 - (iii) accommodation in a hotel;
 - (iv) accommodation in a motel;
 - (v) backpacker accommodation.

home hosted accommodation means the provision, or making available, of premises—

- (a) for use by 1 or more persons (each an *occupant*), other than the owner of the premises, for less than 3 consecutive months; and
- (b) which comprise—
 - (i) a habitable room at residential premises, for example, a bedroom, studio or cabin; or
 - (ii) bed and breakfast style accommodation; and
- (c) where the person in charge of the premises resides at the premises whilst the occupant uses the premises.’.

5. Amendment of sch2 (Prescribed activities)

- (1) Schedule 2 part 1, after ‘undertaking regulated activities on local government controlled areas and roads’—

insert—

‘operation of short stay letting or home hosted accommodation’.

- (2) Schedule 2, part 2, definition *operation of shared facility accommodation*—

omit, insert—

‘operation of shared facility accommodation means the provision of shared facility accommodation to holiday makers or travellers, but does not include any of the following—

- (a) short stay letting;
- (b) home hosted accommodation;
- (c) accommodation in a hotel;
- (d) accommodation in a motel.’.

*Noosa Shire Council
Administration (Amendment) Local Law (No. 1) 2021
5*

-
- (3) Schedule 2, part 2, after the definition for the prescribed activity '*undertaking regulated activities on local government controlled areas and roads*'—
insert—
'*operation of short stay letting or home hosted accommodation* means the provision, or making available, on a commercial basis, of short stay letting or home hosted accommodation.'

This and the preceding 4 pages bearing my initials is a certified copy of *Administration (Amendment) Local Law (No. 1) 2021* made in accordance with the provisions of the *Local Government Act 2009* by Noosa Shire Council by resolution dated the day of 2021.

.....
Chief Executive Officer

1023094_1

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Noosa Shire Council

Administration (Amendment) Subordinate Local Law (No. 1) 2021

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Contents

Part 1	Preliminary.....	3
	1. Short title	3
	2. Purpose	3
	3. Authorising local law	3
Part 2	Amendment of Subordinate Local Law No. 1 (Administration)	
	2015	3
	4. Subordinate local law amended	3
	5. Insertion of new sch 21A —Operation of short stay letting or home hosted accommodation	3

Noosa Shire Council Administration (Amendment) Subordinate Local Law (No. 1) 2021

Part 1 Preliminary

1. Short title

This subordinate local law may be cited as *Administration (Amendment) Subordinate Local Law (No. 1) 2021*.

2. Purpose

The purpose of this subordinate local law is to amend *Subordinate Local Law No 1 (Administration) 2015*.

3. Authorising local law

The making of the provisions of this subordinate local law is authorised by *Noosa Shire Council Local Law No.1 (Administration) 2015*.

Part 2 Amendment of Subordinate Local Law No. 1 (Administration) 2015

4. Subordinate local law amended

This part amends *Subordinate Local Law No. 1 (Administration) 2015*.

5. Insertion of new sch 21A—Operation of short stay letting or home hosted accommodation

After schedule 21—

insert —

'Schedule 21A Operation of short stay letting or home hosted accommodation

Section 11

1 Prescribed activity

Operation of short stay letting or home hosted accommodation.

2 Activities that do not require approval under the authorising local law

An approval is not required in respect of the undertaking of the prescribed activity if the prescribed activity is undertaken at any of the following premises —

- (a) all premises located within the Hastings Street Mixed Use Precinct as identified in the planning scheme of the local government; or

- (b) premises located at any of the following sites—
 - (i) lot 1 on SP286680, 215 David Low Way, Peregrine Beach;
 - (ii) SP190823 and SP151409, 3-5 Morwong Drive, Noosa Heads, (Viridian Noosa Resort);
 - (iii) lot 10 and lot 11 on SP195871, 3-7 Serenity Close, Noosa Heads (Settlers Cove resort site);
 - (iv) lot 203 on SP267424 and lot 3 on SP126203, 94 or 142 Noosa Drive, Noosa Heads (RACV Resort and adjoining land);
 - (v) lots 201 and 8000 and common property on SP290680, 75 Resort Drive, Noosa Heads (Parkridge Noosa);
 - (vi) GTP102758, 73 Hilton Terrace, Noosaville (Ivory Palms Resort);
 - (vii) SP115731, 3 Hilton Terrace, Tewantin (Noosa Lakes Resort);
 - (viii) lot 2 on RP135678, 1 Beach Road, Noosa North Shore;
 - (ix) lot 2 on SP186169, 30 Beach Road, Noosa North Shore;
 - (x) lot 500 on SP215779 and lot 500 on SP186174 and any of the Beach Road Holiday Homes, 90 Beach Road, Noosa North Shore;
 - (xi) lot 2 on RP865533, 2 Halse Lane, Noosa Heads (Halse Lodge);
 - (xii) lot 4 on SP178340, 61 Noosa Springs Drive, Noosa Heads.

3 Documents and materials that must accompany applications for approval

The following documents and materials must accompany an application for an approval for the operation of short stay letting or home hosted accommodation at premises—

- (a) application form; and
- (b) the appropriate fees as determined in the local government's schedule of fees and charges; and
- (c) the documents, information and materials identified in the application form for the prescribed activity; and
- (d) a plan of the premises and specifications for the operation of the short stay letting or home hosted accommodation including—
 - (i) a site plan showing the location of all buildings, including any swimming pool or spa; and
 - (ii) a floor plan; and
 - (iii) the use proposed in respect of each room and the maximum number of persons to be accommodated in each bedroom; and

- (e) written confirmation that—
 - (i) the use of the premises for the operation of short stay letting or home hosted accommodation is authorised—
 - (A) by a development approval granted by the local government; or
 - (B) as accepted development or accepted development subject to requirement provisions of the local government's planning scheme; or
 - (C) by lawful use rights in existence on the date the application is made to the local government; and
 - (ii) the operation of short stay letting or home hosted accommodation at the premises complies with—
 - (A) if development approval conditions apply to the operation of the prescribed activity at the premises — the development approval conditions; or
 - (B) if development approval conditions do not apply to the operation of the prescribed activity at the premises — the planning scheme of the local government which applied at the time the operation of the prescribed activity commenced at the premises; and
- (f) written confirmation that the premises will not be used for the purposes of a party house as defined in the *Planning Act 2016*, section 276; and
- (g) written confirmation that the premises are structurally sound and in good repair; and
- (h) if a pool is situated on the premises — written confirmation that a current pool safety certificate has been issued by a QBCC licensed pool safety inspector; and
- (i) written confirmation that a current electrical safety certificate of compliance has been issued by a licensed electrical contractor for each smoke alarm at the premises; and
- (j) if the application is for an approval to operate short stay letting — a written statement that —
 - (i) identifies the name and telephone number of the contact person (which may include the name and contact details of an individual, letting agency, property manager, security firm or the like) for the purposes of the operation of the short stay letting at the premises; and
 - (ii) confirms that the contact person is available 24 hours a day, 7 days a week; and
 - (iii) confirms that the contact person resides, or has a place of business, within 20 minutes travel time (by vehicle) of the premises; and
 - (iv) confirms that the contact person is to be responsible for the

supervision and management of the premises, including addressing complaints about the use of the premises for short stay letting and visitor queries.

4 Additional criteria for the granting of approval

The local government may only grant an approval (or renew an approval) for the operation of short stay letting or home hosted accommodation at premises if it is satisfied the proposed operation and management of the activity would be consistent with each of the following additional criteria—

- (a) the applicant is the owner of the premises, or is authorised in writing by the owner of the premises, used for the short stay letting or home hosted accommodation;
- (b) the operation of the short stay letting or home hosted accommodation can be lawfully conducted on the premises;
- (c) the matters which are the subject of the conditions specified in section 6 of this schedule which are relevant to the operation of the short stay letting or home hosted accommodation at the premises can be adequately addressed by the imposition of conditions;
- (d) the applicant's history in respect of the operation of short stay letting or home hosted accommodation at the premises or other premises and any suspensions or cancellations pursuant to section 17 or 19 of the authorising local law;
- (e) the operation of the short stay letting or home hosted accommodation must comply with the following criteria—
 - (i) the operation of the short stay letting or home hosted accommodation must comply with—
 - (A) any relevant development approval; or
 - (B) accepted development or accepted development subject to requirement provisions of the local government's planning scheme; or
 - (C) for premises with lawful use rights — the local government's planning scheme which applied at the date the lawful use commenced;
 - (ii) the operation of the short stay letting or home hosted accommodation at the premises must not detrimentally affect the residential amenity (including, but not limited to, noise, overlooking or light spill) enjoyed by residents in the vicinity of the premises;
 - (iii) adequate on-site vehicular parking facilities must be provided at the premises;
- (f) if the application is for an approval to operate short stay letting at premises — the applicant must provide to the local government up to date details of a person (*contact person*) (which may include the name and contact details of an individual, letting agent, property manager or the like) being a person who—

- (i) is available 24 hours a day, 7 days a week; and
- (ii) resides, or has a place of business, within 20 minutes travel time (by vehicle) of the premises; and
- (iii) will be responsible for the supervision and management of the premises, including addressing complaints about the use of the premises for short stay letting and visitor queries.

5 Conditions that must be imposed on approvals

No condition must be imposed on an approval for the operation of short stay letting or home hosted accommodation at premises.

6 Conditions that will ordinarily be imposed on approvals

- (1) This section specifies the conditions that will ordinarily be imposed on an approval for the operation of short stay letting or home hosted accommodation at premises.
- (2) If the approval is for the operation of short stay letting —
 - (a) an up to date contact person must be identified for the premises at all times (which may include an individual, letting agent, property manager or the like), who —
 - (i) is available 24 hours a day, 7 days a week; and
 - (ii) resides, or has a place of business, within 20 minutes travel time (by vehicle) of the premises; and
 - (iii) is responsible for the supervision and management of the premises, including addressing complaints about the use of the premises for short stay letting and visitor queries; and
 - (iv) is responsible for responding to each complaint —
 - (A) within 30 minutes of receipt of notification of the complaint; or
 - (B) if the premises forms part of the letting pool within an on-site managed complex — within the time frame specified by the letting agreement for the complex, or 30 minutes, whichever is the lesser; or
 - (C) if the premises forms part of a community titles scheme and does not form part of the letting pool within an on-site managed complex — within the time frame specified by the body corporate bylaws or 30 minutes, whichever is the lesser and if a time frame is not specified in the body corporate bylaws, within 30 minutes; and
 - (v) is responsible for resolving each complaint at the premises, including ensuring compliance with the requirements of the code of conduct for guest behavior; and
 - (b) if the premises do not form part of a community titles scheme —

- (i) the holder of the approval must prominently and permanently display a current, and up to date, written notice (*contact person notice*) at the front of the premises; and
 - (ii) the contact person notice must be visible to members of the public at all times; and
 - (iii) the size of the contact person notice must not exceed 0.2m², and
 - (iv) the contact person notice must specify, in letters and numbers not less than 50mm in height—
 - (A) the current, and up to date, contact person details for the premises; and
 - (B) the telephone number of the contact person; and
 - (C) a statement that the contact person is responsible for the supervision and maintenance of the premises; and
 - (c) if the premises forms part of a community titles scheme, the holder of the approval must notify the body corporate of the approval and make available the contact person details for the premises at a location which complies with the by-laws for the community titles scheme.
- (3) If the approval is for the operation of short stay letting or home hosted accommodation at premises—
- (a) the operation of the short stay letting or home hosted accommodation must not detrimentally affect the residential amenity (including but not limited to noise, overlooking or light spill) enjoyed by residents in the vicinity of the premises; and
 - (b) the operation of the short stay letting or home hosted accommodation at the premises must not constitute a nuisance (including a noise nuisance); and
 - (c) adequate provision must be made at the premises for occupants to enter and leave the premises without causing disturbance to adjoining residents; and
 - (d) adequate provision must be made for the parking of vehicles on the premises, including a vehicle used by a person occupying the premises, and all vehicles must—
 - (i) be stored in a manner that does not cause a nuisance or inconvenience to adjoining premises; and
 - (ii) be parked within the parking facilities at the premises where provided; and
 - (e) the operation of short stay letting or home hosted accommodation must not make provision for any occupant of the premises to sleep or camp on the premises in a tent, caravan, campervan or similar facility; and
 - (f) the holder of the approval must, at all times, hold and maintain a broadform public liability insurance policy which provides indemnity—

- (i) in an amount not less than \$10,000,000.00 or another amount specified by the local government; and
 - (ii) in respect of the use of the premises for the operation of short stay letting or home hosted accommodation; and
- (g) waste containers that are provided as part of the operation of the short stay letting or home hosted accommodation must, at all times, be regularly cleaned and maintained in a clean, tidy, sanitary and hygienic condition; and
- (h) if the premises do not form part of a community titles scheme where waste containers are managed by the body corporate — each of the approval holder and, if the contact person is not the approval holder, the contact person, must—
 - (i) place the waste container for the premises on the kerb side frontage of the premises, for the collection of general waste from the container; and
 - (ii) ensure that the container is placed on the kerb side frontage for no longer than 24 hours before or after the scheduled collection day for the collection of waste in the container; and
- (i) the code of conduct for guest behavior for the use, or occupation, of the premises must be—
 - (i) displayed in a manner, and in a prominent location within the premises, so that it can be viewed by persons using, or occupying, the premises; and
 - (ii) made available by the holder of the approval, or the contact person, to all users and occupants of the premises, including on any website or social media used to promote the use of the premises for short stay letting or home hosted accommodation; and
- (j) each of the approval holder and, if the contact person is not the approval holder, the contact person, must keep and maintain a written record of each complaint received by the contact person including, as a minimum, the following information about each complaint —
 - (i) details of the complaint; and
 - (ii) the date and time of receipt of the complaint; and
 - (iii) details of how the complaint was resolved or addressed; and
- (k) each of the approval holder and, if the contact person is not the approval holder, the contact person, must keep and maintain a register of the use of the premises for short stay letting, and record in the register, each of the following —
 - (i) on each occasion on which the premises are used, or occupied, for short stay letting on a commercial basis —
 - (A) the number of adults who are occupants of the premises; and
 - (B) the number of minors, an individual who is under 18,

- who are occupants of the premises; and
- (ii) the dates when each persons use, or occupation, of the premises for short stay letting began and ended; and
 - (iii) the number of guests of each person who uses, or occupies, the premises for short stay letting; and
- (l) each of the approval holder and, if the contact person is not the approval holder, the contact person, must make available, for inspection by the local government, within 5 business days of receipt of a written request given at any time, each of—
- (i) the written record of complaints referred to in paragraph (j); and
 - (ii) the register referred to in paragraph (k); and
- (m) each of the approval holder and, if the contact person is not the approval holder, the contact person, must require each occupant of the premises to comply with each of the following conditions (collectively the *code of conduct for guest behaviour*)—
- (i) each vehicle used by an occupant of the premises must—
 - (A) be stored in a manner that does not cause a nuisance or inconvenience to adjoining premises; and
 - (B) if parking facilities are provided at the premises — be parked within the parking facilities at the premises;
 - (ii) each occupant of the premises who enters, uses or occupies the premises, including any outdoor area of the premises, for example, an outdoor deck, balcony, swimming pool or spa, must not—
 - (A) detrimentally affect the residential amenity (including but not limited to noise, overlooking or light spill) enjoyed by residents in the vicinity of the premises; or
 - (B) cause a nuisance (including a noise nuisance); or
 - (C) display unacceptable behavior, for example—
 - loud aggressive behaviour;
 - yelling, screaming, arguing;
 - excessively loud cheering, clapping or singing;
 - or
 - (D) create a level of noise which is in excess of the acceptable levels described by Queensland Government legislation for environmental protection (noise);
 - (iii) an occupant of the premises must not sleep or camp on the premises in a tent, caravan, campervan or similar facility;
 - (iv) pets occupying the premises must be managed and not cause a nuisance (including a noise nuisance);

- (v) each occupant of the premises must store general waste (including the separation of recyclable waste) produced as a result of the ordinary use or occupation of the premises in a waste container;
- (vi) each occupant of the premises must ensure that the premises, including the grounds of the premises, are kept in a safe and tidy condition.

7 Term of approval

- (1) The term of an approval commences on the date the approval is granted and expires 12 months from the date of the approval.
- (2) An approval expires at the end of the day for expiry specified in subsection (1).

8 Term of renewal of approval

An approval that is renewed expires on the next 30th day of June, unless otherwise specified in the renewal.

9 Definitions for schedule

In this schedule —

body corporate has the meaning given in the *Body Corporate and Community Management Act 1997*.

building has the meaning given in the *Building Act 1975*.

code of conduct for guest behaviour has the meaning given in section 6(3)(m).

community titles scheme has the meaning given in the *Body Corporate and Community Management Act 1997*.

contact person has the meaning given in section 4(g).

contact person notice has the meaning given in section 6(2)(b).

development approval has the meaning given in the *Planning Act 2016*.

general waste has the meaning given in *Local Law No. 7 (Waste Management) 2018*.

occupant, of premises, means a person who uses, or occupies, the premises, including a visitor to the premises.

planning scheme means the planning scheme of the local government.

vehicle has the meaning given in the *Transport Operations (Road Use Management) Act 1995*.

waste container see *Local Law No. 7 (Waste Management) 2018*.

*Noosa Shire Council
Administration (Amendment) Subordinate Local Law (No. 1) 2021*

12

This and the preceding 11 pages bearing my initials is a certified copy of *Administration (Amendment) Subordinate Local Law (No. 1) 2021* made in accordance with the provisions of the *Local Government Act 2009* by Noosa Shire Council by resolution dated the day of 2021.

.....
Chief Executive Officer
1023095_1

REVISED DRAFT

Attachment 3: LIST OF LIKELY ANTI-COMPETITIVE PROVISIONS

Local Law: Administration (Amendment) Local Law (No. 1) 2021.

Purpose: The purpose of the local law is to amend *Noosa Shire Council Local Law No. 1 (Administration) 2015*.

Anti-competitive Provisions	Relevant criteria	Explanatory Comments
Local law section 5 (Amendment of schedule 2 (Prescribed activities))	5 – prescribed standard 7 – business restriction 10 – permit requirement	The provision identifies, for the purpose of the local law, the prescribed activity of the operation of short stay letting or home hosted accommodation. Under the local law:- (a) an approval is required in respect of the undertaking of the prescribed activity; and (b) the local government has a discretion about the granting of approvals; and (c) if an approval is granted by Council—the approval may be granted subject to conditions prescribed by Council; and (d) <u>an</u> approval is not required in respect of the undertaking of the prescribed activity in specified circumstances.

Subordinate Local Law: Administration (Amendment) Subordinate Local Law (No. 1) 2021.

Purpose: The purpose of the subordinate local law is to amend *Subordinate Local Law No. 1 (Administration) 2015*.

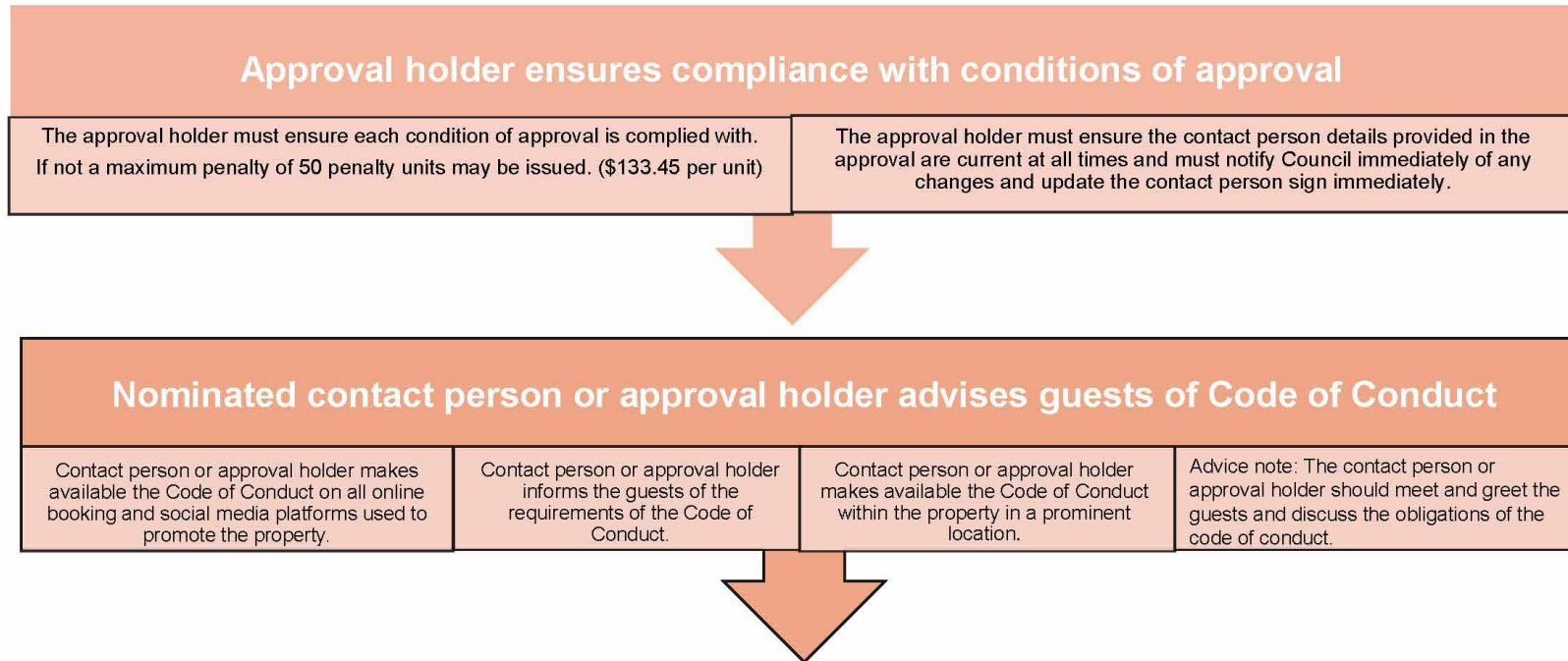
Anti-competitive Provisions	Relevant criteria	Explanatory Comments
Subordinate Local law section 5 (Insertion of new schedule 21A – Operation of short stay letting or home hosted accommodation)	5 – prescribed standard 7 – business restriction 10 – permit requirement	<ul style="list-style-type: none"> Imposes a requirement to obtain an approval in respect of the undertaking of the prescribed activity and may have an impact on the conduct of a business activity, and in particular, the prescribed activity of the operation of short stay letting or home hosted accommodation. Regulates the process for the grant of an approval by constraining the Council's discretion. The power to impose conditions and examples of subject matter for conditions which form part of the process for the grant of an approval. The imposition of conditions may have an impact on the conduct of a business activity.

Attachment 4

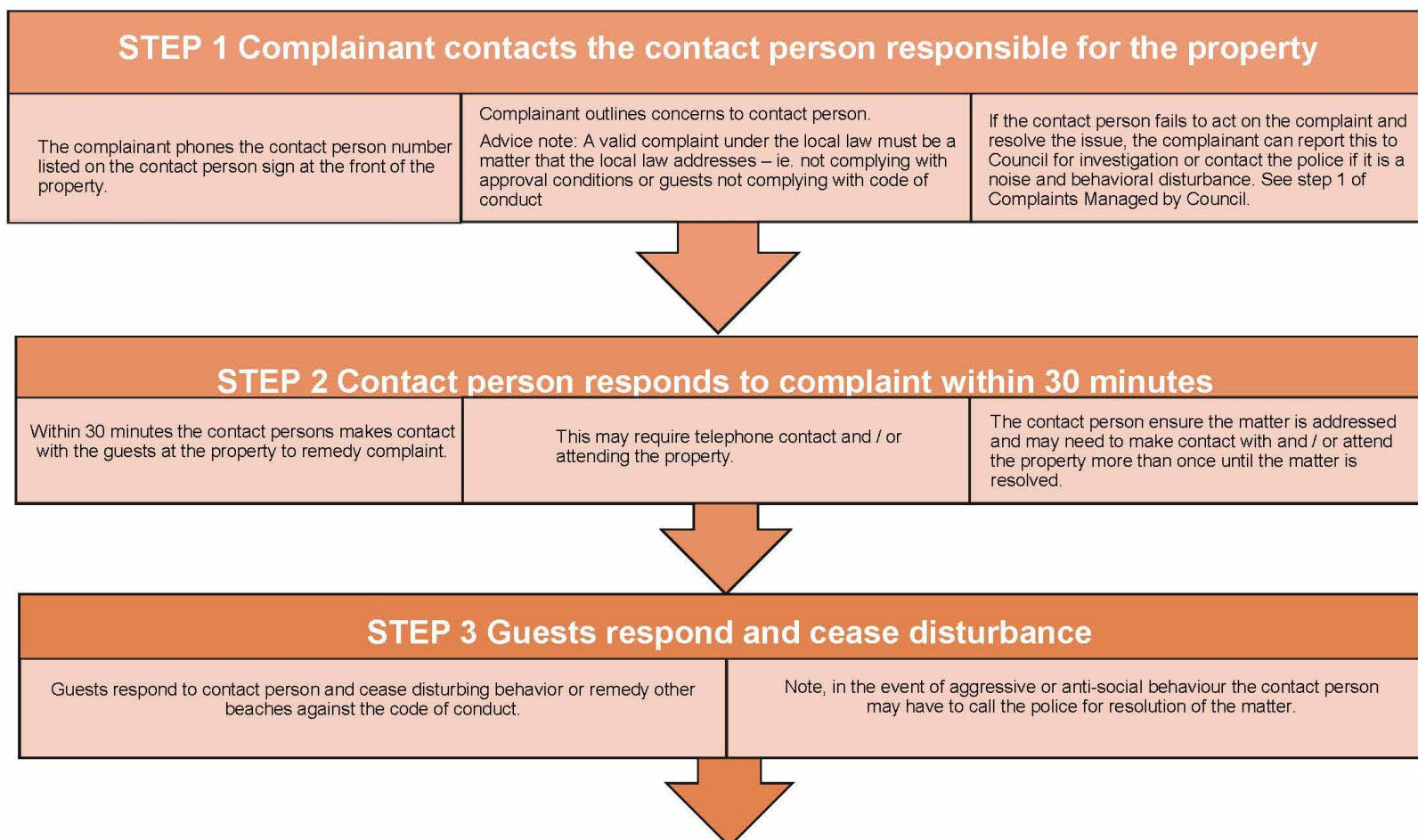


Short stay letting and home hosted accommodation Local Law Complaints procedure

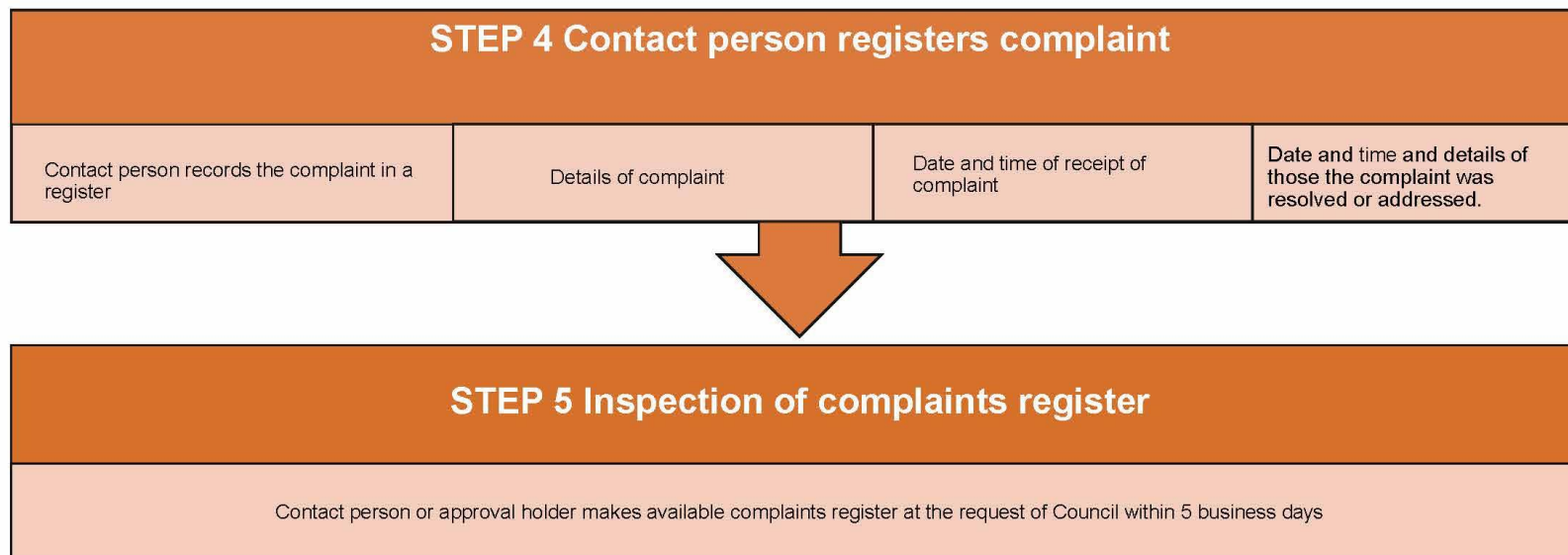
Approval holder /contact person responsibilities



Complaints managed by contact person



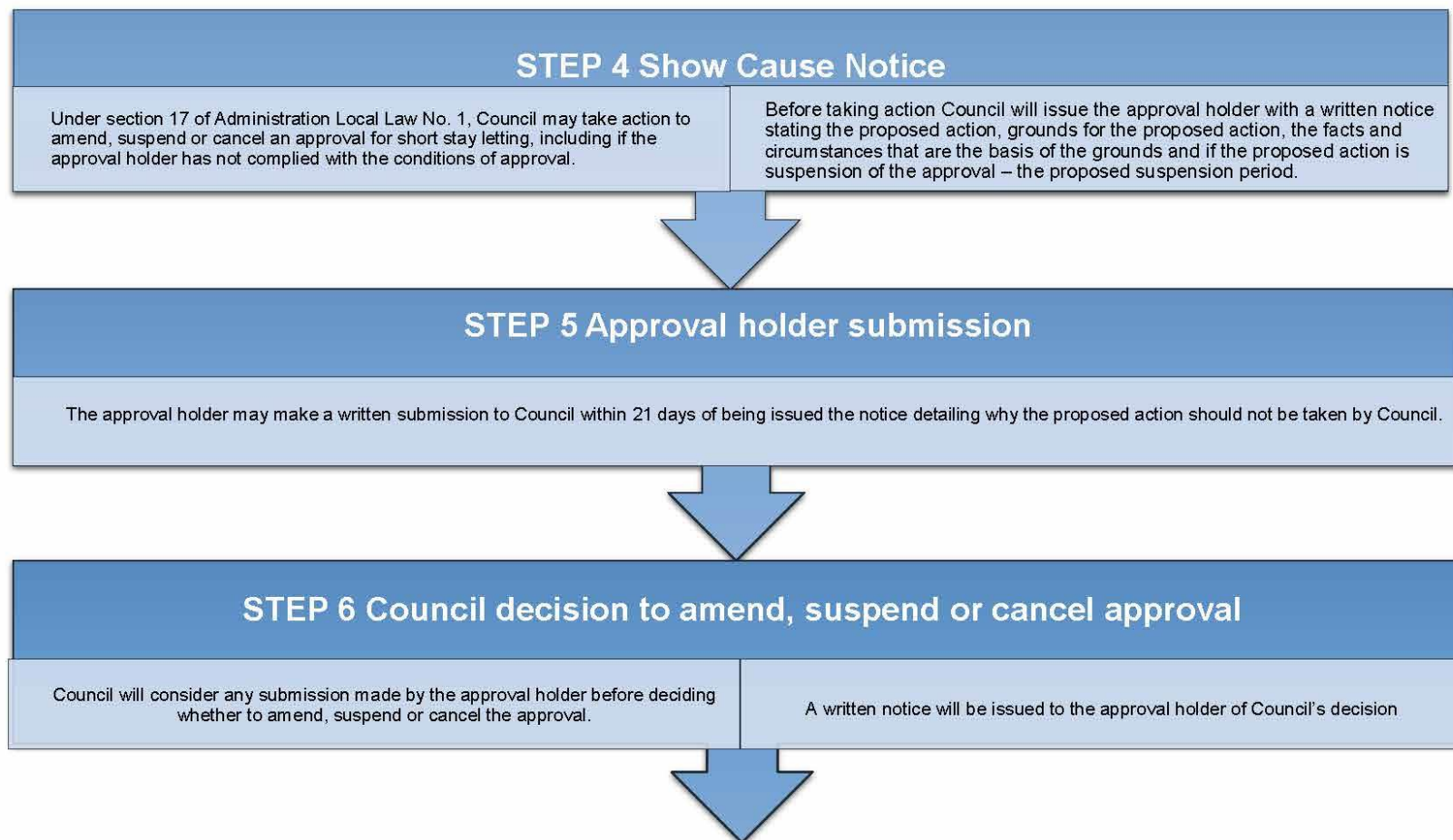
Complaints managed by contact person



Complaints managed by Council



Complaints managed by Council

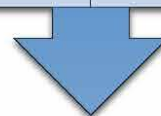


Complaints managed by Council

STEP 7 Council decision to immediately amend, suspend or cancel approval

Under section 19 of Administration Local Law No.1 Council may immediately suspend an approval if there is an urgent and serious threat to public safety or urgent and serious risk of environmental harm, property damage or loss of amenity.

Council will issue a notice to the approval holder about the decision to immediately suspend the approval.



Approval renewal

The approval for short stay letting is renewed annually by the approval holder.

In considering the issuing of a renewal, the applicant's history in the operation of short stay letting or home hosted accommodation at the premises or other premises and any suspensions or cancellations will be considered.

Attachment 5 - FIRST DRAFT LOCAL LAW 2019 SUMMARY OF REQUIREMENTS (Plain English version)

Application requirements

- annual application for short stay letting, with exemptions for
 - ☐ units in an onsite overnight managed complex, managed by onsite letting agent;
 - ☐ holiday houses not being used for short term accommodation;
 - ☐ home hosted accommodation;
 - ☐ motel, backpacker's accommodation, cabins,
- plan to scale – site plan, floor plan, use of each room, number of persons per bedroom;
- body corporate approval (if relevant);
- evidence of rates and levies paid;
- statutory declaration confirming the premises is not used as a 'Party House';
- confirmation of:
 - ☐ development approval and compliance with conditions (if required); or
 - ☐ lawful existing use rights;
 - ☐ premises being structurally sound and in good repair;
 - ☐ a current pool safety certificate;
 - ☐ a current electrical safety certificate for smoke alarms.
- contact person's name and telephone number:
 - ☐ available 24 hours 7 days per week; and
 - ☐ lives within 20 minutes of the premises; and
 - ☐ responsible for supervision and management of premises, addressing complaints and visitor queries.

Criteria for assessment

- applicant is owner of the premises;
- operation of short stay letting is lawful;
- conditions of approval can be met;
- applicant has not been suspended, cancelled or it convicted of 3 offences in 2 year period;
- complies with development approval and planning scheme;
- max occupants 2 per bedroom or max of 12 persons (including visitors), whichever lesser;
- operation does not affect residential amenity;
- vehicle parking does not protrude beyond premises boundary; and
- identification of a contact person:
 - ☐ available 24 hours 7 days; and
 - ☐ resides within 20 minutes of premises; and
 - ☐ responsible for complaints and visitor queries.

Conditions of approval

- must not affect residential amenity;
- must not constitute a nuisance including a noise nuisance;
- provision made for people to safely enter and leave premises;
- vehicles must be stored to not cause a nuisance or inconvenience, be parked in parking facilities at premises, not protrude or extend beyond boundary of premises;
- max occupants of 2 per bedroom or max 12 persons (including visitors), whichever lesser;
- waste containers provided and cleaned;

- display contact person notice-name and contact details available 24 hours, 7 days, resides within 20 minutes of premises, responsible for managing and addressing complaints;
- place waste containers at kerb no longer than 24 hours;
- code of conduct displayed on premises and websites;
- maintain guest register – name and contact details, number of guests and dates;
- maintain complaints register – name and contact details of complainant, details of complaint and how resolved;
- registers to be available for inspection by Council.
- Code of conduct for guests;
 - ☐ vehicles stored not to cause nuisance or inconvenience, parked on onsite if provided, not parked beyond property boundary;
 - ☐ max 2 guests per bedroom or max 12 persons (including visitors), whichever lesser;
 - ☐ guests don't detrimentally affect residential amenity or cause nuisance;
 - ☐ no sleeping or camping in a tent, caravan, campervan or similar;
 - ☐ no use of outdoor area 10pm -7 am;
 - ☐ store waste in containers, place waste at kerb, no longer than 24 hours; and
 - ☐ grounds kept safe and tidy

Attachment 6 – FIRST DRAFT LOCAL LAW 2019 - PUBLIC NOTIFICATION
SUMMARY AND RESPONSE TO KEY ISSUES AND RECOMMENDATIONS FOR REVISED DRAFT LOCAL LAW

Issues resulting in proposed changes to the revised local law

Issue	Response	Recommendation for revised draft local law
Annual approval requirements A full annual application for short stay letting is an onerous requirement.	<p>Instead of a new application being made annually, a one-off application with all the required supporting information is considered appropriate with a simple annual renewal fee to be paid.</p> <p>Any changes to the original application information would require a new approval.</p>	<p>Require a single one-off application for short stay letting and home hosted accommodation with annual renewal fee to be paid.</p>
Inclusion of home hosted accommodation The local law should equally apply to home hosted accommodation.	<p>Prior to Noosa Plan 2020 commencing, home hosted accommodation was identified as <i>Visitor Accommodation Type 1 – home hosted</i> and required an impact assessable planning approval at a cost of \$3,647. Despite this requirement, Council officers were aware of many properties undertaking home hosted accommodation without planning approval.</p> <p>Home hosted accommodation is now classified as a home based business, no longer needs planning approval and is now accepted development subject to requirements under Noosa Plan 2020. The effects of the ongoing operation of the use however are currently unregulated.</p> <p>A local law approval for home hosted accommodation is considered appropriate as it will ensure the use is not operating outside the requirements of Noosa Plan 2020. This is particularly important for ensuring the use is not operating within a secondary dwelling or other self-contained areas within a dwelling house reserved for permanent residents, as a number of compliance issues have arisen on this specific matter.</p> <p>In addition, a local law approval will ensure basic minimum safety standards are met for fire alarms and pool safety and the operator has public liability insurance. It will also apply the same residential amenity, waste and parking requirements for the business use, consistent with short stay letting.</p> <p>Approvals will also inform Council where home hosted accommodation is occurring for data collection and informing the tourism levy.</p>	<p>Include home hosted accommodation as a prescribed activity requiring an approval under the local law.</p>
Onsite manager exemptions Concerns were raised about the exemptions for properties managed by an onsite letting	<p><u>Resident letting agent licencing</u></p> <p>The first draft local law did favour the onsite letting agent business model over external letting agent businesses by exempting them from the local law approval requirements.</p>	<ul style="list-style-type: none"> Remove exemptions for onsite managed properties using the onsite letting agent business. Exempt properties and precincts from the local law that align to Noosa Plan 2020 land

Attachment 6 – 1st Draft local law 2019 – Short stay letting – public notification – summary and response to key issues and recommendations for revised draft local law

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<p>agent as being inequitable and discriminatory for properties who use an external letting agent or self-manage.</p> <p>Potential inequities will arise within complexes between properties operating under the local law requirements and guest code of conduct and those properties exempt and not operating under the local law.</p> <p>Onsite managers argued onsite letting agents are already licenced and operate under a code of conduct and should be exempt from local law.</p> <p>And body corporate agreements require an on-site manager to deal with complaints within a specified time.</p> <p>Managers with multiple management rights – cannot comply with overnight manager requirement.</p>	<p>Having some properties operating under the local law and others not within the one building or complex may lead to inequities and inconsistencies, and in particular not deal with the main concern of the local law, which is impacts from short stay letting on permanent residents.</p> <p>On further examination of licencing requirements for onsite letting agents, it is identified that both onsite and external letting agents require the same resident letting agent licence under the Property Occupations Act, requiring trust accounts and audits. And whilst the onsite letting agent additionally operates under the Body Corporate and Community Management Act, their code of conduct is about how they should conduct their business, not matters covered by the local law.</p> <p>While there is considered to be no overlap between onsite management licencing requirements and the local law, it is recognised that self-managed properties do not operate under a resident letting agent licence, as there is no statutory obligation to do so.</p> <p><u>Body Corporate bylaws</u></p> <p>Most body corporate bylaws deal with noise and behaviour (limited extent), garbage and signage. These bylaws have to be adhered to whether a property is let by the onsite letting agent or an external letting agent, self-managed or is permanently tenanted.</p> <p>If there is a letting agent on site – depending on the body corporate bylaws (which vary site to site), there may also be requirements for the onsite letting agent to be available at certain times, and with regard to managing properties within their letting pool - respond to complaints, maintain a guest register, have public liability insurance and ensure fire safety. These requirements, where they exist in a bylaw, may overlap with the local law requirements, however there is no need for an applicant under the local law to duplicate anything as they may already meet the local law requirements by their current practices.</p> <p><u>Interchangeable use rights- permanent occupation to visitor and vice versa</u></p> <p>Most of the existing older unit / townhouse complexes and resorts require no approval to interchangeably move from permanent occupation to visitor, and therefore there are no conditions of approval to be met for how that change in use impacts permanent residents.</p> <p>There is no code of conduct for guest behaviour and no obligation for an onsite letting agent to consider the impacts of their letting agent business on the residential amenity of permanent residents. The change in use from properties from visitor to permanent</p>	<p>use planning by exempting properties approved for or intended for visitor only occupancy and other non-residential activities outlined below:</p> <p>(a) all premises located within the Hastings Street Mixed Use Precinct as identified in the planning scheme of the local government; or</p> <p>(b) premises located at any of the following sites—</p> <p>(i) lot 1 on SP286680, 215 David Low Way, Peregian Beach;</p> <p>(ii) SP190823 and SP151409, 3-5 Morwong Drive, Noosa Heads, (Viridian Noosa Resort);</p> <p>(iii) lot 10 and lot 11 on SP195871, 3-7 Serenity Close, Noosa Heads (Settlers Cove resort site);</p> <p>(iv) lot 203 on SP267424 and lot 3 on SP126203, 94 or 142 Noosa Drive, Noosa Heads (RACV Resort and adjoining land);</p> <p>(v) lots 201 and 8000 and common property on SP290680, 75 Resort Drive, Noosa Heads (Parkridge Noosa);</p> <p>(vi) GTP102758, 73 Hilton Terrace, Noosaville (Ivory Palms Resort);</p> <p>(vii) SP115731, 3 Hilton Terrace, Tewantin (Noosa Lakes Resort);</p> <p>(viii) lot 2 on RP135678, 1 Beach Road, Noosa North Shore;</p> <p>(ix) lot 2 on SP186169, 30 Beach Road, Noosa North Shore;</p> <p>(x) lot 500 on SP215779 and lot 500 on SP186174 and any of the Beach Road</p>

Attachment 6 – 1st Draft local law 2019 – Short stay letting – public notification – summary and response to key issues and recommendations for revised draft local law

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	<p>occupation is inherently detrimental to their potential letting pool stock and business success.</p> <p><u>Noosa Plan 2020- Land use planning</u></p> <p>Noosa Plan 2020 sets out where visitor accommodation should and should not occur. Historical approvals however, also mean that most units/ townhouse complexes have approvals for both visitor and permanent occupation creating a constant interchangeable mix of visitors and permanent residents.</p> <p>Notwithstanding this, Noosa Plan 2020 specifically identifies sites and precincts within the Tourist Accommodation zone with visitor only approvals or reserves land for visitor only accommodation (to the exclusion of permanent residents) including the Hastings St Mixed Use Precinct. These sites, and in particular Hastings St, are intended for visitors not permanent residents with a range of commercial, tourist and entertainment and late night uses. Notwithstanding there may be permanent residents residing in some of these properties.</p> <p>Given the main purpose of the local law is to manage the ongoing impacts of short stay letting on permanent residents, and there are no permanent residents permitted in the visitor only sites or intended in the Hastings St Mixed Use precinct, it is appropriate they be exempt from the local law.</p> <p>These exemptions align to the land use outcomes sought by Noosa Plan 2020, and avoids potential inconsistencies, inequities and discrimination which may arise from the first draft's proposal to exempt onsite letting agents.</p>	<p>Holiday Homes, 90 Beach Road, Noosa North Shore;</p> <p>(xi) lot 2 on RP865533, 2 Halse Lane, Noosa Heads (Halse Lodge);</p> <p>(xii) lot 4 on SP178340, 61 Noosa Springs Drive, Noosa Heads.</p>
Body Corporate approval cannot be required	Body corporate approval cannot be required for an owner to lodge an application under the local law and cannot prevent a lawful use operating in a premises.	Remove body corporate approval to make an application under the local law.
Local law is duplicating planning scheme matters	The restrictions on occupancy of 2 persons per bedroom or maximum 12 people, whichever the lesser, and the restriction on the hours of use of outdoor areas to between 7am and 10pm are planning scheme matters and cannot be regulated by the local law.	Remove planning scheme matter of occupancy and hours of use of outdoor areas from the local law.
Contact person notice on community title properties is contrary to body corporate bylaws	<p>The contact person notice requirements is contrary to body corporate bylaws for the placement of signs.</p> <p>The revised draft local law should instead require properties within a community titles scheme to notify the body corporate of the local law approval and provide contact details in a location consistent with their body corporate by laws.</p>	Remove the contact person notice requirement for properties within a community title scheme and instead include a requirement the body corporate be notified of an approval and a contact person notice be placed consistent with the body corporate bylaws.

Issue	Response	Recommendation for revised draft local law
Contact person should include letting agents, property managers and the like	It is reasonable that a nominated contact person include a letting agent or property manager to manage the property and deal with complaints – not just an individual.	Expand the definition of a contact person to include letting agents, property managers and the like.
Response time to complaints required	The 1 st draft local law only included a requirement for the contact person to reside 20 minutes from the property, not the time in which a complaint had to be responded to. A 30 minute response time to complaints is reasonable, and if an onsite manager whatever the time specified in their agreement with the body corporate, whichever is the lesser.	Include a 30 minute response time to complaints (or whatever the response time required for onsite manager whichever the lesser time) and reference back to compliance with code of conduct.
Residential amenity and guest behaviour <ul style="list-style-type: none"> clarify what residential amenity means restrict outdoor lighting manage pets local law can't restrict cars parked legally in the street 	The term residential amenity requires further definition, as does what constitutes unacceptable guest behaviour in the code of conduct for guests. Pets left unattended should also be addressed by the local law. The local law cannot prevent vehicles being legally parked out on the street or parked beyond the property boundary.	Further clarify the term residential amenity by including noise, light spill and overlooking. Define what is unacceptable behaviour including: <ul style="list-style-type: none"> loud aggressive behaviour; yelling, screaming, arguing; or excessively loud singing or clapping. Include a requirement that pets must not cause a nuisance and be managed by guests. Remove reference to cars not being able to park beyond the property boundary.
Overlap with bylaws for community title scheme properties for garbage and signage.	Garbage placed to the street kerb for collection is managed by the body corporate for properties within a community titles scheme.	Remove the garbage to kerb requirement for properties within a community title scheme where waste is managed by the body corporate.
Complaints procedure Role of Council	A plain English interpretation of the local law as it relates the contact person role for dealing with complaints and when a complaint is elevated to Council responsibility is required, including infringement notices and penalties. The local law has the enabling provisions – but a simple explanation is required which should sit outside the local law.	Prepare a complaints procedure to sit outside of the local law.

Issues that did not result in proposed changes to the revised local law

Issues	Response	Recommendation for revised draft local law
Resident objection to short stay letting applications	The local law application process cannot make provision for public notification or objection to applications for short stay letting or home hosted accommodation. Noosa Plan 2020 makes provision for public notification of new applications for short term accommodation where the use is impacts assessable in the particular zone. Short term accommodation for entire use of a dwelling is impacts assessable in Low, Medium and High Density Residential zones and Rural Residential zone.	No change recommended
Increase fees Increase fees and levies for strain on infrastructure	Any application fees for short stay letting or home hosted accommodation under the local law are cost recoverable only and cannot be allocated to deal with infrastructure matters. There are a number of options available to Council to recover any additional resourcing costs associated with administering the local law, which may include: <ul style="list-style-type: none"> the introduction of an application and renewal fee applied to the properties subject to the local law; general rates; funding under a levy or special rating charge; or a combination of the above. 	The assessment of funding options for the administration of the local law be referred to the 2021/22 budget process to ensure it is considered holistically with all other rates, fees and charges applicable to short stay accommodation.
Qualified property agents to manage short stay letting Mandate management by qualified property agents	The mandating of qualified property management for short stay letting is a state legislative matter and cannot be addressed by the local law. However, it may be prudent for Council to support any industry lobby to affect change in legislation.	Consider supporting any industry lead lobby to the state for changes to legislation to mandate qualified letting agents to manage short stay let properties.
Reasonableness Local law makes the contact person liable for actions and behaviour of others – not reasonable.	While the local law should not ordinarily make a person responsible for actions or omissions over which the person may have no control, the local law is drafted consistent with the fundamental legislative principles regarding the approval holder's responsibilities. The process for enforcement under sections 17-19 in Local Law (Administration) No. 1 will be followed in this regard.	No change recommended
Additional requirements for guest safety, health, discrimination, state/ federal laws	Matters addressed by other legislation do not need to be duplicated by the local law. The minimum requirements for safety in the revised draft local are considered adequate.	No change recommended

Attachment 6 – 1st Draft local law 2019 – Short stay letting – public notification – summary and response to key issues and recommendations for revised draft local law

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Employ security Employ a security firm with fees collected.	Application fees for short stay letting or home hosted accommodation are cost recoverable for the application and compliance service. Council should consider allocation fees to employ after hours security during peak times such as schoolies. The local law should be monitored for its effectiveness in dealing with the impacts of short stay letting on residential amenity.	Consider allocating renewal fees for addressing compliance matters to the services of an external security firm during peak periods such as schoolies and other peak times. Monitor the effectiveness of the local law and continue to review other models for dealing with the impacts of short stay letting on residential amenity.
Resident notification of bookings Notify residents of every booking where no onsite manager	Body corporates are required to be notified of an approval under the local law by the approval holder and sign placed in a location consistent with body corporate bylaws of the contact person. Once approved it is not considered reasonable for residents to be notified of every booking.	No change recommended
Infringements Fine the guest not the owner	The approval holder is the only person able to be issued with enforcement notices and fines under the provisions of the local law. The onus is on the approval holder / contact person to ensure the guests are aware of the code of conduct and deal with any complaints.	No change recommended
Evaluation and monitoring The local law and its impacts should be monitored and evaluated.	Once in place, the local law will be reviewed after 2 years to determine its effectiveness. 2 years is a reasonable timeframe, given it is likely to take at least a 2-3 year period for all properties to be approved under the local law when they come forward.	Monitor the effectiveness of the local law and consider its review if required after a 2 year period.