

Ipswich

City Council

Local Law (Amending) Local Law No. 1
(Administration) 2019

Contents

Part 1 Preliminary

1	Short title.....	4
2	Commencement.....	4
3	Local laws amended.....	4

Part 2 Amendment of Local Law No. 1 (Administration) 2013

4	Amendment of s 4 (Application of local law).....	4
5	Amendment of s 5 (Requirements of an application).....	4
6	Insertion of new s 5A.....	5
7	Insertion of new s 5B.....	6
8	Amendment of s 6 (Determination of an approval).....	7
9	Insertion of new s 6A.....	7
10	Amendment of s 8 (Certification of specified matters).....	8
11	Amendment of s 9 (Power to change the conditions of an approval or cancel or suspend approval).....	8
12	Insertion of new s 9A.....	10
13	Amendment of s 10 (Procedure to change the conditions of an approval or cancel or suspend approval).....	11
14	Insertion of new s 10A.....	12
15	Amendment of s 12 (Fraud and unlawful possession of an approval).....	13
16	Amendment of s 13 (Evidentiary provisions).....	14
17	Amendment of s 14 (Responsibility for acts or omissions of representatives).....	14
18	Amendment of s 15 (Joint and several liability).....	14
19	Replacement of pt 4, div 1 (Appointment of council officers under local law).....	15
20	Omission of pt 4, div 2 (Assessment of applications).....	15
21	Amendment of pt 4, div 3 (Investigation and enforcement).....	15
22	Amendment of s 29 (Analysis of samples).....	15
23	Replacement of s 30 (General compliance notice).....	16

24	Insertion of new s 30A.....	19
25	Amendment of s 31 (Performance of work and recovery of costs).....	20
26	Omission of pt 4, div 4 (Directions).....	21
27	Amendment of pt 4, div 5 (Protection of council officers).....	21
28	Amendment of s 40 (Unclaimed goods).....	21
29	Amendment of s 45 (Reviewable decisions).....	22
30	Amendment of s 48 (Decision on review).....	22
31	Insertion of new s 45A.....	23
32	Amendment of s 46 (Application for review).....	24
33	Amendment of sch (Dictionary).....	24

Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law (Amending) Local Law No. 1 (Administration) 2019*.

2 Commencement

This local law commences on the date notice of the making of the local law is published in the gazette.

3 Local laws amended

This local law amends *Local Law No. 1 (Administration) 2013*.

Part 2 Amendment of Local Law No. 1 (Administration) 2013

4 Amendment of s 4 (Application of local law)

Section 4(1) –

omit, insert –

(1) This local law is –

(a) in addition to and does not derogate from, laws regulating land use planning and development assessment; and

(b) applies to each of the local government's local laws subject to any specific provision in a local law that expresses a contrary intention.

5 Amendment of s 5 (Requirements of an application)

(1) Section 5(2), subsection (b), after 'local law' –

insert –

or subordinate local law

(2) Section 5(2), subsection (c) –

omit, insert –

(c) in respect of any separate approval relating to the proposal that is required under another law:

- (i) proof that the applicant holds any separate approval relating to the proposal; or
- (ii) proof that an application has been made for any separate approval relating to the proposal and advice on the status of that application; or
- (iii) advice on when an application for any separate approval relating to the proposal will be made.

6 Insertion of new s 5A

After section 5 –

insert –

5A Request for further information

- (1) The local government may, by written notice, request the applicant to provide further information or clarification of information, documents or materials included in the application.
- (2) The notice under subsection (1) must state—

- (a) the grounds on which the request is made; and
 - (b) an outline of the facts and circumstances forming the basis for the grounds; and
 - (c) a detailed description of the information requested; and
 - (d) the date, not less than 7 days after the applicant receives the notice, by which the applicant must provide the information.
- (3) If the applicant does not provide the further information by the stated date—
- (a) the application lapses; and
 - (b) the local government must give the applicant written notice stating that—
 - (i) under this section the application lapses; and
 - (ii) the applicant may make a new application.
- (4) However, the local government may extend the period for the applicant to provide the further information.

7 Insertion of new s 5B

Before section 6 –

insert –

5B Assessment of proposals

- (1) Before the local government decides an application, an authorised person may –
 - (a) inspect any premises, vehicle, equipment, animal, plant or thing to be involved in the proposal; and
 - (b) measure, weigh, sample, test, photograph, videotape or otherwise examine anything that may be inspected.
- (2) An authorised person's powers under subsection (1) must be exercised in accordance with section 132 of the Act to the extent the authorised person needs to enter property.

8 Amendment of s 6 (Determination of an approval)

Section 6(1), after 'may' –

insert –

by written notice to the applicant

9 Insertion of new s 6A

After section 6 –

insert –

6A Conditions of approval

- (1) An approval may be granted on conditions the local government considers appropriate.
- (2) However, the conditions must—

- (a) be reasonably necessary to ensure that the operation and management of the proposal will be adequate to protect public health, safety and amenity; and
 - (b) be consistent with the purpose of any relevant local law or subordinate local law; and
 - (c) require the approval holder to notify the local government in writing of a suspension or cancellation of a relevant approval for the proposal under an Act within 3 days of the relevant approval being suspended or cancelled.
- (3) Subject to subsection (2), the local government may, by subordinate local law, prescribe conditions that must be imposed on an approval or that will ordinarily be imposed on an approval.

10 Amendment of s 8 (Certification of specified matters)

Section 8(2), subsection (b), 'given by the local law' –

omit, insert –

given by the local government

11 Amendment of s 9 (Power to change the conditions of an approval or cancel or suspend approval)

(1) Section 9(1), subsection (c) –

omit.

(2) Section 9(1), subsection (e), after 'regulate the proposal' –

insert –

; or

- (3) Section 9(1), after subsection (e) –

insert –

- (e) to allow for works on roads or local government controlled areas; or
- (f) to improve access to a road; or
- (g) to improve the efficiency of vehicle or pedestrian traffic.

- (4) Section 9(1), subsection (d) to (e) –

renumber as subsection (c) to (d), respectively.

- (5) Section 9(2), subsection (b), ‘.’ –

omit, insert –

; or

- (6) Section 9(2), after subsection (b) –

insert –

- (c) another approval required for the prescribed activity under an Act has been suspended or cancelled;
- (d) in undertaking the prescribed activity, the approval holder has failed to comply with a local law or an Act;
- (e) the approval holder has failed to comply with a notice under section 30 or has failed to comply with a stop order under section 30A;

- (f) the approval was granted because of a document or representation that was –
 - (i) false or misleading; or
 - (ii) obtained or made in another improper way.

12 Insertion of new s 9A

After section 9 –

insert –

9A Amending conditions at request of approval holder

- (1) An approval holder may apply to the local government to amend the conditions of an approval.
- (2) The application must be written and state –
 - (a) the proposed amendment; and
 - (b) the reasons for it.
- (3) The local government must consider and decide whether to grant or refuse the application.
- (4) If the local government decides to amend the conditions as requested, the local government must, within 14 days of the decision, give the approval holder written notice of the amended conditions and the day that they take effect.
- (5) If the local government refuses to amend the conditions, the local government must give the approval holder written notice of its decision and reasons for the refusal.

- (6) The local government may amend the conditions of the approval under this section without following the procedure in section 10.

13 Amendment of s 10 (Procedure to change the conditions of an approval or cancel or suspend approval)

- (1) Section 10(1), subsection (a), before, 'give the holder' –

insert –

before taking the proposed action,

- (2) Section 10(1)(a), subsection (i), from 'proposed change' –

omit, insert –

proposed action and the reasons for the action; and

- (3) Section 10(1)(a), subsection (ii), 'proposed change' –

omit, insert –

proposed action

- (4) Section 10(3), subsection (a), 'the change' –

omit, insert –

the action

- (5) Section 10(3), subsection (a), 'change the condition' –

omit, insert –

take any further action

- (6) Section 10(3), subsection (b), 'the change' –

omit, insert –

the action

- (7) Section 10(3), subsection (b) from 'change the condition' –

omit, insert –

change, cancel or suspend the approval, including details of the change,
suspension or cancellation.

- (8) Section 10(4), 'change condition' –

omit, insert –

change, suspension or cancellation of the approval

- (9) Section 10(4), after 'the approval' –

insert –

or a later day stated in the notice.

14 Insertion of new s 10A

After section 10 –

insert –

10A Procedure for immediate suspension of approval

- (1) Despite section 10, the local government may immediately suspend an approval if the local government believes that continuation of the activity by the approval holder poses—

- (a) an urgent and serious threat to public health or safety; or

- (b) an urgent and serious risk of property damage or loss of amenity.

(2) The suspension—

- (a) can be effected only by the local government giving a notice to the approval holder about the decision to immediately suspend the approval, together with a notice about proposed action under section 10(a); and
- (b) operates immediately the notices are given to the approval holder; and
- (c) continues to operate until the earliest of the following happens—
 - (i) the local government cancels the suspension;
 - (ii) the local government gives the approval holder notice under section 10(3) of its decision after it has considered all submissions made within the stated time;
 - (iii) 14 days have passed since the expiry of the stated time for the making of written submissions;
 - (iv) 14 days have passed since the approval holder notifies the local government that it has made its final written submissions.

- (1) Section 12(1), subsection (c), 'furnish' –

omit, insert –

provide

- (2) Section 12(1), subsection (c), 'furnished' –

omit, insert –

provided

16 Amendment of s 13 (Evidentiary provisions)

Section 13(4)(d), subsection (e) –

renumber as subsection (iv)

17 Amendment of s 14 (Responsibility for acts or omissions of representatives)

Section 14(2), 'also' –

omit.

18 Amendment of s 15 (Joint and several liability)

- (1) Section 15(1), after 'on an owner' –

insert –

or occupier

- (2) Section 15(1), after 'are the owners' –

insert –

or occupiers

19 Replacement of pt 4, div 1 (Appointment of council officers under local law)

Part 4, Division 1 –

omit, insert –

Division 1 Authorised persons

21 Appointment

An authorised person's instrument of appointment¹ must state the local laws, or the provisions of local laws, for which the person is appointed as an authorised person.

20 Omission of pt 4, div 2 (Assessment of applications)

Part 4, Division 2 –

omit.

21 Amendment of pt 4, div 3 (Investigation and enforcement)

(1) Part 4, Division 3 –

renumber as Division 2

22 Amendment of s 29 (Analysis of samples)

(1) Section 29(1), after 'council officer' –

insert –

or an authorised person

(2) Section 29(2), subsection (a), after 'council officer' –

¹ See the Act, chapter 6, part 6, for the power to appoint authorised persons.

insert –

or an authorised person

- (3) Section 29(2), subsection (b), after 'council officer' –

insert –

or an authorised person

23 Replacement of s 30 (General compliance notice)

Section 30 –

omit, insert –

30 Compliance notice for contravention of local law or approval condition

- (1) Subsection (2) applies if an authorised person is satisfied on reasonable grounds that—

(a) a person—

(i) is contravening a local law or a condition of an approval; or

(ii) has contravened a local law or a condition of an approval in circumstances that make it likely the contravention will continue or be repeated; and

(b) a matter relating to the contravention can be remedied; and

- (c) it is appropriate to give the person an opportunity to remedy the matter.

Examples for paragraph (b) of matters relating to a contravention that can be remedied—

- If the contravention relates to a person's failure to take action that is required under a local law or a condition of an approval, then the matter can be remedied by the person taking that action.
- If the contravention relates to a person taking action that is prohibited under a local law or a condition of an approval, then the matter can be remedied by the person stopping that action.

- (2) The authorised person may give a written notice (a **compliance notice**) to the person (the **recipient**) requiring the person to remedy the contravention.²

- (3) The compliance notice must state the following—

- (a) the particular provision of the local law or condition of an approval the authorised person believes is being, or has been, contravened; and
- (b) briefly, how it is believed the provision of the local law or condition of an approval is being, or has been, contravened; and
- (c) the time by which the recipient must remedy the contravention; and

² Where a compliance notice is given to the owner of a property and requires action to be taken in relation to that property, then it will constitute a remedial notice under the Act, section 138(2).

- (d) that it is an offence to fail to comply with the compliance notice; and
 - (e) the maximum penalty for failing to comply with the compliance notice.
- (4) The time under subsection (3)(c) must be reasonable having regard to—
 - (a) the action required to remedy the contravention; and
 - (b) the risk to public health and safety and the risk of damage to property or loss of amenity posed by the contravention; and
 - (c) how long the recipient has been aware of the contravention.
- (5) The compliance notice may also state the reasonable steps the authorised person considers necessary to remedy the contravention or avoid further contravention.

Examples of reasonable steps to avoid further contravention—

- The repetition of a specified action at stated intervals for a certain period.
- Stopping taking an action that is prohibited by a local law or condition of an approval.
- (6) The compliance notice must include, or be accompanied by, an information notice.
- (7) The recipient must comply with the compliance notice.

Maximum penalty for subsection (7)—50 penalty units.

24 Insertion of new s 30A

After section 30 –

insert –

30A Stop orders

- (1) An authorised person may give a relevant person an order to immediately stop an activity if the authorised person believes that continuation of the activity poses—
 - (a) an urgent and serious threat to public health or safety; or
 - (b) an urgent and serious risk of property damage or loss of amenity.
- (2) An order under this section –
 - (a) may be given orally or in writing; and
 - (b) operates until the earliest of the following happens –
 - (i) the expiry of the period, of no more than 3 days, specified by the authorised person when the order is given;
 - (ii) the local government immediately suspends the approval for the activity under section 10A.

(3) An authorised person must confirm an oral order in writing by the next business day following the giving of the order.

(4) A person who receives an order under this section must comply with the order.

Maximum penalty for subsection (4) – 50 penalty units.

(5) This section does not affect the local government's powers under another law.

(6) In this section—

relevant person means the approval holder for the activity or an employee or agent of the approval holder currently conducting the activity.

25 Amendment of s 31 (Performance of work and recovery of costs)

(1) Section 31(1), after 'the offence' –

insert –

, including by repairing the damage or restoring any damaged structure, object or thing to its original standard

(2) Section 31(3), subsection (b), ' ; or' –

omit, insert –

.

(3) Section 31(3), subsection (c) –

omit.

- (4) Section 31, subsection (7) and (8) –

omit, insert –

- (7) The local government may recover the cost of action taken under this section as a debt from the person responsible for the activity.

- (5) Section 31, subsection (9) –

renumber as subsection (8)

26 Omission of pt 4, div 4 (Directions)

Part 4, Division 4 –

omit.

27 Amendment of pt 4, div 5 (Protection of council officers)

Part 4, Division 5 –

renumber as Division 4

28 Amendment of s 40 (Unclaimed goods)

- (1) Section 40(5), subsection (b), after ‘the property’ –

insert –

; and

- (2) Section 40(5), subsection (c) –

omit.

- (3) Section 40(5), subsection (d) –

omit, insert –

- (c) third, to the former owner of the goods.

- (4) Section 40, subsection (6) –

omit, insert –

- (6) If no person establishes a valid claim to the amount to which the former owner is entitled under subsection (5)(c) within 6 months of the date of the sale or disposal, the amount becomes the property of the local government.

- (5) Section 40(8), subsection (c), 'furnished' –

omit, insert –

provided

- (6) Section 40(8)(d), subsection (iii) –

omit.

29 Amendment of s 45 (Reviewable decisions)

Section 45, subsection (1), 'regarding an approval, or an application for an approval' –

omit.

30 Amendment of s 48 (Decision on review)

- (1) Section 48, subsection (1), after 'may' –

omit, insert –

:

- (a) confirm the original decision; or
- (b) amend the original decisions; or
- (c) substitute another decision for the original decision.

(2) Section 48, after subsection (2) –

insert –

- (3) if the local government's decision is not the decision sought by the applicant, the written notice must also state the reasons for the local government's decision.

31 Insertion of new s 45A

After section 45 –

insert –

45A Stay of operation of original decision

- (1) An application for review under this part does not stay the original decision that is the subject of the application.
- (2) However, the applicant may, immediately after being given notice of the original decision, apply to the Magistrates Court for a stay of the original decision.
- (3) The court may stay the original decision to secure the effectiveness of the review.

- (4) A stay may be granted on conditions the court considers appropriate.

32 Amendment of s 46 (Application for review)

Section 46, subsection (1), 'A person aggrieved by a reviewable decision' –

omit, insert –

A person who is given, or is entitled to be given, notice of a decision under a local law

33 Amendment of sch (Dictionary)

- (1) Schedule –

insert –

compliance notice means a compliance notice given under –

- (a) section 30; or
- (b) another local law that authorises the giving of a compliance notice.

information notice, for a decision, means a written notice stating the following—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the person to whom the notice is given may apply for a review of the decision within 14 days after the notice is given; and
- (d) how to apply for a review.

local government controlled area—

- (a) means land, facilities and other infrastructure owned, held in trust or otherwise controlled by the local government, other than a road; and

Examples of local government controlled areas—

- parks, reserves and recreational areas
 - conservation parks
 - cemeteries
 - local government operated library, including mobile libraries
 - local government Chambers and local government offices
 - jetties
 - a mall
- (b) includes part of a local government controlled area; and
- (c) includes any other road or area approved under chapter 6 of the *Transport Infrastructure Act 1994*.

***road* means —**

- (a) a road as defined in the Act, section 59; and
- (b) a State-controlled road in respect of which the chief executive has given written agreement under *the Transport Operations (Road Use Management) Act 1995*, section 66(5)(b) where that act requires such agreement.

- (2) Schedule, definition *perform work*, after 'Local Government Act' –

insert –

, local law or compliance notice

(3) Schedule, definition *premises* –

omit, insert –

premises see the *Planning Act 2016*, schedule 2

Draft