

Ipswich

City Council

Draft

Local Law (Amending) Local Law No. 4 (Permits)
2019

Contents

Part 1 Preliminary

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

Part 2 Amendment of Local Law No. 4 (Permits) 2013

4	Amendment of s 2 (Objects).....	4
5	Amendment of s 3 (Definitions – the Dictionary).....	4
6	Amendment of s 4 (Relationship to other laws).....	5
7	Amendment of s 5 (Relationship with other local laws).....	6
8	Insertion of new s 5A.....	6
9	Insertion of new s 5B.....	7
10	Insertion of new s 5C.....	8
11	Amendment of s 6 (Application for a permit).....	9
12	Insertion of new s 6A.....	10
13	Amendment of s 7 (Deciding an application for a permit).....	11
14	Amendment of s 9 (Conditions of a permit).....	13
15	Amendment of s 10 (Power to change the conditions of a permit).....	13
16	Amendment of s 11 (Amendment, renewal or transfer of a permit).....	14
17	Amendment of s 12 (Cancellation or suspension of a permit).....	16
18	Insertion of new s 12A.....	17
19	Amendment of s 13 (General compliance provision).....	19
20	Amendment of s 14 (Compliance notice).....	19
21	Omission of s 15 (Procedure for immediate suspension of licence).....	20
22	Amendment of s 16 (Inspection of activities).....	20
23	Amendment of s 17 (Performance of work).....	21
24	Amendment of s 18 (Power of entry and cost recovery).....	22

25	Insertion of new s 19A.....	22
26	Insertion of new s 21A.....	24
27	Amendment of s 22 (Subordinate local laws).....	24
28	Amendment of s 23 (Existing permits).....	26
29	Amendment of sch 1 (Dictionary).....	26

Draft

Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law (Amending) Local Law No. 4 (Permits) 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. 4 (Permits) 2013*.

Part 2 Amendment of Local Law No. 4 (Permits) 2013

4 Amendment of s 2 (Objects)

(1) Section 2(a), subsection (ii), ‘; or’ –

omit, insert –

; and

(2) Section 2(a), subsection (iii) –

omit.

5 Amendment of s 3 (Definitions – the Dictionary)

Section 3(2), after ‘this local law’ –

insert –

6 Amendment of s 4 (Relationship to other laws)

- (1) Section 4(1), subsection (a), 'licensing' –

omit, insert –

regulation

- (2) Section 4(1)(b), subsection (ii), ';' –

omit, insert –

,

- (3) Section 4(2), 'with all Acts' –

omit, insert –

with any Acts

- (4) Section 4(2), subsection (b), '*Fire and Rescue Service Act 1990*' –

omit, insert –

Fire and Emergency Services Act 1990

- (5) Section 4(2), subsection (c), '*Land Protection (Pest and Stock Route Management) Act 2002*' –

omit, insert –

Stock Route Management Act 2002

- (6) Section 4(2), subsection (h), '*Sustainable Planning Act 2009*' –

omit, insert –

Planning Act 2016

(7) Section 5(2), subsection (q), ‘.’ –

omit, insert –

; and

(8) Section 5(2), after subsection (q) –

insert –

(r) *Vegetation Management Act 1999; and*

(s) *Nature Conservation Act 1992; and*

(t) *Environment Protection and Biodiversity Conservation Act 1999 (Cth).*

7 Amendment of s 5 (Relationship with other local laws)

(1) Section 5, before subsection (1) –

insert –

(1) This local law is to be read with *Local Law No. 1 (Administration) 2013*.

(2) Section 5, subsections (1) and (2) –

renumber as subsections (2) and (3), respectively

8 Insertion of new s 5A

After Part 2, heading –

insert –

5A What is a permit regulated activity

- (1) *A permit regulated activity* means –
- (a) an activity which is prescribed as a permit regulated activity in a local law or subordinate local law; or
 - (b) an activity which would ordinarily be prohibited by a local law unless authorised by a permit, but for which a local law or subordinate local law prescribes that a permit is not required.

9 Insertion of new s 5B

After new section 5A –

insert –

5B Offence to undertake permit regulated activity without permit

- (1) A person must not carry out a permit regulated activity on premises within the local government area unless authorised by a permit granted under section 7 (Deciding an application for a permit) of this local law, or another local law;

Maximum penalty for subsection (1) – 50 penalty units.

- (2) A person must not, in any manner or by any means indicate that a permit regulated activity which does not comply with this local law or any other relevant local law does comply with the local law.

Maximum penalty for subsection 2 – 50 penalty units.

- (3) Despite section 5B(1) (Offence to undertake permit regulated activity without permit) of this local law, a local law or a

subordinate local law may specify that a permit is not required in respect of a permit regulated activity (**exempt permit regulated activity**).

10 Insertion of new s 5C

After new section 5B –

insert –

5C Minimum standards for permit regulated activity

- (1) The local government may, by subordinate local law, prescribe minimum standards that must be complied with in carrying out a permit regulated activity.
- (2) The local government may, by subordinate local law, require that a permit regulated activity or an exempt permit regulated activity cannot be carried out unless—
 - (a) minimum standards for the regulated activity prescribed in a subordinate local law are complied with; or
 - (b) if minimum standards cannot be complied with, the written approval of the local government has been obtained.
- (3) If the local government prescribes minimum standards for the conduct of a permit regulated activity or exempt permit regulated activity, a person must not—

- (a) undertake the permit regulated activity or exempt permit regulated activity (as the case may be) on premises within the local government area unless—
 - (i) the relevant minimum standards are complied with; or
 - (ii) the person has obtained the written approval of the local government under section 5A(2)(b); or
- (b) change the manner of operation of a permit regulated activity on premises within the local government area unless –
 - (i) minimum standards are complied with; or
 - (ii) the person has obtained the written approval of the local government under section 5A(2)(b).

Maximum penalty for subsection (3)—50 penalty units

11 Amendment of s 6 (Application for a permit)

- (1) Section 6(1)(c), subsection (iii) –

omit, insert –

- (iii) in respect of any separate approval relating to the proposal that is required under another law:
 - (A) proof that the applicant holds any separate approval relating to the proposal; or

- (B) proof that an application has been made for any separate approval relating to the proposal and advice on the status of that application; or
- (C) advice on when an application for any separate approval relating to the proposal will be made; and

(2) Section 6(1)(c), after subsection (iv) –

insert –

- (v) such other information and materials specified in a subordinate local law.

(3) Section 6(3), subsection (b), before 'permit' –

insert –

a

(4) Section 6, subsections (4) and (5) –

omit.

(5) Section 6, subsection (6) –

renumber as subsection (4)

12 Insertion of new s 6A

After section 6 –

insert –

6A 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 10 business 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.

13 Amendment of s 7 (Deciding an application for a permit)

- (1) Section 7(1), subsection (a), before 'consider' –

insert –

subject to section 6(3) of this local law,

- (2) Section 7(1), subsection (b) –

omit, insert –

(b) after carrying out assessment of the application:

- (i) approve the application;
- (ii) approve the application subject to conditions; or
- (iii) refuse the application.

- (3) Section 7(2), subsection (c), 'environmental harm or' –

omit.

- (4) Section 7(2), subsection (g) –

omit, insert –

(g) whether the applicant holds any other approvals required to conduct the activity under another law; and

- (5) Section 7(2), subsection (i), 'criteria ;' –

omit, insert –

criteria¹;

- (6) Section 7(2), subsection (j), '.' –

¹ See definition of *assessment criteria* in the Schedule (Dictionary).

omit, insert –

; and

(7) Section 7, subsection (4), after 'Deciding' –

insert –

an

14 Amendment of s 9 (Conditions of a permit)

Section 9, subsection 2 –

omit, insert –

(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.

15 Amendment of s 10 (Power to change the conditions of a permit)

(1) Section 10(1), subsection (b), 'urgently' –

omit.

- (2) Section 10(1)(b), subsection (iii) –

omit.

- (3) Section 10(1)(b), subsection (iv) –

renumber as subsection (iii)

- (4) Section 10, after subsection (1) –

insert –

(1A) Section 10(1) (Power to change the conditions of a permit) of this local law does not limit the power a local government may have apart from this section to amend a condition of a permit.²

- (5) Section 10, subsection (4), after 'permit' –

insert –

or a later day stated in the notice

16 Amendment of s 11 (Amendment, renewal or transfer of a permit)

- (1) Section 11, subsection (1), after 'make' –

insert –

an

- (2) Section 11(1), subsection (a), after 'permit' –

insert –

including the conditions of the permit

² See section 9 of *Local Law No. 1 (Administration) 2013*.

- (3) Section 11(2)(d), after 'transfer of the permit' –

omit, insert –

:

- (i) the written consent of the person to whom the permit will be transferred;
and
- (ii) if the applicant for the transfer or the transferee is not the owner, the written consent of the owner of the premises on which the permit regulated activity is or is to be undertaken.

- (4) Section 11, subsection (4), after 'Deciding' –

insert –

an

- (5) Section 11, subsection (5) –

omit, insert –

- (5) If an application to renew a permit is made to the local government, the permit remains in force until –
 - (a) the application is granted;
 - (b) if the application is refused and the applicant applies for a review under Part 6 of *Local Law No. 1 (Administration) 2013* – the date the applicant is given notice of the review decision; or
 - (c) if the application is refused and the applicant has not applied for a review of the decision under Part 6 of *Local Law No. 1*

(Administration) 2013 – 14 days after the applicant is given an information notice.

17 Amendment of s 12 (Cancellation or suspension of a permit)

- (1) Section 12(1), subsection (b), 'urgently' –

omit.

- (2) Section 12(1)(b), subsection (iii) –

omit.

- (3) Section 12(1)(b), subsection (iv) –

renumber as subsection (iii)

- (4) Section 12(1), subsection (f), '.' –

omit, insert –

; or

- (5) Section 12(1), after subsection (f) –

insert –

- (g) another permit or approval required to undertake the activity under another law has been suspended or cancelled.

- (6) Section 12(2), subsection (a), before 'give the holder' –

insert –

before taking the proposed action,

- (7) Section 12(2)(a), subsection (i) –

omit, insert –

- (i) the proposed action and the reasons for the proposed action; and

- (8) Section 12(2)(a), after subsection (i) –

insert –

- (ii) if the local government proposes to suspend the permit – the proposed period of suspension;

- (9) Section 12(2)(a), subsection (ii) and (iii) –

renumber as subsections (iii) and (iv), respectively.

- (10) Section 12(3), subsection (b), after 'cancel' –

insert –

or suspend

- (11) Section 12, subsection (4), 'effected' –

omit, insert –

affected

- (12) Section 12, subsection (6), after 'permit regulated activity' –

insert –

from the date the cancellation or suspension takes effect under subsection (5)

18 Insertion of new s 12A

After section 12 –

insert –

12A Procedure for immediate suspension of a permit

- (1) Despite section 12 (Cancellation or suspension of a permit), the local government may immediately suspend a permit if the local government believes that continuation of the activity by the permit 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 permit holder about the decision to immediately suspend the permit, together with a notice about proposed action under section 12(2); and
 - (b) operates immediately the notices are given to the permit 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 permit holder notice under section 12(3) of its decision after it has considered all submissions made within the stated time;

- (iii) 10 business days have passed since the expiry of the stated time for the making of written submissions;
- (iv) 10 business days have passed since the permit holder notifies the local government that it has made its final written submissions.

19 Amendment of s 13 (General compliance provision)

- (1) Section 13, subsection (2), 'undertaking a permit regulated activity' –

omit, insert –

acting under the permit

- (2) Section 13(2), subsection (c) –

omit.

- (3) Section 13(2), subsections (d) and (e) –

renumber as subsections (c) and (d), respectively

- (4) Section 13(2), subsections (f) to (h) –

renumber as subsections (i) to (iii), respectively

20 Amendment of s 14 (Compliance notice)

- (1) Section 14, subsection (1) –

omit, insert –

The local government may give a compliance notice to a person in relation to a contravention of this local law.³

(2) Section 14, subsection (2) –

omit.

(3) Section 14, subsection (3) –

renumber as subsection (2)

(4) Section 14, subsection (3), 'subsection (3)' –

omit, insert –

subsection (2)

21 Omission of s 15 (Procedure for immediate suspension of licence)

Section 15 –

omit.

22 Amendment of s 16 (Inspection of activities)

(1) Section 16, subsection (1), 'the permit regulated activity' –

omit, insert –

a permit regulated activity

(2) Section 16, subsection (1), 'any activity for which minimum standards have been prescribed under a local law of this subordinate local law' –

omit, insert –

³ See section 30 of *Local Law No. 1 (Administration) 2013*.

an exempt permit regulated activity

- (3) Section 16(2), subsection (b), after 'condition of the permit' –

insert –

, or as a requirement of the minimum standards

- (4) Section 16(2), subsection (c), after 'equipment,' –

insert –

animal,

- (5) Section 16(4), subsection (a), '(Inspection of a permit regulated activity)' –

omit, insert –

(Inspection of activities)

23 Amendment of s 17 (Performance of work)

- (1) Section 17, subsection (1), 'committing' –

omit, insert –

who commits

- (2) Section 17, subsection (1), after 'the offence' –

insert –

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

- (2) Section 17, subsection (2), after 'may perform the work' –

insert footnote –

See section 31 of *Local Law No. 1 (Administration) 2013*.

- (3) Section 17, subsection (2), after 'performed by' –

omit, insert –

:

- (a) section 17(1) (Performance of work) of this local law; or
- (b) a compliance notice issued under this local law.

- (3) Section 17, subsections (3) and (5) –

omit.

- (4) Section 17, subsection (6) –

renumber as subsection (3)

24 Amendment of s 18 (Power of entry and cost recovery)

Section 18, subsection (2) and (3) –

omit, insert –

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

25 Insertion of new s 19A

After section 19 –

insert –

19A Owners and occupier must ensure compliance with the local law

- (1) The owner and occupier of premises must ensure that a person who is undertaking a permit regulated activity on the premises complies with this local law.
- (2) If a person who is undertaking a permit regulated activity on the premises commits an offence against a provision of this local law, the owner and the occupier of the premises also commit an offence, namely, the offence of failing to ensure that the person who is undertaking the permit regulated activity on the premises complies with the provision.

Maximum penalty for subsection (2)—the penalty for the contravention of the provision.

- (3) Evidence that the person who is undertaking the permit regulated activity on the premises has been convicted of an offence against a provision of this local law or has paid a penalty infringement notice is evidence that the owner and the occupier of the premises committed the offence of failing to ensure that the person who is undertaking the permit regulated activity on the premises complied with the provision.
- (4) However it is a defence for an owner or occupier to prove that—
 - (a) the owner or occupier exercised reasonable diligence to ensure that the person undertaking the permit regulated activity on the premises complied with the provision; or
 - (b) the non compliance with a provision of this local law occurred without that person's knowledge or consent.

26 Insertion of new s 21A

After section 21 –

insert –

21A Defence

It is a defence to any breach of or non-compliance with a provision contained in this local law if a person has a lawful excuse or defence.

Example—

It is a defence to any breach or non-compliance of any provision contained in a local law if a person was not criminally responsible in accordance with Chapter 5 (Criminal Responsibility) of the *Criminal Code*.

27 Amendment of s 22 (Subordinate local laws)

Section 22, subsection (a) –

omit, insert –

- (a) the assessment criteria for deciding an application for a permit for the operation of a permit regulated activity pursuant to the Schedule (Dictionary) of this local law; and
- (b) an activity as a permit regulated activity pursuant to the Schedule (Dictionary) of this local law; and
- (c) the minimum standards with which the undertaking of a permit regulated activity must comply pursuant to the Schedule (Dictionary) of this local law; and

- (d) any minimum standards for the purposes of section 5A (Minimum standards for permit regulated activity) of this local law; and
- (e) a permit regulated activity in respect of the operation of which a person is not required to hold a licence pursuant to section 5B(3) (Offence to undertake permit regulated activity without permit) of this local law; and
- (f) the information that must accompany an application for a permit pursuant to section 6(1)(c)(v) (Application for a permit) of this local law; and
- (g) the circumstances in which the local government may waive the requirements of section 6 (Application for a licence) of this local law pursuant to section 6(6)(c) (Application for a licence) of this local law; and
- (h) the term of a permit pursuant to section 8(1) (Term of a permit) of this local law; and
- (i) the conditions that must be imposed in a permit or that will ordinarily be imposed in a permit pursuant to section 9(3) (Conditions of a permit) of this local law; and
- (j) the changes in circumstances since a permit was granted that make the continued operation of the permit inappropriate pursuant to section 12(1)(f) (Cancellation or suspension of a permit) of this local law; and
- (k) the records that are required to be kept pursuant to section 16(2)(b) (Inspection of activities) of this local law; and

- (l) the terms of a periodic inspection, monitoring or management program in respect of the operation of a licence regulated activity pursuant to section 16(2)(d) or (4)(b) (Inspection of activities) of this local law.

28 Amendment of s 23 (Existing permits)

- (1) Section 23, 'operate an activity' –

omit, insert –

undertake an activity

- (2) Section 23, 'operated' –

omit, insert –

undertake

29 Amendment of sch 1 (Dictionary)

- (1) Schedule 1 –

insert –

the Act means the *Local Government Act 2009*

- (2) Schedule 1, definition *environmental harm* –

omit.

- (3) Schedule 1, definition *environmental nuisance* –

omit.

- (4) Schedule 1, definition *minimum standards*, before 'local law' –

insert –

subordinate

- (5) Schedule, definition *permit*, subsection (b), after 'Cancellation' –

insert –

or suspension

- (6) Schedule, definition *permit regulated activity* –

omit, insert –

permit regulated activity see section 5A

- (7) Schedule 1, definition premises –

omit, insert –

premises see the *Planning Act 2016*, schedule 2