

8 REPORTS DIRECT TO COUNCIL**8.15 PROPOSED AMENDMENT TO LOCAL LAW NO.3 (COMMUNITY HEALTH AND ENVIRONMENTAL MANAGEMENT) 2019**

File No:	Council meetings
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PURPOSE

The purpose of this report is to seek a Council resolution proposing to make Amendment Local Law No. 3 (Community Health and Environmental Management) 2019.

EXECUTIVE SUMMARY

At the Ordinary Meeting on 17 May 2018, Council resolved to make amendments to *Local Law No. 3 (Community Health and Environmental Management) 2011* which duplicated the then expiring waste provisions of Chapter 5A of the *Environmental Protection Regulation 2008* (since repealed and now replaced with Chapter 6 of the *Environmental Protection Regulation 2019*) (the Regulation) and Part 2A of the *Waste Reduction and Recycling Regulation 2011* (WRRR).

At the time the local law amendments were made, the provisions in both regulations were scheduled to expire on 1 July 2018. The commencement provisions in the local law were drafted to ensure that the duplicated waste provisions would not commence until the Queensland State Government (State) expired their waste provisions under the Regulation and the WRRR.

The duplication of the waste provisions in the local law were intended to safeguard Councils ability to continue to regulate the appropriate storage and removal of general waste from premises within the region under Council's local laws and designate waste collection areas. It was imperative, given the impending expiry of both these provisions under the Regulations, that Council retain the necessary provisions in their local laws.

However, following the 17 May 2018 Ordinary Meeting, Council received notification from the State that the waste provisions in both the Regulation and the WRRR had been extended until September 2018. Since that time, the expiry of both provisions have been removed from both the Regulation and the WRRR and continue to remain in effect until further notice. As a result, the amendment local law made on 17 May 2018 has not commenced (taken effect) to date.

Given some of the uncertainty with regards to the expiring provisions and to ensure Council retains the appropriate mechanisms to continue to manage waste across the local government area, it is recommended that amendments are made to the 2018 amendment local law so that the new local law waste provisions can commence on 10 February 2020.

A Council resolution proposing to make the amendment local law is necessary to proceed with the local law making process.

OFFICER RECOMMENDATION

That Council:

- (a) receive and note the report titled “Proposed Amendment to Local Law No.3 (Community Health and Environmental Management) 2019”
- (b) resolve to propose to make Amendment Local Law No. 3 (Community Health and Environmental Management) 2019 (Appendix A)
- (c) hereby resolve in relation to the draft local law to conduct a shorter period of fourteen (14) days of community consultation in lieu of Council’s normal practice of (28) days for the following reasons:
 - (i) the effect of the amendment local law is only to amend the commencement date of the amended local law
 - (ii) the amended local law was already the subject of community consultation for 28 days in 2018 and Council considered the community’s feedback on the law before making it on 17 May 2018, and
 - (iii) hereby resolve to undertake community consultation on the draft local law for fourteen (14) days and
- (d) hereby resolve to undertake a State Interest Check in relation to the draft local law pursuant to section 29A of the *Local Government Act 2009* and
- (e) note that the draft local law has been reviewed to identify anti-competitive provisions pursuant to section 38 of the *Local Government Act 2009* and has been found to contain no anti-competitive provisions.

FINANCE AND RESOURCING

The cost of drafting Amendment Local Law No.3 (Community Health and Environmental Management) 2019 has been funded through existing budget allocations within the Corporate Governance Branch.

The amendments to the local law that were made at Council’s Ordinary Meeting 17 May 2018 merely replicated the provisions currently contained in the Regulations and reflect Council’s current operational activities. Therefore, when the current waste provisions in the local laws commence on 10 February 2020 they will not impact on Council’s financial operations or require any additional resources not already fully budgeted for in Council’s budget.

However, failure to amend the commencement provisions in the local laws prior to 10 February could expose Council to further uncertainty surrounding the future of the waste provisions in the State Regulations and therefore impact Council’s ability to effectively manage waste operations across the region.

CORPORATE PLAN

Corporate Plan Goal: *Service excellence*

Outcome: We serve our community by providing this great service

Operational Activity: S25 - Waste and resource management - collection and disposal of solid and liquid wastes, operation of waste transfer facilities and landfills, recycling and materials recovery, community education programs.

CONSULTATION

Councillor Consultation

Consultation with portfolio Councillor Ted Hungerford has occurred.

Internal Consultation

Instructions to amend the commencement date of the current waste provisions in Local Law No. 3 (Community Health and Environmental Management) 2011 were received and approved by the following:

- Group Executive Customer Engagement and Planning Services
- Manager Waste and Resources Management

Further consultation has occurred with:

- Coordinator Governance Process and Policy

External Consultation

Section 29 of the *Local Government Act 2009* provides that the local government may decide its own process for making a local law. The proposal to commence the amendment local law making process will include engagement with:

- relevant government agencies about the overall State interest in the proposed amendment local law and
- the community.

A public interest review for the amendments made at the Ordinary Meeting on 17 May 2018, was undertaken between 10 November 2017 and 22 December 2017. As the proposed amendment local law does not change any of the provisions previously made and tested through the public interest review process, a Public Interest Review Consultation Paper is not required as the proposed amendment does not contain any anti-competitive provisions.

Community Engagement

Community consultation about the proposed amendment local law will be undertake from 13 December to 26 December 2019 (14 days). While it is normal practice for Council to undertake a minimum of 28 days community consultation, given that the effect of the amendment is only to amend the commencement date and 28 days of community consultation on the local law has already occurred, it is recommended in this instance that only fourteen (14) days is necessary.

PROPOSAL

BACKGROUND

Waste and Resource Management

In 2015, Council adopted the Sunshine Coast Waste Strategy 2015-2025. The strategy was developed to shape Council's future waste management infrastructure needs and to develop strong resource recovery materials. This strategy also aims to ensure that this essential community service remains both cost effective and customer focused while protecting the health of the public and the natural environment. Council is also committed to achieving the objectives of the National Waste Policy which sets Australia's waste management and resource recovery direction to 2020. The principles of Council's Waste strategy align with Council's vision to be "Australia's most sustainable region – Healthy. Smart. Creative".

Complementary to the policy maker/legislator role, Council also plays a prominent role as a regulator in charge of implementing strategies and enforcing the legislation. In this role,

Council are not just law enforcers, but also educators and persuaders. For this reason, a robust legislative framework is required in order to ensure education and regulation can occur. Without the necessary tools in the local law to regulate waste, Council will be limited in its ability to pursue sustainable and innovative waste management practices in the public interest and achieve waste minimisation targets set by the State and Commonwealth Governments.

In managing waste as a resource and pursuing research and development of innovative technology to manage waste repatriation, engagement with and utilisation of other entities will remain a key focus and fundamental element in the pursuit of appropriate business models for delivery of outcomes sought.

State Government Waste Legislation

At the 17 May 2018 Ordinary Meeting, the waste provisions under the *Environmental Protection Regulation 2008* (since repealed and replaced with the *Environmental Protection Regulation 2019*) and s.7 of the *Waste Reduction and Recycling Regulation 2011* (WRRR) were set to expire on 1 July 2018. It was for this reason that Council determined it appropriate to duplicate these expiring provisions into *Local Law No. 3 (Community Health and Environmental Management) 2011*. This was decided to ensure Council can continue to collect waste, regulate the placement of waste, continue to build awareness on waste minimisation strategies, invest in developing new resource recovery facilities, establish innovative waste management contracts, increase landfill capacity and investigate a range of alternative waste management initiatives, it was proposed that the expiring provisions be transferred to Council's local laws.

However, to ensure we avoided any dual regulation (between the local laws and State regulation), the local law amendments were drafted so that the waste provisions would only come into effect when the regulations expired. Since this time, the expiry dates have moved from 1 July 2018 to September 2018 and now these expiry provisions have been removed entirely. Further to this, the *Environmental Protection Regulation 2008* was repealed in 2019 and replaced with the *Environmental Protection Regulation 2019*. The waste provisions contained in the new 2019 Regulation remain and are largely unchanged from the previous regulation. At this time, the waste provisions in the *Environmental Protection Regulation 2019* (Regulation) and s.7 of the *Waste Reduction and Recycling Regulation 2011* (WRRR) remain in place and unchanged. As a result, the amendment local law made at Council's Ordinary Meeting on 17 May 2018 has not commenced (taken effect) to date

Given the ongoing uncertainty surrounding the States position on the future of their waste provisions, it is proposed that Council amend the existing local law waste provisions to remove the current commencement arrangements and replace with a commencement date of 10 February 2020. This will ensure that Council has the appropriate mechanisms to manage all aspects of the waste management lifecycle across the region. Further to this it is proposed to make any necessary amendments to align the chapter and section references used in the new *Environmental Protection Regulation 2019*. These proposed amendments do not in any way change the intention or provisions of the originally adopted local law, they are simply minor changes to reflect current changed legislative references.

The process for making the proposed amendment local law is in accordance with the following steps outlined in Table 1 below:

Table 1 – Local Law making process

Phase	Activity	Timing	Status
Phase 1	Resolution to propose to make amendment local law.	Ordinary Meeting – 12 December 2019	Completed
Phase 2	Consult with relevant State Government Agencies. Undertake Community Consultation	13 December 2019 – 26 December 2019 (14 days)	Underway
Phase 3	Consider submissions and community feedback. Prepare report for Council consideration.	30 January 2020	Underway
Phase 4	Resolution to make amendment local law.	Ordinary Meeting – 30 January 2020	Underway
Phase 5	Publication in the Government Gazette (Local law amendments become effective).	7 February 2020	Underway
Phase 6	Notification and copy of amendment local law to the Minister	21 February 2020	To be completed
Phase 6	Consolidation of local laws	Ordinary Meeting – 19 March 2020	To be completed

Legal

The proposal has been considered in accordance with the following legislation:

- Section 29-32 of the *Local Government Act 2009* and section 15 of the *Local Government Regulation 2012*
- Sunshine Coast Council's suite of Local Laws and Subordinate Local Laws
- Amendment Local Law No.3 (Community Health and Environmental Management) 2019
- Chapter 5A of the *Environmental Protection Regulation 2008* (now contained in Chapter 6 of the new *Environmental Protection Regulation 2019*) and
- Section 7 of the *Waste Reduction and Recycling Regulation 2011*.

Policy

There are no new policy implications that haven't already been considered in the proposed Amendment Local Law No. 3 (Community Health and Environmental Management) 2019.

Risk

There is a risk that if the amendment local law provisions regarding the commencement date are not adopted by 30 January 2020 there will be:

- continued uncertainty with regards to future changes to the States waste laws and
- further uncertainty as to whether Council will be able to continue with current waste operations and contract arrangements.

Previous Council Resolution
Ordinary Meeting 17 May 2018 (OM18/61)

That Council:

- (a) *receive and note the report titled “Making of Amendment Local Law No. 1 (Community Health and Environmental Management) 2017”*
- (b) *resolve to implement the recommendations of the Public Interest Review Report in Appendix B to proceed to make the local law retaining the anti-competitive provisions on the basis that they are in the overall public interest in accordance with Council’s ‘Process for Making Local Laws’ adopted on 1 June 2010, pursuant to section 29 of the Local Government Act 2009, Council hereby resolves to make Amendment Local Law No. 1 (Community Health and Environmental Management) 2017 (Appendix A) with the following amendments based on consideration of public submissions and the State interests check feedback:*
 - (i) *in section 2 (Commencement), replace “This local law commences on the date of gazettal” with the following:*
 - “(1) This local law commences only if both of the following events have occurred—*
 - (a) expiry of chapter 5A of the Environmental Protection Regulation 2008; and*
 - (b) expiry of section 7 of the Waste Reduction and Recycling Regulation 2011.*
 - (2) This local law commences—*
 - (a) if the two events mentioned in subsection (1) occur at the same time— at that time; or*
 - (b) if the two events mentioned in subsection (1) occur at different times— at the later of those times.”*
 - (ii) *in section 4 (Amendment of s 2 (Purpose and how it is to be achieved)):*
 - after “providing for”, insert “the regulation of”*
 - in paragraphs (a) and (b), delete “the regulation of”*
 - in paragraph (b), replace “disposal” with “disposing”*
 - in paragraph (a), replace “waste from premises” with “general waste at relevant premises”*
 - add a new paragraph (b) “storage and treatment of industrial waste at relevant premises”*
 - renumber current paragraph (b) to (c)*
 - (iii) *in section 5 (Insertion of pt 7A (Waste management)), new section 25B, after “by resolution”, insert “or by subordinate local law”*
 - (iv) *in section 5 (Insertion of pt 7A (Waste management)), new section 25C:*
 - amend the definition of general waste to the following:*

“general waste means—

 - (a) waste other than regulated waste; or*
 - (b) for divisions 2, 3 and 4 of this part, waste other than regulated waste that is any of the following—*
 - (i) commercial waste;*
 - (ii) domestic waste;*
 - (iii) recyclable waste.”*
 - insert the following new definitions:*

“premises see the Environmental Protection Act 1994, schedule 4.

registered suitable operator see the Environmental Protection Act 1994, schedule 4.

regulated waste see the Environmental Protection Regulation 2008, section 65.”

- *in the definition of waste, after the word “see”, insert the word “the”*
- (v) *in section 5 (Insertion of pt 7A (Waste management)), new section 25L(2) replace “the operator of the facility” with the following:*
 - “(a) the person who—
 - (i) is the registered suitable operator for the facility; or
 - (ii) holds an environmental authority for the facility; or
 - (b) the person in charge of the facility.”
- (vi) *insert a new section 6 (Amendment of s 26 (Subordinate local laws)) to insert a new paragraph (h) “designating waste collection areas” with a footnote referencing section 25B*
- (c) *note that Amendment Local Law No. 1 (Community Health and Environmental Management) 2017 will be re-titled Amendment Local Law No. 1 (Community Health and Environmental Management) 2018, in accordance with the numbering convention for amendment local laws*
- (d) *note that Amendment Local Law No.1 (Community Health and Environmental Management) 2018 contains anti-competitive provisions and*
- (e) *authorise the Chief Executive Officer to make any necessary administrative and formatting amendments to the document as part of the final proof reading and cross referencing.*

Related Documentation

- *Local Government Act 2009 and Regulation*
- *Sunshine Coast Regional Council Local Laws and Subordinate Local Laws 2011*
- *State Government Guidelines for Drafting Local Laws 2016*
- *Corporate Plan 2019-2023*

Critical Dates

It is beneficial for Council to make the amendment local law to ensure the commencement of the Council’s waste provisions can come into effect in the event that the Queensland State Government decide to again expire the waste provisions relating to local government in Chapter 6 of the *Environmental Protection Regulation 2019* and s.7 of the *Waste Reduction and Recycling Regulation 2011*.

Implementation

Following consideration of this report, actions relevant to the recommendation will be implemented and include:

- Prepare the Gazette notice for the Government Gazette
- Preparation of the website notice
- In accordance with section 29B(7) of the *Local Government Act 2009* provide the Minister with a copy of the amendment local law
- Preparation of the consolidated local law.

Sunshine Coast Regional Council

Amendment Local Law No. 3 (Community Health and Environmental Management) 2019

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Part 1 Preliminary

1 Short title

This local law may be cited as *Amendment Local Law No. 3 (Community Health and Environmental Management) 2019*.

2 Commencement

This local law commences on the day it is published in the gazette.

Part 2 Amendment of Amendment Local Law No. 1 (Community Health and Environmental Management) 2018

3 Local law amended

This part amends *Amendment Local Law No. 1 (Community Health and Environmental Management) 2018*.

4 Replacement of s 2 (Commencement)

Section 2—

omit, insert—

2 Commencement

This local law commences on 10 February 2020.

5 Amendment of s 5 (Insert of pt 7A (Waste Management))

- (1) Section 5, '*Environmental Protection Regulation 2008*', all mentions—

omit, insert—

Environmental Protection Regulation 2019

- (2) Section 5, 'chapter 5A', all mentions—

omit, insert—

chapter 6

- (3) Section 5, 'section 81ZC'—

omit, insert—

section 98

- (4) Section 5, 'section 65'—

omit, insert—

section 42