

28 March 2023

Notice of Motion, Cr Leppert: Renewal of Local Laws

Motion

That Council requests from management proposals to make the *Activities Local Law 2023* and *Environment Local Law 2023*. These proposals should:

1. Replicate the terms of the *Activities Local Law 2019* and the *Environment Local Law 2019*, other than as directed below;
2. With regard to the *Activities Local Law 2019*, replicate the number of penalty units for offences under clauses 6, 7 and 9, and halve the number of penalty units for offences under all other clauses;
3. With regard to the *Environment Local Law 2019*, translate all penalties into penalty units as appropriate;
4. With regard to both Local Laws, update any out-of-date references and make any other changes deemed by management to be necessary or beneficial;
5. Be accompanied by a program of community engagement and explanatory text to show how the proposals will satisfy Sections 73 and 74 of the *Local Government Act 2020*; and
6. Aim to have the new Local Laws commence within the first quarter of FY23-24.

Background

The *Local Government Act 2020*, like the *Local Government Act 1989*, limits the maximum penalties able to be applied for offences at 20 penalty units. However, the value of a penalty unit has changed with the commencement of the 2020 Act.

Under the 1989 Act, the value of a penalty unit was set by Section 110(2) of the *Sentencing Act 1991* at \$100. Under the 2020 Act, the value of a penalty unit is set by Section 110(1) of the *Sentencing Act 1991*, which is tied to Section 5(3) of the *Monetary Units Act 2004* which in turn is the amount fixed by the Treasurer as published from time to time in the Government Gazette – currently \$184.92. The figure is expected to rise at 1 July 2023, to an amount yet to be fixed, but which will fall short of double the old penalty unit value.

Local Laws made under the 1989 Act continue to apply the older definition of a penalty unit. The City of Melbourne's [Activities Local Law 2019 and Environment Local Law 2019](#) fall into this category. The former expresses penalties in terms of numbers of penalty units, and the latter in terms of dollar value. To trigger the new definition of a penalty unit, new Local Laws must be made.

The effect of the proposed new *Activities Local Law 2023*, as proposed in the motion, will be to reduce most penalties in real terms: it will halve the number of penalty units that apply for most offences, which in turn will result in financial penalties that are less than half their current value. Those penalties will rise in line with or below CPI at the discretion of the Treasurer. The net effect is a slight reduction in real terms of most penalties now and into the future. At the same time, the new Local Law would retain the number of penalty units for offences relating to road works and building construction, which in turn will nearly double the value of the financial penalty for those offences. This ensures that the purpose of these penalties – to deter companies from making the public and public realm unsafe or unhealthy – is better reflected in the size of the penalties. The current values have effectively been frozen for 14 years and more, losing their deterrence effect.

The Future Melbourne Committee previously resolved, on 21 July 2020, that it:

Notes that the 20 penalty units limit on breaches of the local law in relation to building works nuisances such as out-of-hours construction is too low to be a meaningful deterrent for larger projects and that the cost of breaching the local law is increasingly being built into the cost of doing business, and that the current regulatory framework for building works nuisance abatement is therefore inadequate especially in high density mixed use areas such as central Melbourne.

The resolution went on to request from the Minister for Planning reforms “to allow for an enforceable statutory framework and permitting regime to regulate building works nuisance abatement”. To date, the Minister has not agreed to act on the request.

While the City waits for a stronger regulatory framework to manage building construction offences, it will need to make do with provisions in its Local Laws. This motion ensures that the penalties on building construction offences do not continue to reduce in real terms and in their deterrence effect.

The *Activities Local Law 2019* and the *Environment Local Law 2019* refer to each other, and both should be made anew at the same time.

Mover: Cr Rohan Leppert

Seconder: Lord Mayor Sally Capp