

Continued Use and Adaptive Reuse of Properties with Historic Lawful Use Rights

Date of Resolution

These guidelines were adopted by Council on 11 November 2014 and take effect from 21 November 2014, in accordance with section 2.3(2) of the Planning Scheme.

Purpose of the Guideline

The purpose of this guideline is to assist with the interpretation of the Ipswich Planning Scheme and to clarify Council's planning intent relating to the continued use and adaptive reuse of properties with historic lawful use rights.

This guideline is primarily intended to promote sympathetic developments that focus on the adaptive reuse of properties with historic lawful use rights including those identified in Council's Non-Conforming and Fettered Use Registers. The guideline also provides guidance on how to determine if a property has historic use rights as well as a practical interpretation of how to determine if a changed use is a suitable adaptive reuse of the property.

Council's Implementation Guidelines are intended to apply a standard approach to the interpretation and implementation of the relevant aspects of the Planning Scheme. They offer a degree of certainty and formality to applicants, Council and the community. This guideline does not change the level of assessment outlined in the relevant zone, or the code provisions of the planning scheme.

Where an applicant is proposing a variation to the guidelines the onus is on the applicant to demonstrate the facts and circumstances to support the variation.

Definitions

For the purposes of this Implementation Guideline the following terms have the meaning as set out below;

- (a) 'Non-Conforming Use Register' means a register of existing lawful non-conforming uses that established prior to the day when a planning scheme or an amendment of a planning scheme commenced to apply to the premises. This register contains a list of uses, which had they not been in existence before the day the planning scheme was appointed, would constitute a use which would have been prohibited by Council in the zone where the property was located.
- (b) 'Fettered Use Register' means a register of existing lawful fettered uses that were established prior to the day when a planning scheme or an amendment of a planning scheme commenced to apply to the premises. This register contains a list of uses, which had they not been in existence before the day the planning scheme was appointed, would constitute a use which may have been established only with the consent of the Council.

NOTE

Council's Non-Conforming and Fettered Use Registers contain information in respect to lawful uses and are kept open to inspection pursuant to section 3.2 of the repealed *Local Government (Planning and Environment) Act 1990*.

- (c) 'Interim Development Control Provisions' means development controls that were applied to a proposed planning scheme area through a resolution adopted by Council at a time when there was no planning scheme in force in respect of the area the subject of the resolution.

Application of the Guideline

1. Determination of Historic Lawful Use Rights

- (1) There are numerous ways to determine if a property has historic use rights.
- (2) In some instances, Council has documented existing use rights within its Non-Conforming or Fettered Use Registers.
- (3) It may take further investigation to determine if a property has a particular use right.
- (4) Methods used to determine if a property has historic lawful use rights include;
 - (a) By way of a valid development permit or planning consent.
 - (b) By way of a relevant citation in Council's Non-Conforming Use Register.
 - (c) By way of a relevant citation in Council's Fettered Use Register.
 - (d) If a lawful use right is not established by means of (a)-(c) above, a review of historic photographs (including aerial photography) may be undertaken to determine when an existing use was established. Upon confirming an establishment timeframe, a determination may be made under the relevant planning scheme or interim development control provisions in force at the time the use was established. In some instances, an existing use may not have required Council approval at the time it was initially established. (e.g. in instances where no planning controls existed at the time the use was established).

2. Lawful Use of Premises Protected

To the extent that a use has been lawfully established, neither a new planning instrument nor an amendment of an existing planning instrument can stop the use from continuing, further regulate the use or require the use to be changed.

3. Continuation of a Use Identified in Council's Non-Conforming or Fettered Use Registers.

Where a specific lawful use has been identified in Council's Non-Conforming or Fettered Use Registers, such use may continue to operate in perpetuity until the use is abandoned (refer to Implementation Guideline No. 10 - Determining Abandonment of a Lawful Use). Once the use is abandoned, any future uses are to be considered on their merits and may require a Material Change of Use approval, which would be assessed against the relevant zone code provisions of the planning scheme in addition to other relevant assessment criteria.

4. Adaptive Reuse Provisions

Notwithstanding the provisions contained within section 3 of this guideline, the adaptive reuse of properties identified within Council's Non-Conforming and Fettered Use Registers or otherwise lawfully established is supported where the previous use has not been abandoned and the adaptive reuse does not result in a material increase in the intensity or scale of the use of the premises.

In some instances, the adaptive reuse may not be a like for like use of the property, however it will not require a Material Change of Use approval on the basis that it will not materially increase the scale or intensity of the use and it will not adversely or further affect the amenity of the nearby area.

(1) Practical Interpretation

In determining whether a use is a suitable adaptive reuse of a property, the applicant must ensure that the use does not adversely or further affect the amenity of the nearby area having regard to:

- Hours of Operation - The changed use maintains the same or reduced hours of operation as the existing lawfully established use and the hours alone of the changed use will not adversely affect the amenity of the nearby area.
- Traffic - The changed use maintains the same or a reduced volume of traffic than that which is generated by the existing lawfully established use.
- Car Parking - The changed use does not generate or significantly exacerbate a parking problem in the local area.

- Noise - The changed use does not generate additional noise, as detected from the property boundaries, than that which is generated by the existing lawfully established use.
- Odour - The changed use does not generate additional odours, as detected from the property boundaries, than that which is generated by the existing lawfully established use.
- Visual Pollution - The changed use does not generate additional visual pollution, as viewed from the property boundaries, than that which is generated by the existing lawfully established use.

(2) Practical Examples

Practical adaptive reuse examples which would generally not require a Material Change of Use approval on the basis that they would not materially change, increase the scale or intensity of the existing lawful use and would not adversely or further effect the amenity of the nearby area include but are not limited to:

From (Existing Lawful Use)	To (Changed Use)
Business Use (Shop)	Business Use (Professional Office)
Business Use (Shop)	Business Use (Cafe)
Business Use (Restaurant)	Business Use (Shop) / Business Use (Professional Office)
Business Use (Shop)	General Store
Business Use (Cafe)	Business Use (Restaurant)

5. Pre-lodgement Discussion and Development Assessment

Where there is uncertainty about a changed use that is proposed to operate on a property with historic lawful use rights, it is recommended that landowners or applicants engage early with Council officers to identify whether the use is a suitable adaptive reuse of the property and to discuss any possible issues with the proposal.

