

ITEM 6.4 - PROPOSED MBRC LOCAL LAW AND SUBORDINATE LOCAL LAW - BATHING RESERVES (Cont.)
#1 Draft Bathing Reserves Local Law



Bathing Reserves Local Law 2023

Consultation Copy Only

Moreton Bay Regional Council Bathing Reserves Local Law 2023

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Moreton Bay Regional Council Bathing Reserves Local Law 2023

Part 1 Preliminary

Division 1 Introductory provisions

1 Short title

This Local Law may be cited as the *Bathing Reserves Local Law 2023*.

Division 2 Object and achievement of Local Law

2 Object

The object of this Local Law is to enhance the public safety, enjoyment and convenience of bathing reserves under the local government's control through orderly management and regulation of activities within these reserves.

3 How object of Local Law is to be achieved

The object of this Local Law is to be achieved by providing for the—

- (a) designation and management of safe, supervised bathing areas within bathing reserves; and
- (b) reservation of parts of a bathing reserve for training, competitions and special occasions; and
- (c) use of aquatic equipment in bathing reserves; and
- (d) regulation of behaviour in bathing reserves; and
- (e) assignment of responsibility to life-saving clubs for managing, patrolling and supervising bathing reserves; and
- (f) appointment and powers of authorised persons; and
- (g) enforcement within bathing reserves.

Division 3 Interpretation

Subdivision 1 Dictionary

4 Definitions—dictionary

The dictionary in Schedule 1 defines particular words used in this Local Law.

Subdivision 2 Key concepts

5 Bathing reserve

A *bathing reserve* means a part of the seashore, adjacent land under the sea, and the sea itself placed under the control of the local government as a bathing reserve under the Act.

6 Bathing area

- (1) A *bathing area* means the part of the bathing reserve that is, in an authorised person's opinion, the safest and most suitable area for bathing having regard to the prevailing conditions.
- (2) A bathing area consists of the area defined by—
 - (a) an imaginary line between 2 patrol flags; and
 - (b) lateral boundaries extending seaward from each patrol flag at right angles from the imaginary line; and
 - (c) an outer boundary parallel to, and 200 metres to the seaward side of, the imaginary line.
- (3) Where the boundary of the bathing reserve is less than 200 metres to the seaward side of an imaginary line between the 2 patrol flags, then the boundary of the bathing area shall be the outer boundary of the bathing reserve.

7 Aquatic equipment

aquatic equipment means—

- (a) a boat or vessel; or
- (b) a surf ski; or
- (c) a jet ski; or
- (d) a surf board; or
- (e) a sail board; or
- (f) a body board; or
- (g) another device (whether motorised or not) for use on or in water to carry a person or thing across or through water or for recreational use in water.

Division 4 Operation of Local Law

8 Relationship with other Acts

This Local Law is in addition to and does not derogate from laws regulating the use or development of land.

Part 2 Appointment and powers of authorised persons

Division 1 What this part is about

9 Overview

This part describes the process for appointing authorised persons and the powers they may exercise.

Division 2 Appointment of authorised persons

10 Who are authorised persons

- (1) The following persons are authorised persons for this Local Law—
 - (a) a person appointed as an authorised person for this Local Law under this section; or
 - (b) a person who is an authorised person under a Subordinate Local Law.
- (2) A local government may appoint the following persons as an authorised person for this Local Law—
 - (a) employees of the local government; or
 - (b) other persons who are eligible for appointment as authorised persons under the Act.
- (3) The document that appointed the authorised person under this section must state the provisions of this Local Law for which the person is appointed as an authorised person.
- (4) A local government may appoint a person as an authorised person under this section only if—
 - (a) the local government considers the person has the necessary expertise or experience for the appointment; or
 - (b) the person has satisfactorily finished training approved by the local government for the appointment.

11 Limitation on authorised person's powers

An authorised person's powers may be limited in the document that appointed the authorised person or under a Subordinate Local Law.

12 Authorised person's appointment conditions

- (1) An authorised person's appointment is subject to the conditions stated in the document that appointed the authorised person or under a Subordinate Local Law.
- (2) A person stops being an authorised person—
 - (a) if the document that appointed the authorised person or Subordinate Local Law provides for a term of appointment— at the end of the term; or
 - (b) if appointed as an authorised person under section 10(1)(a)—via a

- signed notice of resignation given to the local government; or
- (c) if appointed as an authorised person under section 10(1)(b)— on ceasing to hold the relevant rank or position; or
 - (d) if it is a condition of the authorised person’s appointment that the authorised person hold another position at the same time—if the authorised person stops holding the other position.
- (3) However, an authorised person may not resign as an authorised person under subsection (2)(b) if a condition of the authorised person’s employment requires them to hold the appointment as an authorised person.

13 Protection from liability

- (1) This section applies to—
 - (a) an authorised person; and
 - (b) a person acting under the direction of an authorised person.
- (2) The person does not incur civil liability for an act done or omission made honestly and without negligence under this Local Law.
- (3) A liability that would, apart from this section, attach to the person attaches instead to the local government.

14 Authorised person’s identity card

- (1) Each authorised person must hold an identity card issued by the local government or a recognised life-saving club.
- (2) An identity card must contain the particulars specified under a Subordinate Local Law.
- (3) A person who ceases to be an authorised person must return their identity card to the local government or the life-saving club that issued it within 21 days after the person ceases to be an authorised person.

Maximum penalty for subsection (3)—10 penalty units.

15 Production of identity card

- (1) An authorised person may exercise a power in relation to someone else (the *other person*) only if the authorised person—
 - (a) first produces their identity card for the other person’s inspection; or
 - (b) has the identity card displayed so it is clearly visible to the other person.
- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the other person’s inspection at the first reasonable opportunity.

Division 3 Powers of authorised persons

16 Power to remove or reduce danger

- (1) If a person brings a dangerous object or dangerous item of aquatic equipment onto a bathing reserve, an authorised person may direct the person to take specified action to remove or reduce the danger posed by the object or item.

Example—

If a person brings a beach umbrella onto a bathing reserve and the umbrella appears likely to blowaway, an authorised person might direct the person to take specified action to secure the umbrella.

- (2) A person must comply with a direction under this section.
Maximum penalty for subsection (2)—20 penalty units.

17 Power to require bathers to leave water

- (1) An authorised person may give a direction to a bather to leave the water if—
 - (a) the bathing reserve, or the relevant part of the bathing reserve, is closed to bathing; or
 - (b) an emergency evacuation alarm has been given under section 37; or
 - (c) there is some other risk to the bather's safety.
- (2) A person must comply with a direction under this section.
Maximum penalty for subsection (2)—20 penalty units.

18 Seizure and detention of dangerous objects and prohibited equipment

- (1) This section applies if, in a bathing reserve, a person—
 - (a) possesses, uses or has used a dangerous object or dangerous item of aquatic equipment; or
 - (b) uses or has used an object in a dangerous way; or
 - (c) has prohibited equipment.
- (2) An authorised person may seize and impound the object, item or equipment referred to in subsection (1) (the *seized thing*).
- (3) The local government may recover the cost of action taken under this section as a debt from the person responsible for the seized thing.

19 Dealing with impounded items

- (1) This section applies where an object, item or equipment has been seized and impounded under section 18 (an *impounded item*).
- (2) If an impounded item is, in the reasonable opinion of an authorised person, perishable or of negligible commercial value, then the local government may immediately dispose of it as the chief executive officer directs.
- (3) If the local government possesses an impounded item, then a person may reclaim that impounded item from the local government by—

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- (a) making a written application to the chief executive officer to reclaim the impounded item; and
 - (b) producing proof, to the satisfaction of the chief executive officer, that the person is the owner of the impounded item; and
 - (c) paying the prescribed fee for the impounding of the impounded item.
- (4) If an impounded item is not reclaimed under subsection (3) within 20 business days of the item being seized and impounded under section 18, that item is forfeited to the local government.
- (5) If an impounded item has been forfeited to the local government under subsection (4), then the local government may dispose of that impounded item—
- (a) if, in the reasonable opinion of the authorised person, the commercial value of the impounded item is so slight that it would not cover the reasonable cost of seizing, impounding and selling the impounded item— as the chief executive officer directs; or
 - (b) by sale through a public auction; or
 - (c) if the impounded item has been offered for sale under paragraph (b) but has not been sold within a period that, in the reasonable opinion of the authorised person, is reasonable for the sale of that type of item— as the chief executive officer directs.
- (6) Where an impounded item has been sold under this section, the proceeds of the sale must be applied in order—
- (a) firstly, towards the direct and indirect costs of the sale; and
 - (b) secondly, towards the local government in an amount equivalent to the prescribed fee for the impounding of the impounded item as if it was to be reclaimed under subsection (3); and
 - (c) thirdly, if there is an amount owing to an entity under a security interest registered for the property under the *Personal Property Securities Act 2009* (Cth)— in payment of the amount owing under the security interest; and
 - (d) fourthly, to the former owner of the impounded item.
- (7) If no person establishes a valid claim for the amount to which the former owner of an impounded item that has been sold under this section is entitled to under subsection (6)(d) within 3 months of the date of that entitlement arising, the amount becomes the property of the local government.
- (8) Except where expressly stated, the local government incurs no liability to a person, and no person has any claim for relief or compensation against the local government, in respect of any action taken by the local government under this section or section 18, if the local government has acted in good faith and without negligence.

Part 3 Bathing reserves

Division 1 What this part is about

20 Overview

This part describes how bathing reserves and bathing areas are designated, how these reserves and areas are to be signed and how conditions in these reserves and areas are to be managed.

Division 2 Designation of bathing reserves

21 Signs indicating existence of bathing reserve

- (1) If the local government proposes to regulate the use of a bathing reserve under this Local Law, the local government must exhibit and maintain signs (*reserve signs*) in prominent positions on or adjacent to the foreshore to indicate the existence of the bathing reserve.
- (2) Reserve signs must be exhibited at the lateral boundaries of the bathing reserve indicating the position of the boundaries.
- (3) The signs must face both seawards and shorewards.

Division 3 Designation of bathing areas

22 Bathing areas

- (1) An authorised person may mark out a bathing area within a bathing reserve.
- (2) The bathing area is marked out by exhibiting 2 patrol flags at different points on or adjacent to the foreshore.
- (3) An authorised person may, in view of prevailing conditions, change the boundaries of a bathing area by changing the position of the patrol flags.
- (4) Patrol flags must not be exhibited if the bathing area is not under surveillance by a life-saving patrol.

Division 4 Flags and signs

23 Flags to inform bathers about prevailing conditions

- (1) This section applies if—
 - (a) an authorised person has marked out a bathing area under section 22; and
 - (b) in the authorised person's opinion, there are potentially hazardous conditions prevailing within the bathing area.
- (2) The authorised person must exhibit, in a prominent position on or adjacent to the foreshore, a yellow flag warning bathers of the potentially hazardous conditions.

24 Closure of bathing reserves

- (1) An authorised person may close a bathing reserve or part of a bathing reserve to bathing by exhibiting a red flag in a prominent position on or adjacent to the foreshore.

Example—

The authorised person may close the bathing reserve if the prevailing conditions pose a risk to the lives of members of the public bathing in the reserve.

- (2) If patrol flags marking out a bathing area have been exhibited in position, the patrol flags must be removed on closure of the bathing reserve or a part of the bathing reserve in which the bathing area is situated.
- (3) A person must not bathe in a bathing reserve or part of a bathing reserve while the reserve or the relevant part of the reserve is closed to bathing.

Maximum penalty for subsection (3)—20 penalty units.

25 Interference with flags and life-saving equipment

- (1) A person must not, without the approval of an authorised person, damage, destroy or interfere with a sign or flag exhibited under this Local Law.

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

- (2) A person must not, without the approval of an authorised person, interfere with life-saving equipment on a bathing reserve.

Maximum penalty for subsection (2)—50 penalty units.

26 Compliance with Australian Standards

- (1) The flags and signs to be used for the purposes of this Local Law should comply with any relevant Australian Standard issued or approved by Standards Australia.
- (2) However, non-compliance with an applicable standard does not invalidate anything done under this Local Law.

Part 4 Reservation for life-saving training

Division 1 What this part is about

27 Overview

This part is about how an authorised person can designate an area for life-saving training.

Division 2 Setting aside areas for training

28 Reservation for life-saving training

- (1) An authorised person may set apart the whole or a part of a bathing reserve for life-saving training on a temporary basis.
- (2) An authorised person may impose restrictions on access to an area set apart under

subsection (1).

- (3) An area set apart under this section, and the restrictions applying to access, must be clearly indicated by signs exhibited in prominent positions on the bathing reserve.

Part 5 Use of aquatic equipment in bathing reserves

Division 1 What this part is about

29 Overview

This part is about managing the use of certain aquatic equipment within a bathing reserve.

Division 2 Prohibitions, restrictions and reservations for use of aquatic equipment

30 Prohibition of use of aquatic equipment in bathing areas

- (1) A person must not use aquatic equipment in a bathing area.
Maximum penalty for subsection (1)—20 penalty units.
- (2) However—
 - (a) this section does not prevent the use of aquatic equipment if its use at a place within a bathing reserve is authorised under another law; and
 - (b) a float or board made from rubber or foam that does not give rise to risk of injury to other bathers may be used in a bathing area; and
 - (c) if an authorised person authorises the use of other aquatic equipment in a bathing area, the equipment may be used subject to conditions fixed by the authorised person when giving the authorisation; and
 - (d) life-saving equipment may be used in a bathing area by members of a life-saving patrol for surveillance of the bathing area or to assist bathers in distress.

31 Restrictions on use of aquatic equipment in bathing reserves

- (1) The local government may, by Subordinate Local Law, prohibit or restrict the use of aquatic equipment or a specified class of aquatic equipment within a bathing reserve or a particular part of a bathing reserve.
- (2) Notice of a prohibition or restriction imposed under this section must be included on the reserve signs or on notices adjacent to the reserve signs.
- (3) A person must not use aquatic equipment in contravention of a prohibition or restriction imposed under this section, unless authorised to do so by an authorised person under section 32 or authorised under another law.
Maximum penalty for subsection (3)—20 penalty units.

32 Reservation of areas for use of aquatic equipment

- (1) An authorised person may temporarily set apart a particular part of a bathing reserve for the use of aquatic equipment of a particular type.
- (2) A part of the bathing reserve set apart under this section must be defined by signs and flags or in some other way that clearly indicates the relevant part of the reserve and the use for which it is set apart.
- (3) If a part of a bathing reserve is set apart for the use of aquatic equipment of a particular type under this section, a person must not—
 - (a) use aquatic equipment of the relevant type in the bathing reserve outside the part of the reserve set apart for its use; or
 - (b) use aquatic equipment, in the relevant part of the reserve, that is not of the type for which the relevant part of the reserve is set apart.

Maximum penalty for subsection (3)—20 penalty units.

Part 6 Behaviour in bathing reserves

Division 1 What this part is about

33 Overview

This part is about regulating behaviours of persons in a bathing reserve.

Division 2 Dangerous behaviour in bathing reserves

34 Dangerous object

- (1) A person must not bring into, or use or have in a bathing reserve, a dangerous object or a dangerous item of aquatic equipment.

Maximum penalty for subsection (1)—20 penalty units.

- (2) This section does not apply to life-saving equipment used by members of a life-saving patrol for surveillance of the bathing reserve or to assist bathers in distress.

35 Prohibited equipment

- (1) A person must not bring into, or use or have in a bathing reserve, prohibited equipment.

Maximum penalty for subsection (1)—20 penalty units.

- (2) However, this section does not apply in circumstances excluded under a Subordinate Local Law from the application of this section.

36 Dangerous conduct

A person must not use aquatic equipment or anything else in a bathing reserve in a way that creates a risk to the safety of others.

Maximum penalty for subsection (1)—20 penalty units.

Division 3 Alarms and all-clears

37 Emergency evacuation alarm

- (1) If an emergency evacuation alarm is given, a person within a bathing reserve—
- (a) must leave the water as soon as practicable; and
 - (b) must not enter or re-enter the water until the all-clear is given.

Maximum penalty for subsection (1)—20 penalty units.

- (2) An emergency evacuation alarm is given by—
- (a) the prolonged ringing of a bell or sounding of a siren; and
 - (b) the exhibition of a red flag.
- (3) The all-clear is given by—
- (a) a short ringing of the bell or sounding of the siren; and
 - (b) the replacement of the red flag by a yellow flag.
- (4) An emergency evacuation and the all-clear may also be given in ways recognised by SLSQ.

Example—

The emergency evacuation alarm may be given by holding up a red and white quartered flag and the all-clear may be given by taking down the flag when the danger has passed.

38 False alarms

A person must not, without the authority of an authorised person—

- (a) give an emergency evacuation alarm or do anything likely to be reasonably interpreted as an emergency evacuation alarm; or
- (b) give the all-clear after an emergency evacuation alarm or do anything likely to be reasonably interpreted as the all-clear after an emergency evacuation alarm.

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

Part 7 Life-saving clubs

Division 1 What this part is about

39 Overview

This part is about assigning responsibility to recognised life-saving clubs to patrol bathing reserves and how they may patrol bathing reserves.

Division 2 Life-saving clubs and patrols

40 Recognised life-saving clubs

- (1) The local government may assign to a life-saving club the responsibility for patrolling a bathing reserve or a particular part of a bathing reserve.
- (2) The responsibility—
 - (a) may be assigned on conditions the local government considers appropriate; and
 - (b) may only be assigned with the written agreement of the life-saving club to which the responsibility is assigned.

41 Enclosure for life-saving patrols

A recognised life-saving club may, with the local government's written approval, enclose a part of a bathing reserve for the exclusive use of members of life-saving patrols.

42 Distinctive clothing

A member of a life-saving patrol must wear a distinctive uniform appropriate to the member's rank in a design approved by SLSQ.

Part 8 Offences and enforcement

Division 1 What this part is about

43 Overview

This part outlines—

- (a) further offences relating to this Local Law; and
- (b) the enforcement mechanisms that can be utilised by authorised persons; and
- (c) the manner in which offence proceedings in the Magistrates Court must be commenced; and
- (d) defences for offences against this Local Law.

Division 2 Offences

44 Obstruction of authorised persons and lifesavers

- (1) A person must not obstruct an authorised person or a member of a life-saving patrol in the conduct of their duties.

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

- (2) A person must not—

- (a) threaten, insult or use abusive language to an authorised person or a member of a life-saving patrol; or
- (b) give false or misleading information to an authorised person in response to a request that an authorised person is entitled to make under the Act.

Maximum penalty for subsection (2)—20 penalty units.

Note—

An authorised person may require a person to state their name and address under section 127 of the Act in certain circumstances (including where the authorised person reasonably suspects that the person just committed an offence under this Local Law).

It is an offence under the Act to fail to comply with certain requests made by authorised persons without a reasonable excuse—see section 127(6) of the Act

45 Impersonation of authorised persons and lifesavers

A person must not pretend to be an authorised person or a member of a life-saving patrol.

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

46 Attempts to commit offences

- (1) A person who attempts to commit an offence under this Local Law commits an offence.

Maximum penalty for subsection (1)— half the maximum penalty for committing the offence.

- (2) The provisions of the *Criminal Code Act 1899* (relevant to attempts to commit offences) apply to the attempt.

47 Liability of third parties

- (1) Any person involved in a contravention of this Local Law commits an offence.

Maximum penalty for subsection (1)— the penalty for which any person who committed the contravention would be liable.

- (2) For subsection (1), a person involved in a contravention of this Local Law is any person who—
 - (a) has aided, abetted, counselled or procured the contravention; or
 - (b) has induced, whether by a threat or a promise or otherwise, the contravention; or
 - (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
 - (d) has conspired with another person to effect the contravention; or
 - (e) has knowingly benefited from or knowingly was capable of benefiting from the contravention.

Division 3 Powers of the local government

48 Compliance notice for contravention of Local Law

- (1) This section applies if a person contravenes this Local Law.
- (2) An authorised person may give a notice, in writing (*compliance notice*), to—
 - (a) a person who contravenes this Local Law; or
 - (b) any person involved in the contravention of this Local Law under section 47.
- (3) The compliance notice may require a person to
 - (a) stop a contravention, if the contravention is of a continuing or recurring nature; or
 - (b) take reasonable steps to remedy the contravention, for or within a time specified in the compliance notice, whether or not the contravention is of a continuing or recurring nature.
- (4) The compliance notice must state the following—
 - (a) the particular provision of this Local Law that is being, or has been, contravened; and
 - (b) briefly, how the provision of the Local Law is being, or has been, contravened; and
 - (c) the time by which the person must remedy the contravention; and
 - (d) the reasonable steps necessary to remedy the contravention or avoid further contravention; and
 - (e) that it is an offence to fail to comply with the compliance notice; and
 - (f) the maximum penalty for failing to comply with the compliance notice.

Examples of reasonable steps to avoid further contravention in subsection (d)—

- *the repetition of a specified action at stated intervals for a certain period; and*
- *stopping taking an action that is prohibited by this Local Law.*

- (5) The time under subsection (4)(c) must be reasonable having regard to—
 - (a) the action required to remedy the contravention; and
 - (b) the risk to public health and safety, the risk of damage to property or loss of amenity and the risk of environmental harm posed by the contravention; and
 - (c) how long the person has been aware of the contravention.
- (6) The compliance notice must include, or be accompanied by, a decision notice.
- (7) A person who is given a compliance notice must comply with the compliance notice.

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

Division 4 Offence proceedings in Magistrates Court

49 Proceedings for offences

Proceedings for an offence against this Local Law (*offence proceedings*)—

- (a) must be taken in a summary way; and
- (b) must start—
 - (i) within 1 year after the offence is committed; or
 - (ii) within 1 year after the offence comes to the complainant's knowledge but within 2 years after the offence is committed.

50 Enforcement orders

- (1) After hearing offence proceedings, a Magistrates Court may make an order (an *enforcement order*) for the defendant to take stated action within a stated period.
- (2) The enforcement order may be in terms the Court considers appropriate to secure compliance with this Local Law.
- (3) An enforcement order must state the period within which the defendant must comply with the order.
- (4) An enforcement order may be made under this section in addition to the imposition of a penalty.

51 Joint and several liability

- (1) Where this Local Law imposes a liability on a person engaged in a particular activity, and 2 or more persons are jointly engaged in the relevant activity, the liability is joint and several.
- (2) This section applies both to civil liabilities and liabilities enforced by summary proceedings under the *Justices Act 1886*.

Division 5 Defences

52 Defence of reasonable excuse

If a person is charged with an offence involving a contravention of this Local Law, it is a defence to prove that the person had a reasonable excuse for the contravention.

Part 9 Reviewing decisions

53 Application for review

- (1) A person who is given, or is entitled to be given, a decision notice may apply to the local government for a review of the decision (a **review application**).
- (2) The review application must be made within 15 business days of—
 - (a) if the person is given a decision notice—the day the person receives the notice; or
 - (b) if subparagraph (a) does not apply—the day the person otherwise becomes aware of the decision.
- (3) The review application must be in writing and accompanied by a statement of the grounds on which the applicant seeks the review of the decision.

54 Review decision

- (1) The local government must review the original decision within 20 business days of receiving a review application and make a decision (the **review decision**) to—
 - (a) confirm the original decision; or
 - (b) amend the original decision; or
 - (c) substitute another decision for the original decision.
- (2) The application must not be dealt with by—
 - (a) the person who made the original decision; or
 - (b) a person in a less senior office than the person who made the original decision unless that person was the chief executive officer.
- (3) The local government must, within 5 business days of the review decision being made, give the applicant notice of the decision (the **review notice**).
- (4) If the review decision is not the decision sought by the applicant, the review notice must also state the reasons for the review decision.
- (5) If the local government does not make the review decision within 20 business days of receiving a review application or does not give the review notice within 5 business days of making the review decision, the review decision is taken to confirm the original decision.

55 Stay of operation of original decision

A review application does not stay the original decision that is the subject of the application.

Part 10 Administrative provisions

56 Fees

- (1) If this Local Law provides for payment of a fee and does not itself fix the amount of the fee, the fee is to be fixed by resolution under the Act, chapter 4, part 2.

ITEM 6.4 - PROPOSED MBRC LOCAL LAW AND SUBORDINATE LOCAL LAW - BATHING RESERVES (Cont.)
Bathing Reserves Local Law 2023

- (2) A resolution fixing a fee may provide for the reimbursement of the fee in appropriate circumstances.
- (3) Unless specific provision to the contrary is made in this Local Law or resolution fixing a fee, the local government may, in an appropriate case, waive or partially remit a fee.

57 Rewards

The local government may, by public notice, offer a reward for information leading to the conviction of a person for an offence against this Local Law.

58 Subordinate Local Laws

The local government may make Subordinate Local Laws about—

- (a) the appointment of authorised persons under section 10; and
- (b) the limitation of an authorised person's powers under section 11; and
- (c) conditions of appointment for authorised persons under section 12; and
- (d) particulars of identity cards under section 14; and
- (e) prohibiting or restricting the use of aquatic equipment under section 31; and
- (f) the classification of objects as prohibited equipment under Schedule 1; and
- (g) circumstances in which a person may have prohibited equipment in a bathing reserve under section 35.

59 Extrinsic material

- (1) The local government may make an explanatory note to assist in the interpretation of this Local Law.
- (2) The local government makes an explanatory note by—
 - (a) passing a resolution to make the explanatory note; and
 - (b) publishing the explanatory note on the local government's website.
- (3) An explanatory note made in accordance with this section is declared to be a relevant document for the purposes of section 14B of the *Acts Interpretation Act 1954* (as modified by section 15 of the *Statutory Instruments Act 1992*).

Note—

Pursuant to Part 4, Division 1 of the Statutory Instruments Act 1992, the Acts Interpretation Act 1954 (AIA) is modified so that a document declared by a Local Law to be a "relevant document" for the purposes of section 14B of the AIA is extrinsic material which may assist in the interpretation of a provision of the Local Law.

Part 11 Transitional and repeal provisions

60 Definitions for this part

In this part—

decision includes an agreement, appointment, approval, authorisation, declaration, delegation, direction, notice, resolution and restriction, for example.

Examples—

- *Where the local government has appointed a person as an authorised person.*
- *Where the local government or a recognised life-saving club has issued an authorised person with an identity card.*
- *Where the local government has issued a compliance notice.*

61 Local Law repeal

The *Moreton Bay Regional Council Local Law No. 6 (Bathing Reserves) 2011* and its Subordinate Local Law are repealed (***repealed Local Law***).

62 Transitional provisions for the repealed Local Law

A decision made under the repealed Local Law, that was in force immediately before the commencement of this section, continues in force as if the decision were made under this Local Law.

63 Other transitional arrangements

The transitional arrangements for decisions made under the *Moreton Bay Regional Council Local Law No. 1 (Administration) 2011* are set out in the *Commercial Use of Public Land and Roads Local Law 2023*, section x.

Schedule 1 Dictionary

approval includes a consent, permission, licence, permit or authorisation.

aquatic equipment see section 7.

authorised person means a person who is an authorised person for this Local Law under Part 2.

bathing includes all activities involving the immersion or partial immersion of the body in water.

bathing area see section 6.

bathing reserve see section 5.

compliance notice means a compliance notice given under section 46.

dangerous item of aquatic equipment means an item of aquatic equipment that is of such a nature that, in the absence of care or precaution in its use or management, the life, safety or health of any person may be endangered.

Examples of dangerous items of aquatic equipment—

- *A surfboard with sharp or broken edges.*
- *A boat with projections liable to cause injury to bathers.*

dangerous object means an object that is of such a nature that, in the absence of care or precaution in its use or management, the life, safety or health of any person may be endangered.

decision means—

- (a) for part 11, see section 60; or
- (b) a decision by an authorised person to give a compliance notice under section 48.

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

- (a) the decision; and
- (b) any relevant details about the decision; and
- (c) the reasons for the decision; and
- (d) that the person to whom the notice is given may apply for a review of the decision within 10 business days after the notice is given; and
- (e) how to apply for a review.

Examples for subsection (b)—

- *the date on which the decision takes effect or actions required under the notice must be taken.*

enforcement order see section 50(1).

exhibit includes to erect, install or place.

foreshore means land between the high-water mark and low-water mark during ordinary spring tides.

impounded item see section 19(1).

lifeguard means a person who the local government considers having the necessary skills and experience capable of performing life-saving services.

life-saving club means a body—

- (a) affiliated with—
 - (i) SLSQ; or
 - (ii) the Head Centre of the Royal Life Saving Society; and
- (b) accredited by the Queensland Fire and Emergency Services.

life-saving equipment means any equipment in the control of the life-saving patrol for use in sea rescue, life-saving, or the provision of first aid.

life-saving patrol means the members of a recognised life-saving club assigned by the club or SLSQ to patrol a bathing reserve, or part of a bathing reserve, at a particular time.

local government means the Moreton Bay Regional Council.

Local Law includes any Subordinate Local Laws made under this Local Law.

offence proceedings see section 49(1).

original decision means a decision the subject of a review application under section 53.

patrol flag means a red and yellow flag of the design prescribed by Australian Standard No.2416.

Patrol Captain means a person who instructs and directs the activities of members of a life-saving club to patrol a bathing reserve, or part of a bathing reserve, at a particular time.

prohibited equipment means—

- (a) a spear gun; or
- (b) a fishing spear; or
- (c) another object classified as prohibited equipment under a Subordinate Local Law.

prescribed fee means a fee fixed by the local government under the Act, section 97.

public notice means a notice that is published in a newspaper that is circulating generally in the local government area and on the local government's website.

recognised life-saving club means a life-saving club to which the local government has assigned the responsibility for patrolling a bathing reserve or a particular part of a bathing reserve under section 40.

repealed Local Law see section 61.

reserve signs see section 21(1).

review application see section 53(1).

review decision see section 54(1).

review notice see section 54(3).

seized thing see section 18(2).

SLSQ means Surf Life Saving Queensland Inc.

surveillance means the visual supervision of an area.

the Act means the *Local Government Act 2009*.

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ITEM 6.4 - PROPOSED MBRC LOCAL LAW AND SUBORDINATE LOCAL LAW - BATHING RESERVES (Cont.)
#2 Draft Bathing Reserves Subordinate Local Law



Bathing Reserves
Subordinate Local Law 2023

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Moreton Bay Regional Council Bathing Reserves Subordinate Local Law 2023

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Moreton Bay Regional Council Bathing Reserves Subordinate Local Law 2023

Part 1 Preliminary

1 Short title

This subordinate Local Law may be cited as the *Bathing Reserves Subordinate Local Law 2023*.

2 Object

The purpose of this subordinate Local Law is to supplement the *Bathing Reserves Local Law 2023* (the **authorising Local Law**), which provides for the orderly management and regulation of activities within bathing reserves placed under the local government's control.

3 How object of Subordinate Local Law is to be achieved

The object of this Subordinate Local Law is to be achieved by providing for the—

- (a) the appointment of authorised persons; and
- (b) the limitation of an authorised person's powers; and
- (c) conditions of appointment for authorised persons; and
- (d) particulars of identity cards; and
- (e) prohibiting or restricting the use of certain aquatic equipment; and
- (f) circumstances in which a person may have prohibited equipment in a bathing reserve.

4 Authorising Local Law

This subordinate Local Law is made pursuant to the authorising Local Law.

5 Definitions

Particular words used in this subordinate Local Law have the same meaning as provided for in the authorising Local Law.

Part 2 Appointment and powers of authorised persons

6 Who are authorised persons—Authorising Local Law, s 10(1)(b)

For section 10(1)(b) of the authorising Local Law, a member of a life-saving patrol who holds the rank of Patrol Captain in the life-saving patrol is an authorised person for the Local Law.

7 Limitation of authorised person's powers— Authorising Local Law, s 11

For section 11 of the authorising Local Law, the powers of an authorised person appointed under section 6 of this subordinate Local Law are limited as follows—

- (a) The authorised person may only exercise the powers specified in the following sections of the authorising Local Law—
 - (i) 17(1); and
 - (ii) 22(1), (3); and
 - (iii) 23(2); and
 - (iv) 24(1); and
 - (v) 25(1), (2); and
 - (vi) 28(1), (2); and
 - (vii) 30(2); and
 - (viii) 32(1); and
 - (ix) 38(1).
- (b) The authorised person may only exercise the limited powers when carrying out a patrol in the bathing reserve or part of the bathing reserve assigned to the surf lifesaving club under section 41 of the authorising Local Law.

8 Conditions of appointment for authorised persons—Authorising Local Law, s 12(1)

For section 12(1) of the authorising Local Law, an authorised person appointed under section 6 of this subordinate Local Law must comply with any directions given by an authorised person appointed under section 10(1)(a) of the authorising Local Law.

9 Particulars of identity cards—Authorising Local Law, s 14(2)

For section 14(2) of the authorising Local Law, an identity card issued by the local government or a recognised life-saving club must—

- (a) contain a recent photograph of the authorised person or state the authorised person's date of birth; and
- (b) be signed by the authorised person; and
- (c) identify the person as an authorised person for the local government or recognised life-saving club; and
- (d) include an expiry date.

Part 3 Use of aquatic equipment in bathing reserves

10 Prohibition or restriction of aquatic equipment—Authorising Local Law, s31(1)

- (1) For section 31(1) of the authorising Local Law, the equipment mentioned in column 2 of schedule 1 is prohibited in the corresponding bathing reserve or part of a bathing reserve mentioned in column 1 of schedule 1.
- (2) For section 31(1) of the authorising Local Law, the equipment mentioned in column 2 of schedule 2 is restricted in the corresponding bathing reserve or part of a bathing reserve mentioned in column 1 of schedule 2, to the extent described in column 3 of schedule 2.

Part 4 Behaviour in bathing reserves

11 Circumstances where prohibited equipment permitted—Authorising Local Law, s 35(2)

For section 35(2) of the authorising Local Law, the following circumstances are excluded from the application of the section—

- (a) A person may have prohibited equipment in a bathing reserve if authorised by an authorised person under section 10(1)(a) of the authorising Local Law and subject to any conditions fixed by the authorised person when giving the authorisation; and
- (b) Members of a life-saving patrol may have life-saving equipment in a bathing reserve; and
- (c) Essential services personnel may have essential services vehicles, vessel or equipment in a bathing reserve.

Schedule 1 Prohibited aquatic equipment for bathing reserves or parts of bathing reserves

Section 10(1)

	<p style="text-align: center;">Column 1 Bathing reserve or part of bathing reserve</p>	<p style="text-align: center;">Column 2 Prohibited aquatic equipment</p>
1	All bathing reserves within the local government area	canoes/kayaks; or kite surfers; or fishing equipment; or netting; or spear fishing equipment; or wind powered, motorised watercraft/vessels; or any other items which, in the opinion of an authorised person, could cause injury or danger to others.

Schedule 2 Restricted aquatic equipment for bathing reserves or parts of bathing reserves

Section 10(2)

	Column 1 Bathing reserve or part of bathing reserve	Column 2 Restricted aquatic equipment	Column 3 Extent of restriction
1	All bathing reserves within the local government area	All aquatic equipment other than the prohibited aquatic equipment as listed in Schedule 1.	Other aquatic equipment may be used where the equipment will not cause injury or danger to others, in the opinion of the authorised person.

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Moreton Bay Regional Council

Bathing Reserves

Local Law 2023

Explanatory Notes

2023 | Version 1.0



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Short title

This Local Law may be cited as the *Bathing Reserves Local Law 2023*.

What is this Local Law trying to achieve and why?

The Moreton Bay Region is home to beautiful beaches enjoyed by locals and visitors. Moreton Bay Regional Council (**Council**) wants to celebrate these great coastal areas by promoting the safe enjoyment of its bathing reserves. A 'bathing reserve' is that part of the beach designated for swimming and patrolled during certain times of the year. Council currently has two bathing reserves, being Suttons Beach at Redcliffe and Woorim Beach on Bribie Island.

We all have a role to play in creating safe bathing reserves for everyone to enjoy. It also means acting appropriately while enjoying the beach and not behaving in a way that negatively impacts on others, *for example, only using certain aquatic equipment, such as surfboards, in areas where the risk of injury to swimmers is low.*

Council aims to create a modern Local Law that provides a framework for regulating the use of bathing reserves in the Region in a way that encourages safe and responsible enjoyment.

This Local Law, for example:

- prohibits interference with flags, signs or life-saving equipment;
- prohibits use of certain aquatic equipment in certain areas;
- regulates behaviour that may create risk to the safety of others; requires you to leave water where there is some other risk to your safety; and
- gives Surf Life Saving Clubs flexibility and autonomy in undertaking their responsibilities to manage, supervise and patrol bathing reserves.

Council aims to create a new Local Law that is easy to read and navigate. Laws about bathing reserves were previously spread across a number of Local Laws, including *Moreton Bay Regional Council Local Law No. 1 (Administration)*. This new Local Law brings all those laws into one place.

How will the Local Law achieve those aims?

This Local Law repeals the previous *Moreton Bay Regional Council Local Law No. 6 (Bathing Reserves) 2011* and *Moreton Bay Regional Council Subordinate Local Law No. 6 (Bathing Reserves) 2011*. In doing so, this Local Law provides a regulatory framework for bathing reserves in the Region.

This Local Law achieves its purposes by providing for the:

- designation and management of safe, supervised bathing areas within bathing reserves;
- reservation for life-saving training;
- use of aquatic equipment in bathing reserves;
- regulation of behaviour in bathing reserves;
- assignment of responsibility to life-saving clubs for managing, patrolling and supervising bathing reserves;
- appointment and powers of authorised persons; and
- enforcement within bathing reserves.



(1) Designation and management of safe, supervised bathing areas within bathing reserves

This law applies to beaches designated as bathing reserves. It is important for the community to be able to easily identify the boundaries of each of Council's bathing reserves.

Council considers that exhibiting signs in prominent positions both on the beach or adjacent to the beach is the best way to notify people of the boundary of the bathing reserves. Signs will face toward and away from the beach.

It is well understood in the community that flags on the beach are used to indicate where and when it is safe to swim. This Local Law regulates the placement of these flags.

To ensure the public are swimming in the safest parts of the beach, it is an offence to interfere with a sign or flag exhibited under this Local Law. It is also an offence to interfere with life-saving equipment.

(2) Reservation for life-saving training

This law allows an authorised person to set aside an area of the bathing reserve on a temporary basis for the undertaking of surf life-saving training. Council considers this is necessary to support lifesavers to continually develop their proficiencies and promote diverse recreation in bathing reserves.

(3) Use of aquatic equipment in bathing reserves

Council recognises the safety risks arising from the use of aquatic equipment in bathing reserves (*for example, risk of injury to swimmers who may be hit by this equipment*). To protect swimmers, this law regulates the use of aquatic equipment (as defined), by either allowing, restricting or prohibiting its use.

This Local Law generally prohibits the use of aquatic equipment in *bathing areas* (i.e., those areas between the red and yellow flags). However, some aquatic equipment (*e.g., body boards and surf boards*) can be used in the *bathing reserve*, provided it is not within the bathing area. An authorised person may also restrict the use of aquatic equipment to a certain area within a bathing reserve.

Other types of aquatic equipment cannot be used in a bathing reserve at all (*e.g., motorised watercraft, spear fishing, kayaks*). This equipment poses a significant risk of injury to others and generally endangers users of

ITEM 6.4 - PROPOSED MBRC LOCAL LAW AND SUBORDINATE LOCAL LAW - BATHING RESERVES (Cont.)

the bathing reserve.

Signs and notices must be exhibited along the foreshore to inform the public about any prohibition or restriction. Users of the bathing reserve may then decide whether the use of the bathing reserve is appropriate for their purposes.

(4) Regulation of behaviour in bathing reserves

This Local Law prohibits a person from bringing, using or having a *dangerous item of aquatic equipment* or any *dangerous object* in a bathing reserve. This might include, *for example, a surfboard with sharp or broken edges*. It also prohibits a person bringing, using or having certain *prohibited equipment* in a bathing reserve, including a spear gun and other fishing spear. Where a person is allowed to have aquatic equipment and other objects, they cannot use it in a way that creates risk to the safety of others.

Authorised persons have the power to raise an emergency evacuation alarm where there is an emergency or other dangerous situation. Such an alarm is given to require persons to leave the water for their safety. It is an offence to give a false emergency evacuation alarm or all-clear to return to the water. This is to ensure that the public are not misled regarding their safety when using the bathing reserve.

(5) Assignment of responsibility to life-saving clubs for managing, patrolling and supervising bathing reserves

To ensure public safety and enjoyment, Council considers it appropriate to assign responsibility to a life-saving club to patrol our bathing reserves. Lifesavers are trained in surf rescue and play a pivotal role in ensuring public safety in prevailing or dangerous surf conditions.

A recognised life-saving club may enclose an area of the bathing reserve to store their life saving equipment securely and must wear distinctive clothing. This enables lifesavers to undertake their roles in life-saving effectively and makes sure the public can identify a lifesaver across all the Region's bathing reserves.

(6) Appointment and powers of authorised persons

Given the role that lifesavers play in patrolling the bathing reserves, Council considers it appropriate to formally appoint lifesavers that hold a particular rank (e.g., *Patrol Captains*) as authorised persons. *For example, such an appointment could give Patrol Captains certain limited powers to enforce the Local Law*. It is intended that these powers be limited to those required to patrol the bathing reserves.

Council employees or other persons eligible for appointment as authorised persons under the *Local Government Act 2009* will also be able to exercise powers under this Local Law. It is intended that powers that require specialised local government training will only be exercised by Council employees.

Example: the power to remove or reduce danger within a bathing reserve.

To ensure a consistent enforcement process and reduce the risk of impersonation, authorised persons must carry an identity card and produce the identity card before exercising any authorised power under this Local Law. It is an offence under this Local Law to obstruct or impersonate an authorised person or a member of a life-saving patrol.

(7) Enforcement within bathing reserves

This Local Law contains compliance enforcement measures integral for ensuring the safe enjoyment of bathing reserves. Where a person has breached an obligation or committed an offence under the Local Law Council may:

- issue a compliance notice (to give the person an opportunity to take certain steps to remedy the breach);
- issue a fine (which aims to deter the person from continuing to commit breaches);
- commence prosecution (which aims to both deter and punish the person for either continuing to commit breaches, or committing breaches of a more serious nature); and
- seize and impound an item or thing.

Who did Council seek feedback from in forming this law?

In April 2021, Council sought feedback from the community to identify key issues with the Council's Local Laws. This consultation took the form of a public survey, as well as invitations to relevant peak body organisations and State government departments, including:

- Bribie Island Environmental Protection Association Inc;
- Bribie Island Surf Life Saving Club;
- Redcliffe Environmental Forum;
- Redcliffe Peninsula Surf Life Saving Club;
- Surf Life Saving Queensland; and
- Department of Agriculture and Fisheries.

Feedback from stakeholders was considered in developing this Local Law.

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Plain English explanations of each section of the Local Law

Note: The *Local Law No. 6 (Bathing Reserves) 2011* (which is repealed by this Local Law) will be referred to throughout this section as '*the 2011 Local Law*'. The relevant sections of the *Local Law No. 1 (Administration) 2011* will be referred to throughout this section as '*the 2011 Administration Local Law*'.

Part 1 - Preliminary

Division 1 - Introductory provisions

Section 1 - Short title

This section establishes the short title of this Local Law.

Division 2 - Object and achievement of Local Law

Section 2 - Object

This section sets the broad context and scope for each provision within the Local Law. The content of these provisions must be consistent with the object of this Local Law, which seeks to balance a person's right to use a bathing reserve against the impact to other people, particularly around keeping other people safe.

The Local Law aims to:

- **Enhance the public safety in and around bathing reserves** - Council recognises that public safety helps to make areas more liveable and enjoyable.
- **Enhance public enjoyment of bathing reserves** - Public enjoyment is central to the use of bathing reserves and Council considers people should not be unduly subjected to nuisances or other unlawful interferences. Public enjoyment did not form part of the object of the 2011 Local Law, but Council considers it is an important aim for this Local Law. This is because Council wants to promote the lifestyles and well-being of visitors and locals of the Region.
- **Enhance the convenience of the public using bathing reserves** - Council believes that everyone has the right to access and enjoy our beaches. Members of the public should be able to use our beaches with ease and without obstruction. This Local Law seeks to allow this to the extent possible, whilst also having regard to public safety.

Section 3 - How object of Local Law is to be achieved

This section sets out how the object of the Local Law will be achieved. Each of the matters listed in this section directly relate to the object of the Local Law. For example, this Local Law regulates the use of aquatic equipment in bathing reserves, supporting the object of public safety by specifying which items of aquatic equipment cannot be used in a bathing reserve due to the risks associated with their use. It also supports the object of enjoyment because it regulates the use of aquatic equipment (for example, a boat) that is likely to impact on the people's enjoyment of a bathing reserve.

Division 3 - Interpretation

Section 4 - Definitions - dictionary

This section provides that all relevant words are defined in the schedule dictionary.

Section 5 - Bathing Reserves

This section defines **bathing reserve**. This definition is consistent with the definition of bathing reserve as in the *Local Government Act 2009*. In simple terms, a bathing reserve relates to a part of the foreshore placed under Council's control as prescribed under the *Local Government Act 2009*. A bathing reserve is placed under the control of Council by the Queensland government via a gazette notice. The intent of this Local Law is only to apply to bathing reserves under Council's control. The Local Law cannot be used for regulating other areas used for swimming such as dams, creeks and other recreational waterways. Council's other Local Laws may regulate these activities.

Section 6 - Bathing area

This section defines **bathing area**. A bathing area is established by marking out two patrol flags adjacent to the foreshore. The (imaginary) outer seaward boundary of a bathing area extends 200 metres from the patrol flags (rather than using the outer boundary of the bathing reserve, which is approximately one-kilometre seaward of the low water mark). Council retained the 200 metre outward seaward boundary as people generally swim within 50-100 metres from the shore.

This boundary also enables certain aquatic equipment to be used beyond 200 metres but within the outer boundary of the bathing reserve. Section 30 of this Local Law which prohibits the use of aquatic equipment within a bathing area. *For example, surfboard users must paddle beyond 200 metres from the patrol flags in a bathing area.* The intent of this limitation is to protect the safety of those recreational swimmers and generally provide for the management of safe, supervised bathing areas.

It is important to note that the outer seaward boundary of 200 metres commences from the patrol flags. This is intended to make it easier for lifesavers and the public to determine the outer boundary of a bathing area. If Council obtains another bathing reserve that has a boundary less than 200 metres to the seaward side of an imaginary line between the 2 patrol flags, then the boundary of the bathing area shall be the outer boundary of the bathing reserve. The term 'patrol flag' is defined in Schedule 1.

Section 7 - Aquatic equipment

This section defines **aquatic equipment**. The definition of aquatic equipment generally encompasses recreational devices (whether motorised or not) for use on or in water to carry a person or thing. Council regulates these devices within bathing reserves and areas given that they may pose a risk to public safety, inhibit public enjoyment or cause a public inconvenience. This definition may overlap with the operation of the *Transport Operations (Marine Safety) Act 1994* (TOMSA) and *Transport Operations (Marine Safety) Regulation 2016* ("TOMSR"), in two ways:

- TOMSR applies to all Queensland waters, while this Local Law applies to a subset of Queensland waters, designated as a bathing reserve; and
- TOMSR applies to ships and powered personal watercraft (such as a jet ski), while this Local Law regulates 'aquatic equipment'. This is defined to include a boat, vessel, a surf ski, jet-ski, surfboard, sailboard, bodyboard or another device (whether motorised or not) for use on or in water.

Despite this overlap, section 27 of the *Local Government Act 2009* confirms that the TOMSR will prevail over Local Law provisions to the extent of any inconsistency.

Division 4 - Operation of Local Law

Section 8 - Relationship with other Acts

This section clarifies that this Local Law is intended to be consistent with and in addition to those laws regulating

use or development of land

Part 2 - Appointment and powers of authorised persons

Division 1 - What this part is about

Section 9 - Overview

This section provides an overview of this part, which describes the process for appointing authorised persons and the powers they may exercise.

Division 2 - Appointment of authorised persons

Section 10 - Who are authorised persons

This section retains section 26 of the 2011 Local Law, which specifies authorised persons and the process for appointment. This Local Law has separate authorised persons provisions to that of the *Local Government Act 2009*, in order to better provide for the unique circumstances associated with the regulation of bathing reserves.

Example: given that bathing reserves are predominantly regulated by life-saving clubs, it is considered appropriate to distinguish the role and powers of authorised persons in relation to these matters, rather than simply conferring all of the broad-ranging powers granted to authorised persons generally under the Local Government Act 2009.

This provision retains two distinct ways in which the Council may appoint authorised persons, including under:

- the Local Law itself (section 10); or
- the Subordinate Local Law.

These two approaches provide flexibility for Council to directly appoint Council employees and other persons eligible to be authorised persons under the *Local Government Act 2009*, but also to allow for the appointment by Subordinate Local Law of a category of authorised persons (e.g., *Patrol Captains*).

Council employees or other persons eligible under Chapter 6, Part 6 of the *Local Government Act 2009* may be appointed as authorised persons under section 10 of this Local Law. Council may only appoint persons with the necessary expertise or experience or completed satisfactory training. The document appointing the person must state the provisions of this Local Law for which the person is an authorised person to ensure transparency and clarity on the appointment.

Under section 58 of the Local Law, the Subordinate Local Law also provides a mechanism for the automatic appointment of categories of authorised persons. *For example, a member of a life-saving patrol who holds the rank of Patrol Captain may be a category of authorised persons appointed under the Subordinate Local Law.* The purpose of this approach is to enable recognised life-saving clubs the autonomy to manage their responsibility of patrolling bathing reserves. Authorised persons powers are limited to those detailed in section 11 below.

Section 11 - Limitation on authorised person's powers

This section retains section 27 of the 2011 Local Law, which is to enable Council to limit the powers of an authorised person, or category of authorised person (i.e. those categories specified in the Subordinate Local Law). Limitations may be placed on the powers of an authorised person in two ways:

- where the authorised person is appointed under the Local Law, then any required limitations may be outlined in the document that appointed the authorised person; and

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- where the authorised person is appointed by Subordinate Local Law, then any required limitations may be included in the Subordinate Local Law.

Such limitations might include a limit to:

- the powers that may be exercised (e.g., *only the powers under Part 2, Division 3 of the Local Law*);
- the powers that may be exercised by a particular category of authorised person (e.g., *an authorised person who is a Patrol Captain may only exercise the powers under sections 17(1), 22(1) and (3), 23(2) etc. of the Local Law*);
- where the powers may be exercised (e.g. *only in that part of the bathing reserve assigned to the life-saving club under section 40 of the Local Law*); and
- the times that those powers may be exercised (e.g., *only when they are participating in a life-saving patrol etc.*).

Under section 58 of the Local Law, Council may, by Subordinate Local Law, list the powers of authorised persons appointed under the Subordinate Local Law. This limitation exists so that they may only exercise powers necessary for the designation and safe management of the bathing reserve, where no specialised local government training is required.

Section 12 - Authorised person's appointment conditions

This section retains section 28 of the 2011 Local Law, which outlines the conditions which may apply to an authorised person's appointment and how the appointment of an authorised person may cease.

Where an authorised person is appointed under the Local Law itself, any conditions on their appointment must be included in the document that appointed the authorised person. A person's appointment as an authorised person will cease at the end of the term or the conditions specified in the document that appointed the authorised person or Subordinate Local Law. They may also resign by signed notice of resignation given to Council.

Where an authorised person is appointed under the Subordinate Local Law (e.g. *Patrol Captains*), conditions on their appointment must be included in the Subordinate Local Law. The Subordinate Local Law may also require an appointment of an authorised person appointed under the Subordinate Local Law (e.g. *Patrol Captains*) to cease where they cease to hold their relevant rank or at the end of a term specified. The intent of these provisions is to ensure that Council has the appropriate oversight on how authorised persons manage and enforce bathing reserves.

Section 13 - Protection from liability

This section retains section 32 of the 2011 Local Law, which affords authorised persons protection from civil liability for their action or inaction made honestly and without negligence while performing their duties under this Local Law.

This protection extends to any person acting under the direction of an authorised person. Council will be liable instead. This provision protects surf lifesavers, who are often volunteers performing dangerous duties associated with surf rescues in bathing reserves. This is important so that Council can protect those acting lawfully under this Local Law in their duties to enhance public safety, enjoyment and convenience of bathing reserves.

Section 14 - Authorised person's identity card

This section retains section 29 of the 2011 Local Law, which requires all authorised persons to hold an identity card issued by Council or relevant life-saving club.

Given the wide-ranging powers exercised by authorised persons, it is important that they hold identity cards. This is to ensure that other persons can verify the authority and jurisdiction of an authorised person. It is intended that identity cards can be issued by both Council or a life-saving club, depending on whether the person is a Council employee or a lifesaver. This is to ensure administrative ease and flexibility when appointing authorised persons.

It is also important they return these cards once their appointment has ended. Failure to return an identify card

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is an offence. This section does not prevent the giving of a different identity card to a person for this part and for other purposes.

Under section 58, the Subordinate Local Law may specify the particulars that an identity card must contain.

Example: particulars may include photographs and signatures of the authorised person.

Section 15 - Production of identity card

This section retains section 30 of the 2011 Local Law, which requires authorised persons to produce and display their identity cards before exercising any powers in relation to another person. This requirement reflects section 126 of the *Local Government Act 2009*. This provision ensures that persons are able to clearly identify authorised persons and creates a uniform procedure before authorised persons exercise their powers.

Division 3 - Powers of authorised persons

Section 16 - Power to remove or reduce danger

This section retains section 22 of the 2011 Local Law, which gives authorised persons the power to take action to reduce or remove any potential danger within a bathing reserve caused by certain objects or item of aquatic equipment in a bathing reserve.

Example: an authorised person may direct a person to remove or tie down a beach umbrella that could be blown away in high winds.

The terms 'dangerous object' and 'dangerous item of aquatic equipment' are both defined in the dictionary as an object or item that is of such a nature that, in the absence of care or precaution in its use or management, the life, safety or health of any person may be endangered. This definition is intentionally broad to capture most potentially dangerous objects or items of aquatic equipment as to protect public safety.

This section also creates an offence for failing to comply with such a direction to remove or reduce danger. Such an offence is necessary to protect public safety and promote the safe enjoyment of our bathing reserves to ensure that potential danger is managed appropriately.

This power complements to sections 34-35 of this Local Law to manage dangerous situations or to prevent potentially dangerous situations from arising.

Section 17 - Power to require bathers to leave water

This section retains section 24 of the 2011 Local Law, which gives authorised persons the power to direct a bather to leave the water in certain circumstances. It is an offence to not comply with this direction. This offence operates in addition to other offences under this Local Law.

Example: it is an offence for a person to swim in a closed bathing reserve or remain in a bathing area after the evacuation alarm has sounded. If they then refuse to leave the water on the direction of an authorised person, the person commits the additional offence of failing to comply with a direction to leave the water.

The intent of this provision is to ensure that bathers leave the water in a timely manner where conditions or circumstances may endanger their safety.

Section 18 - Seizure and detention of dangerous objects and prohibited equipment

This section amends section 28 of the 2011 Administration Local Law and provides for circumstances in which an authorised person may seize and impound an item in three circumstances, where, in a bathing reserve, a person:

1. possesses, uses or has used a dangerous object or dangerous item of aquatic equipment; or
2. uses or has used an object in a dangerous way; or

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3. has prohibited equipment.

Council has the power to recoup the cost of seizing and impounding an item under this section, as a debt from the person responsible for the seized thing. *For example, hiring a contractor trailer to seize and impound a boat with projections liable to cause injury to bathers.*

Section 19 - Dealing with impounded items

This section retains in part section 37 of the 2011 Local Law which sets out:

- how a person can reclaim an impounded item;
- Council's powers to dispose of impounded items in certain circumstances; and
- how any proceeds from the sale or disposal of an impounded item must be dealt with.

A person can reclaim an impounded item by applying, providing proof of ownership of the item and paying the prescribed fee to Council. However, Council has powers to immediately dispose of items that are perishable or where the item is of negligible commercial value. This allows Council to immediately dispose of items where they will not reasonably keep, or where the commercial value is insignificant. Whether an item is perishable or of negligible commercial value will be determined by the reasonable opinion of the authorised officer. Items that are of negligible commercial value may include, for example, items that are dilapidated or damaged (e.g., significant water damage) and cannot reasonably be reused or are not fit for re-use for public health reasons.

If an impounded item (other than an item that is perishable or of negligible commercial value) has not been reclaimed within 20 business days of the item being impounded, Council may:

- if in the reasonable opinion of the authorised person, the commercial value of the impounded item is so slight that it would not cover the reasonable cost of seizing, impounding and selling the impounded item, the item can be disposed of as the chief executive officer directs. The reasonable costs can be determined having regard to the costs associated with seizing, impounding and selling an item by auction, including an officer's time in facilitating this; or
- sell the item through a public auction. If the item does not sell at auction within a reasonable time, the item can be disposed of as the CEO directs (for example, by private sale, giving away the item or destroying the item).

In relation to the disposal of impounded items, Council's liability is limited. Council will only be liable under this section, where it is proved that Council has not acted in good faith or has been negligent.

This section aims to strike a balance between:

- Council's need to manage and responsibly maintain land and roads within the local government area (by seizing and impounding items);
- Council's desire to have transparent processes for managing seized and impounded items; and
- Ensuring the owners of these items are not unreasonably deprived of their property, and are given a reasonable opportunity to reclaim it before it is forfeited.

The term *impounded item* is defined in the dictionary schedule of the Local Law.

Part 3 - Bathing reserves

Division 1 - What this part is about

Section 20 - Overview

This section provides an overview of this part, which deals with the designation of bathing reserves and bathing areas, how these bathing reserves and areas are to be signed, and the management of conditions in bathing reserves and areas.

Division 2 - Designation of bathing reserves

Section 21 - Signs indicating existence of bathing reserve

This section retains section 5 of the 2011 Local Law, which sets out the requirement for signs to be exhibited indicating the boundary of a bathing reserve.

Bathing reserves are those areas declared by gazette notice under the *Local Government Act 2009*. The requirement to exhibit and maintain signs is intended to make the public aware of the designation of a bathing reserve so they are aware of their responsibilities when using that area.

Example: the use of certain aquatic equipment may be restricted or prohibited within the bathing reserve.

Division 3 - Designation of bathing areas

Section 22 - Bathing areas

This section retains section 6 of the 2011 Local Law, which sets out the requirements for marking out a bathing area in a bathing reserve. The intent of this provision is to enable the public to swim in the safest and most suitable part of the bathing reserve in view of the prevailing conditions. Authorised persons are also empowered to change the boundaries of the bathing area by moving the patrol flags. This power enables the flexibility for an authorised person to determine the safest and most suitable bathing area for recreational users, given the everchanging prevailing conditions within a bathing reserve.

Division 4 - Flags and Signage

Section 23 - Flags to inform bathers about prevailing conditions

This section retains section 7 of the 2011 Local Law, which sets out the requirements for responding to potentially hazardous conditions. A yellow flag must be exhibited in the bathing area to inform the public of these conditions. This will assist the public to make an informed decision about whether to use the bathing area in circumstances where the potentially hazardous conditions are not considered dangerous enough to close the bathing reserve.

Section 24 - Closure of bathing reserves

This section retains section 8 of the 2011 Local Law, which enables authorised persons to close a bathing reserve. To close a bathing reserve, patrol flags must be removed from the bathing reserve and a red flag must be exhibited in a prominent position along the foreshore. This section is generally used where prevailing conditions of the bathing area exceed those requiring a yellow flag and pose a risk to the safety of the public.

This provision also creates an offence for any person that swims in a closed bathing reserve. This is to give authorised persons the ability to appropriately enforce the closure of a bathing reserve. Doing so is important to ensure the lives of bathers and lifesavers are not unduly endangered in light of prevailing conditions.

Section 25 - Interference with flags and life-saving equipment

This section retains section 35 of the 2011 Local Law, which creates an offence for a person to interfere with a sign or flag exhibited under this Local Law without approval from an authorised person. The intent of this provision is to enforce the regulation of behaviour within bathing reserves so that the public are not deprived of safety information.

It is also an offence for a person to interfere with life-saving equipment without approval from an authorised person. This offence seeks to enable lifesavers to undertake their life-saving duties without disruption or interference. Council has made this an offence given the potential seriousness and safety risks associated with interfering with flags and life-saving equipment.

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Section 25 - Compliance with Australian Standards

This section retains section 33 of the 2011 Local Law. This provision reinforces the use of standardised flags and signs across all bathing reserves in compliance with relevant Australian Standards (e.g., No. 2416 [Design and Application of Water Safety Signs]). The intended outcome of this provision is to ensure that the public can recognise the information being conveyed by the signs or flags across the Region. This uniformity contributes to the safe management and public enjoyment of bathing reserves. Non-compliance with any flag or signage standard does not invalidate anything done under this Local Law.

Part 4 - Reservation for life-saving training

Division 1 - What this part is about

Section 27 - Overview

This section provides this part is about how an authorised person can designate an area for life-saving training or other special occasions.

Division 2 - Setting aside areas for training

Section 28 - Reservation for life-saving training

This section retains in part section 9 of the 2011 Local Law, which enables an authorised person to set aside the whole or a part of a bathing reserve for life-saving training on a temporary basis. An authorised person may apply restrictions on access to the area set apart. Any access restrictions imposed by an authorised person must be clearly indicated by signs. The intent of this provision is to enable life-saving clubs to undertake routine life-saving training. Life-saving training plays an important role for lifesavers to maintain the safe management of supervised bathing reserves and areas.

Use of any part of a bathing reserve for the conduct of a surfing competition, a life-saving competition or another aquatic activity, as provided under section 10 of the 2011 Local Law, will now require an approval from Council as under another Law.

Part 5 - Use of aquatic equipment in bathing reserves

Division 1 - What this part is about

Section 29 - Overview

This section says this part is about managing the use of certain aquatic equipment within a bathing reserve.

Division 2 - Prohibitions, restrictions and reservations for use of aquatic equipment

Section 30 - Prohibition of use of aquatic equipment in bathing areas

This section retains section 11 of the 2011 Local Law, which prohibits the use of certain aquatic equipment in bathing areas, including boats, jet skis and surfboards. It also creates an offence for the use of aquatic equipment in bathing areas. Unlike section 31, this prohibition does not apply to the broader bathing reserve.

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This section does not apply in certain circumstances, such as where a board or float is made from rubber or foam. The intention here is to not capture those items which are of minimal risk of injury to swimmers in the bathing area.

The intent of this provision is to ensure the safety of users and balance the enjoyment of the bathing area. Given the bathing area extends 200 metres seaward from the flags, this provision does not prohibit the use of aquatic equipment beyond this boundary (i.e., between the 200-metre outer boundary of the bathing area and the outer boundary of the bathing reserve). This means that a person using aquatic equipment (such as a surfboard) must be 200 metres from the shore where a flagged bathing area is established.

Section 31 - Restrictions on use of aquatic equipment in bathing reserves

This section retains section 12 of the 2011 Local Law, which gives Council the power to *prohibit* or *restrict* the use of certain aquatic equipment within a bathing reserve or part thereof by Subordinate Local Law. This enables Council to address future aquatic equipment that may not be currently captured by its Subordinate Local Laws. Unlike section 32, this section imposes *permanent* prohibitions or restrictions on certain aquatic equipment within a bathing reserve or part thereof.

If a restriction or prohibition to the use of certain aquatic equipment is applied, signage or notices must be exhibited on or near the reserve signs to inform the public as to the restriction or prohibition. It is an exemption to any prohibition or restriction to use such equipment if authorised under another law. This is intended to avoid any conflict or inconsistency with any Federal, State or Local Law.

The intent of this provision is to ensure consistency between all bathing reserves within the Region and ensure that any potential risks of injury to users of bathing reserves are minimized. A decision to prohibit or restrict the use of aquatic equipment should balance the safety and enjoyment of users of the bathing reserve.

Section 32 - Reservation of areas for use of aquatic equipment

This section retains section 13 of the 2011 Local Law, which enables authorised persons to *temporarily* set aside a part of a bathing reserve for the use of particular aquatic equipment. These areas must be clearly defined (e.g., by flags) to identify the area set aside and the purposes for which it may be used. Using aquatic equipment contrary to any such reservation is an offence. This is necessary to ensure these temporary areas are being used for its intended purpose.

The intent of this provision is to balance public enjoyment and enable the use of some aquatic equipment where the safety of the public has been considered. It is emphasized that this provision is a temporary restriction and section 31 is used for more permanent restrictions.

Part 6 - Behaviour in bathing reserves

Division 1 - What this part is about

Section 33 - Overview

This section says this part is about regulating behaviours of persons in a bathing reserve.

Division 2 - Dangerous behaviour in bathing reserves

Section 34 - Dangerous object

This section retains section 14 of the 2011 Local Law, which creates an offence to *bring* into, or *use* or *have* dangerous objects or dangerous items of aquatic equipment in a bathing reserve. The scope of this offence has been expanded to also include *having* a dangerous object or dangerous item of aquatic equipment in a

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bathing reserve. The provision aims to cover any potentially dangerous objects or items of aquatic equipment that are not specifically prohibited under section 30. Unlike section 35, this section only applies to dangerous objects or items of aquatic equipment in a bathing reserve.

The terms 'dangerous object' and 'dangerous item of aquatic equipment' are both defined in the dictionary as being of such a nature that, in the absence of care or precaution in its use or management, the life, safety or health of any person may be endangered. These definitions are generally consistent with language in the Queensland Criminal Code (see section 280 Duty of persons in charge of dangerous things) to make this Local Law easy to administer and ensure consistency with State legislation. Surf life-saving equipment used by lifesavers is exempt from this provision to enable them to patrol the bathing reserve and conduct surf rescues.

The aim of this section is to give authorised persons the power to regulate objects and items that are brought and used in a bathing reserve for public safety. Such dangerous items may also adversely affect the enjoyment of bathing reserves by the public.

Section 35 - Prohibited equipment

This section retains section 15 of the 2011 Local Law, which creates an offence to *bring* into or *use* or *have* prohibited equipment in a bathing reserve. The aim of this provision is to protect public safety by regulating those objects of such a dangerous nature that warrant an express, blanket prohibition within bathing reserves. For consistency with section 34, the scope of this offence has been expanded to also include *bringing* prohibited equipment into a bathing reserve and *using* prohibited equipment in a bathing reserve. However, unlike section 34, this provision only applies to behaviours pertaining to *prohibited equipment*.

The term "prohibited equipment" is defined in the dictionary. The definition from the 2011 Local Law has been slightly altered. The definitions from the 2011 Subordinate Local Law for prohibited equipment have been removed as they are covered in the definition of dangerous item of aquatic equipment.

Under section 58 of this Local Law, Council may classify additional objects as prohibited equipment by Subordinate Local Law. Council may also, by Subordinate Local Law, prescribe circumstances in which a person may have prohibited equipment in a bathing reserve.

Example: prohibited equipment authorised by an authorised person.

Section 36 - Dangerous conduct

This section retains section 16 of the 2011 Local Law, which gives authorised persons the power to address any conduct that creates a risk to the safety of others in a bathing reserve. The intent of this provision is to reduce public safety risks in a bathing reserve. This section does not limit any powers that the Police may exercise and the most serious of instances should be referred to the Police.

Division 3 - Alarms and all-clears

Section 37 - Emergency evacuation alarm

This section retains section 17 of the 2011 Local Law, which creates an offence for a person to remain in the water or re-enter the water before an all-clear is given after an emergency evacuation alarm. An emergency evacuation alarm may be given by a prolonged ringing of a bell or alarm and/or the raising of a red flag or other manner recognised by Surf Life Saving Queensland (SLSQ), such as raising a red and white quartered flag. The all-clear is given by a short ringing of the bell or sounding of the siren and the replacement of the red flag by a yellow flag.

The intention of this section is to provide a way to let people know they should not be in the water, without lifesavers having to enter the water to tell people. This is an offence provision due to the evident risks to yourself and others by remaining in the water after an emergency evacuation alarm has sounded.

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Section 38 - False alarm

This section retains section 18 of the 2011 Local Law, which creates an offence for giving an emergency evacuation alarm or all clear after an emergency evacuation alarm without the authority of an authorised person. The intent of this section is to ensure that users of the bathing reserve are not misled and reduce potential consequences of giving false alarms to the safety of the users of the bathing reserve. This is a matter of public safety as the public should have trust that these alarms are given for a legitimate purpose.

Part 7 - Life-saving clubs

Division 1 - What this part is about

Section 39 - Overview

This section says this part is about assigning responsibility for recognised life-saving clubs to patrol bathing reserves and how they may patrol.

Division 2 - Life-saving clubs and patrols

Section 40 - Recognised life-saving clubs

This section retains section 19 of the 2011 Local Law, which allows Council to assign the responsibility for patrolling a bathing reserve or part of a bathing reserve to a life-saving club by written agreement. The dictionary defines a 'recognised life-saving club' as one which Council has assigned the responsibility for patrolling a bathing reserve or part thereof under this provision. This responsibility enhances the public safety, convenience and enjoyment of bathing reserves.

Section 41 - Enclosure for life-saving patrols

This section retains section 20 of the 2011 Local Law, which enables a recognised life-saving club to set aside and enclose a part of a bathing reserve for their exclusive use with Council's written approval. The intent of this provision is to allow life-saving clubs to store their life-saving equipment securely to patrol bathing reserves more effectively.

Example: recognised life-saving clubs may establish an enclosure within a bathing reserve to store rescue jet skis or paddle boards.

Section 42 - Distinctive clothing

This section retains section 21 of the 2011 Local Law, which mandates life-saving patrol members wearing a distinctive uniform approved by SLSQ. The intent of this provision is to ensure consistency across all bathing reserves so that life-saving patrol members are easily identifiable by the public.

Part 8 - Offences and enforcement

Division 1 - What this part is about

Section 43 - Overview

This section provides an overview of this part, including the offences under this Local Law, the enforcement mechanism that may be used to ensure compliance with this Local Law, the way in which court proceedings must be commenced for offences under the Local Law and defences available for offences against this Local Law.

Division 2 - Offences

Section 44 - Obstruction of authorised persons and lifesavers

This section retains section 34 of the 2011 Local Law, which creates an offence to obstruct an authorised person or a member of a life-saving patrol in the conduct of their duties. This effectively mirrors section 149 of the *Local Government Act 2009 (LGA)*, where it is an offence to obstruct a person authorised under the LGA when they are taking action under the LGA or a Local Law. Although the LGA has a similar provision, it is necessary to include this provision in the Local Law to protect members of a life-saving patrol.

It is also an offence for a person to use insulting, threatening or abusive language to an authorised person or a member of a life-saving patrol. It is also an offence to give false or misleading information to an authorised person in response to a request that an authorised person is entitled to make under the LGA. Section 44 has been expanded to include further protections for authorised persons. The intent is to protect authorised persons and lifesavers and enable them to undertake their duties.

Section 45 - Impersonation of authorised persons and lifesavers

This section retains section 31 of the 2011 Local Law, which creates an offence for a person to pretend to be an authorised person or a member of a life-saving patrol. This provision reflects that of section 150 of the *Local Government Act 2009*. This is a matter of public safety so that the public can trust the authority of an authorised person or member of a life-saving patrol.

Section 46 - Attempts to commit offences

This section provides that a person who attempts to commit an offence under this Local Law commits an offence. This means that even if a person unsuccessfully attempts to commit an offence, the person has committed the offence of attempting to commit an offence.

The maximum penalty for the offence under this section is half the penalty for the offence attempted.

Section 47 - Liability of third parties

This section provides that a person involved in a contravention of the Local Law (for example, by aiding a contravention) also commits an offence.

Division 3 - Powers of the local government

Section 48 - Compliance notice for contravention of Local Law

This section retains in part section 26 of the 2011 Administration Local Law and applies if a person contravenes the Local Law. An authorised person may give the person who contravenes the Local Law or who is involved in the contravention a compliance notice. A compliance notice must contain those matters stated in subsection (2), including the timeframe to remedy the breach and the consequences of failing to do so. It is an offence not to comply with a compliance notice. Council may 'give' a compliance notice by delivering it to the person personally, or by leaving it at, or sending it to the person's place of residence or business. See *Acts Interpretation Act 1954*, section 39.

The purpose of this section is to enable an authorised persons to give a person responsible an opportunity to remedy a breach of the Local Law, if appropriate to do so. *For example, where a person has damaged a sign exhibited under this Local Law, which is an offence under section 25.* This allows Council to work with the person to ensure lawful behaviour within our bathing reserves. This aligns with Council's general enforcement approach, emphasising educating the community first, and escalating to stronger methods of enforcement as required. Non-compliance with a notice may result in Council issuing fines or commencing legal proceedings.

When Council makes a decision to issue a compliance notice under this section, it must provide a notice of the decision to the applicant. This means the person given the compliance notice may apply to review the giving of the notice under section 53. The requirements for a decision notice are set out in the definition of *decision notice* in the dictionary Schedule of this Local Law.

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Division 4 - Offence proceedings in the Magistrates Court

Section 49 - Proceedings for offences

This section sets out the requirements and timeframes within which Council can commence proceedings for offences under this Local Law. If Council seeks to prosecute a person in court for an offence under this Local Law, it must be dealt with in the Magistrates Court as a summary offence. The purpose of this section is to facilitate legal proceedings occurring within a reasonable period of time after the commission of the offence. See section 237 of the *Local Government Act 2009* for the name in which proceedings by the local government may be started.

Section 50 - Enforcement orders

This section gives the Magistrates Court discretion to make an enforcement order requiring a person to take certain action within a specified period. The purpose of this clause is to give the presiding Magistrate power to order a person to comply with a direction to secure compliance with this Local Law. This is particularly useful where a person has previously been given opportunities to comply by Council officers but has refused to do so (*e.g., the person has not complied with a compliance notice*). It also means that there are more potential consequences that can be imposed by the court on the person if they fail to comply with the enforcement order.

Section 51 - Joint and several liability

This section retains section 32 of the 2011 Administration Local Law. This section provides that where this Local Law imposes responsibility on multiple people that are either engaged in the activity or joint owners/occupiers of a place, each person can be held liable, with or separate from the other. *For example, where two people interfere with life-saving equipment as under section 25 of this Local Law.* The aim of this section is to ensure any and all responsible parties can be held accountable via compliance and enforcement mechanisms under this Local Law.

Division 5 - Defences

Section 52 - Defence of reasonable excuse

This section retains section 30 of the 2011 Administration Local Law. It provides a defence for a person charged with an offence against this Local Law, where they can prove they had a reasonable excuse for the contravention. This defence is typically used where extenuating circumstances or circumstances outside a person's control have caused the contravention of the Local Law.

Example: it is a defence to any breach or non-compliance of any provision contained in this Local Law if a person was not criminally responsible in accordance with the Criminal Code, chapter 5.

Part 9 - Reviewing decisions

Section 53 - Application for review

This section retains section 22 of the 2011 Administration Local Law, which provides that a person who is given, or entitled to be given a decision notice may apply to Council for a review of a decision. This gives the person a right to have the decision to issue compliance notices internally reviewed by Council.

A review application must be made within the period stated in subsection (2) and be accompanied by a statement of the grounds on which the applicant seeks the review of the decision. It is important to state the grounds so that Council can properly assess the application and review the relevant decision.

Internal reviews also help Council ensure consistency in decision-making. If a person wishes to complain about any other issues that do not attract a formal review right under this Local Law, they may be do so

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through the administrative actions complaints process, which Council must administer under the *Local Government Act 2009*.

Section 54 - Review decision

This section retains section 23 of the 2011 Administration Local Law, which sets out requirements for Council's review of a decision. Council is required to either confirm or amend the original decision or substitute another decision. It is a requirement that the review application cannot be handled by the same person who made the original decision or a less senior person, unless the original decision was made by the CEO. This is to ensure the objectivity, impartiality, and fairness of the review decision.

Section 55 - Stay of operation of original decision

This section retains in part, section 24 of the 2011 Administration Local Law, providing that a review application does not stay the original decision. This means a person remains bound by the original decision unless and until the original decision is amended or substituted by another decision.

Example: if an authorised person issues a compliance notice and the recipient applies for a review of that decision, Council's decision to issue the compliance notice is still valid while the review process is underway, and the person must take the specified action in the compliance notice.

Part 10 - Administrative provisions

Section 56 - Fees

This section retains section 35 of the 2011 Administration Local Law. Chapter 4, Part 2 of the *Local Government Act 2009* allows Council to set cost-recovery fees under a local law or by resolution of Council. A cost recovery fee can be, for example, a fee for seizing property under a local government Act (which includes a local law). Where the Local Law provides for payment of a fee but does not specify the amount payable, this amount will need to be decided by resolution of Council.

The purpose of this section and the provisions of the *Local Government Act 2009* are to ensure that Council is transparent and accountable to the community in charging fees under this Local Law. Cost recovery fees cannot be more than the cost to Council of taking the action for which the fee is charged.

Subsection (2) gives Council the flexibility to determine, by resolution, appropriate circumstances for the reimbursement of a fee. Under subsection (3) the local government may, where appropriate, waive or partially remit a fee, unless specific provision to the contrary is made in a local law or resolution.

Section 57 - Rewards

This section retains section 33 of the 2011 Administration Local Law and allows Council to offer a reward for information leading to conviction of a person for offences against this Local Law. This enables Council to, in appropriate circumstances, provide an incentive to the public, to provide information which can assist Council's enforcement of this Local Law.

Example: Council may offer a reward for information regarding someone interfering with life-saving equipment.

Section 58 - Subordinate Local Laws

This section retains section 36 of the 2011 Local Law. It allows Council to make Subordinate Local Laws in relation to bathing reserves. This includes, *for example, the appointment of authorised persons, the particulars that need to be contained on identify cards of authorised persons and the classification of objects as prohibited equipment*. The purpose of this section is to define the scope of what Council can regulate by Subordinate local law.

ITEM 6.4 - PROPOSED MBRC LOCAL LAW AND SUBORDINATE LOCAL LAW - BATHING RESERVES (Cont.)

Section 59 - Extrinsic material

This section enables Council to make an explanatory note (which includes this document), which can be used to assist in the interpretation of this Local Law. The explanatory note must be passed by a resolution of Council and published on Council's website. The effect of this provision is that, where the meaning of a section of the Local Law is unclear or is debated, Council can refer to the explanation of that section in this Explanatory Note (or another Explanatory Notes passed by Council resolution) to try and determine the meaning of the section. The information provided in the Explanatory Note should not be treated as an exhaustive statement on the subject, but rather a tool to inform of the operation and intend behind each provision.

Part 11 - Transitional and repeal provisions

Section 60 - Definitions for this part

This section defines the word "decision" for the purposes of the transitional arrangements in sections 62 and 63.

Section 61 - Local Law repeal

This section repeals the 2011 Local Law and its Subordinate Local Law (repealed Local Law). This Local Law has the effect of replacing those laws.

Section 62 - Transitional provisions

This section is intended to preserve all decisions (as that term is defined in section 60) that were made under the 2011 Local Law so that they remain in force, even after the repeal of the 2011 Local Law. If Council does not preserve these decisions, then they will cease to have any effect under the new Local Law. Circumstances in which this is particularly relevant include decisions about the:

- appointment of authorised persons;
- issuing of identify cards; and
- agreements with surf life-saving clubs.

Section 63 - Other transitional arrangements

This section notes that transitional arrangements for decisions (as that term is defined in section 56) made under *Local Law No. 1 (Administration) 2011* are set out in the *Commercial Use of Public Land and Roads Local Law 2023*, section x. This is to ensure that any relevant decisions made by Council under the 2011 Local Law with respect to bathing reserves continue once this Local Law comes into effect.

Is this law consistent with fundamental legislative principles?

The Local Law is generally consistent with fundamental legislative principles.

Is this law consistent with Human Rights?

The Local Law is generally compatible with the *Human Rights Act 2019*.



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#4 MBRC Local Law Making **Moreton Bay Regional Council**

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ITEM 6.2 LOCAL LAW AMENDMENT - MORETON BAY REGIONAL COUNCIL LOCAL LAW NO. 2 & SUBORDINATE LOCAL LAW NO. 2 - REGIONAL (Cont.)

#1 Appendix A Local Law Making Process

LOCAL LAW MAKING PROCESS

The process—

- (a) applies to the making of—
 - (i) each local law that incorporates a model local law; and
 - (ii) each local law that is a subordinate local law; and
 - (iii) each other local law; but
- (b) does not apply to a local law that is an interim local law.

Making a local law that incorporates a model local law

The process (model local law making process) specified must be used to make a local law that incorporates a model local law into the local laws of the local government.

Making a local law that incorporates a model local law

- Step 1 — By resolution, propose to incorporate the model local law.
- Step 2 — If the model local law contains an anti-competitive provision, comply with the procedures prescribed under a regulation for the review of anti-competitive provisions.
- Step 3 — If there is an existing local law about a matter in the model local law that would be inconsistent with the matter in the model local law—amend or repeal the existing local law so that there is no inconsistency.
- Step 4 — By resolution, incorporate the model local law.
- Step 5 — Let the public know that the local law has been made, by publishing a notice of the making of the local law in accordance with the requirements of section 29B(1) to (4) inclusive of the *Local Government Act 2009*.
- Step 6 — As soon as practicable after the notice is published in the gazette, ensure that a copy of the local law may be inspected and purchased at the local government's public office.
- Step 7 — Within 14 days after the notice is published in the gazette, give the Minister—
 - (a) a copy of the notice; and
 - (b) a copy of the local law in electronic form; and
 - (c) if the local law contains 1 or more anti-competitive provisions—
 - (i) advice of each anti-competitive provision; and
 - (ii) the reasons for their inclusion.
- Step 8 — Update the local government's register of its local laws.

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Making an “other” local law

The process (other local law making process) specified must be used to make a local law (a proposed local law) other than—

- (a) a model local law; or
- (b) an interim local law; or
- (c) a subordinate local law.

Making an “other” local law

- Step 1 — By resolution, propose to make the proposed local law.
- Step 2 — Consult with relevant government entities about the overall State interest in the proposed local law.
- Step 3 — Consult with the public about the proposed local law for at least 21 days (the consultation period) by—
 - (a) publishing a notice (a consultation notice) about the proposed local law at least once in a newspaper circulating generally in the local government’s area; and
 - (b) displaying the consultation notice in a conspicuous place at the local government’s public office from the first day of the consultation period until the end of the last day of the consultation period; and
 - (c) making a copy of the proposed local law available for inspection at the local government’s public office during the consultation period; and
 - (d) making copies of the proposed local law available for purchase at the local government’s public office during the consultation period.

The consultation notice must state the following—

- (a) the name of the proposed local law; and
- (b) the purpose and general effect of the proposed local law; and
- (c) the length of the consultation period and the first and last days of the period; and
- (d) that written submissions by any person supporting or objecting to the proposed local law may be made and given to the local government on or before the last day of the consultation period stating—
 - (i) the grounds of the submission; and
 - (ii) the facts and circumstances relied on in support of the grounds.

If the local government decides, by resolution, that the proposed local law only amends an existing local law to make an insubstantial change, the local government may proceed to step 6 without satisfying step 3 or step 5.

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ITEM 6.2 LOCAL LAW AMENDMENT - MORETON BAY REGIONAL COUNCIL LOCAL LAW NO. 2 & SUBORDINATE LOCAL LAW NO. 2 - REGIONAL (Cont.)

Making an "other" local law

- Step 4 — If the proposed local law contains an anti-competitive provision, comply with the procedures prescribed under a regulation for the review of anti-competitive provisions. For avoidance of doubt, step 3, and this step 4, may be undertaken contemporaneously.
- Step 5 — Accept and consider every submission properly made to the local government.
- A submission is properly made to the local government if it —
- (a) is the written submission of any person about the proposed local law; and
 - (b) states—
 - (i) the grounds of the submission; and
 - (ii) the facts and circumstances relied on in support of the grounds; and
 - (c) is given to the local government on or before the last day of the consultation period.
- Step 6 By resolution, decide whether to—
- (a) proceed with the making of the proposed local law as advertised; or
 - (b) proceed with the making of the proposed local law with amendments; or
 - (c) make the proposed local law as advertised; or
 - (d) make the proposed local law with amendments; or
 - (e) not proceed with the making of the proposed local law.
- If the local government resolves to proceed with the making of the proposed local law with amendments, and the amendments are substantial, the local government may again —
- (a) consult with the public at step 3; and
 - (b) accept and consider every submission properly made to the local government at step 5.
- For the avoidance of doubt, if an amendment changes an anti-competitive provision, the local government must again comply with the procedures prescribed under a regulation for the review of anti-competitive provisions for the amended anti-competitive provision.
- Step 7 — Let the public know that the local law has been made, by publishing a notice of the making of the local law in accordance with the requirements of section 29B(1) to (4) inclusive of the *Local Government Act 2009*.

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Making an "other" local law

- Step 8 — As soon as practicable after the notice is published in the gazette, ensure that a copy of the local law may be inspected and purchased at the local government's public office.
- Step 9 — Within 14 days after the notice is published in the gazette, give the Minister—
- (a) a copy of the notice; and
 - (b) a copy of the local law in electronic form; and
 - (c) if the local law contains 1 or more anti-competitive provisions—
 - (i) advice of each anti-competitive provision; and
 - (ii) the reasons for their inclusion.
- Step 10— Update the local government's register of its local laws.

Making a subordinate local law

The process (subordinate local law making process) specified must be used to make a subordinate local law (a proposed subordinate local law).

The local government may start the process for making a subordinate local law even though the process for making the local law (including a model local law) on which the subordinate local law is to be based (the proposed authorising law) has not finished.

The local government may use steps 1 to 5 of the subordinate local law making process (other than actually making the subordinate local law) before the proposed authorising law is made if—

- (a) in making the proposed authorising law, the local government has to satisfy—
 - (i) the model local law making process; or
 - (ii) the other local law making process; and
- (b) if the proposed authorising law is made under the other local law making process— the notice about the subordinate local law under step 2 of the subordinate local law making process is published no earlier than the notice about the proposed authorising law under step 3 of the other local law making process is published.

For the avoidance of doubt, a subordinate local law made by the local government using the process detailed in this resolution may provide for the local government to, from time to time, by resolution, reference or incorporate information.

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For example, under the *Local Government Regulation 2012*—

- (a) the identification guidelines for the identification of anti-competitive provisions are a document made by the department and available for inspection on the department's website; and
- (b) the public interest test procedures are a document made by the department and available for inspection on the department's website.

Making a subordinate local law

Step 1 — By resolution, propose to make the proposed subordinate local law.

Step 2 — Consult with the public about the proposed subordinate local law for at least 21 days (the consultation period) by—

- (a) publishing a notice (also a consultation notice) about the proposed subordinate local law at least once in a newspaper circulating generally in the local government's area; and
- (b) displaying the consultation notice in a conspicuous place in the local government's public office from the first day of the consultation period until the end of the last day of the consultation period; and
- (c) making a copy of the proposed subordinate local law available for inspection at the local government's public office during the consultation period; and
- (d) making copies of the proposed subordinate local law available for purchase at the local government's public office during the consultation period.

The consultation notice must state the following—

- (a) the name of the proposed subordinate local law; and
- (b) the name of—
 - (i) the local law allowing the proposed subordinate local law to be made; or
 - (ii) if the local government has started the process for making a subordinate local law even though the process for making the proposed authorising law on which the subordinate local law is to be based has not finished — the proposed authorising law; and
- (c) the purpose and general effect of the proposed subordinate local law; and
- (d) the length of the consultation period and the first and last days of the period; and
- (e) that written submissions by any person supporting or objecting to the proposed subordinate local law may be made and given to the local government on or before the last day of the consultation period

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Making a subordinate local law

stating—

- (i) the grounds of the submission; and
- (ii) the facts and circumstances relied on in support of the grounds.

If the local government decides, by resolution, that the proposed subordinate local law only amends an existing subordinate local law to make an insubstantial change, and the amendment does not affect an anti-competitive provision, the local government may proceed to step 5 without satisfying any of step 2 to step 4 inclusive.

Step 3 — If the proposed subordinate local law contains an anti-competitive provision, comply with the procedures prescribed under a regulation for the review of anti-competitive provisions. For avoidance of doubt, step 2, and this step 3, may be undertaken contemporaneously.

Step 4 — Accept and consider every submission properly made to the local government.

A submission is properly made to the local government if it—

- (a) is the written submission of any person about the proposed subordinate local law; and
- (b) states—
 - (i) the grounds of the submission; and
 - (ii) the facts and circumstances relied on in support of the grounds; and
- (c) is given to the local government on or before the last day of the consultation period.

Step 5 — By resolution, decide whether to—

- (a) proceed with the making of the proposed subordinate local law as advertised; or
- (b) proceed with the making of the proposed subordinate local law with amendments; or
- (c) make the proposed subordinate local law as advertised; or
- (d) make the proposed subordinate local law with amendments; or
- (e) not proceed with the making of the proposed subordinate local law.

If the local government resolves to proceed with the making of the proposed subordinate local law with amendments, and the amendments are substantial, the local government may again —

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Making a subordinate local law

- (a) consult with the public at step 2; and
- (b) accept and consider every submission properly made to the local government at step 4.

For the avoidance of doubt, if an amendment changes an anti-competitive provision, the local government must again comply with the procedures prescribed under a regulation for the review of anti-competitive provisions for the amended anti-competitive provision.

- Step 6 — Let the public know that the subordinate local law has been made, by publishing a notice of the making of the subordinate local law in accordance with the requirements of section 29B(1) to (4) inclusive of the *Local Government Act 2009*.
- Step 7 — As soon as practicable after the notice is published in the gazette, ensure that a copy of the subordinate local law may be inspected and purchased at the local government's public office.
- Step 8 — Within 14 days after the notice is published in the gazette, give the Minister—
 - (a) a copy of the notice; and
 - (b) a copy of the subordinate local law in electronic form; and
 - (c) if the subordinate local law contains 1 or more anti-competitive provisions—
 - (i) advice of each anti-competitive provision; and
 - (ii) the reasons for their inclusion.
- Step 9 — Update the local government's register of its local laws.