
ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

#1 Draft Cemeteries Local Law



Cemeteries Local Law 2023

Consultation Copy Only

Moreton Bay Regional Council Cemeteries Local Law 2023

Contents

| | | |
|----------------------|--|----------|
| Part 1 | Preliminary | 6 |
| Division 1 | Introductory provisions | 6 |
| 1 | Short title | 6 |
| Division 2 | Object and achievement of Local Law | 6 |
| 2 | Object..... | 6 |
| 3 | How object of Local Law is to be achieved..... | 6 |
| Division 3 | Interpretation | 6 |
| Subdivision 1 | Dictionary | 6 |
| 4 | Definitions — Dictionary | 6 |
| Subdivision 2 | Key concepts | 6 |
| 5 | Prescribed activity | 6 |
| 6 | Excluded activity..... | 7 |
| Division 4 | Operation of Local Law | 7 |
| 7 | Relationship with other Acts | 7 |
| Part 2 | Approvals for prescribed activities | 7 |
| Division 1 | What this part is about | 7 |
| 8 | Overview | 7 |
| Division 2 | Approvals | 7 |
| Subdivision 1 | Application process | 7 |
| 9 | Need for approval..... | 7 |
| 10 | Making an application..... | 8 |

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

Cemeteries Local Law 2023

| | | |
|----------------------|---|-----------|
| Subdivision 2 | Timeframes for deciding applications | 8 |
| 11 | Timeframes for deciding applications when no further information is needed | 8 |
| 12 | Timeframe for deciding applications when further information is needed | 8 |
| 13 | Timeframe for dealing with applications that are not properly made .. | 9 |
| Subdivision 3 | Deciding an application | 9 |
| 14 | Deciding a prescribed activity application..... | 9 |
| 15 | Effect of failure to decide application on time | 9 |
| 16 | Third-party certification..... | 9 |
| 17 | Permitted Conditions | 10 |
| 18 | Term of approval | 10 |
| Subdivision 4 | Administering approvals | 10 |
| 19 | Definitions for this subdivision 4 | 10 |
| 20 | Renewal or transfer of approval | 10 |
| 21 | Approval holder may apply to amend conditions..... | 12 |
| 22 | Local Government may amend, suspend or cancel approval..... | 12 |
| 23 | Procedure for immediate suspension of approval | 13 |
| Part 3 | Record keeping obligations for prescribed activities | 14 |
| 24 | Record keeping obligation for operation of cemeteries | 14 |
| Part 4 | Offences and enforcement | 15 |
| Division 1 | What this part is about | 15 |
| 25 | Overview | 15 |
| Division 2 | Offences | 15 |
| 26 | Undertaking a prescribed activity without an approval | 15 |
| 27 | Failure to comply with conditions of a prescribed activity approval .. | 15 |
| 28 | Discharging a firearm within local government cemetery | 15 |
| 29 | Interfering with funeral or commemorative service within local government cemetery..... | 15 |

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

Cemeteries Local Law 2023

| | | |
|-------------------|---|-----------|
| 30 | Riding an animal or causing an animal to pull a vehicle within local government cemetery..... | 15 |
| 31 | Providing false or misleading information..... | 16 |
| 32 | Threatening an authorised person..... | 16 |
| 33 | Attempts to commit offences | 16 |
| 34 | Liability of third parties..... | 16 |
| Division 3 | Powers of the local government | 16 |
| 35 | Appointment of authorised persons..... | 16 |
| 36 | Production of records | 16 |
| 37 | Compliance notice for contravention of Local Law | 17 |
| 38 | Stop orders..... | 18 |
| 39 | Local government power to seize and cost recover | 19 |
| 40 | Dealing with impounded items..... | 19 |
| 41 | Local government power to reinstate site and cost recover | 20 |
| 42 | Maintenance, repair and removal of memorials, columbarium, mausoleums and vaults..... | 20 |
| Division 4 | Offence proceedings in Magistrates Court | 21 |
| 43 | Proceedings for offences..... | 21 |
| 44 | Enforcement orders..... | 21 |
| 45 | Joint and several liability | 21 |
| Division 5 | Defences | 22 |
| 46 | Defence of reasonable excuse..... | 22 |
| 47 | Owners and occupiers must ensure compliance with this Local Law | 22 |
| Part 5 | Reviewing decisions | 22 |
| 48 | Application for review | 22 |
| 49 | Review decision | 23 |
| 50 | Stay of operation of original decision..... | 23 |
| Part 6 | Administrative provisions | 23 |

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)
Cemeteries Local Law 2023

| | | |
|-------------------|---------------------------------|-----------|
| 51 | Power to make a guideline | 23 |
| 52 | Fees | 23 |
| 53 | Rewards | 24 |
| 54 | Subordinate Local Laws | 24 |
| 55 | Extrinsic material | 24 |
| 56 | Transitional arrangements..... | 24 |
| Schedule 1 | Dictionary..... | 25 |

Consultation Copy Only

Moreton Bay Regional Council Cemeteries Local Law 2023

Part 1 Preliminary

Division 1 Introductory provisions

1 Short title

This Local Law may be cited as the *Cemeteries Local Law 2023*.

Division 2 Object and achievement of Local Law

2 Object

The object of this Local Law is to regulate the operation of cemeteries and other activities regarding human remains in a way that:

- (a) minimises risk to human health and safety; and
- (b) protects visual and public amenity of local government cemeteries; and
- (c) minimises environmental harm and environmental nuisance.

3 How object of Local Law is to be achieved

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

- (a) providing a framework to grant an approval for a prescribed activity; and
- (b) providing mechanisms for enforcement whether there is non-compliance with conditions of an approval or provisions of this Local Law.

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 Prescribed activity

prescribed activity means—

- (a) operation of cemeteries; and
- (b) disturbance or burial of human remains within a local government

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)
Cemeteries Local Law 2023

cemetery; and

- (c) erection, installation, or placement of, or interference with, a memorial, columbarium, mausoleum or vault within a local government cemetery; and

- (d) disturbance or burial of human remains outside a cemetery,

but does not include an excluded activity.

6 Excluded activity

Excluded activity means—

- (a) scattering cremated remains; and
- (b) placement of items at a gravesite within a local government cemetery where the items:
 - (i) are smaller than the headstone; and
 - (ii) comply with a guideline of the local government.

Division 4 Operation of Local Law

7 Relationship with other Acts

This Local Law is in addition to and does not derogate from laws regulating—

- (a) the use or development of land; or
- (b) the exhumation of human remains, ordered by a coroner under the *Coroners Act 2003*.

Part 2 Approvals for prescribed activities

Division 1 What this part is about

8 Overview

This part details—

- (a) the circumstances in which an approval is required to undertake a prescribed activity; and
- (b) the process for obtaining an approval for a prescribed activity under this Local Law.

Division 2 Approvals

Subdivision 1 Application process

9 Need for approval

A person must obtain an approval under this Part to undertake a prescribed activity (*approval*).

10 Making an application

- (1) An application for a prescribed activity must be—
 - (a) made in the form prescribed by the local government; and
 - (b) accompanied by—
 - (i) the documents required by the prescribed form; and
 - (ii) the prescribed fee for the application.
- (2) If the application relates to a prescribed activity on private land, the application must be accompanied by the written consent of the owner of the place, to the extent that the applicant is not the owner.
- (3) The local government—
 - (a) must accept an application that the local government is satisfied complies with subsections (1) and (2); and
 - (b) must not accept an application unless the local government is satisfied the application complies with subsection (2); and
 - (c) may accept an application that does not comply with subsection (1).
- (4) The local government may prescribe forms for this Local Law.

Subdivision 2 Timeframes for deciding applications

11 Timeframes for deciding applications when no further information is needed

- (1) This section applies if the local government—
 - (a) receives a properly made application; and
 - (b) does not require any further information in relation to the application.
- (2) The local government must decide the application within 21 business days of receiving it, or a further period agreed to with the applicant.

12 Timeframe for deciding applications when further information is needed

- (1) This section applies if the local government—
 - (a) receives a properly made application; and
 - (b) requires further information in relation to the application.
- (2) The local government may make an information request to the applicant.
- (3) An information request made under subsection (2) must be made within 21 business days of receiving the application, or a further period agreed to with the applicant.
- (4) An applicant must respond to an information request within 10 business days of receiving it, or a further period agreed to with the local government (*information request response period*).
- (5) The local government must decide the application within:
 - (a) 21 business days of the earlier of—
 - (i) an information request response being received; or

- (ii) the information request response period ending; or
 - (b) a further period agreed to with the applicant.
- (6) In this section—

information request means a notice to the applicant, requiring them to provide further information or documents in relation to an application under this Local Law.

information request response means a response to an information request.

13 Timeframe for dealing with applications that are not properly made

If the local government receives an application for a prescribed activity which is not a properly made application, the local government must—

- (a) provide the applicant with written notice to that effect within 5 business days of receiving the application, or a further period agreed to with the applicant; and
- (b) take no further action in relation to the application.

Subdivision 3 Deciding an application

14 Deciding a prescribed activity application

- (1) The local government must, after carrying out an assessment of a properly made application, decide to—
 - (a) approve the application; or
 - (b) approve the application, but impose conditions on the approval; or
 - (c) refuse the application.
- (2) The local government may refuse an application under subsection (1)(c) if:
 - (a) the local government considers that approving the application would be inconsistent with the object of this Local Law; or
 - (b) the eligibility criteria, specified by a Subordinate Local Law, for a prescribed activity has not been satisfied; or
 - (c) the granting of the application would be inconsistent with an approval already granted under this Local Law.
- (3) For a decision made under subsection (1), the local government must give a decision notice to the applicant.

15 Effect of failure to decide application on time

The local government is taken to have refused an application if the local government fails to decide a properly made application in accordance with—

- (a) section 11(2); or
- (b) 12(5).

16 Third-party certification

- (1) In deciding an application under this part, the local government may accept the certificate of a third-party certifier as evidence about any application requirement

that is mentioned in a Subordinate Local Law for this subsection.

(2) In this section—

application requirement means a matter that the local government must be satisfied about, or have regard to, before granting an application for approval under this Local Law.

third-party certifier means—

- (a) an individual or organisation declared under a Subordinate Local Law for this paragraph as a third-party certifier for particular application requirements; or
- (b) an individual or organisation that has the qualifications prescribed under a Subordinate Local Law for this paragraph as necessary to provide a certificate about particular application requirements.

17 Permitted Conditions

Any condition imposed on an approval must relate to the object of this Local Law.

18 Term of approval

An approval is valid for the term specified in the approval.

Subdivision 4 Administering approvals

19 Definitions for this subdivision 4

In this subdivision—

show cause notice means a written notice stating—

- (a) the proposed action; and
- (b) the grounds for the proposed action; and
- (c) an outline of the facts and circumstances that are the basis of the grounds; and
- (d) if the proposed action is suspension of the approval, the proposed suspension period; and
- (e) that the approval holder may make written submissions within the stated reasonable time as to why the proposed action should not be taken.

20 Renewal or transfer of approval

- (1) Subject to subsections (4) and (5), an applicant may, before the end of the term of the approval granted under section 14 (**the existing approval**), apply to the local government to transfer the approval (**transfer application**) or renew the approval (**renewal application**).
- (2) An application under this section must be—
 - (a) made in the form prescribed by the local government; and
 - (b) accompanied by—

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)
Cemeteries Local Law 2023

- (i) the documents required by the prescribed form; and
 - (ii) the prescribed fee for the application.
- (3) For a transfer application, the approval holder must apply together with the person to whom the approval is proposed to be transferred (*proposed transferee*).
- (4) An approval holder may not apply to renew an existing approval where the local government has given the approval holder written notice that the existing approval is not renewable.
- (5) An approval holder may not apply to transfer an existing approval where the local government has given the approval holder written notice that the existing approval is not transferable.
- (6) For a renewal application, the local government may determine the term of the renewal.
- (7) Subdivision 2 applies to a renewal application or a transfer application as if it were a properly made application.
- (8) The local government must, after carrying out an assessment of a renewal application or transfer application, decide to—
- (a) grant the application; or
 - (b) grant the application and amend the conditions of the existing approval; or
 - (c) refuse the application.
- (9) In deciding under subsection (8), the local government may have regard to—
- (a) the object of this Local Law; and
 - (b) whether the conditions of the existing approval have been or are being complied with by the applicant.
- (10) For a decision made under subsection (8), the local government must give a decision notice to the applicant and may give a decision notice to the proposed transferee.
- (11) The local government may amend the conditions of the existing approval under subsection (8)(b) without following the procedure in section 22.
- (12) If an approval holder makes a renewal application, the existing approval remains in force until—
- (a) if the renewal application is granted, with or without amendment of the conditions—the date the renewal application is granted; or
 - (b) if the renewal application is refused—
 - (i) and the applicant applied for a review of the decision under Part 5—the date the applicant is given notice of the review decision; or
 - (ii) and the applicant has not applied for a review of the decision under Part 5—15 business days after the applicant is given a decision notice under subsection (10).

21 Approval holder may apply to amend conditions

- (1) An approval holder may apply to the local government to amend the conditions of the approval (*amendment application*).
- (2) An amendment application must be—
 - (a) made in the form prescribed by the local government; and
 - (b) accompanied by—
 - (i) a statement of the proposed amendment and reasons for it; and
 - (ii) the prescribed fee.
- (3) Division 2 applies to an amendment application as if it were a properly made application.
- (4) The local government must, after carrying out an assessment of an amendment application, decide to—
 - (a) grant the application; or
 - (b) refuse the application.
- (5) In deciding under subsection (4), the local government may have regard to—
 - (a) the object of this Local Law; and
 - (b) whether the conditions of the existing approval have been or are being complied with by the applicant.
- (6) For a decision made under subsection (4), the local government must give a decision notice to the applicant.
- (7) The local government may amend the conditions of the approval under this section without following the procedure in section 22.

22 Local Government may amend, suspend or cancel approval

- (1) This section applies if the local government is satisfied that one of the following grounds for amending, suspending or cancelling an approval exists—
 - (a) amendment, suspension or cancellation is necessary to protect or further the object of this Local Law; or
 - (b) amendment, suspension or cancellation is necessary—
 - (i) for the protection of public health or safety; or
 - (ii) to prevent environmental harm; or
 - (iii) to prevent property damage or loss of amenity; or
 - (iv) to allow for works on roads or public land; or
 - (v) to improve the efficiency of vehicle or pedestrian traffic; or
 - (vi) for the protection of animals; or
 - (c) another approval required for the prescribed activity under an Act has been suspended or cancelled; or
 - (d) in undertaking the prescribed activity, the approval holder has failed to comply with a Local Law or an Act; or
 - (e) the approval holder has failed to comply with a condition of the

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

Cemeteries Local Law 2023

- approval; or
- (f) the approval holder has failed to comply with a notice under section 37 that relates to the conduct of the prescribed activity or has failed to comply with a stop order under section 38; or
 - (g) the approval was granted because of a document or representation that was—
 - (i) false or misleading; or
 - (ii) obtained or made in another improper way.
- (2) Before taking action to amend, suspend or cancel an approval (*proposed action*), the local government must give the approval holder a show cause notice.
 - (3) If a show cause notice is issued, the approval holder may, within a stated reasonable time of at least 15 business days after the notice is given (*stated reasonable time*), make written submissions to the local government as to why the proposed action should not be taken.
 - (4) Notwithstanding subsection (3), where the approval holder consents or agrees to the proposed action, they may waive their right to provide written submissions within the stated reasonable time.
 - (5) The local government must consider all submissions made in accordance with subsection (3).
 - (6) If the local government decides that—
 - (a) a ground under subsection (1) no longer exists to take the proposed action, the local government must take no further action in respect of the show cause notice; or
 - (b) a ground exists to take the proposed action, the local government may—
 - (i) if the proposed action was to amend the approval—amend the approval; or
 - (ii) if the proposed action was to suspend the approval—suspend the approval for no longer than the period stated in the notice; or
 - (iii) if the proposed action was to cancel the approval—amend the approval, suspend it for a period or cancel it.
 - (7) For any decision made under subsection (6), the local government must give a decision notice to the approval holder.
 - (8) This section does not limit the power a local government may have apart from this section to amend, suspend or cancel an approval.

23 Procedure for immediate suspension of approval

- (1) Despite section 22, the local government may immediately suspend an approval if the local government believes that the continuation of the prescribed activity by the approval holder poses—
 - (a) an urgent and serious threat or risk to the object of this Local Law; or
 - (b) an urgent and serious threat to public health or safety; or

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

Cemeteries Local Law 2023

- (c) an urgent and serious risk of environmental harm, property damage or loss or amenity; or
 - (d) a serious obstruction to urgent works on roads or public land; or
 - (e) a serious obstruction to road access; or
 - (f) a serious or urgent threat to the safety of vehicle or pedestrian traffic; or
 - (g) an urgent and serious threat to animal welfare.
- (2) The local government must give a notice to the approval holder about the decision to immediately suspend the approval (*suspension notice*), together with a show cause notice about proposed action under section 22.
- (3) The suspension operates immediately upon the notices in subsection (2) being given to the approval holder.
- (4) The suspension continues to operate until the earliest of the following occurs—
- (a) the local government cancels the suspension; or
 - (b) the local government gives the approval holder a decision notice under section 22(7) for a decision made under section 22(6); or
 - (c) 15 business days have passed since the expiry of the stated time for the making of written submissions regarding the show cause notice; or
 - (d) 15 business days have passed since the approval holder notifies the local government that it has made its final written submissions regarding the show cause notice.

Part 3 Record keeping obligations for prescribed activities

24 Record keeping obligation for operation of cemeteries

- (1) A relevant person for the operation of cemeteries must keep and maintain a publicly available register containing all relevant information concerning burials at a cemetery.
- (2) The register kept and maintained under subsection (1) must:
- (a) be maintained at a place approved by the local government for this purpose; and
 - (b) be available for inspection by members of the public at reasonable times.
- (3) In this section—
- relevant information* means—
- (a) the names of all persons whose remains have been buried in a cemetery or outside of a cemetery; and
 - (b) the date and form of the burial.

Part 4 Offences and enforcement

Division 1 What this part is about

25 Overview

This part outlines—

- (a) offences relating to this Local Law; and
- (b) the enforcement mechanisms that can be utilised by the local government; 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

26 Undertaking a prescribed activity without an approval

A person must not undertake a prescribed activity without an approval.

Maximum penalty—50 penalty units.

27 Failure to comply with conditions of a prescribed activity approval

A person must not contravene an approval.

Maximum penalty—50 penalty units.

28 Discharging a firearm within local government cemetery

A person must not discharge a firearm in a local government cemetery, unless permitted by a condition of an approval.

Maximum penalty—20 penalty units.

29 Interfering with funeral or commemorative service within local government cemetery

A person must not interrupt, disturb or interfere with a funeral or commemorative service lawfully conducted within a local government cemetery.

Maximum penalty—20 penalty units.

30 Riding an animal or causing an animal to pull a vehicle within local government cemetery

A person must not ride an animal or cause an animal to pull a vehicle within a local government cemetery, unless permitted by a condition of an approval.

Maximum penalty—20 penalty units.

31 Providing false or misleading information

A person must not give information for this Local Law (either orally or in a document), that the person knows is false or misleading.

Maximum penalty—20 penalty units.

32 Threatening an authorised person

A person must not threaten, insult or use abusive language to an authorised person.

Maximum penalty—20 penalty units.

33 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* (relevant to attempts to commit offences) apply to the attempt.

34 Liability of third parties

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

Maximum penalty—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

35 Appointment of authorised persons

The document that appoints an authorised person must state this Local Law, or provisions of this Local Law, for which this person is appointed as an authorised person.

36 Production of records

- (1) This section applies where an authorised person has entered a property under the Act to find out whether the conditions of an approval have been complied with.
- (2) The authorised person may require the occupier of the property or another relevant

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)
Cemeteries Local Law 2023

person to produce for inspection records that are required by the conditions of an approval.

(3) In this section—

occupier of the property includes a person who reasonably appears to be the occupier of, or in charge of, the property.

property has the same meaning as in the Act.

(4) A person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty for subsection (4)—10 penalty units.

37 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 34.

(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

Example of reasonable steps to avoid further contravention—

- *The repetition of a specified action at stated intervals for a certain period.*
- *Stopping taking an action that is prohibited by this Local Law.*

- (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.

Note—

a compliance notice may be a remedial notice under the Act, chapter 5, part 2, division 2.

(5) The time under subsection (4)(c) must be reasonable having regard to—

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)
Cemeteries Local Law 2023

- (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.

38 Stop orders

- (1) This section applies if a relevant person is undertaking:
- (a) a prescribed activity; or
 - (b) an excluded activity.
- (2) An authorised person may give a relevant person an order to immediately stop a prescribed activity or an excluded activity, if the authorised person believes that the continuation of the activity poses, exacerbates or impedes the local government's ability to respond to—
- (a) an urgent and serious threat or risk to the object of this Local Law; or
 - (b) an urgent and serious threat to public health or safety; or
 - (c) an urgent and serious risk or environmental harm, property damage or loss of amenity; or
 - (d) a serious obstruction to urgent works on roads or public land; or
 - (e) a serious obstruction of access to a road; or
 - (f) a serious or urgent threat to the safety of vehicle or pedestrian traffic; or
 - (g) an urgent and serious threat to animal welfare.
- (3) An order under this section—
- (a) may be given orally or in writing; and
 - (b) operates until the earliest of the following happens—
 - (i) the expiry of the period, of no more than 5 business days, specified by the authorised person when the order is given; or
 - (ii) the local government immediately suspends the approval under section 23.
- (4) An authorised person must confirm an oral order in writing by the next business day following the giving of the order.
- (5) A person who receives an order under this section must comply with the order.
- Maximum penalty for subsection (5)—50 penalty units.
- (6) This section does not affect the local government's powers under another law.

39 Local government power to seize and cost recover

- (1) An authorised person may seize, by dismantling if necessary, and impound an item where the item has been brought onto or installed in, on, across, under or over land or road within the local government area in a manner that contravenes this Local Law, and—
 - (a) in the reasonable opinion of the authorised person, the seizure of the item is necessary in the interests of public health or safety or to prevent environmental harm, property damage or loss of amenity; or
 - (b) an action was required to be taken in relation to the item by a certain time under a compliance notice and that time has elapsed without the required action having been taken.
- (2) The local government may recover the cost of action taken under this section as a debt from the person responsible for the item seized under subsection (1) being brought onto or installed in, on, across, under or over land or road within the local government area.

40 Dealing with impounded items

- (1) This section applies where an item has been seized and impounded under section 39 (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—
 - (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 39, 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

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

Cemeteries Local Law 2023

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 39, if the local government has acted in good faith and without negligence.

41 Local government power to reinstate site and cost recover

- (1) This section applies where a prescribed activity takes place on public land or a road (*the site*); and
- (a) human remains are buried in an incorrect grave; or
 - (b) the operation of the prescribed activity has caused damage to the site which has not been adequately rectified or reinstated by the relevant person.
- (2) The local government may:
- (a) carry out works to rectify a burial occurring in an incorrect grave; or
 - (b) carry out reinstatement works reasonably required to return the site to its original state.
- (3) The local government may recover costs reasonably incurred for the reinstatement works, as a debt from the relevant person.
- (4) In this section—
- original state* means the condition the site was in prior to the relevant person commencing use of the site in accordance with the approval.

42 Maintenance, repair and removal of memorials, columbarium, mausoleums and vaults

- (1) The local government may make safe, maintain, repair or remove a memorial, columbarium, mausoleum or vault in a local government cemetery if it—
- (a) has been vandalised; or
 - (b) becomes unsafe; or

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

Cemeteries Local Law 2023

- (c) has fallen into a state of disrepair; or
 - (d) presents a risk to public safety; or
 - (e) detracts from the visual amenity of the local government cemetery.
- (2) Before the local government takes any action to remove under subsection (1), it must give reasonable written notice of its intention to remove to:
- (a) the relevant person; or
 - (b) where the relevant person is uncontactable, to those members or the family of a deceased person, whose identity are known.
- (3) Notwithstanding subsection (2), the local government does not need to give reasonable written notice where there is an immediate risk to public safety.
- (4) In this section—
- reasonable written notice*** means a written notice given at least 5 days before the local government intends to remove the memorial, columbarium, mausoleum or vault that informs the person of—
- (a) the local governments intention to remove; and
 - (b) the reason for the intended removal.

Division 4 Offence proceedings in Magistrates Court

43 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.

44 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.

45 Joint and several liability

- (1) Where this Local Law imposes a liability on an owner or occupier of a place, or a person engaged in a particular activity, and 2 or more persons are the owners or occupiers of the relevant place, or are jointly engaged in the relevant activity, the liability is joint and several.

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

Cemeteries Local Law 2023

- (2) This section applies both to civil liabilities and liabilities enforced by summary proceedings under the *Justices Act 1886*.

Division 5 Defences

46 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 has a reasonable excuse for the contravention.

47 Owners and occupiers must ensure compliance with this Local Law

- (1) This section does not apply to an occupier of a place where, under another provision of this Local Law, the occupier is not liable for an offence.
- (2) Except where the owner and occupier of a place is the local, State or Commonwealth government, the owner and occupier of the place must ensure that an offence is not committed in or on a place.
- (3) If an offence is committed in or on a place, the owner and occupier of the place also commit an offence, namely the offence of failing to ensure that an offence is not committed in or on the place.

Maximum penalty—the penalty for the commission of the offence in or on that place.

- (4) Evidence that an offence has been committed on a place is evidence that the owner and occupier of the place committed the offence of failing to ensure that the offence is not committed in or on the place.
- (5) However, it is a defence for an owner or occupier to prove that—
- (a) the owner or occupier exercised reasonable diligence to ensure that an offence was not committed in or on the place; or
 - (b) the offence was committed in or on the place without that person's knowledge or consent.

Part 5 Reviewing decisions

48 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.

49 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.

50 Stay of operation of original decision

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

Part 6 Administrative provisions

51 Power to make a guideline

- (1) The local government may make a guideline about the placement of items at a gravesite in a local government cemetery (*guideline*).
- (2) The local government must publish the guideline on the local government's website.
- (3) Without limiting subsection (1), the guideline may deal with the following matters—
 - (a) items that can be placed at a gravesite in a local government cemetery; and
 - (b) where or how items may be placed at a gravesite in a local government cemetery; and
 - (c) items that are prohibited from being placed at a gravesite in a local government cemetery.

52 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 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)
Cemeteries Local Law 2023

- (2) A resolution fixing a fee may provide for the reimbursement of the fee in appropriate circumstances.
- (3) Unless a 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.

53 Rewards

- (1) 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.
- (2) The amount of the reward, and the conditions on which it is payable, must be decided by resolution of the local government.

54 Subordinate Local Laws

The local government may make Subordinate Local Laws about—

- (a) mandatory conditions to be imposed on a prescribed activity approval; and
- (b) any eligibility criteria relevant to a prescribed activity; and
- (c) application requirements for which a third-party certifier's certificate may be accepted by the local government; and
- (d) the individual or organisations that are declared as third-party certifiers for particular application requirements.

55 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 website of 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* (Qld)).

Note—

Pursuant to Part 4, Division 1 of the Statutory Instruments Act 1992 (Qld), 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 this Local Law.

56 Transitional arrangements

The transitional arrangements for approvals for the operation of cemeteries and for undertaking regulated activities regarding human remains granted under *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

Act means—

- (a) a State Act; and
- (b) a Commonwealth Act.

agent includes a contractor, assistant, driver, and any other person aiding the person undertaking a prescribed activity for which an approval has been issued under this Local Law.

amend for an approval, includes varying a condition, removing a condition or adding a condition.

application requirement see section 16.

approval see section 9.

authorised person means a person—

- (a) appointed by the chief executive officer as an authorised person under section 202 of the Act; and
- (b) whose document of appointment provides that they are an authorised person for this Local Law, or provisions of this Local Law.

burial includes—

- (a) the act of placing human remains or the ashes of such in either a grave, niche, columbarium, mausoleum, vault, memorial garden, at sea, or by another method approved by the local government; and
- (b) the cremation of human remains,
and **buried** has the same meaning.

cemetery means a place approved under the provisions of the Planning Act, for the burial or disturbance of human remains, that requires an approval under this Local Law, and includes—

- (a) a crematorium; or
- (b) a columbarium; or
- (c) a mausoleum or vault; or
- (d) a garden of remembrance; or
- (e) other structures and improvements the local government considers appropriate.

chief executive officer means the chief executive officer of the local government.

compliance notice means, for a compliance notice authorised for a contravention of the Local Law, see section 37.

decision means—

- (a) a decision by the local government to give a notice under sections 14, 20, 21 and 22.
- (b) a decision by an authorised person to give a compliance notice under section 37.

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

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

Cemeteries Local Law 2023

(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)—

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

enforcement order see section 44.

environmental harm has the same meaning as in the *Environmental Protection Act 1994*.

environmental nuisance has the same meaning as in the *Environmental Protection Act 1994*.

guideline means a guideline made by the local government under section 51.

human remains means the body or part of the body of a deceased person but does not include a part of the body of a deceased person lawfully removed for transplantation, scientific examination or instruction in anatomy or any other branch of medicine.

impounded item see section 40.

information request see section 12.

information request response see section 12.

information request response period see section 12.

install means construct, make, mark, place or erect, or affix to or paint any surface or structure, and repair, maintain, manage and control.

item means any material thing, including a building or structure or vehicle, other than an animal.

land—

- (a) has the same meaning as in the Planning Act, schedule 2; and
- (b) includes land occupied by water.

Local Government Act has the same meaning as in the Act.

local government area means the local government area of the local government under the Act, including an area taken to be part of a local government area under a Local Government Act.

Examples of areas taken to be part of a local government area—

- *bathing reserves, foreshore.*

local government cemetery means a cemetery under the control of the local government, including a cemetery located on land owned by the local government or on land for which the local government is the trustee.

Local Law includes any subordinate local laws made under this Local Law.

memorial includes-

- (a) a headstone; and
- (b) an inscribed plaque or commemorative plate; and
- (c) monumental, ornamental or other structures erected on a grave site; and
- (d) anything else erected or placed in a cemetery to mark the site where human remains

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

Cemeteries Local Law 2023

have been buried or placed or commemorate a deceased person.

occupier, of a place, means—

- (a) the person who occupies, or has the control or management of, or is apparently in charge of, the place; and
- (b) includes a person who has a lease, licence, permission, approval, right or authority to occupy the place, including under an Act.

occupier of the property see section 36.

offence proceedings see section 43.

operation of cemeteries means to operate any place within the local government area for the burial or disturbance of human remains by—

- (a) burial; or
- (b) cremation; or
- (c) exhumation; or
- (d) placement in a columbarium, mausoleum or vault; or
- (e) placement in a garden or remembrance or other structure the local government considers appropriate.

original decision means a decision the subject of a review application under section 49.

owner, of premises, means the registered owner of the premises.

place means any road, land, property, building, vehicle, boat or structure and includes any part of a place.

Planning Act means the *Planning Act 2016*.

planning scheme means the local government's planning scheme.

prescribed activity see section 5.

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

prescribed form means a document which the local government makes available at its administration centres or on its website for the purpose of making an application under this Local Law.

private land means land that is not—

- (a) public land; or
- (b) a road.

properly made application, for a prescribed activity application, means an application under this Local Law which complies with section 10(1) and (2).

property—

- (a) for section 36, see section 36; or
- (b) otherwise, has the same meaning as in the *Acts Interpretation Act 1954*.

proposed action see section 22.

public land means land, facilities and other infrastructure owned, held in trust or otherwise controlled by the local government, other than a road, including parts of public land.

Examples of public land—

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)
Cemeteries Local Law 2023

- *parks, reserves and gazetted foreshores*
- *camping grounds or caravan parks on land owned or controlled by the local government*
- *local government swimming pools*
- *cemeteries*
- *Council Chambers and local government offices*
- *jetties*
- *canals*

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.

relevant information see section 24.

relevant person—

(a) for section 38, means—

- an approval holder for the prescribed activity or an employee or agent of the approval holder, currently undertaking the prescribed activity; or
- the person undertaking an excluded activity; or

(b) otherwise, means the approval holder for the prescribed activity or an employee or agent of the approval holder, currently undertaking the prescribed activity.

review application see section 48.

review decision see section 49.

review notice see section 49.

road means a road as defined in the Act, under section 59.

show cause notice see section 19.

stop order see section 38.

the Act means the *Local Government Act 2009*.

third-party certifier see section 16.

vehicle has the same meaning as in the *Transport Operations (Road Use Management) Act 1995*.

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

#2 Draft Cemeteries Subordinate Local Law



Cemeteries Subordinate Local Law 2023

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Moreton Bay Regional Council Cemeteries Subordinate Local Law 2023

Contents

| | | |
|-------------------|---|----------|
| Part 1 | Preliminary | 3 |
| 1 | Short title..... | 3 |
| 2 | Object..... | 3 |
| 3 | How object of Subordinate Local Law is to be achieved | 3 |
| 4 | Definitions | 3 |
| Part 2 | Eligibility criteria for prescribed activity | 3 |
| 5 | Eligibility criteria - Authorising Local Law, s 14(2)(b)..... | 3 |
| Schedule 1 | Eligibility criteria for a prescribed activity | 4 |
| Schedule 2 | Dictionary | 5 |

Moreton Bay Regional Council

Cemeteries Subordinate Local Law 2023

Part 1 Preliminary

1 Short title

This Subordinate Local Law may be cited as the *Cemeteries Subordinate Local Law 2023*.

2 Object

The object of this Subordinate Local Law is to supplement the *Cemeteries Local Law 2023 (Authorising Local Law)* which regulates prescribed activities relating to cemeteries and the burial or disturbance of human remains within the local government area.

3 How object of Subordinate Local Law is to be achieved

The object of this Subordinate Local Law is to assist in the implementation of the Authorising Local Law by specifying certain matters for the purposes of that Local Law relating to eligibility criteria for granting an approval.

4 Definitions

Except where particular words are defined in Schedule 1 of this Subordinate Local Law, particular words have the same meaning as in the Authorising Local Law.

Part 2 Eligibility criteria for prescribed activity

5 Eligibility criteria - Authorising Local Law, s 14(2)(b)

For section 14(2)(b) of the Authorising Local Law, the eligibility criteria is listed in Schedule 1, Table 1, column 2, in relation to the prescribed activity specified in Schedule 1, Table 1, column 1, undertaken at the location specified in Schedule 1, Table 1, column 3.

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)
Cemeteries Subordinate Local Law 2023

Schedule 1 Eligibility criteria for a prescribed activity

Section 5

| Table 1 | | |
|---|---|--|
| Column 1 | Column 2 | Column 3 |
| Prescribed Activity | Eligibility Criteria | Location |
| Disturbance or burial of human remains within a local government cemetery | (1) The deceased person must— <ul style="list-style-type: none"> (a) be a resident of the local government area at the time of passing; or (b) have a continuing family residence within the local government area (to first cousin); or (c) be a past resident, having lived in the local government area for a minimum of seven years; or (d) have a first-degree kinship with a person already interred in the cemetery. | Albany Creek, Caboolture Lawn, Dayboro, Redcliffe, Samford and Samsonvale Cemeteries |

Consultation

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)
Cemeteries Subordinate Local Law 2023

Schedule 2 Dictionary

first degree kinship means a first-degree relationship within a family. For example, but not limited to, a brother, sister, mother or father (including non-blood variations).

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ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)
#3 Draft Cemeteries Explanatory Note

Moreton Bay Regional Council

Cemeteries

Local Law 2023

Explanatory Notes

2023 | Version 1.0



ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

Table of Contents

| | |
|--|-----------|
| Short title | 3 |
| What is this Local Law trying to achieve and why? | 3 |
| How will the Local Law achieve those aims? | 3 |
| Who did Council seek feedback from in forming this law? | 6 |
| Part 1 - Preliminary | 7 |
| Part 2 - Approvals for prescribed activities | 9 |
| Part 3 - Record keeping for prescribed activities | 14 |
| Part 4 - Offences and enforcement | 15 |
| Part 5 - Reviewing decisions | 20 |
| Part 6 - Administrative provisions | 21 |
| Is this law consistent with fundamental legislative principles? | 23 |
| Is this law consistent with Human Rights? | 23 |



Short title

This Local Law may be cited as the *Cemeteries Local Law 2023*.

What is this Local Law trying to achieve and why?

The operation and management of cemeteries is not regulated by the Queensland State Government. Each local government is responsible for regulating the operation of cemeteries and the burial of human remains within their local government area.

Moreton Bay Regional Council acknowledges the importance of providing cemeteries for the community to bury loved ones and to honour them with memorials that celebrate their life. Council recognises the trust the community places in Council to ensure that Council operated cemeteries are well cared for and appropriately managed and that loved ones buried are treated with dignity and respect. The role of Council is to balance community expectations against public health, safety, amenity and environmental impacts when regulating the operation of its cemeteries. Such considerations are also relevant for the operation of privately run cemeteries within our Region.

There may also be circumstances where members of the community wish to bury loved ones outside of a cemetery. It is important for Council to have processes in place to facilitate this where appropriate.

The object of this Local Law is to minimise risks to health and safety, protect visual and public amenity and minimise environmental harm arising from the operation of cemeteries and burial of human remains across the Region.

Council aims to create a new local law that is easy to read and navigate. Laws about the operation of cemeteries and burials were previously contained in the *Moreton Bay Regional Council Local Law No. 1 (Administration) 2011 (the 2011 Local Law)*. That local law also dealt with a range of local law matters unrelated to cemeteries and burials. This new Cemeteries Local Law creates an independent local law for the operation of cemeteries and burials.

How will the Local Law achieve those aims?

This Local Law achieves its aims by requiring a person to obtain an approval from Council before:

- operating a cemetery;
- disturbing or burying human remains within a Council cemetery;
- erecting, installing, interfering or placing a memorial, columbarium, mausoleum or vault within a Council cemetery; or
- disturbing or burying human remains outside a cemetery.

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

(1) Approvals generally

This Local Law deals with four cemetery-related activities previously dealt with under the 2011 Local Law. In addition to now having a dedicated Cemeteries Local Law, Council has also introduced one approval process for all four cemetery-related activities. This will ensure a consistent and simplified approach to the approval process. This Local Law aims to provide greater flexibility for Council to determine application requirements and approval conditions. This will allow Council to respond to applications on a case-by-case basis, and to condition each application accordingly. Council believes that an approval process structured in this way will help Council better achieve the aims of this Local Law.

(2) Approvals for the operation of cemeteries

There are several Council-operated and privately operated cemeteries across the Region. Council aims to ensure these cemeteries are safe, accessible and visually attractive for the community. Under the 2011 Local Law, a person needed an approval from Council before operating a cemetery. Council believes this remains the most appropriate way to manage the risks associated with the operation of a cemetery, in a way that is still consistent with community expectations. This is especially important given there is no State law regulating cemeteries. By providing an application and approval process, Council can ensure cemeteries are operated in a way that is consistent with the purposes of this Local Law.

It is noted this Local Law regulates the *operation* of a cemetery. The *use* of the land for a cemetery is regulated by the Moreton Bay Regional Council Planning Scheme. The creation of this Local Law is not intended to interfere with this planning process.

(3) Approvals for disturbing or burying human remains within a Council operated cemetery

Human remains can carry a variety of toxins, bacteria and other contaminants and any activity involving human remains has the potential to create significant public health, safety or environmental risk if not undertaken appropriately. While Council acknowledges that burying a loved one is important, we want to also ensure that burials take place in suitable locations, where appropriate precautions can be undertaken, to prevent harm to the community and the natural environments surrounding our cemeteries.

There may also be circumstances in which the disturbance of human remains may be required, including where:

- relatives of the deceased wish to move remains from one cemetery to another; or
- the grave site needs to be opened for the burial of another body in the same grave in accordance with the wishes of the burial rights holder.

Under the 2011 Local Law, you needed an approval from Council to bury or disturb human remains in a Council operated cemetery. Council believes this continues to be the most appropriate way to manage the burial or disturbance of human remains in Council operated cemeteries, in a way that is consistent with community expectations.

Once Council approves an application for a burial within one of our cemeteries, the person who made the application (i.e. by completing and/or signing the relevant application form), is considered the *burial rights holder*. They will obtain the burial right over the gravesite. This is a right at law. This means that the burial rights holder can choose to be buried within the same gravesite or approve the burial of other loved ones at the gravesite. Most gravesites at Council cemeteries are designed to hold 3 interments.

There are some circumstances where it may be appropriate for Council to intervene with the burial right (for example, where the burial rights holder has passed away). Under the 2011 Local Law, Council had the power to impose certain conditions on the approval regarding burial rights. Similar powers are retained under this new Local Law, by allowing Council the flexibility to impose any condition on an approval, as relevant to the object of this Local Law.

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

(4) Approvals for erecting, installing or placing, or interfering with, a memorial, columbarium, mausoleum or vault in a Council operated cemetery

Council appreciates that establishing a memorial for a loved one at their final resting place is an important tradition that aids the grieving process and provides an opportunity to celebrate and honour a person's life. Council seeks to continue to support this activity at Council operated cemeteries via this Local Law while balancing any impact on amenity, safety and maintenance activities.

Council notes that safety, amenity and maintenance issues can arise where memorials are not constructed appropriately, are not well-maintained, or where excessive memorialisation occurs. Under the 2011 Local Law, a person needed an approval from Council to erect or install a memorial, columbarium, mausoleum or vault in a Council operated cemetery. This remains the most appropriate way to manage this activity, as it allows Council to manage safety, amenity and maintenance issues in a way that is consistent with community expectations.

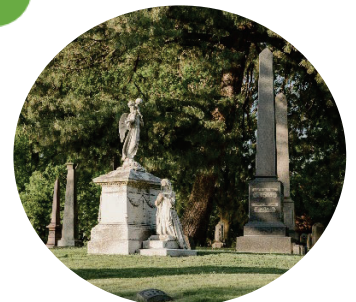
Council acknowledges that in addition to traditional memorials (such as headstones), the community often place other ornaments and memorabilia at gravesites. Such items may include flowers, photo frames, statues and clothing. It would be impractical for Council to require an approval for the placement of these kinds of items. Accordingly, approvals are not required for memorialisation smaller than a headstone, provided there is compliance with Council's guidelines.

(5) Approvals for disturbing or burying human remains outside a cemetery

Council recognises there may be some instances where members of the community wish to bury loved ones outside of a cemetery (i.e. on private land), to maintain special family, cultural and/or historical connections. This has the potential to create health, safety and environmental risks if not undertaken appropriately. Burials on private land may also impact future landowners, should ownership of the land change over the years. If burials on private land are not regulated or recorded, new landowners may be unaware that a burial has occurred previously at their property, and whether it has been undertaken safely and lawfully.

Under the 2011 Local Law, a person needed an approval from Council to disturb or bury human remains outside of a cemetery. Council believes this continues to be the most appropriate way to manage the risks associated with these activities in a way that is consistent with community expectations, particularly given the absence of any Queensland law regulating this activity.

The scattering of ashes outside a cemetery (whether on private or public land) can continue to occur without approval.



Who did Council seek feedback from in forming this law?

In March 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:

- The Australasian Cemeteries and Crematoria Association;
- Australian Funeral Directors Association;
- Master Builders Queensland;
- Moreton Bay Region Industry and Tourism (MBRIT);
- Local Government Association of Queensland;
- Moreton Bay Business Association;
- Department of Local Government, Racing and Multicultural Affairs; and
- Department of Energy and Public Works.

The feedback received from these stakeholders was considered in developing this Local Law.

Plain English explanations of each section of the Local Law

Note: The relevant sections of Local Law No.1 (Administration) 2011 and the Subordinate Local Law No.1 (Administration) 2011 will be referred to throughout this section as 'the 2011 Local Law' and 'the 2011 Subordinate Local Law'.

Part 1 - Preliminary

Division 1 - Introductory provisions

Section 1 - Short title

This section establishes the short title of the 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 aims to regulate and facilitate the operation of cemeteries and activities regarding human remains, in a way that minimises risks to human health, safety and the environment, and protects visual and public amenity.

The regulation of these activities aims to:

- **minimise risks to public health and safety:** Activities involving human remains (both within, or outside a cemetery), have the potential to create significant public health and safety risks. Human remains can carry toxins, bacteria and other contaminants that can have harmful impacts on community health, if appropriate measures are not taken. *For example, if human remains are not appropriately buried, the exposure of these remains may cause public health concerns.*
- **minimise risks to the environment:** Human remains can have harmful impacts on the natural environments that surround cemeteries and other final resting places. *For example, if human remains are not appropriately buried, toxins and contaminants make enter surrounding soil or waterways.*
- **protect visual and public amenity:** Council recognises that all cemeteries across the Region need to be well maintained to protect the visual amenity of the area. *For example, the installation of memorials at Council cemeteries will need to meet appropriate standards, to protect the visual amenity of the cemetery.* Council also acknowledges that our cemeteries are public facilities, that need to be easily accessible and available for use by all members of the community. *For example, if items left at gravesites are not appropriately managed, they may impede public access and use across Council cemeteries, diminishing public amenity.*

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. This includes through:

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

- implementing a framework for assessing and approving the following activities:
 - operation of cemeteries;
 - disturbance or burial of human remains within a local government cemetery;
 - erection, installation or placement of, or interference with, a memorial, columbarium, mausoleum or vault within a local government cemetery; and
 - disturbance or burial of human remains outside a cemetery; and
- giving Council officers the ability to enforce against those who do not comply with approvals or the Local Law.

Division 3 - Interpretation

Subdivision 1 - Dictionary

Section 4 - Definitions—dictionary

This section states that the dictionary in Schedule 1 defines particular words in the Local Law.

Subdivision 2 - Key concepts

Section 5 - Prescribed activity

This section defines 'prescribed activity' to include:

- operation of cemeteries;
- disturbance or burial of human remains within a local government cemetery;
- erection, installation or placement of, or interference with, a memorial, columbarium, mausoleum or vault within a local government cemetery; and
- disturbance or burial of human remains outside a cemetery.

These are the activities that require approval under this Local Law and is consistent with the activities that required approval under the 2011 Local Law.

Interference with a grave or a memorial, columbarium, mausoleum or vault was previously a restricted activity under *Subordinate Local Law No.4 (Local Government Controlled Areas and Roads) 2011*. An 'interference' may include, for example, the removal or repair of a headstone. This activity has now been incorporated into the prescribed activities above, where interference with a grave is intended to be dealt with by dot point 2 above (disturbance of burial of human remains within a local government cemetery) and where interference with a memorial, columbarium, mausoleum or vault is intended to be dealt with by dot point 3.

Section 6 - Excluded activity

This section defines 'excluded activity', which covers:

- the scattering of ashes; and
- the placement of items at a gravesite within a Council cemetery, provided the items are smaller than the headstone and comply with the relevant guideline.

These activities have been excluded from the definition of 'prescribed activity' under this Local Law. This means that a person does not need to obtain Council's approval under this Local Law to undertake the activity.

Scattering of ashes

Council considers an approval is not required for the scattering of ashes as it has little to no impact on the environment, public health and safety or visual amenity. This position is also consistent with the approach taken by the Department of Environment and Science where a permit is not required to scatter ashes in areas managed by the Queensland Parks and Wildlife Service.

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

Placing items at a gravesite

Council considers an approval is not required for the placement of items on a gravesite, where the item is smaller than a headstone and complies with Council's guideline, as generally this will have little impact on the environment, public health and safety or visual amenity. Council has the power to make a guideline under section 51 of this Local Law.

Since the commencement of the 2011 Local Law, Council has become aware of risks to public safety, visual and public amenity, arising from excessive amounts or certain types of items, being placed at gravesites. Council intends to manage those risks by requiring people to comply with the guideline when placing items at a gravesite. Items that do not comply with the guideline will require an approval for the "erection, installation or placement of, or interference with, a memorial, columbarium, mausoleum or vault within a local government cemetery".

Division 4 - Operation of Local Law

Section 7 - Relationship with other Acts

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

- the use or development of land; and
- the exhumation of human remains, ordered by a coroner under the *Coroners Act 2003 (the Coroners Act)*.

Nothing in this Local Law is intended to establish an alternative development process and any obligation or requirement imposed by or under this Local Law does not involve an assessment of development. To the extent that any proposed prescribed activity constitutes development as that term is defined in the *Planning Act 2016*, that activity ought to be assessed pursuant to the development process in that Act. This Local Law should not be relied on to regulate any activity dealt with under a development approval or otherwise covered by an existing land use right.

Section 20 of the Coroners Act allows the State Coroner to order human remains to be exhumed or cremated remains to be recovered. In doing so, the State Coroner is required to provide notice to the relevant cemetery operator (i.e. Council, for Council operated cemeteries), but is not required to seek their approval. This Local Law intends to ensure consistency with this legislation, recognising an approval for the prescribed activity of disturbing human remains within a Council cemetery is not required where permitted by the Coroners Act.

Part 2 - Approvals for prescribed activities

Division 1 - What this part is about

Section 8 - Overview

This section provides that Part 2 regulates the circumstances in which an approval is required to undertake a prescribed activity, and the process for obtaining an approval.

Division 2 - Approvals

Subdivision 1 - Application process

Section 9 - Need for approval

This section retains section 7 of the 2011 Local Law, which provides that an approval is required to undertake a prescribed activity under this Part of the Local Law. It is an offence to undertake a prescribed activity without an approval. Council requires approvals to be obtained for a prescribed

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

activity so that Council is aware of the prescribed activity, and it is carried out in a manner which minimises any risks to health and safety, the environment and protects visual and public amenity.

Section 10 - Making an application

This section partly retains section 8 of the 2011 Local Law with respect to a prescribed activity, which sets out the way in which an application for an approval needs to be made to Council and what it must be accompanied by. Under the 2011 Subordinate Local Law, Council imposed several application requirements, including mandating extensive documents and materials to accompany an application. In this Local Law, Council has aimed to achieve more flexibility, removing excessive application requirements so that only essential documents are required. The intention of this amendment is to ensure the community has a simple, straightforward application process to navigate.

Subdivision 2 - Timeframes for deciding applications

Section 11 - Timeframes for deciding applications when no further information is needed

This section sets out the timeframe within which Council must decide a properly made prescribed activity application, where no further information is required from the applicant. This timeframe may be extended where both parties agree. Previously, Council did not have a set time within which it had to decide an application in relation to a prescribed activity. However, Council recognises that timeframes provide accountability and keep the decision-making process progressing for both parties.

Council recognises that under this Local Law, there are four different prescribed activities, that may require different levels of assessment. Most prescribed activities regulated under this Local Law can be considered quickly (i.e. within 5 days), however, the “operation of cemeteries”, is likely to require further consideration to decide an outcome. Council has carefully considered this and has determined 21 business days to be sufficient to decide all properly made applications for all prescribed activities under this Local Law. This time period aims to ensure Council has sufficient time to assess an application, while also considering the community’s expectation to have their application decided efficiently.

Section 12 - Timeframe for deciding applications when further information is needed

This section sets out the timeframe within which Council must decide a properly made prescribed activity application, where Council requires further information from the applicant to make a decision. Under this section, Council can make an information request to the applicant and the applicant must respond within the timeframe stated in the section. Council then has further time to consider this information and make a decision. If the further information is not provided by the applicant within the timeframe, Council can still decide the application. The purpose of this section is to allow the parties to request and provide further information necessary for Council to properly assess and decide the application. *For example, Council receives an application for a burial within a Council cemetery but requires further information regarding the casket to be used for the burial, before it is able to make a decision.*

Section 13 - Timeframe for dealing with applications that are not properly made

This section applies where Council receives a prescribed activity application that is not properly made. It requires Council to advise the applicant in writing that the application is not properly made. Following this, Council is not required to take any further action. The consequence of this section is that the applicant will need to make a fresh application under section 10. This provision intends to ensure applications are being properly made and that Council is not required to assess and decide an application if there is insufficient information to do so.

*ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)***Subdivision 3 - Deciding an application****Section 14 - Deciding a prescribed activity application**

This section requires Council to decide a prescribed activity application by either approving it, approving it subject to conditions or refusing the application. Council may refuse the application where:

- it is not properly made; or
- the prescribed activity cannot be undertaken in a manner consistent with the object of the Local Law; or
- the eligibility criteria is not satisfied; or
- granting the approval is inconsistent with an approval already granted.

When Council makes a decision under this section, it must provide a notice of the decision to the applicant. This means the applicant may apply to review the decision under section 48. The requirements for a decision notice are set out in the definition of decision notice in the dictionary schedule of this Local Law.

Conditions

If there are risks that need to be mitigated Council can approve the application but impose conditions, to ensure the prescribed activity is undertaken in a manner consistent with the object of this Local Law. *For example, Council may condition an approval for a burial on private land to take place at a particular location, where environmental risks are minimal.* If it is not possible to condition the prescribed activity in a way which sufficiently mitigates risks or ensures the object of this Local Law, Council can refuse the application. *For example, Council may refuse an application for a burial on private land, if Council is unable to condition the application to mitigate environmental concerns.*

Eligibility criteria

Council can refuse an application for a prescribed activity if the application does not satisfy the eligibility criteria prescribed in subordinate local law. *For example, Council may specify eligibility criteria regarding the disturbance or burial of human remains within a local government cemetery by requiring a person to have defined links to the Moreton Bay community to be buried in certain Council cemeteries.*

Inconsistent with another approval

Council can refuse an application for a prescribed activity where approval would be inconsistent with another approval. *For example, where Council has already granted an approval for a burial at a gravesite to a person (the first person), it would be inconsistent with that approval to grant and approval to another person for the same site. In that case, the first person has the right to determine who can be buried at the gravesite as they are the burial rights holder.*

Section 15 - Effect of failure to decide application on time

This section provides that if an application is not decided by Council in the timeframes specified in section 11 and 12 of this Local Law, or such further period as agreed to by the applicant, the application is taken to be refused. This means that an applicant cannot undertake the proposed prescribed activity in the absence of Council's approval, even if the time in which the decision should have been made has passed. This ensures that prescribed activities cannot go ahead unless Council has properly assessed an application. If a decision is taken to be refused because Council did not make a decision on time, the applicant will need to re-apply. Where an applicant reapplies, the timeframes for deciding an application will re-commence.

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

Section 16 - Third party certification

This section retains section 12 of the 2011 Local Law, which gives Council the power to accept evidence from a qualified third party that a particular application is met. It also enables Council to specify (by Subordinate Local Law):

- individuals or organisations that are considered to be third party certifiers; or
- particular qualifications that individuals or organisations must have to be considered third party certifiers under the Local Law.

The purpose of this section is to enable Council to rely on external expertise in assessing certain application requirements. This may assist Council's consideration of the application.

Section 17 - Permitted conditions

This section provides that any condition imposed on a prescribed activity approval must relate to the object of this Local Law. This differs from the approach taken in the 2011 Subordinate Local Law, which imposed onerous mandatory conditions on prescribed activity approvals. This approach was in-flexible, which sometimes made it difficult to achieve the best outcomes for both the community and Council. This new section gives Council greater flexibility to impose tailored, purpose-based conditions. *For example, Council may impose a condition on an approval, that a burial must be conducted by a funeral director. This will enable Council to ensure that burials comply with health and safety requirements. This type of condition satisfies the object of this Local Law as it aims to minimise risks to human health and safety and minimise environmental harm.*

This approach also allows Council to impose any previous conditions from the 2011 Subordinate Local Law, that may be necessary and relevant to ensuring the object of this Local Law. *For example, under the 2011 Subordinate Local Law, the burial of human remains in a Council cemetery was required to be in specified containers/coffins. This was to ensure human remains were appropriately contained to prevent contaminants entering the atmosphere, surrounding soils or waterways. This condition aims to minimise risks to public health, safety and the environment. Under this Local Law, this condition could still be imposed on an approval.*

Section 18 - Term of approval

This section provides that a prescribed activity approval is valid for the term specified by Council in the approval. Under the 2011 Subordinate Local Law, the term of approval for a prescribed activity differed depending on the prescribed activity. Council aims to maintain this flexibility in the new Local Law. This is because Council recognises that different terms of approval are required, depending on the type of prescribed activity being undertaken.

Subdivision 4 - Administering approvals

Section 19 - Definitions for this subdivision 4

This section defines a show cause notice.

Section 20 - Renewal or transfer of approval

This section provides approval holders with the flexibility to renew or transfer their approval for the continuation of the prescribed activity. It also gives Council the ability to reconsider a prescribed activity approval to ensure it continues to meet the object of this Local Law.

An application to renew or transfer must be submitted before the expiry of the existing approval (subsection (1)). If the approval holder is seeking to transfer the approval to another person, this person must be part of the application process (subsection (3)). This is to ensure an approval is not transferred to another person without their knowledge or consent. However, an approval holder cannot apply to renew or transfer their approval if Council has given the approval holder written

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

notice that the approval holder is not renewable or transferable (subsection (4) and (5)). Written conditions of an approval or a decision notice will constitute written notice, such that if the conditions of an approval is not renewable or transferable, then an approval holder cannot apply to renew or transfer the approval under this section.

Council must decide a renewal or transfer application by either approving it, approving it with amended conditions or refusing the application. Factors which Council may consider in deciding an application include the approval holder's history of compliance with approval conditions and the object of this Local Law. For renewal applications, Council has complete discretion to determine the term of renewal (if it decides to renew) (subsection (6)).

For renewal applications, existing approvals will remain in effect for different periods of time depending on the outcome of the application. These timeframes preserve the applicant's right to seek review if Council refuses the renewal application.

When Council makes a decision under this section, it must provide a notice of the decision to the applicant. This means the applicant may apply to review the decision under section 48. The requirements for a decision notice are set out in the definition of **decision notice** in the dictionary schedule of this Local Law.

Section 21 - Approval holder may apply to amend conditions

This section retains section 16 of the 2011 Local Law. It allows an approval holder to apply to Council to amend the conditions of an approval. This section recognises that circumstances may change and allows Council the flexibility to amend approval conditions to respond to those changes and enable the approval holder to continue the prescribed activity. Council must decide an amendment application by either granting or refusing the application, having regard to the object of this Local Law and the approval holder's history of compliance with approval conditions. When Council makes a decision under this section, it must provide a notice of the decision to the applicant. This means the applicant may apply to review the decision under section 48. The requirements for a decision notice are set out in the definition of decision notice in the dictionary schedule of this Local Law. Where an amendment is made at the request of the approval holder, Council can amend the approval without having to follow the approval process in section 22.

Section 22 - Local Government may amend, suspend or cancel approval

This section allows Council to amend, suspend or cancel an approval in certain limited circumstances. This includes, for example, for the protection of public health and safety, or where the approval holder has failed to comply with the approval. Before making a decision, Council must provide the approval holder with a show cause notice. This gives the approval holder an opportunity to explain in writing why Council should not amend, suspend or cancel the approval, as proposed. For example, the approval holder may have a reasonable excuse for not complying with a condition of an approval. An approval holder does not have to make a submission in response to the show cause notice and may waive his or her right to do so. An approval holder may choose to do this in circumstances where he or she consents or agrees to the proposed action (for example, Council's proposal to amend conditions to mitigate risk of environmental harm) (see subsection (3)). In that case, Council does not need to wait for the time stated in the show cause notice to pass before it makes a decision under subsection (6).

Where a submission is made by the approval holder, Council must consider the submission and then decide whether a reason to amend, suspend or cancel the approval still exists. If a reason no longer exists, Council will not take further action, meaning the existing approval remains in effect. If a reason still exists, Council can take the action proposed in the show cause notice. However, if Council proposed to cancel the approval, it is open to Council to either amend, suspend or cancel the approval. This allows Council to consider the submissions made and determine whether amendment or temporary suspension of the approval would be more appropriate than a cancellation. When Council makes a decision under this section, it must provide a notice of the decision to the applicant. This means the applicant may apply to review the decision under section 48. The

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

requirements for a decision notice are set out in the definition of decision notice in the dictionary schedule of this Local Law. This section is not intended to restrict Council's power to amend, suspend or cancel an approval under other section of the Local Law, such as through an immediate suspension under section 23 or a stop order under section 38.

Section 23 - Procedure for immediate suspension or approval

This section retains section 19 of the 2011 Local Law, which gives Council the power to immediately suspend a prescribed activity approval. Council recognises there are certain urgent circumstances which make it necessary for the prescribed activity to immediately cease. For example, where the continuation of the prescribed activity poses an urgent and serious threat to public health and safety. *For example, Council may immediately suspend an approval for a burial within a Council cemetery during wet weather, as it would be unsafe for Council to dig a gravesite or for the community to walk through the cemetery during this weather.*

While this may impact the individual approval holder, it is intended to be used only where there is an urgent and/or serious need. The suspension can only operate for a limited period of time, until the risk is minimised, or Council decides to either amend, suspend or cancel the approval. As such, this provision is intended as a temporary measure while Council decides how to proceed with an approval. Under this section, Council is required to give the approval holder both a suspension notice and a show cause notice. The show cause notice invites the approval holder to make written submissions to Council, as to why Council should not proceed to permanently amend, suspend or cancel the approval. This gives the approval holder an opportunity to demonstrate why permanently amending, suspending or cancelling the approval would be unjust. Council may then decide to either amend, suspend or cancel the approval, or alternatively lift the suspension. If Council lifts the suspension, the existing prescribed activity approval continues.

Part 3 - Record keeping for prescribed activities

Section 24 - Record keeping obligation for operation of cemeteries

This section reflects the mandatory condition imposed on all approvals for the operation of cemeteries in the 2011 Local Law, which requires operators of cemeteries to maintain a publicly available register containing:

- the name of every person buried, cremated or placed in the cemetery; and
- the date and form of the burial

Council considers the maintenance of publicly available records is vital to the operation of all cemeteries, to ensure proper regulation. It allows Council to keep records of burials both within Council operated and privately operated cemeteries, including the details of the remains being buried, and the time and location of the burial. With this information, Council is not only able to manage public health and environmental risks, but is also able to facilitate lawful disturbances, such as exhumations where required. Accurate burial records also enable Council to preserve the historical significance of certain burial sites. For these reasons, this section imposes a standalone obligation on Council to maintain publicly available records in relation to the operation of cemeteries.

Part 4 - Offences and enforcement

Division 1 - What this part is about

Section 25 - Overview

This part provides an overview of the Offences and Enforcement Part of this Local Law, including the tools that can be utilised by authorised persons within Council to secure compliance with the Local Law, or to penalise approval holders for non-compliance. This Part includes the way in which court proceedings must be commenced for offences under the Local Law and the defences available for offences against the Local Law.

Division 2 - Offences

Section 26 - Undertaking a prescribed activity without an approval

This section retains section 6 of the 2011 Local Law, making it an offence for a person to undertake a prescribed activity without getting an approval under this Local Law. The purpose of this provision is to deter people from undertaking prescribed activities within the Region, without being able to regulate the prescribed activity and impose appropriate conditions to protect public health, safety, amenity and the environment.

Section 27 - Failure to comply with conditions of a prescribed activity approval

This section makes it an offence if a person undertaking a prescribed activity approval under this Local Law fails to comply with their approval, including the conditions provided for in their approval. The power to impose conditions (see sections 14 and 17) enables Council to ensure the prescribed activity is undertaken in a manner that protects public health and safety and minimises impacts on amenity and the environment. This section aims to ensure that any risks posed by the prescribed activity are minimised and deter those undertaking the prescribed activity from ignoring the conditions imposed on their approvals by imposing penalties for non-compliance.

Section 28 Discharging a firearm within local government cemetery

This section makes it an offence for a person to discharge a firearm in a local government cemetery, unless permitted by a condition of an approval. This retains item 7, Schedule 2, of *Subordinate Local Law No.4 (Local Government Controlled Areas or Roads) 2011*, which restricted this activity. Council recognises that discharging a firearm can be an important component for military funerals. The aim of this section is to ensure public safety, by only allowing the use of a firearm within a Council cemetery only where conditioned as part of an approval to bury a person.

Section 29 Interfering with funeral or commemorative service within local government cemetery

This section makes it an offence for a person to interrupt, disturb or interfere with a funeral or commemorative service lawfully conducted within a local government cemetery. This retains item 4, Schedule 1 of *Subordinate Local Law No.4 (Local Government Controlled Areas or Roads) 2011*, which prohibited this activity. This section aims to ensure any funerals or commemorative services arising from a prescribed activity application to bury human remains can take place without interruptions, disturbances or interference from any member of the wider community.

Section 30 Riding an animal or causing an animal to pull a vehicle within local government cemetery

This section makes it an offence for a person to ride an animal or cause an animal to pull a vehicle within a local government cemetery, unless permitted by a condition of an approval. This retains

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

item 7, Schedule 2, of *Subordinate Local Law No.4 (Local Government Controlled Areas or Roads) 2011*, which restricted this activity. Council understands that in some instances, the community may want to ride an animal (i.e. a horse), or have an animal pull a vehicle (i.e. a cart or carriage), in connection with a funeral. *For example, a person wishes for Council to approve a coffin being transported to a gravesite via a horse and carriage, as part of their application to bury a loved one within a Council cemetery.* This section aims to allow this activity as part of an approval to bury a person within a Council cemetery, where Council can ensure safety and amenity.

Section 31 - Providing false or misleading information

This section makes it an offence for a person to give information that they know is false or misleading in relation to this Local Law. This aims to ensure the community is aware of their obligations to provide correct and truthful information to Council and to deter the community from providing false or misleading information, through penalties. False or misleading information could result in Council making a decision that is not consistent with the object of this Local Law, or community expectations.

Section 32 - Threatening an authorised person

This section retains the offence in section 21 of the 2011 Local Law, which makes it an offence to threaten, insult or use abusive language to an authorised person. The intention of this provision is to protect the safety of authorised persons and enable them to perform their roles and responsibilities under the Local Law in an effective and safe manner. If a person commits an offence under this section, an authorised person can issue them with a penalty infringement notice.

Section 33 - Attempts to commit offences

This section provides that a person who attempts commit an offence under the Local Law also commits an offence. This means that even if the attempt is not successful. The person has still committed the offence of "attempt". The maximum penalties which apply to the offence of attempt under this section depend on, and will be half the penalty that applies to the offence attempted.

Section 34 - 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 35 - Appointment of authorised persons

This section establishes how Council employees are to be appointed as authorised persons under this Local Law. Under section 202 of the *Local Government Act 2009*, the CEO may appoint a qualified person who is an employee of Council to be an authorised person for specific local laws. Section 35 provides that a Council employee's document of appointment must state this Local Law or the provisions of this Local Law, which the employee is appointed as an authorised person. This section ensures that officers are properly authorised to take certain actions under the Local Law, for example, an authorised person may give a compliance notice for a contravention of this Local Law under section 37. This ensures clarity and transparency in the exercise of those powers.

Section 36 - Production of records

This section retains section 25 of the 2011 Local Law. Where an authorised person has entered a property under section 132 of the *Local Government Act 2009* to determine if conditions of a prescribed activity approval are being complied with, they may ask the occupier to produce records for inspection that are required to be kept under an approval. The purpose of this section is to assist authorised persons with their enquiries, to ensure approval holders are complying with their

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

obligations under this Local Law. Because this power is linked to the power of entry under section 132 of the *Local Government Act 2009*, the definitions of “occupier” and “property” in this section are consistent with that Act.

Section 37 - Compliance notice for contravention of Local Law

This section retains in part section 26 of the 2011 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 contravention of this Local Law includes a contravention of any approval condition. 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 person to give a person responsible for a prescribed activity an opportunity to remedy a breach of the Local Law (including an approval condition), if appropriate to do so. *For example, if Council issues a compliance notice for a memorial within a Council cemetery that has not been safely constructed in accordance with the approval, the notice may state specific actions the approval holder can take to ensure compliance with the conditions of their approval, so that it no longer contravenes this Local Law.* This allows Council to work with the person to ensure activities within our community are being undertaken in a lawful manner. 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 amending, suspending or cancelling an approval, or issuing fines or commencing legal proceedings.

Where a compliance notice is given to the owner of a property and requires specific action to be taken in relation to that property, then it will constitute a remedial notice under the *Local Government Act 2009*, chapter 5, part 2, division 2. This means that if the person fails to take the action specified in the notice, Council can, in certain circumstances, enter the property and take the specified action. If the amount Council properly and reasonably incurs in taking the action required under the notice is not paid by the person who failed to take the action, Council may, if the debt is not paid within 30 days of Council having given a person notice of the amount of such a debt, recover the amount, as a debt, as if the debt were overdue rates under the *Local Government Act 2009*, section 142.

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 48. The requirements for a **decision notice** are set out in the definition of decision notice in the dictionary schedule of this Local Law.

Section 38 - Stop order

This section retains, in part, section 29 of the 2011 Local Law, which allows Council to issue a stop order to a person, requiring them to immediately stop a prescribed activity or an excluded activity, where the activity either:

- (a) poses; or
- (b) exacerbates; or
- (c) inhibits Council’s ability to respond to, those urgent and/or serious threats specified in subsection (2)(a)-(g).

This section allows Council to stop a person from undertaking an approved prescribed activity for a period of no more than 5 business days. The intention of this provision is to act as an interim measure to immediately stop a person from carrying out a prescribed activity, giving Council the opportunity to:

- attend to the urgent and/or serious matters giving rise to the stop order; or

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

- where an approval has been issued, commence the process for suspending the approval under section 23 and possibly cancelling it under section 22 (if required).

It is an offence not to comply with a stop order issued under this section, which may trigger other enforcement measures. This section applies only where a person has an approval to carry out a prescribed activity or a person is undertaking an excluded activity. If an authorised person wishes to put an immediate stop to a person undertaking an activity that is a breach of this Local Law, then the authorised person could also issue a compliance notice requiring the person to cease the offending activity immediately.

Section 39 - Local government power to seize and cost recover

This section expands on section 28 of the 2011 Local Law and provides for circumstances in which an authorised person may seize and impound an item brought onto or erected or installed in, on, across, under or over land or road within the local government area in a manner that contravenes the Local Law. This section gives an authorised person the power to seize the item in two circumstances:

- where immediate removal of the structure or item is necessary in the interest of public health or safety, or to prevent environmental harm, property damage or loss of amenity; or
- where a compliance notice has been issued to the owner to remove the structure or thing and the owner has failed to do so. In this circumstance, Council will need to wait for the review period for the compliance notice to expire, before seizing the structure or thing.

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 it being on the land or road. *For example, if a person installs a memorial within a Council cemetery in a manner that does not comply with this Local Law, Council can remove the memorial, and bill the owner for the cost of removing the memorial.*

Section 40 - Dealing with seized and 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; and
- 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 (i.e. like food), 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. fire or 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).

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

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); and
- Council's desire to have transparent processes for managing seized and impounded items; and
- ensuring the owners of the items are not unreasonably deprived of their property and are given a reasonable opportunity to reclaim it before it is forfeited.

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

Section 41 - Local government power to reinstate site and cost recover

This section allows Council to carry out reinstatement works where a prescribed activity on public land or road causes damage, and that damage is not rectified by the person that has undertaken the prescribed activity. It also gives Council the ability to recover reasonable costs for the reinstatement works as a debt from the person that carried out the prescribed activity. This is a discretionary power. There may be circumstances in which it is not reasonable or appropriate to recover the costs from a person who carried out the prescribed activity. *For example, where the damage is a result of circumstances outside the control of the person undertaking the prescribed activity (i.e. weather causing flood damage to the public land).*

Section 42 - Maintenance, repair and removal of memorials, columbarium, mausoleums and vaults

This section reflects a condition open to Council under the 2011 Subordinate Local Law to impose on approvals for the erection, installation or placement of, or interference with, a memorial, columbarium, mausoleum or vault within a local government cemetery. It gives Council the discretionary power to make safe, maintain, repair or remove a memorial, columbarium, mausoleum or vault in certain circumstances relevant to public safety and amenity.

Where Council proposes to remove a memorial, columbarium, mausoleum or vault it is required to provide notice to the approval holder or, where that person is unable to be contacted, to another family member of the deceased, before Council proceeds with the removal.

This is a discretionary power of Council. This section is not intended to require Council to respond to circumstances where a memorial, columbarium, mausoleum or vault has been vandalised or fallen into disrepair. It is ultimately the responsibility of the approval holder to maintain memorials, columbarium, mausoleums and vaults.

Division 4 - Offence proceedings in Magistrates Court

Section 43 - 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 (rather than going up to a higher court for trial or sentence). 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 44 - Enforcement orders

This section gives the Magistrates Court discretion to make an enforcement order requiring a person

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

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. has not complied with a compliance notice to remedy the installation of a memorial within a Council cemetery*). 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 45 - Joint and several liability

This section retains section 32 of the 2011 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 a burial takes place on private land, and there are two joint owners of the land where the burial is taking place, Council can hold each of these owners liable. 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 46 - Defence of reasonable excuse**

This section retains section 30 of the 2011 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.

Section 47 - Owner and occupiers must ensure compliance with this Local Law

This section provides that owners and occupiers of places must ensure that an offence under this Local Law is not committed in or on a place. Failure to do so means the owner or occupier also commits an offence. The intent of this provision is to ensure persons take responsibility for activities occurring in places they own or occupy. This section retains the defence in section 31 of the 2011 Local Law by providing that it provides a defence for an owner or occupier of a place where the offence occurred to prove that they did not have knowledge of the act/omission which led to an offence, and they could not have reasonably prevented it. Council recognises that there are some circumstances where it may not be reasonable or fair to hold the owner or occupier of a place responsible for an offence. *For example, human remains have been buried at a large, rural private property, without an approval. As the property is very large, the landowner was not aware that someone had entered their land and buried human remains at the property. Such circumstances could give rise to the current landowner utilising this defence.*

Part 5 - Reviewing decisions

Section 48 - Application for review

This section retains section 22 of the 2011 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 following types of decisions reviewed internally by Council:

- decisions in relation to prescribed activity approvals (i.e. conditions imposed, refusals, etc);
- decisions in relation to changing approvals (refusal to renew, refusal to amend conditions upon request, Council decisions to amend, suspend or cancel an approval); and
- decisions to issue compliance notices.

A review application must be made within the period stated in subsection (2) and be accompanied

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

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

Section 49 - Review decision

This section retains section 23 of the 2011 Local Law, which sets out the 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 50 - Stay of original decision

This section retains in part, section 24 of the 2011 Local Law, providing that a review application does not stay the original decision unless and until the original decision is amended or substituted by another decision. *For example, if Council refuses an application for a prescribed activity approval and the applicant applies for a review of that decision, Council's refusal is still valid while the review process is underway, and the person is not allowed to undertake the prescribed activity.*

Part 6 - Administrative provisions

Section 51 - Power to make a guideline

This section gives Council the power to make a guideline about the placement of items at gravesites within a Council cemetery. The guideline may establish requirements around the types of items that may be placed at gravesites in Council cemeteries, where or how they must be placed and any prohibited items.

Section 52 - Fees

This section retains section 35 of the 2011 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 an application for the prescribed activity, or 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. *For example, where an approval is surrendered before the end of its duration, Council can resolve to give a partial reimbursement of the approval fee if considered appropriate.* Under subsection (3) the local government may, where appropriate, waive or partially remit a fee, unless a specific provision to the contrary is made in a local law or resolution.

Section 53 - Rewards

This section retains section 33 of the 2011 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

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

which can assist Council's enforcement of this Local Law.

Section 54 - Subordinate Local Laws

This section retains section 39 of the 2011 Local Law. It allows Council to make Subordinate Local Laws in relation to a prescribed activity. This includes, for example, the making of a Subordinate Local Law which specifies eligibility criteria for an application for a prescribed activity. The purpose of this section is to define the scope of what Council can regulate by Subordinate Local Law.

Section 55 - 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 provisions is that, where the meaning of a section of the Local Law is unclear or debated, Council can refer to the explanation of that section in this Explanatory Note (or another Explanatory Note 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 intent behind each provision.

Section 56 - Transitional arrangements

This section notes that transitional arrangements for decisions made under *Local Law No.1 (Administration) 2011* (with respect to prescribed activities under this Local Law), are set out in the *Commercial Use of Public Land Local Law 2022*, section X. The purpose of this section is to ensure that prescribed activity approvals, and any relevant notices or other decisions made by Council under the 2011 Local Law 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.

Rights and liberties of the individual

This Local Law provides a clear framework for obtaining an approval to undertake a prescribed activity. Requiring an approval for the burial or disturbance of human remains outside a cemetery may be perceived as infringing on a person's right to utilise their private land at their discretion. Nonetheless, Council acknowledges that requiring an approval for this activity is consistent with the 2011 Local Law, and the approval process has not been designed to limit the rights of individuals, but it is aimed at facilitating this type of activity, while also ensuring community health, safety and the environment are protected. As such, Council considers imposing an approval process on this activity is reasonably necessary and appropriate to ensure the object of this Local Law.

Sufficient regard to Aboriginal tradition and Island custom

In some First Nations communities, burials may take place on land which has cultural significance to the community or individual. This land may be private land, outside a purpose-built cemetery.

Requiring a permit for burials outside a cemetery, or relocation of burials currently located in purpose-built cemeteries to private land, has the potential to limit burials on land culturally significant to First Nations persons and communities. This is particularly the case if the conditions imposed on approvals are inconsistent with traditional burial practices. However, it is noted that while an approval process will require conditions to be placed on approvals for burials on, or relocation of burials to private land, this process is unlikely to limit these activities to the extent that they will be unattainable for First Nations communities. The flexibility provided by a purpose-based approval process is intended to ensure these activities are facilitated for all applicants, including First Nations communities, with conditions only being imposed to the extent necessary to protect public health, safety, amenity and the environment.

Is this law consistent with Human Rights?

This Local Law is generally compatible with the human rights protected by the *Human Rights Act 2019* (Qld) (**the HR Act**). It limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

As noted above, the approval process for the prescribed activity of the burial or relocation of human remains outside a cemetery, may limit the cultural rights of Aboriginal and Torres Strait Islander peoples under section 28(2)(a) of the HR Act. Requiring an approval for these activities may limit the rights of First Nations communities to engage in cultural practices regarding burials outside of cemeteries. However, the approval process for these activities has not been designed to restrict them from occurring but instead, aims to provide clear parameters around the undertaking of these activities, to ensure health, safety, amenity and the environment is protected for the whole of the Region. As such, Council does not consider there is a breach of human rights afforded to First Nations communities within the Region as a result of this approval process,

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)

as Council will continue to facilitate these activities, utilising the flexible condition process established by this Local Law, to ensure conditions are only imposed to protect the purposes of this Local Law.



Consultation

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)
#4 MBRC Local Law Making Process Moreton Bay Regional Council

COORDINATION COMMITTEE MEETING
29 July 2014

PAGE 8
Supporting Information

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.

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)
Moreton Bay Regional Council

COORDINATION COMMITTEE MEETING
29 July 2014

PAGE 9
Supporting Information

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

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.

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)
Moreton Bay Regional Council

COORDINATION COMMITTEE MEETING
29 July 2014

PAGE 10
Supporting Information

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*.

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)
Moreton Bay Regional Council

COORDINATION COMMITTEE MEETING
29 July 2014

PAGE 11
Supporting Information

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 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.

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)
Moreton Bay Regional Council

COORDINATION COMMITTEE MEETING
29 July 2014

PAGE 12
Supporting Information

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

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

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)
Moreton Bay Regional Council

COORDINATION COMMITTEE MEETING
29 July 2014

PAGE 13
Supporting Information

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

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 —

ITEM 6.6 - PROPOSED LOCAL LAW AND SUBORDINATE LOCAL LAW - CEMETERIES (Cont.)
Moreton Bay Regional Council

COORDINATION COMMITTEE MEETING
29 July 2014

PAGE 14
Supporting Information

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

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.