

**City of Moreton Bay**

# **Community Standards for Private Land Local Law 2023**

**Explanatory Notes**

2023 | Version 1.0

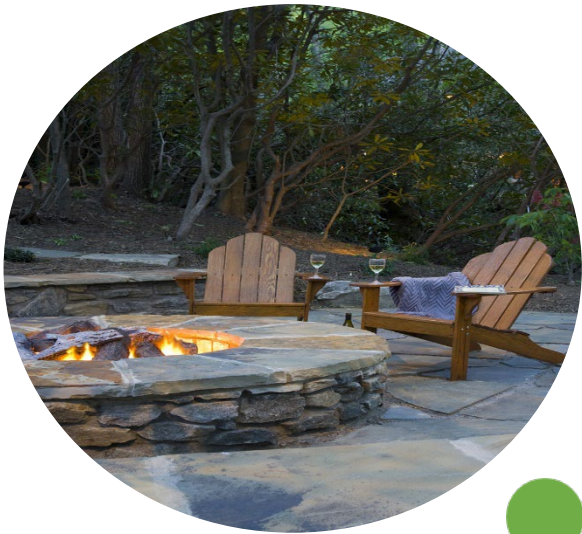


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# Short title

This Local Law may be cited as the *Community Standards for Private Land Local Law 2023*.

## What is this Local Law trying to achieve and why?

Moreton Bay combines the best of the suburbs, bush and beach. No matter where you live, neighbourhood amenity and safety is important to all of us. City of Moreton Bay is committed to building vibrant communities and supporting healthy environments.

The use of private land has a direct impact on these communities and environments, not only in terms of visual amenity but also in terms of public health and safety risks. These uses can negatively impact those who live in the surrounding neighbourhood and also those visiting Moreton Bay and can include:

- unsightly or overgrown land;
- accumulation or storage of materials and items; and
- lighting and maintaining backyard fires.

While some of these private land uses may be short term and relatively minor, the impacts of these uses affect each community differently. This Local Law aims to set the standard for the use of private land in line with modern community sentiment.

It is important that neighbourhood character and amenity aligns with current community expectations. Properties should be well maintained and should not be overgrown with vegetation, have excessive objects or materials or the accumulation of organic matter to the extent that it adversely affects the visual amenity of the land or is likely to present a risk to the health and safety of the public. This ensures that our communities continue to be liveable, pleasant, and are free from unnecessary risks.

It is the main purpose of this Local Law to minimise impacts on the environment public health and safety, and amenity within the local government area. As we near 500,000 residents and planning for an additional 200,000 residents by 2041, this purpose will only become more important. In recognising our communities are distinct and diverse, this Local Law aims to reflect that diversity and ensure that public health and safety and amenity are maintained.

# How will the Local Law achieve those aims?

This Local Law achieves its object by eliminating or reducing risks and threats to the environment, public health and safety, and amenity that arise from:

- inadequate protection against animal and plant pests;
- overgrown vegetation on land in the local government area;
- the accumulation of objects, materials and organic matter;
- fires not regulated by State law; and
- a local annoyance or hazard.

## *(1) Inadequate protection against animal and plant pests*

This law regulates the local declaration of animals and plants as pests. Council has powers under State legislation to identify and regulate local pest animals and plants. There may also be some emergent or emergency circumstances where such a declaration may be necessary to support the State legislative framework.

Council considers that, before making such a declaration, it is important to consult with the State to ensure that such regulation is appropriate. In addition, Council must be transparent with these matters to the community and as such must publish such a declaration. These powers are necessary to respond to matters of public health and safety to ensure that there is adequate protection against animal and plant pests at a local level.

There are currently no declared local pests in City of Moreton Bay, however this part of the local law is included to respond to emerging issues in the future.

## *(2) Vegetation overgrowth*

This law regulates overgrown land and how Council may work with owners to rectify these situations. Letting grass grow very long can present amenity issues for neighbours and in certain circumstances, increase public health and safety risk. This law gives Council the power to direct responsible persons for the land to cut or remove vegetation from the land.

## *(3) Accumulation of objects, materials and organic matter*

This law regulates the accumulation of objects, materials and organic matter on land. This deals with objects and materials such as discarded or disused machinery or machinery parts, broken-down or severely rusted vehicles and discarded bottles, containers or packaging.

During consultation, stakeholders raised concern about Council not having power to regulate unsightly pools (e.g., stagnant or green pools) for amenity reasons and not just public health reasons. This law allows Council to regulate such pools and the accumulation of organic matter, including algae, by requiring the responsible person to take action to remedy these situations. In doing so, Council can adequately address the impact on visual amenity arising from these situations.

## *(4) Fires not regulated by State law*

This law provides that a person must not light or maintain a fire in the open on private land in the local government area unless they comply with the requirements set out in this law. In undertaking consultation with the community, there was a significant amount of support for Council to relax the rules and to enable people to have backyard fires and firepits for recreational purposes. However, Council recognises that a balance



needs to be struck between enabling people to enjoy the use of private properties, and the need to regulate potential impacts on neighbouring amenity and the environment. This law aims to achieve that balance.

**(5) A local annoyance or hazard**

This law regulates other local annoyance and hazards. The law allows Council to:

- enter property to inspect for local annoyance or hazards;
- issue compliance notices to remove and reduce impacts arising from local annoyance or hazards; and
- prescribe requirements that must be met by responsible persons relating to local annoyance or hazards.

This Local Law limits risks and threats to the environment, public health and safety, and amenity resulting from such local annoyance or hazards. Specific details of local annoyance or hazards are discussed below.



# 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 Local Law regulating activities on private land and invited recommendations on how those issues could be addressed. This consultation took the form of a public survey, as well as invitations to the peak body organisations and State Government departments. Council reviewed all responses and identified issues that were the most prevalent for the community.

In July 2021, Council undertook targeted consultation on the following questions via a second public survey and invited further submissions from relevant peak bodies and State Government departments.<sup>1</sup> The cumulative feedback from external stakeholders, internal stakeholders and the community were utilised throughout the development of this Local Law.

Below is a snapshot of the feedback received on some of the key provisions of this Local Law.

## Backyard issues

To address issues associated with overgrown and unsightly land, Council asked the community “*Should Council have the power to direct a resident to clean their unsightly pool or to tidy up their backyard?*” Approximately 683 responses were received in relation to this question on the Local Laws review survey. 72.7% of respondents were in favour of Council having this power and 25.9% of respondents were against this.

Backyard Issues Survey		
Survey question	Responses received	Outcome
Should Council have the power to direct a resident to clean their unsightly pool or to tidy up their backyard?	683	Yes = 72.7% No = 25.9% Unsure = 1.4%

The regulation of unsightly pools is in-line with other Southeast Queensland Councils. Public consultation was undertaken to assess whether Council should follow suit. The common themes of the majority of survey respondents confirmed Council needed adequate powers to address amenity and public health issues regarding unsightly (‘green’) backyard pools. This Local Law affords similar powers to other Councils to address this issue.

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<sup>1</sup> Including from the Animal Justice Party, Asthma Australia, Biosecurity Queensland, Centre for Air pollution, Energy and Health Research, Clean Air Australia, Department of Agriculture and Fisheries, Department of State Development, Infrastructure and Local Government, Farm Animal Rescue, HQ Plantations, Lung Foundation Australia, Queensland Fire and Emergency Services, Queensland Health, Queensland Police Service, RSPCA Queensland and Safe Food Queensland.

## Backyard fires

To help inform provisions relating to backyard fires, Council asked the community: “*Should Council allow backyard fires in braziers and/or firepits?*” Council received approximately 1,233 responses to this question. 88.16% (1087 respondents) supported backyard firepits and braziers, 10.30% (127 respondents) were opposed and 1.54% (19) were undecided.

Backyard fires Survey		
Survey question	Responses received	Outcome
Should Council allow backyard fires in braziers and/or firepits?	1,233	Yes = 88.16% No = 10.30% Unsure = 1.54%

It is noted that the majority of respondents who support backyard firepits/braziers proposed that there should be conditions aimed at preserving health, safety and/or amenity. Council has considered ways to balance the interests of all stakeholders. Backyard recreational fires will generally be allowed with some conditions, which are in line with other Southeast Queensland Councils (through the development of firepit guidelines). These rules are not intended to impact on existing rules for properties over 3,000m<sup>2</sup>.

## Slaughtering animals

On the issue of slaughtering of animals, Council asked the community “*Should residents on larger (3000m<sup>2</sup> +) blocks continue to be permitted to slaughter their animals for their own consumption on their property?*” Approximately 652 responses were received in relation to this question on the Local Laws review survey. 83.3% of respondents were in favour of this, and 11.5% of respondents were against this.

Slaughtering animals Survey		
Survey question	Responses received	Outcome
Should residents on larger (3000m <sup>2</sup> +) blocks continue to be permitted to slaughter their animals for their own consumption on their property?	652	Yes = 83.3% No = 11.5% Unsure = 5.2%

The sentiments of the majority provide that this practice should be able to continue. At present, concerns regarding the *Animal Care and Protection Act 2001* may be enforced by the State government and relevant concerns regarding the *Biosecurity Act 2014* may be enforced by Council.



# Plain English explanations of each section of the Local Law

Note: The *Local Law No. 3 (Community and Environmental Management) 2011* (which is repealed by this Local Law) will be referred to throughout this section as '*the 2011 Local Law*'. The *Local Law No. 1 (Administration) 2011* (which is repealed) will be referred to throughout this section as '*the 2011 Administration Local Law*'.

## Part 1 - Preliminary

### Division 1 - Introductory provisions

#### Section 1 - Short title

This section establishes the short title of this Local Law.

### Division 2 - Object and achievement of Local Law

#### Section 2 - Object

This section details the scope and context for the provisions of this Local Law. These provisions and their content must be consistent with the object of this Local Law, which seeks to safeguard key aspects of our local government area. The Local Law aims to prevent or minimise impacts within the local government area in relation to:

- **Environment** - Council aims to enhance its healthy natural and built environments that contribute to our identity, support biodiversity and our sustainable lifestyles. It is vital that this Local Law protects this for future generations.
- **Public health and safety** - It is important that City of Moreton Bay is a safe place to live. This Local Law seeks to regulate certain local annoyance or hazards that may pose a risk to the health and safety of others.
- **Amenity** - In ensuring a balanced approach to environmental protection and urban growth management, the amenity of our local communities play a key role. This Local Law seeks to strike that balance in regulating such matters as overgrown land and the accumulation of objects on land. This helps keep our neighbourhoods neat and tidy.

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

This section sets out how the object of the Local Law will be achieved. Each of the matters listed in this section relate to the object of the Local Law. For example, this Local Law regulates visual pollution and health and safety risks resulting from the accumulation of objects, materials and organic matter. This supports the object of minimising impacts to the amenity within the local government area by keeping our properties neat and tidy.

### Division 3 - Interpretation

#### Section 4 - Definitions

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

## Division 4 - Operation of Local Law

### Section 5 - Relationship with other Acts

This section clarifies that this Local Law is intended to be consistent with and in addition to those laws regulating the use or development of land, pest management, regulation of fires and environmental protection. These include (for example):

- *Biosecurity Act 2014*;
- *Public Health Act 2005*;
- *Fire and Emergency Services Act 1990*; and
- *Environmental Protection Act 1994*.

The *Biosecurity Act 2014* regulates the declaration and management of invasive plants and animals in Queensland, referred to as invasive biosecurity matter. There are a range of invasive plants and animals that are listed as prohibited and restricted matter in the Act. More information on invasive biosecurity matter can be found on Council's website. Local governments can include strategies for addressing locally significant invasive plants and animal species in their biosecurity plan or make a local law for their management. This Local Law enables invasive plants and animals not scheduled in the Act to be declared as "local pests" and managed accordingly.

The *Public Health Act 2005* is the authority for the control of vermin (e.g., rats, mice etc). This Local Law does not regulate the control of such matters to avoid duplication and inconsistency with this authority.

The *Fire and Emergency Services Act 1990* regulates the lighting and control of fires in Queensland. It is an offence under this Act for a person to light a fire, unless the fire is authorised by the Act or by a notification, notice or permit given under the Act. Section 63 of the Act empowers the Commissioner to authorise the lighting of certain fires, by gazette notice. In a gazette notice dated 6 August 2004, the Commissioner relevantly authorised that the following fires may be lit without a permit being issued:

- a fire in which neither the height, width nor length of the material to be consumed exceeds 2 metres;
- a fire lit for the purpose of burning the carcass of a beast; or
- a fire lit outdoors for the purpose of cooking, if enclosed in a fireplace so constructed as to prevent the escape of fire or any burning material.

The notice further stated these fires may be lit "provided that adequate precautions are taken to prevent the spread of fire, and the lighting of the fire conforms with any Local Law...the *Health Act 1937* or the *Environmental Protection Act 1994*."

The *Environmental Protection Act 1994* creates offences for causing environmental nuisance and environmental harm. If, for example, Council receives a complaint about a backyard fire or firepit causing smoke nuisance, this can be investigated by authorised Council officers as a potential environmental nuisance under this Act, rather than under the Local Law.

## Part 2 - Declared local pests

### Division 1 - What this part is about

#### Section 6 - Overview

This section sets out the matters dealt with in part 2. This part generally applies to the whole of the local government area (i.e., private land, public land and roads).

## **Section 7 - Application of part**

This section updates section 5 of the 2011 Local Law, which clarifies that this part does not apply to an animal or plant that is prohibited matter or restricted matter under the *Biosecurity Act 2014*. It also does not apply to native animals and native plants that are protected wildlife under the *Nature Conservation Act 1994* and native fish that are managed under the *Fisheries Act 1994*. This is to avoid duplication or inconsistency with these Acts.

## **Division 2 - Declaration of local pests**

### **Section 8 - Declaration of local pests**

This section retains in part section 6 of the 2011 Local Law, which allows Council, by Subordinate Local Law, to declare an animal or plant to be a local pest (*declared local pest*), without causing an inconsistency with the *Biosecurity Act 2014*. Before making such a declaration, Council must consult with the State about the desirability of the declaration. A declaration must be published to the community to ensure transparency and clear communication. A declaration may apply to the whole or a specific part of the local government area (see s 10). This gives council the flexibility to adopt specific or general localised solutions to bolster Council's protection against animal and plant pests.

### **Section 9 - Emergency declarations**

This section retains in part section 7 of the 2011 Local Law, which enables Council to expedite the process for declaring local pests in response to emergency situations to minimise an immediate risk to public health or safety or environmental harm. Environmental harm has the same meaning as under the *Environmental Protection Act 1994*. This section has been expanded to allow for Council to declare a local pest for public health or safety to help achieve the object of this Local Law. Under this section, Council may make such a declaration via resolution. This declaration must be published in a newspaper and operates temporarily on a three-month basis from the date of publication. This temporary timeframe allows Council to address these emergency situations and may lead to a more permanent declaration, as under section 8.

### **Section 10 - Application of declaration**

This section retains section 8 of the 2011 Local Law, which enables Council to apply a local pest declaration to whole or part of its local government area. In doing so, Council has the flexibility to respond effectively and manage animal and plant pests anywhere within its City.

## **Division 3 - Control of local pests**

### **Section 11 - Power to search for declared local pests**

This section retains section 9 of the 2011 Local Law, which enables an authorised person to enter land and take reasonable action to search for declared local pests without the permission of the occupier. Before entering the land, reasonable written notice must be given to the owner and occupier of the land at least seven days before the land is to be entered. Reasonable written notice must state the intention and reason of the authorised person entering the land and the days and time when the land will be entered. The authorised person must also inform the owner or occupier of the land of these matters upon entry. An authorised person may only enter a home on the land with the permission of the occupier of the land.

Council recognises that, in some instances, it is necessary for the effective enforcement of local pest declarations to enter and inspect properties. This provision is similar to the powers of entry afforded to Council under section 132 of the *Local Government Act 2009*, which cannot be relied upon in these instances to cover notices under this section. The provision has been included as opposed to relying upon the more onerous 'approved inspection program' provisions in section 133 of the *Local Government Act 2009*.

### **Section 12 - Pest control notices**

This section retains section 10 of the 2011 Local Law, which gives the power for an authorised person to give a compliance notice to an owner of a land requiring them to take specified action against a declared local pest on their land. This compliance notice then may be enforced under section 33, which also specifies what information must be included in the notice and the penalty for non-compliance. A compliance notice must also

include or be accompanied by a decision notice. This means that the decision to issue a compliance notice is a reviewable decision. The authorised person 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.

In addition, the owner may also have a right to enter land where the owner is not the occupier to take action to comply with a remedial notice and may recover amounts incurred to satisfy an owner's obligations under the *Local Government Act 2009*. In any instance, failure to comply with a compliance notice may result in Council using the powers under section 142 of the *Local Government Act 2009* to perform the specified action under the compliance notice.

## **Division 4 - Prohibition of sale and propagation**

### **Section 13 - Prohibition on sale**

This section retains section 11 of the 2011 Local Law, which provides that it is an offence for a person to sell, supply, offer or display for sale a declared local pest. This offence may, for example, be relevant for pet shops, pet breeders or nurseries offering such animals and plants for sale.

### **Section 14 - Prohibition on introducing, propagating etc a declared local pest**

This section retains section 12 of the 2011 Local Law, which provides that it is an offence for a person to introduce, propagate, breed or harbour a declared local pest. Council may exempt certain persons from this offence, particularly if the person is undertaking scientific research, education or entertainment purposes (such as the CSIRO, universities, zoos or circuses).

# **Part 3 - Overgrown and unsightly land**

## **Division 1 - What this part is about**

### **Section 15 - Overview**

This sets out the matters dealt with in part 3.

## **Division 2 - Overgrown land and the accumulation of objects etc.**

### **Section 16 - Overgrown land**

This section retains in part section 13 of the 2011 Local Law, which gives an authorised person the power to issue a compliance notice to a responsible person of overgrown land to cut and remove the vegetation to an extent specified in the notice. These powers are necessary to maintain amenity and protect public health and safety. For enforcement with respect to vermin, including rats and mice, Council may use its powers under the *Public Health Act 2005*. The term '**responsible person**' is defined in the dictionary schedule of the Local Law and includes either the owner or occupier of the land in question.

To determine whether vegetation has grown to the extent that it has 'adversely affected' the visual amenity of the land, the authorised person may consider whether a reasonable person would consider the visual amenity of the land to be 'adversely affected'. Council also should consider whether the vegetation is protected or complies with the requirements in various State legislation, including the vegetation under the *Nature Conservation Act 1994*, the *Vegetation Management Act 1999* or the *Aboriginal Cultural Heritage Act 2003*. For example, bushland vegetation under restoration would not typically be classified as 'overgrown'.

A compliance notice is enforced under section 33. That section specifies what information must be included in the compliance notice and the penalty for non-compliance. A compliance notice must also include or be accompanied by a decision notice. This means that the decision to issue a compliance notice is a reviewable decision. The authorised person 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.

## Section 17 - Accumulation of objects, materials and organic matter on land

This section retains in part section 14 of the 2011 Local Law, which gives an authorised person the power to issue a compliance notice to a responsible person of a land requiring them to remove accumulated objects, materials and organic matter or take other specified actions.

These powers have been expanded to include organic matter (e.g. algae) so as to maintain amenity and protect public health and safety. This section applies to any buildings or structures within land (e.g. swimming pools) and the compliance notice may require the responsible person to take specified action (e.g. cleaning or draining a swimming pool to remove green algae).

It should be noted that the issue of graffiti is addressed by the *Summary Offences Act 2005*.

The term '**responsible person**' is defined in the dictionary schedule of the Local Law and includes either the owner or occupier of the land in question.

A compliance notice is enforced under section 33. That section specifies what information must be included in the compliance notice and the penalty for non-compliance. A compliance notice must also include or be accompanied by a decision notice. This means that the decision to issue a compliance notice is a reviewable decision. The authorised person 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.

# Part 4 - Fires

## Division 1 - What this part is about

### Section 18 - Overview

This sets out the matters dealt with in part 4.

## Division 2 - Fires

### Section 19 - Regulation of lighting and maintaining fires in the open

This Local Law only regulates the types of fires listed in section 19(1). It does not regulate:

- indoor fireplaces; or
- fires other than those listed in subsection (1) that require a permit under the *Fire and Emergency Services Act 1990 (FES Act)*.

This section provides that it is an offence for a person to light or maintain a fire in the open on private land in the local government area, unless the person complies with the requirements set out in subsection (3). There are three separate sets of requirements under subsection (3). A person only needs to comply with one of these for a fire to be allowed:

- Subsection (3)(a) allows a person to light and maintain a fire where it is used to cook food in a barbeque or similar device, subject to certain restrictions (*e.g., material must be clean and dry and the fire must not be in direct contact with the ground*).
- Subsection (3)(b) allows a person on any property size to light and maintain a fire within an effective fireplace, firepit or brazier, subject to certain restrictions (*e.g., must have consent of the land owner or occupier, and must not pose an unreasonable fire hazard*). This allows a person to have a backyard fireplace, firepit or brazier for recreational purposes at any time of day. To have a fire in a fireplace, firepit or brazier, you must be able to comply with a 2.5 metre setback. This means that there must be a clearance of 2.5 metre in every direction from the outer edges of the fireplace, firepit or brazier, and the following:
  - land boundaries (this includes property boundaries shared with neighbours and street boundaries);
  - buildings;



- structures (e.g., sheds); and
- vegetation.
- Subsection (3)(c) allows a person to light and maintain a fire if they are on a lot 3000m<sup>2</sup> or larger, subject to certain restrictions. These fires are not required to be maintained within an effective fireplace, firepit or brazier, and as such must comply with the additional requirements set out in subsection (3)(c)(iii) to (3)(c)(x). *Fires allowed under this subsection may include, for example, a small bonfire that uses clean fuel, and which is set back at least 6 metres from the property boundaries.* Importantly, this category of fire cannot be burning after dusk. If a person wants to light a fire on a large property after dusk, the fire needs to be contained within an effective fireplace, firepit or brazier and comply with the other requirements in subsection (3)(b).

Fires lit under subsection (2) or (3) must not cause a 'fire hazard'. A **'fire hazard'** is defined in subsection (4) to mean the risk of flames coming into contact with, and causing burns to, a person or causing damage to property. Regard should be had to the weather and the environmental conditions in determining whether conditions are appropriate to light a fire, such that it does not cause a fire hazard.

Council considers that the fires allowed by this Local Law:

- do not pose an unreasonable risk to community or environmental safety;
- are consistent with the reasonable expectations of the community around using fire-powered cooking devices; and
- are consistent with other relevant laws that regulate fires.

However, you will not be allowed to light a fire if there is a local fire ban or a state of fire emergency declared under the FES Act applicable to your property. The fire bans and declarations under the FES Act will override section 19 of the Local Law regarding the regulation of fires.

Nothing in this Local Law prevents Council taking action under the *Environmental Protection Act 1994* to address smoke impacts or other 'environmental nuisance'.

## Part 5 - Local annoyance or hazards

### Division 1 - What this part is about

#### Section 20 - Overview

This section sets out the matters dealt with in part 5.

### Division 2 - Management of a local annoyance or hazard

#### Section 21 - Power to enter land to inspect for a local annoyance or hazard

This section retains section 17 of the 2011 Local Law, which enables an authorised person to enter land and take reasonable action to search for a local annoyance or hazard without the permission of the occupier. Before entering the land, reasonable written notice must be given to the owner and occupier of the land at least seven days before land is to be entered. **'Reasonable written notice'** is defined in the Schedule Dictionary and provides the intention and reason of the authorised person entering the land and the days and time when the land will be entered. The authorised person must also inform the owner or occupier of the land of these matters upon entry. An authorised person may only enter a home on the land with the permission of the occupier of the land.

Council recognises that, in some instances, it is necessary for the effective enforcement of a local annoyance or hazard to enter and inspect land. This provision is similar to the powers of entry afforded to Council under section 132 of the *Local Government Act 2009*, which cannot be relied upon in these instances to cover notices under this section. The provision has been included as opposed to relying upon the more onerous 'approved inspection program' provisions in section 133 of the *Local Government Act 2009*.

## Section 22 - Removal or reduction of a local annoyance or hazard

This section retains section 18 of the 2011 Local Law, which allows for an authorised person to give a responsible person a compliance notice to remove a local annoyance or hazard or reduce the level of risk posed by that local annoyance or hazard. Remove, in this section, includes repairing or demolishing a structure.

This power can be used in respect of estate entry statement signs that have deteriorated or pose a significant risk of causing injury to a person or damage to property (see definition of **'local annoyance or hazard'**). Estate entry statements are generally a decorative feature wall with associated signage, landscaping and in some instances, feature lighting that denote the entry into a residential subdivision or business district.

Where a compliance notice is given to the owner of land and requires specific action to be taken in relation to the land, 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 land 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 a 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.

The term **'responsible person'** is defined in the dictionary schedule of the Local Law and includes either the owner or occupier of the land in question. A compliance notice under this section constitutes a compliance notice under section 33

## Section 23 - Prescribed requirements for a local annoyance or hazard

This section retains section 18 of the 2011 Local Law, which allows Council to prescribe, by Subordinate Local Law, requirements for specified types of local annoyance or hazards that must be met by a responsible person for the land (or structure on the land). These requirements are important to eliminate or reduce of risks and threats to the environment, public health and safety, and amenity. It is offence for a responsible person to not comply with these prescribed requirements.

The term **'responsible person'** is defined in the dictionary schedule of the Local Law and includes either the owner or occupier of the land in question.

# Part 6 - Offences and enforcement

## Division 1 - What this part is about

### Section 24 - Overview

This part sets out matters dealt with in part 6.

## Division 2 - Offences

### Section 25 - Prohibition on feeding wild animals

Council recognises that it is important to connect with nature, however Council supports 'keeping wildlife wild' and does not encourage feeding of wild animals. This section creates an offence for a person to feed a wild animal in a way that causes, or may cause, a relevant nuisance. Subsection (2) sets out the circumstances in which feeding may cause a 'relevant nuisance', but it is not exhaustive. The circumstances may include:

- excessive or unsightly accumulation of droppings
- an accumulation of food waste
- offensive odour.

Regarding the issue of noise, subsection (2) does not mention noise, but that does not mean it cannot be considered a relevant nuisance under subsection (1), having regard to the definition of **‘relevant nuisance’** in subsection (4). Noise may be relevant if, for example, the feeding results in many animals gathering and causing noise in excess of what would naturally occur in the absence of the proactive feeding. However, as noted in the definition of **‘feed’**, a person is not taken to feed a wild animal if the person simply plants a plant which is a source of food for a wild animal. Such factors need to be taken into account when determining if noise is a relevant nuisance. Noise caused by wild animals outside of any proactive feeding by a person will not be considered a relevant nuisance.

## **Section 26 - Providing false or misleading information**

This section makes it an offence for a person to give information that they reasonably know or ought to have known 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 27 - Threatening an authorised person**

This section retains the offence in section 21 of the 2011 Administration 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 a safe and effective manner. If a person commits an offence under this section, an authorised person can issue them with a penalty infringement notice. Given the seriousness of this offence, the maximum penalty has been increased from 20 penalty units to 50 penalty units.

## **Section 28 - Attempts to commit offences**

This section provides that a person who attempts to commit an offence under this Local Law commits an offence. This means that even if a person unsuccessfully attempts to commit an offence, the person has committed the offence of attempting to commit an offence. The ‘attempt’ offence is not intended to operate, or be capable of operating, in respect of all offences. The offence of ‘attempt’ will only apply to those offences where it is possible to attempt the offence. In other words, an **‘attempt’** cannot reasonably and sensibly apply to that which is not capable of being attempted. To illustrate, to avoid doing something is not attempting not to do the thing; it simply is not doing the thing.

An attempt to commit an offence will most likely be capable of occurring, and being identified, where the offence involves:

- the doing of a positive act;
- the person taking steps with the intention to perform or otherwise carry out the positive act (and whether or not they are all the steps necessary to carry out the offending act); or
- an intervening event (not being an act necessary to perform the positive act) such that the person does not do the offending positive act.

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 29 - 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 30 - Appointment of authorised persons**

This section establishes an additional requirement for how certain qualified persons are to be appointed as authorised persons under this Local Law.

Under section 202 of the *Local Government Act 2009*, Council's CEO may appoint certain qualified persons to be authorised persons for specific Local Laws. For example, a Council employee who is a qualified person may be appointed as an authorised person for this Local Law.

Section 30 provides that the document that appointed an authorised person must state this Local Law, or the provisions of this Local Law, for which the person is appointed as an authorised person. This ensures that appropriately qualified persons are authorised to take certain actions under the Local Law and that the extent and limitations of an authorised person's powers are documented, transparent and well defined.

### **Section 31 - Directions generally**

This section provides that an authorised person may give an oral compliance direction to a person contravening this Local Law. The direction may require a person to cease any conduct or activity which contravenes this Local Law or take other such action so the person does not contravene this Local Law. It is an offence for a person to not comply with such a direction.

### **Section 32 - Compliance notice for contravention of Local Law**

This section retains in part section 26 of the 2011 Administration Local Law and applies if a person contravenes the Local Law. An authorised person may give the person who contravenes the Local Law, or who is involved in the contravention, a compliance notice. A compliance notice must contain those matters stated in subsection (4), 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.

An authorised person 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 an opportunity to stop or remedy a breach of this Local Law, if appropriate to do so.

*For example, a person is selling or supplying a declared local pests. Council may then issue a compliance notice for the person to stop selling or supplying the declared local pests.*

Compliance notices allow 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.

Where a compliance notice is given to the owner of land and requires specific action to be taken in relation to that land, 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 land 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 an authorised person issues a compliance notice under this section, they must provide a notice of the decision to the person. This means the person given the compliance notice may apply to review the giving of the notice under section 40. The requirements for a decision notice are set out in the definition of '**decision notice**' in the dictionary Schedule of this Local Law.

### **Section 33 - Compliance notice authorised by Local Law**

This section retains section 27 of the 2011 Administration Local Law. Unlike the compliance notice issued under section 32, this section applies where the Local Law provides that an authorised person may give a compliance notice to a person. This section is relevant for sections 12, 16, 17 and 22, which enables a compliance notice to be issued requiring a person to take specified action, including destroying declared local pests or cutting or removing vegetation.

It should be noted that, for example, having overgrown land is not an offence in itself, which is why a compliance notice could not be issued under section 32 for a person who has overgrown land. Rather, sections

12, 16, 17 and 22 empower the authorised person to issue a compliance notice where the authorised person, for example, forms the opinion that the land is overgrown with vegetation to such an extent that it has adversely affected the visual amenity of the land. The compliance notice gives the responsible person for the property an opportunity to rectify the issue.

The offence is committed, where the responsible person fails to comply with the compliance notice. This section sets out the information that must be contained within a compliance notice, including the timeframe within which the specified action must be taken and the consequences of failing to do so. 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.

Where a compliance notice is given to the owner of land and requires specific action to be taken in relation to the land, 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 land 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 a 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 an authorised person issues a compliance notice under this section, they must provide a notice of the decision to the person. This means the person given the compliance notice may apply to review the giving of the notice under section 40. The requirements for a decision notice are set out in the definition of '**decision notice**' in the dictionary Schedule of this Local Law.

## **Section 34 - Local government power to seize and cost recover**

This section expands on section 28 of the 2011 Administration Local Law and regulates the 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 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 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 item 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 item.

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.

*For example: A person has failed to clean-up discarded machinery as required by a compliance notice. Council may then seize the items in the interest of loss of amenity and recover the cost of seizing it from the person who failed act.*

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

## **Section 35 - Dealing with impounded items**

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

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

A person can reclaim an impounded item by applying, providing proof of ownership of the item and paying the prescribed fee to Council. However, Council has powers to immediately dispose of items that are perishable or where the item is of negligible commercial value. This allows Council to immediately dispose of items where they will not reasonably keep (e.g. 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).

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 within the local government area (by seizing and impounding items);
- Council's desire to have transparent processes for managing seized and impounded items; and
- ensuring the owners of 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.

## **Division 4 - Offence proceedings in Magistrates Court**

### **Section 36 - Enforcement orders**

This section gives the Magistrates Court discretion to make an enforcement order requiring a person to take certain action within a specified period. The purpose of this section 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 take specified action under section 33 of this Local Law). This section also provides for further potential consequences that can be imposed by the court on the person if they fail to comply with the enforcement order.

### **Section 37 - Joint and several liability**

This section retains section 32 of the 2011 Administration Local Law. This section provides that where this Local Law imposes responsibility on multiple people that are either engaged in the activity or joint owners/occupiers of land, each person can be held liable, with or separate from the other.

*For example, two people are the occupiers of a property and have failed to slaughter an animal in accordance with prescribed requirements.*

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 38 - Defence of reasonable excuse

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

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

### Section 39 - Owners and occupiers must ensure compliance with this Local Law

This section provides that owners and occupiers of land must ensure that an offence under this Local Law is not committed in or on land. 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 land they own or occupy. This section retains the defence in section 31 of the 2011 Administration Local Law by providing a defence for an owner or occupier of land 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 land responsible for an offence.

*For example, an occupier of land fails to comply with a compliance notice to cut overgrown vegetation. The owner, who regularly attends the land, is also liable for the penalty for the commission of the offence in or on the land.*

The words '*land*', '*owner*' and '*occupier*' are defined in the dictionary Schedule of this Local Law.

## Part 7 - Reviewing decisions

### Section 40 - Application for review

This section retains section 22 of the 2011 Administration Local Law, which enables a person who is given, or entitled to be given a decision notice to apply to Council for a review of a decision. This gives the person a right to decisions to issue compliance notices under sections 32 and 33 reviewed internally by Council.

A review application must be made within the period stated in subsection (2) and be accompanied by a statement of 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.

This section allows Council to take a fresh look at its original decision to determine whether it was correct. Internal reviews also help Council ensure consistency in decision-making. If a person wishes to complain about any other issues that do not attract a formal review right under this Local Law, they may be able to do so through the administrative actions complaints process, which Council must administer under the *Local Government Act 2009*.

### Section 41 - Review decision

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

## **Section 42 - Stay of operation of original decision**

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

*For example, if a person applies to review Council's decision to issue them a compliance notice, the compliance notice is still valid while the review process is underway, and the person must comply with the compliance notice.*

# **Part 8 - Administrative provisions**

## **Section 43 - Fees**

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

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

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

## **Section 44 - Rewards**

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

*For example, information regarding a person breeding a declared local pest.*

## **Section 45 - Subordinate Local Laws**

This section retains in part section 21 of the 2011 Local Law. It allows Council to make Subordinate Local Laws in relation to those matters stated in the section. The purpose of this section is to define the scope of what Council can regulate by Subordinate Local Law. Regarding the making of Subordinate Local Laws about repeal and transitional provisions, the intention is that a Subordinate Local Law could be made where considered absolutely necessary and, then, likely to address some process in how a decision would be handled to ensure the intended effect of part 9 is achieved.

## **Section 46 - Extrinsic material**

This section enables Council to make an explanatory note (which includes this document), which can be used to assist in the interpretation of this Local Law. The explanatory note must be passed by a resolution of Council and published on Council's website. The effect of this provision is that, where the meaning of a section of the Local Law is unclear or is debated, Council can refer to the explanation of that section in this Explanatory Note (or another Explanatory 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.

# Part 9 - Transitional and repeal provisions

## Section 47 - Local Law repeal

This section repeals the *Local Law No. 3 (Community and Environmental Management) 2011* and its Subordinate Local Law (*the 2011 Local Law*). This Local Law has the effect of replacing those laws.

## Section 48 - Transitional provisions for the repealed Local Law

This section is intended to preserve all decisions made under the 2011 Local Law so that they remain in force, even after the repeal of the 2011 Local Law.

The word '**decision**' is defined in subsection (2). Circumstances in which this is particularly relevant include decisions about:

- issuing a reasonable written notice; and
- emergency declaration of an animal or plant of the relevant species to be a local pest.

## Section 49 - Other transitional provisions

The transitional provisions for decisions made under the 2011 Administration Local Law are all contained in the *Commercial Use of Public Land and Roads Local Law 2023 (CUPLR LL)*. The CUPLR LL repeals the 2011 Administration Local Law and for this reason, the transitional provisions for decisions made under the 2011 Administration Local Law, to the extent they relate to the repealed Local Law, are contained in the CUPLR LL, part 7. This section 49 simply directs to reader to the CUPLR LL for the transitional arrangements.

# Is this law consistent with fundamental legislative principles?

The Local Law is generally consistent with fundamental legislative principles. While it confers power to enter and inspect premises without consent or a warrant issued by a judge or other judicial officer, the exercise of these powers is inhibited by a robust process, including reasonable written notice and consent of the occupier to enter a home. It should be noted that these powers have been conferred to local governments in the model Local Laws and have not been altered under this Local Law. These powers are also generally consistent with the powers of entry afforded to Council as under the *Local Government Act 2009*.

# Is this law consistent with Human Rights?

The Local Law is generally compatible with the *Human Rights Act 2019*. In particular, the Local Law does not seek to acquire or interfere with any right of property. However, as explained, the Local Law does authorise entry onto land, without consent or warrant, in certain circumstances.

