

City of Moreton Bay

Community Standards for Public Land and Roads 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 Public Land and Roads Local Law 2023*.



What is this Local Law trying to achieve and why?

City of Moreton Bay's vision is for a City that has well preserved and maintained public land that can be enjoyed by visitors and locals. As members of the community, we share a role to protect those around us and protect the environment. The main purpose of this Local Law is to:

- protect the health and safety of persons using public land and roads;
- preserve the fitness for use and amenity of public land and roads; and
- preserve features of the natural and built environment.

The natural and built environment of the City of Moreton Bay is unique to Southeast Queensland. This Local Law aims to set the standard for how public land and roads in the City are used. This Local Law is not an exhaustive regulation of activities on public land and roads. Other local laws may also apply.

How will the Local Law achieve those aims?

This Local Law achieves its aims by:

- regulating the use of, and activities on, public land and roads, including regulating the management and use of shopping trolleys;
- providing for and regulating the maintenance and repair of driveway crossovers, awnings and road verges;
- providing a framework to assess and approve the use of vehicles and vessels on public land; and
- providing mechanisms for enforcement where there is non-compliance with conditions of approval or provisions of this Local Law.

(1) Use of, and activities on, public land and roads

Part 2, division 2 and division 3 of this Local Law deals with regulated activities on public land and roads. These include:

- **Shopping trolley containment**— Dumped shopping trolleys can make public spaces look unkempt and untidy. Dumped trolleys can also clog rivers, drains, creeks and culverts, which can contribute to flooding during weather events. This Local Law requires that retailers ensure all shopping trolleys remain within the retail premises and requires retailers with more than 20 shopping trolleys to install a trolley containment system. This Local law also requires a retailer to mark their shopping trolleys with sufficient identification (e.g. name, address and contact details) and ensure that their shopping trolleys remain in their retail premises. It is also an offence for a person to take or leave a shopping trolley outside a retail premises.
- **Designated areas for activities**— Public land may have many uses, some of which may be considered dangerous. In balancing these uses, this Local Law allows Council to prohibit or allow certain activities in established designated areas. Signs in these areas will indicate any prohibited activities or allowed activities.
- **Liquor on public land**— Consuming alcohol on public land, such as parks, reserves and foreshores, is currently prohibited in the City of Moreton Bay. Under the *Liquor Act 1992* (the **Liquor Act**), Councils have the power to designate public places for the consumption of alcohol ('wet areas'). In doing so, Councils can nominate specific days and times when alcohol can be consumed. This Local Law allows Council to impose conditions on the use of these areas.

Part 3 of this Local Law also allows Council to regulate a wide range of other activities on public land and roads. The regulation of these activities is supported by the objects of this Local Law.

(2) Maintenance obligations on things located on, or which impact, public land and roads

Part 2, division 4 of this Local Law prescribes maintenance obligations for certain things impacting on public land and roads, including the maintenance of:

- **Road verges**— Road verges usually form part of the dedicated road and is the area between a front property boundary and the kerb (or if there is no kerb, the table-drain). This land is used by the public, however, Council encourages the beautification of road verges by residents (turfing and installation of gardens) where it is safe and appropriate to do so. In certain circumstances, this Local Law gives Council the ability to direct a property owner to mow the road verge outside their property to ensure public health and safety.
- **Driveway crossovers**— Driveway crossovers refer to the constructed access crossings connecting a property with the road. They are constructed within the dedicated road area (which is used by the public) and, if not properly constructed or maintained, can cause trip hazards to pedestrians. Council considers that property owners should be responsible for the construction, maintenance, alteration and repair of driveway crossovers. This Local Law gives Council the ability to require residents to maintain, repair or remove their driveway crossover.
- **Awnings**— Awnings are those permanent, roof like structures, attached to and projecting from the wall of a building which is generally designed or constructed to provide pedestrians with protection against the weather. They generally overhang footpaths and, if not maintained properly, can cause a serious public safety risk to pedestrians. This Local Law requires property owners with awnings over footpaths to ensure the structural adequacy and condition of the awning, the awning connection to the building and any items attached to the awning is in a safe condition. This Local Law also gives powers to Council to enforce the maintenance obligation.

(3) Framework to assess and approve the use of vehicles and vessels on public land

Part 4 of this Local Law provides that vehicle and vessel access to public land requires an approval from Council. If a person wishes to access their property via public land, this can have drastic effects on the surrounding amenity. Driving on public land can put the ratepayer at an expense for Council to rectify any damage, including re-turfing or other beautification works. This Local Law provides an approval process for persons wanting to use public land for this purpose so that any undue impacts resulting from the vehicle or vessel access must be mitigated and remedied by the responsible person.

(4) Mechanisms for enforcement

Part 5 of this Local Law provides enforcement powers to ensure this Local Law is complied with.



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 a variety of matters on public 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 departments¹. 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 issues via a second public survey and further invitations to the relevant businesses, peak bodies and State Government departments:

- Shopping trolley containment;
- Recreational activities in parks;
- Consumption of alcohol on public land;
- Maintenance of road verges; and
- Maintenance of driveway crossovers.

The feedback from external stakeholders, internal stakeholders and the community informed the development of this Local Law. An overview of the community feedback on the issues consulted on is set out below.

Shopping Trolleys

Other Southeast Queensland Councils have imposed stricter compliance on larger retailers to reduce the theft and illegal dumping of shopping trolleys. Council asked the community “*Should Council have the power to direct supermarkets to put wheel-lock mechanisms on their trolleys to prevent trolley-dumping?*” Approximately 454 responses were received in relation to this question on the Local Laws review survey. 57.7% of respondents were in favour of Council having this power and 35.9% of respondents were against it.

Shopping Trolley Dumping Survey		
Survey question	Responses received	Outcome
Should Council have the power to direct supermarkets to put wheel-lock mechanisms on their trolleys to prevent trolley-dumping?	454	Yes = 57.7% No = 35.9% Unsure = 6.4%

¹ Peak bodies including: Costco, Woolworths Group, Coles Group, MetCash Ltd, Aldi Australia, Exhibition and Events Association of Australia, Hire and Rental Industry Association of Australasia, Boating Industry Association, MBRIT, Queensland Police Service, Aiga Samoa Association North Brisbane Inc, Caboolture Baptist Church, Community Gardens Australia, Encircle Neighbourhood Centre, Hills Community Garden, Landscape Queensland, Millen Farm, Native Plants Queensland, Plant Shack, Red Fox Orchids, Redcliffe Uniting Church, Statewide Tree Management, Sustainable, Gardening Australia, Theo's Garden Centre, Friends of CREEC, Friends of Lagoon Creek Nursery, Kumbartcho (Pine Rivers Nursery), Master Builders Queensland, Wallum Community Nursery, Board of Professional Engineers of Qld, Dial Before you Dig, Bribie Island Environmental Protection Association, Master Plumbers Association, Redcliffe Botanic Gardens Community Nursery, Redcliffe Environmental Forum, the Electrical Safety Office, Office of Industrial Relations, Telstra, Neighbourhood Watch Queensland, Institute of Public Works Engineering Australasia Queensland (IPWEAQ), Sports Aeromodellers Moreton Bay Region Inc. (SAAMBR), Pine Rivers BMX Club, Caboolture BMX Club, North Brisbane MTB Club “Dirt Dogs”, Bushrangers Mountain Bike Club Sunshine Coast Incorporated and HQPlantations.

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Many of the respondents raised concerns about this Local Law affecting small business owners. Ideas for other measures that retailers could take to reduce the illegal dumping of shopping trolleys were also raised. As a result, obligations under this Local Law for retailers to install a trolley containment system will generally only apply to retailers who have more than 20 shopping trolleys.

Other Regulated Activities

Council asked the community: “*Should ALL recreational activities (e.g., golf, archery, drone flying, etc.) be permitted in public parks?*” Approximately 764 responses were received in relation to this question on the Local Laws review survey. 75.9% of respondents were against allowing all recreational activities in public parks and 23.7% of respondents were in favour of this.

Dangerous Recreational Activities (‘Other regulated activities’) Survey		
Survey question	Responses received	Outcome
Should ALL recreational activities (e.g. golf, archery, drone flying, etc.) be permitted in public parks?	764	Yes = 23.7% No = 75.9% Unsure = 0.4%
Should certain recreational activities only be permitted by exception?	559	Yes = 82% No = 14% Unsure = 4%

The responses to the public consultation highlighted that some activities should be regulated and not allowed to occur in all parks or public spaces. Council has considered ways to balance the interest of all users and has developed this Local Law, which allows Council to either specifically allow or to prohibit certain recreational activities in designated areas of public land.

Gatherings and alcohol

To inform Council’s approach regarding the consumption of alcohol on public land, Council asked the community “*Should the consumption of alcohol on ALL public land remain prohibited?*” Approximately 800 responses were received in response to the question and the majority of survey respondents do not want the consumption of alcohol to remain prohibited on all public land.

Gatherings and alcohol Survey		
Survey question	Responses received	Outcome
Should the consumption of alcohol on ALL public land remain prohibited?	774	Yes = 36.5% No = 61.3% Unsure = 2.2%

To enable alcohol to be consumed on public land, the area must be declared under the *Liquor Act 1992*. Given the results of the community feedback, should Council declare an area in future, it wants to ensure these areas are safe. As such, this Local Law allows Council to condition the use of any declared areas and to enforce those conditions.

Road Verges

Council asked the community: “*Should Council be able to require residents to mow untidy or overgrown road verges outside their properties?*” Council received approximately 638 responses to this question. 52% of respondents support Council having this power and 45% were opposed, with 3% undecided.

Road Verge Maintenance Survey		
Survey question	Responses received	Outcome
Should Council be able to require residents to mow untidy or overgrown road verges outside their properties?	638	Yes = 52% No = 45% Unsure = 3%

The majority of respondents wanted Council to be able to require residents to mow overgrown road verges adjoining their property, where it presented a public health and safety risk (as opposed to amenity). This Local Law introduces a power for Council to direct property owners to mow the road verge outside their property, but only for the purpose of preserving public health and safety.

Driveway Crossovers

Council asked the community: “*Should Council be able to demand residents improve unsafe or unsightly driveway crossovers bringing them up to a particular standard?*” Approximately 627 responses were received in relation to this question. 50.9% of respondents were in favour of Council having this power, 44% were against it and 5.1% were undecided.

Driveway Crossover Survey		
Survey question	Responses received	Outcome
Should Council be able to demand residents improve unsafe or unsightly driveway crossovers bringing them up to a particular standard?	627	Yes = 50.9% No = 44% Unsure = 5.1%

Public consultation was sought on this issue because it would give Council new powers in line with other Southeast Queensland Councils. It was apparent from the feedback on the public survey that this power should only be used to address public safety concerns (as opposed to amenity concerns) and only where it is clear that any non-compliance is at the fault of the property owner. This Local Law requires property owners to maintain their driveways to a certain standard and gives Council the power to direct property owners to fix non-compliant driveway crossovers in line with these considerations.

Plain English explanations of each section of the Local Law

Note: The *Local Law No.4 (Local Government Controlled Areas and Roads) 2011* (which is to be repealed by this Local Law) will be referred to throughout this section as '*the 2011 Local Law*'. The *Local Law No. 1 (Administration) 2011* will be referred to throughout this section as '*the 2011 Administration Local Law*'.

Part 1 - Preliminary

Division 1 - Introductory provisions

Section 1 - Short title

This section establishes the short title of this Local Law.

Section 2 - Commencement

This section provides a 6-month lead time for the provisions relating to shopping trolley containment systems (see section 10(1) and 10(2)). Council recognises that the introduction of an obligation to have and maintain a shopping trolley containment system requires sufficient time for retailers to make the necessary changes to achieve compliance. Reference in this section to "the commencement" is a reference to the commencement of the section, being the date notice of the making of this Local Law is published in the Queensland Government Gazette. See section 32F(2) of the *Acts Interpretation Act 1954*.

Division 2 - Objects and achievement of Local Law

Section 3 - Objects

This section sets out the objects of the Local Law and provides the broad context and scope for each provision of the Local Law. The objects of this Local Law are to:

- **Protect the health and safety of persons using public land and roads** - Various activities on public land and roads can pose risks to the community. Given the nature of these activities, it is important that those persons undertaking the activity look out for the safety of others.
- **Preserve the fitness for use and amenity of public land and roads** - The aim of this object is to preserve the ordinary way the community expects to use public land and roads. It also aims to safeguard the desirability of public land and roads in relation to its purpose. These objects are important to protect our City's way of life.
- **Preserve features of the natural and built environment** - City of Moreton Bay has a unique landscape. This object aims to preserve elements of the environment from damage and ensure the landscape retains its familiar uniqueness. This object ties in with the concept of amenity but extends to protecting Council assets and other property from damage and protecting the environment.

Section 4- How objects of Local Law are to be achieved

This section sets out how the objects of the Local Law will be achieved. Each of the matters listed in this section directly relate to the objects of the Local Law.

For example, this Local Law regulates the dumping of shopping trolleys by specifying that retailers must implement a shopping trolley containment system. This supports the object of preserving the amenity of public land and roads and the environment. It also supports the object of public safety because the dumping of shopping trolleys may also cause a hazard to traffic.

Division 3 - Interpretation

Section 5 - Definitions

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

Division 4 - Operation of Local Law

Section 6 - 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, buildings and structures and the use of trust land and roads.

For instance, the *Land Act 1994* is relevant given Council, as trustee of trust land, must consider its requirements when making a Local Law or Subordinate Local Law. The *Land Act 1994* contains requirements that Council must notify the Minister where it intends to permanently closed public land held on trust. This is due to the fact that this may require a change of tenure for that land. The *Land Act 1994* also contains specific requirements for temporary and permanent closure of roads.

This Local Law is intended to cover matters not regulated by State legislation and where State legislation specifically authorises local governments to regulate a matter. For example, section 66(3)(b) of the *Transport Operations (Road Use Management Act) 1995 (TORUM Act)* authorises local governments to regulate by Local Law, the washing or cleansing, painting, repairing, alteration or maintenance of vehicles on a road (regulation of such matters on State-controlled roads requires the chief executive's written agreement—section 66(5)(b) of the TORUM Act).

Part 2 - Regulated activities and maintenance obligations

Division 1 - What this part is about

Section 7 - Overview

This section sets out the matters dealt with in part 2.

Division 2 - Regulation of shopping trolleys

Section 8 - Definitions for this division

This section defines terms exclusive to this division, including '**retail premises**', '**retailer**', '**shopping trolley**', '**shopping trolley containment system**', '**sufficient details**' and '**wheel lock system**'.

Section 9 - Shopping trolleys to be sufficiently identified and remain within retail premises

This section requires retailers to ensure that shopping trolleys are marked with sufficient details so that Council can identify the rightful owner of the shopping trolley. It also creates an offence for a retailer to fail to ensure that its shopping trolleys remain within the retail premises. It reflects, in part, the obligation of owners and occupiers of a shopping centre under section 19 of *Local Law No. 3 (Community and Environmental Management) 2011* and section 9(5) of *Subordinate Local Law No. 3 (Community and Environmental Management) 2011*. It is a defence for the retailer to prove that they took all reasonable measures to ensure that the shopping trolleys would remain in the retail premises.

Illegally dumped shopping trolleys can greatly affect the amenity of the City and impact the environment. Council believes there is a mutual interest in retailers preventing shopping trolleys leaving a retail premises. By reducing the frequency in which shopping trolleys are removed from a retail premises, the cost to the

retailed of replacing the trolleys will be reduced, as will the cost to the ratepayer in Council having to retrieve shopping trolleys from public land, including drains and waterways.

To this aim, this section also makes it an offence for a person to take a shopping trolley from a retail premises or leave a shopping trolley on public land or road outside a retail premises.

Section 10 - Shopping trolley containment systems

Council believes we all have a role to play in reducing the number of illegally dumped shopping trolleys. This section requires retailers with more than 20 shopping trolleys to have and maintain a shopping trolley containment system. This system can be a “wheel lock system” or another system prescribed by Subordinate Local Law. It is an offence for these retailers not to have the required shopping trolley containment system.

The aim of this provision is to reduce the amenity and environmental impacts of illegally dumped trolleys. Council believes that if a retailer makes available the use of shopping trolleys on a large scale (i.e., more than 20 trolleys), it should take additional steps to ensure that the trolleys remain on the retail premises. Council acknowledges that whilst there is an initial cost to retailers who need to implement a shopping trolley containment system, there may be a corresponding reduction in costs in having to deal with the dumped shopping trolleys, such as impoundment and release fees. Council believes that this measure will drastically reduce the amount of shopping trolleys that leave retail premises and will be positive for the City.

Council retains the ability to exempt certain retailers from implementing a shopping trolley containment system on such conditions it considers appropriate. Council may also specify other retailers that must implement a shopping trolley containment system (for example, where there have been repeated offences of section 9). It is important to note that this section requiring a retailer to have and maintain a shopping trolley containment system commences 6 months after the commencement of this Local Law. See section 2.

Division 3 - Other regulated activities

Subdivision 1 - Designated areas for activities

Section 11 - Definitions for this subdivision

This section provides the definition of terms exclusive to this subdivision. It defines the term ‘**road**’.

Section 12 - Activities in designated areas

Under Schedule 1 of the Subordinate Local Law, a person must not undertake any activity which, in the reasonable opinion of an authorised person, is likely to injure, endanger, obstruct, interfere with or inconvenience other persons on public land or road. An exception to this is where the activity is being undertaken in accordance with an activity designation, under this section 12.

Under this section, Council can resolve to allow an activity in a designated area and prescribe conditions for the use of the designated area. This power is necessary to allow certain activities to occur where those activities may be considered dangerous or may interfere with use of the area by other people. In determining whether to designate an area for an activity, sufficient consideration should be given to the risk of harm to other people, impact on neighbouring properties, potential property damage and impact on amenity. Council must advise the community of a designated activity area via its website or notice in the newspaper and information signs installed at the area.

For example, Council may in future designate areas where it is safe to launch drones and other remotely piloted aircraft on public land and prescribe conditions of use for that area in the interests of public safety.

To enforce compliance with this section, authorised persons may issue stop orders, penalty infringement notices or compliance notices.

Section 13 - Prohibited activities in designated areas

Under this section, Council can resolve to prohibit an activity in a designated area. Council recognises that certain activities may need to be prohibited in certain areas of public land or roads to achieve the objects of this Local Law.

For example, it may be important to prohibit fishing in certain waterbodies to protect the natural environment and biosecurity of Moreton Bay.

Council must advise the community of a designated prohibited activity area via its website or notice in the newspaper and information signs installed at the area. To enforce compliance with this section, authorised persons may issue stop orders, penalty infringement notices or compliance notices.

Subdivision 2 - Designated public places under the Liquor Act 1992

Section 14 - Conditions for the use of designated public places

Under section 173C of the *Liquor Act 1992*, Council can designate areas of public land where the consumption of alcohol is allowed. These are referred to as 'designated public places', but are commonly known as 'wet areas'. Section 14 of the Local Law allows Council to prescribe conditions of use for a designated public place. The intention of this provision is to ensure that public safety can be maintained in these areas.

For example, Council may impose a condition that no glass cups or bottles be used.

Such conditions must be communicated to the public via a notice in the newspaper or on Council's website. Council must also place signage at the designated public place.

This Local Law will not address public intoxication. Under State laws, it is unlawful for a person to be intoxicated in a public place, including any designated public places. The Police have a range of enforcement powers to deal with this issue.

Division 4 - Maintenance obligations

Subdivision 1 - Road verges and driveway crossovers

Section 15 - Maintenance of road verges

This section applies to road verges, which is the area of land between the kerb of the road and the adjacent private land and includes a footpath within that area. Where an authorised person is of the reasonable opinion that a road verge is so overgrown with vegetation that it poses a risk to public health or safety, they may give a compliance notice to the owner or occupier of the adjacent land. The compliance notice may require them to cut or remove the vegetation to the extent specified in the 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.

Section 16 - Self-assessable verge gardens

This section sets out the powers of Council to, by resolution, prescribe guidelines that apply to gardens installed and maintained in the road verge ('**verge gardens**'). Any restrictions or requirements imposed by these guidelines should relate to the objects of this Local Law. It is an offence to fail to comply with the guidelines unless another law allows the person to install and maintain the garden.

Installation and maintenance of a garden in the road verge would ordinarily require approval from Council as an alteration of public land under the *Alteration of Public Land Local Law 2023*. However, this section aims to reduce red tape for residents by enabling them to install and maintain verge gardens without needing to obtain approval, if they comply with the guidelines prescribed by Council. Council seeks to encourage beautification of our suburbs but acknowledges the need for reasonable restrictions (via guidelines) to ensure the health and safety of the public. *For example, the guidelines may require a verge garden to be set back a certain distance from the road kerb, to allow a safe clearance for pedestrian access.*

This section does not apply to a '**State-controlled road**'.

Section 17 - Good repair and safe condition requirement for driveway crossovers

The regulation of driveway crossovers is important to reduce hazards that may affect public safety. For example, trip hazards arising from uneven driveway crossovers. The intent of this provision is to ensure driveway crossovers are properly maintained and removed when no longer required. This section requires a landowner to maintain and keep the driveway crossover in a:

- safe condition; and
- good working order, repair and condition, including so that the driveway crossover continues to be effective for its intended function.

What is a driveway crossover?

A '**driveway crossover**' is defined in subsection (4). It is also commonly referred to as a 'vehicle crossing', 'driveway crossing', or 'footpath crossing'. It is essentially the section of the driveway from the edge of the formed road to the private property boundary. See example in image 1.

Image 1



What does it mean to maintain a driveway crossover?

The word "maintain" is not defined in this section of the Local Law. However, the dictionary says "maintenance" includes repair and replacement and taking preventive action and that "maintain" has a corresponding meaning. The maintenance obligation applies at all times. While Council can take enforcement action for non-compliance with the maintenance obligation, it is not necessary for Council to give a person a compliance notice before the person becomes liable to maintain, including repair, a driveway crossover.

What is a safe condition?

An example of keeping a driveway crossover in a safe condition is repairing a driveway crossover so that it will not be a risk or danger to pedestrians. This example is provided in section 17(1)(a).

When is a driveway crossover effective for its intended function?

For a driveway crossover to “continue to be effective for its intended function” it must be work in the way intended. For example, while a person may still be able to drive a car over a driveway crossover that is full of potholes, that does not mean the crossover continues to be effective for the intended function of providing access to private property.

What compliance action can Council take?

An authorised person may give a compliance notice to the landowner if the driveway crossover:

- has not been maintained in a safe condition and in good working order, repair and condition; or
- is no longer required to provide access from the road to the land.

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.

The compliance notice may require the landowner to do the things specified in section 17(3), including carrying out specific maintenance or repairs, removing the driveway crossover and carrying out other consequential work. Examples of consequential work are provided in section 17(3)(d). A compliance notice is enforced under section 53. That section specifies what information must be included in the compliance notice and the penalty for non-compliance.

This section is not intended to and does not establish an alternative development process. This section is limited to maintenance, repair and removal of a driveway crossover. Matters relating to the location, design and construction are not dealt with by this Local Law. Further, section 17 does not affect the need for a person to obtain an approval outside of this Local Law (for example, from the State government) to undertake work to a driveway crossover, should such an approval be required. If a compliance notice under section 17 requires a person to perform work and performing the work would contravene another law (for example, the *Transport Infrastructure Act 1994*) unless the person had an approval or permission to perform the obligation, then the person must take all reasonable steps to obtain the approval or permission.

Subdivision 2 - Awnings

Section 18 - Definitions for this subdivision

This section provides the definition of terms exclusive to this subdivision. It defines the terms '**attached**', '**awning**', and '**responsible person**'. For the definition of awning, reference to overhanging a *road* includes overhanging a footpath as '**road**' is defined to include a footpath. Further, this Local Law applies to all awnings (whether or not they are supported by a column) as defined, including those awnings installed before the commencement of this Local Law.

Section 19 - Good repair and safe condition requirement for awnings

Council believes the regulation of awnings is an important precaution to protect the public and, particularly, footpath users. An awning is generally designed or constructed to provide pedestrians or shop fronts with protection against the weather and overhangs public land or road. Sections 19 and 20 are in response to the Findings of the 2016 Inquest into the death of Christopher Jon Walton and the recommendations made by the Coroners Court.

This section provides that a responsible person must maintain and keep the awning in a safe condition and in good working order, repair and condition. The responsible person is the person who owns the land on which a building or other structure is located, where an awning is attached to the building or structure. This section is limited to awnings overhanging public land and road.

The word '**maintain**' is not exhaustively defined in the Local Law. However, the dictionary says '**maintenance**' includes repair and replacement and taking preventative action and that '**maintain**' has a corresponding meaning. Section 19(2) lists some things that '**maintain**' specifically includes (for example, undertaking repairs and obtaining a maintenance report). The obligation under section 19 of this Local Law may apply in addition to any obligation under State law or another local law to maintain a structure or keep a structure in a particular condition. Where the awning has a support system that cannot be readily inspected, parts of the awning may need to be removed by an appropriately qualified person so that an adequate

inspection can be completed without risk to the inspector or public. Where a responsible person chooses to obtain a maintenance report, they should do so from a registered professional engineer under the *Professional Engineer Act 2002*. See section 19(5).

The maintenance obligation applies at all times. While Council can take enforcement action for non-compliance with the maintenance obligation, it is not necessary for Council to give a person a compliance notice before the person becomes liable to maintain an awning, including its repair.

Where an authorised person does not think an awning has been maintained to the required standard, they may give a compliance notice to the responsible person. 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.

The compliance notice may require the landowner to do the things specified in section 19(4), including carrying out specific maintenance or repairs, removing the awning and carrying out other work reasonably required. Examples of this work are provided in section 19(4)(d). A responsible person is not prevented from re-applying for an approval to install a new awning if it was required, in complying with a compliance notice, to remove an awning. A compliance notice is enforced under section 53. That section specifies what information must be included in the compliance notice and the penalty for non-compliance.

This section is not intended to and does not establish an alternative development process. This section is limited to maintenance, repair and removal of an awning. Matters relating to the location, design and construction are not dealt with by this Local Law. Further, section 19 does not affect the need for a person to obtain an approval outside of this Local Law (for example, from the State government) to undertake work to an awning, should such an approval be required. If a compliance notice under section 19 requires a person to perform work and performing the work would contravene another law unless the person had an approval or permission to perform the obligation, then the person must take all reasonable steps to obtain the approval or permission.

Nothing in this section prevents Council from exercising other powers under other legislation, including issuing an enforcement notice and/or show cause notice under the *Building Act 1975*.

Section 20 - Awning inspection report

Under this section, Council may give a responsible person an awning inspection report notice requiring the person to obtain and give Council an awning inspection report about an awning within a reasonable period stated in the notice. In the notice, Council may also specify, in addition to the requirements for an awning inspection report outlined in subsection (3), any matter or thing which is reasonably required to be considered and included in the awning inspection report.

An '**awning inspection report**' (which is defined in subsection (11)), is a report about an awning which must comply with the requirements outlined in subsection (3), and any matter or thing reasonably required by Council as stated in the awning inspection report notice, and which must be prepared by a registered professional engineer under the *Professional Engineer Act 2002* who can competently address the matters required to be included in the report.

Subject to an emergency event occurring (in which case, Council may issue a responsible person with an awning inspection report notice following the emergency event), Council must not give a responsible person an awning inspection report notice more than once every five years after the commencement. The term '**emergency event**' is defined in subsection (11). Reference in this section to "the commencement" is a reference to the commencement of the section, being the date notice of the making of this Local Law is published in the Queensland Government Gazette. See section 32F(2) of the *Acts Interpretation Act 1954*.

It is an offence not to comply with an awning inspection report notice. Also, Council may obtain the report if the responsible person does not and may recover the cost of doing so from the responsible person.

The purpose of this section is to allow Council to monitor the state of maintenance, the structural adequacy and condition of the awning, the awning connection to the building and any items attached to the awning via an awning inspection report. If appropriate, Council may decide to take enforcement action against a responsible person (including issuing a compliance notice) as a result of an awning inspection report.

Part 3 - Other uses of public land and roads

Division 1 - What this part is about

Section 21 - Overview

This section sets out the matters dealt with in part 3.

Division 2 - Use of public land and roads

Section 22 - Restricted activities

This section partly retains section 5 of the 2011 Local Law and provides that Council may, by Subordinate Local Law, prescribe an activity to be a restricted activity on public land or roads.

Under the 2011 Local Law, Council could declare prohibited activities, as well as restricted activities. Prohibited activities were blanket prohibitions and restricted activities were permitted in certain circumstances. Blanket prohibitions are inflexible and can produce unfavourable outcomes for the community and Council. Under this Local Law, prohibited activities have been converted to restricted activities. This does not limit Council's ability to, in effect, prohibit certain activities in certain locations, see section 12.

Council must take reasonable measures to inform the public of any restriction of activities. Reasonable measures is defined broadly so that Council may have the flexibility to decide how it informs the public of any regulation on activities in accordance with the size and nature of the place where the regulation applies. It is important to notify the public of such a regulation given it is an offence to undertake a restricted activity contrary to the Local Law. Such notification supports the principles of natural justice to ensure that the public are fully informed of the application of this Local Law.

It is an offence for a person to undertake a restricted activity outside the extent permitted.

For example, Council may prescribe that, on all public land, it is a restricted activity to carry out vehicle maintenance or servicing. However, it is allowed if solely to effect minor emergency vehicle repairs.

It is not the intention of this Local Law to regulate the right of way of vehicles or dangerous driving on a road, as such matters cannot be regulated by a local law pursuant to section 66(4) of the *Transport Operations (Road Use Management) Act 1995*.

Section 23 - Opening hours of public land

This section retains section 6 of the 2011 Local Law, which allows Council to declare times where an area of public land is open to the public (**opening hours**).

For example, the opening hours of parks, reserves, libraries and transfer stations.

Council may wish to limit opening hours for a number of reasons including, to protect public assets, and for public safety and amenity reasons. It is an offence for a person, other than an essential service employee in the course of their duties, to enter or remain in an area of public land outside its opening hours, unless authorised by Council or another local law.

For example, a Council employee authorised to perform duties which require access outside opening hours.

Council must indicate the opening hours of public land via a notice at each public entrance to the area. This provides transparency and openness for members of the public. Any limitations on the right to use publicly owned resources must be justified as necessary in accordance with the purpose of the Local Law.

An '**essential services employee**' is defined in the Dictionary and includes employees of the Council, Queensland Police Services and the Queensland Fire and Emergency Service.

Section 24 - Power to close areas of public land

This section retains in part section 7 of the 2011 Local Law, which allows Council to close areas of public land to public access either on a temporary or permanent basis. Council believes that everyone has the right to enjoy public land. However, sometimes it is necessary to impose restrictions on that access, for reasons including public safety and environmental protection.

Where Council chooses to close an area of public land either temporarily or permanently, it must place at each public entrance to the area a notice of the closure, including a statement of the duration of the closure. It is an offence for a person, other than an essential services employee in the course of their duties, to enter or remain in an area of public land that is closed, unless authorised by Council.

For example, a Council employee authorised to perform duties which require access to the area.

Closure on temporary basis

Council may close an area of public land to the public on a temporary basis, by resolution. This approach allows for occasions when Council must act urgently to close an area.

For example, where public safety is at risk or in circumstances of fire or other natural disaster when closure is required to carry out necessary maintenance and construction and Council needs to be able to respond quickly.

The circumstances in which Council can temporarily close an area of public land is set out in subsection (1) and includes, for example to carry out construction, maintenance, repair or restoration work. This power should be used only when it is absolutely necessary and for the minimum amount of time possible (and not more than 6 months, unless the closure is because of a fire or other natural disaster or to conserve or protect cultural or natural resources or native wildlife, in which case the closure cannot be for more than 24 months). The provision does not limit Council making subsequent resolutions should unanticipated circumstances arise to require this action. Council must revoke the closure as soon as practicable when satisfied that the reason for making the resolution no longer exists.

Permanent closure

Council may close an area of public land on a permanent basis. Given that the closure is permanent, the process for closing is via Subordinate Local Law, rather than resolution. This provision is only intended to be used in limited circumstances for serious issues affecting the area of public land.

For example, when required to protect significant cultural or natural resources or protect a breeding area for native wildlife.

Division 3 - Matters affecting roads

Section 25 - Power to require owner of land adjoining road to fence land

This section retains section 8 of the 2011 Local Law, which enables Council to require an owner of land adjoining a road to fence the land to prevent the risk of interference with the safe movement of traffic or the safe use of the road. An authorised person may give a compliance notice to the landowner, requiring them to build a fence in accordance with any relevant minimum standards or repair, modify or replace a fence that is in disrepair or does not satisfy the minimum standards. Minimum standards must be prescribed by Subordinate Local Law. A compliance notice is enforced under section 53. That section specifies what information must be included in the compliance notice and the penalty for non-compliance. 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.

Section 26 - Numbering of premises and allotments adjoining a road

This section retains section 9 of the 2011 Local Law, and provides that an owner of land:

- must not adopt a number for a premises or allotment that is inconsistent with a numbering system adopted by Council; and
- must display the number allocated in a way that can be easily identified from the adjoining road.

This provision is intended to mitigate difficulties experienced by service vehicles trying to locate the correct property. This is particularly important in situations involving police, fire or medical emergencies. A reasonable person test may be used for Council to determine whether a number can be easily identified. It is an offence not to comply with this section and Council may issue compliance notices or penalty infringement notices for non-compliances.

Section 60 of the *Local Government Act 2009 (LGA)* gives Council control of all roads in its local government area, including being able to name and number roads. Reference in section 26 of this Local Law to a 'numbering system adopted by the local government', is a reference to any system adopted by Council pursuant to its powers under section 60 of the LGA.

Part 4 - Approvals for vehicle or vessel access to public land

Division 1 - What this part is about

Section 27 - Overview

This section provides the overview for this part, which is to regulate the circumstances in which an approval is required to drive a vehicle or vessel on public land and how to obtain that approval.

Division 2 - Vehicle or vessel access approvals

Subdivision 1 - Application process

Section 28 - Need for approval

Under the 2011 Local Law and the 2011 Administration Local Law an approval was generally required to drive a vehicle on public land. This section retains that requirement. It also sets out the limited circumstances in which an approval is not required and includes, for example, essential services vehicles or vessels.

Section 28(2) sets out the circumstances in which a person is not required to obtain an approval to drive a vehicle or vessel on public land. However, just because a person is not required to obtain an approval does not mean they do not need to comply with other requirements. For example, if there is an area of public land

where a particular vehicle (including for example, a wheeled recreational vehicle) is prohibited, then the person must not drive the vehicle in that area.

Section 28(2)(c) provides that where a person is authorised under another Act (which includes another Council local law) to drive a vehicle or vessel on public land, they do not need an approval under this Local Law. For example, if an approval to drive a vehicle on public land forms part of an approval for an event under the *Events Local Law 2023*, then a person will not also require an approval under this Local Law.

Section 28(2)(i) provides that where a person drives a vessel on a canal or on the Bribie Gardens Estate waterways (as those terms are defined), they do not need an approval under this Local Law.

It is an offence under section 44 to drive a vehicle or vessel on public land without an approval (except in the limited circumstances stated).

An approval to drive a vehicle or vessel on public land is required to achieve the objects of this Local Law. Council believes it is an individual's responsibility to ensure that the public land is left in a similar condition to when the individual was provided with access. An approval is necessary to ensure this. Any damage caused as a result of the activity whilst accessing the council land must be repaired at the individual's cost. This is important so that the Council is not attending to repairs at the cost of the general ratepayer.

Section 29 - Making an application

This section partly retains section 8 of the 2011 Administration Local Law with respect to vehicle or vessel access to public land. It sets out the way in which an application for approval needs to be made to Council and what it must be accompanied by. Under the 2011 Administration 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 is to ensure the community has a simple, straightforward application process to navigate.

Subdivision 2 - Timeframes for deciding applications

Section 30 - Timeframe for deciding applications when no further information is needed

This section sets out the timeframe within which Council must decide a properly made 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 for an approval. However, Council recognises that timeframes provide accountability and keep the decision-making process progressing for both parties.

Section 31 - Timeframe for deciding applications when further information is needed

This section sets out the timeframe within which Council must decide a properly made 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 may require the dimensions or weight of a vehicle to determine appropriate conditions for the approval.

Section 32 - Timeframe for dealing with applications that are not properly made

This section applies where Council receives an 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 29. This provision is intended 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.

Subdivision 3 - Deciding an application

Section 33 - Deciding an application

This section requires Council to decide an application by either approving it, approving it subject to conditions or refusing it. Council can refuse an application if approving it would be inconsistent with the object of the Local Law.

If there are risks that need to be mitigated Council can approve the application but impose conditions, to ensure the approval is undertaken in a manner consistent with the objects of the Local Law. See section 36 regarding the conditions that may be imposed on an approval.

For example, if the vehicle access to public land requires heavy vehicles and occurs in a built-up neighbourhood, Council may restrict the hours of operation for those heavy vehicles to preserve the amenity of the public land.

If it is not possible to condition the approval in a way which sufficiently mitigates risks or ensures the objects of the Local Law, Council can refuse the application.

For example, if Council is undertaking beautification works on public land and the applicant requires access to that public land on that day, Council may need to refuse the 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 64. 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 - 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 sections 30 and 31 of the 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 drive a vehicle or vessel on public land in the absence of Council’s approval, even if the time in which the decision should have been made has passed. This ensures that a vehicle or vessel cannot be driven on public land 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.

Section 35 - Third-party certification

This section retains section 12 of the 2011 Administration Local Law, which gives Council the power to accept evidence from a qualified third-party that a particular application requirement 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 36 - Permitted conditions

Under section 33, Council may approve an application subject to conditions. Council may condition an approval to mitigate risks and to ensure an approval is undertaken in a manner consistent with the objects of the Local Law. Section 36 provides that any condition imposed on an approval must relate to the objects of this Local Law. This differs from the approach in the 2011 Subordinate Local Law, which imposed onerous mandatory conditions on 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: it may be a condition of an approval that the approval holder must not damage the public land or must rectify any damage caused. This would be consistent with the object relating to preserving the amenity of public land.

Section 37 - Term of approval

This section provides that an approval is valid for the term specified by Council in the approval. Previously, an approval for could only be issued for a term of 12 months. This section gives Council more flexibility to determine an appropriate length for an approval having regard to the objects of the Local Law and the nature of the approval being issued.

For example: A large construction of a property will take 3 years and requires vehicle access to public land to access the back of the property. Having regard to the objects of this Local Law relating to amenity, Council may trial the original approval for a year. Then, based on the objects of the Local Law and the compliance of the approval holder, Council may extend the approval in accordance with section 41

Subdivision 4 - Administering approvals

Section 38 - Definitions for this subdivision

This section defines a **‘show cause notice’**.

Section 39 - Renewal and transfer of approval

This section provides approval holders with the flexibility to renew or transfer their approval for the continuation of vehicle or vessel access to public land. It also gives Council the ability to reconsider an approval to ensure it continues to meet the objects 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 notice that the approval is not renewable or transferable (subsections (4) and (5)). Written conditions of an approval or a decision notice will constitute written notice, such that if the conditions of an approval or a decision notice says that the 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 (where the application is a renewal application) and the objects 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 64. The requirements for a decision notice are set out in the definition of **‘decision notice’** in the dictionary Schedule of this Local Law.

Section 40 - Approval holder may apply to amend conditions

This section retains section 16 of the 2011 Administration 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 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 64. 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 process in section 41.

Section 41 - 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 their right to do so. An approval holder may choose to do this in circumstances where they consent or agree to the proposed action (for example, Council's proposal to amend conditions to mitigate risk of environmental harm) (see subsection (4)). 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 approval holder. This means the approval holder may apply to review the decision under section 64. The 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 sections of the Local Law, such as through an immediate suspension under section 42 or a stop order under section 54.

Section 42 - Procedure for immediate suspension of approval

This section retains section 19 of the 2011 Administration Local Law, which gives Council the power to immediately suspend an activity approval. Council recognises there are certain urgent circumstances which make it necessary for the activity to immediately cease. For example, where the continuation of the activity poses an urgent and serious threat to public health and safety. While this may impact the 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 approval continues.

Part 5 - Offences and enforcement

Division 1 - What this part is about

Section 43 - Overview

This section outlines:

- further offences relating to this Local Law;
- the enforcement mechanisms that can be utilised by the local government;
- offence proceedings in the Magistrates Court; and
- defences for offences against this Local Law.

Division 2 - Offences

Section 44 - Vehicle or vessel access to public land without an approval

This section retains section 6 of the 2011 Administration Local Law, making it an offence for a person to drive a vehicle or vessel on public land without getting an approval under this Local Law. However, it is not an offence if a person is not required to get an approval because they fall into one of the circumstances listed in section 28. The purpose of this provision is to deter people from driving on public land, without Council being able to regulate this and impose appropriate conditions to ensure public safety and to preserve the fitness for use, amenity and environment of public land.

Section 45 - Failure to comply with conditions of an approval

This section makes it an offence for a person not to comply with an approval issued under this Local Law, including the conditions of an approval. The power to impose conditions (see sections 33 and 36) enables Council to ensure that vehicle or vessel access to public land is undertaken in a way that ensures public safety and preserves the fitness for use, amenity and environment of public land. This section aims to ensure that any risks posed by the activity are minimised and deter approval holders from ignoring the conditions imposed on their approvals by imposing penalties for non-compliance.

Section 46 - 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 objects of this Local Law, or community expectations.

Section 47 - 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 48 - 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 49 - 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 50- 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 50 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 51 - 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 52 - 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 this 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 (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 '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 (including an approval condition), if appropriate to do so.

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. Non-compliance with a compliance notice may result in Council amending, suspending or cancelling an approval, or issuing fines or commencing legal proceedings.

For example, is a person who has an approval to drive a vehicle on public land creates ruts and damages public land and it is a condition of their approval to not cause damage to public land, Council may then issue a compliance notice to the approval holder requiring them to remedy the contravention.

When an authorised person issues a compliance notice under this section, they 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 64. The requirements for a decision notice are set out in the definition of **‘decision notice’** in the dictionary Schedule of this Local Law.

Section 53 - Compliance notice authorised by Local Law

This section retains section 27 of the 2011 Administration Local Law. Unlike the compliance notice issued under section 52, this section applies where the Local Law provides that an authorised person may give a compliance notice to a person. It is used in circumstances where a person has not complied with the Local Law, but the non-compliance is not actually an offence under this Local Law.

Part 2, division 4 of this Local Law empowers the authorised person to issue a compliance notice on various grounds. 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. The compliance notice gives the responsible person for the property an opportunity to rectify the issue. It is an offence where the person fails to comply with the compliance notice.

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 64. The requirements for a decision notice are set out in the definition of **‘decision notice’** in the dictionary Schedule of this Local Law.

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.

In this section, a reference to a person includes a **‘responsible person’**, under section 18.

Section 54 - Stop orders

This section retains, in part, section 29 of the 2011 Administration Local Law, which allows Council to issue a stop order to a person requiring them to immediately stop certain activities otherwise allowed under this Local Law where the activity either:

- (a) causes,
- (b) exacerbates, or
- (c) inhibits Council's ability to respond to,

those urgent and/or serious matters specified in subsection (2)(a)-(g).

For section 54(2)(g), a serious obstruction to the use of the public land for its intended purpose relates to the object in section 3(b).

Council can stop a person from undertaking these activities 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 undertaking the activity, giving Council the opportunity to:

- attend to the urgent and/or serious matters giving rise to the stop order; or
- where an approval has been issued, commence the process for suspending the approval under section 42 and possibly cancelling it under section 41 (if required).

It is an offence not to comply with a stop order issued under this section, which may trigger other enforcement measures.

If an authorised person wishes to put an immediate stop to a person's activity that is a breach of the Local Law, it may be more appropriate for them to give the person an oral direction under section 51 or to issue a compliance notice requiring the person to cease the offending activity immediately.

Section 55 - Abandoned items

This provision retains:

- the offence in the 2011 Local Law of abandoning a vehicle or vessel on public land (which includes canals and other waterway areas); and
- section 36 of the 2011 Administration Local Law, giving Council power to seize and impound an item if in the reasonable opinion of the authorised person the item has been abandoned on public land or road.

Section 36 of the 2011 Administration Local Law referred to abandoned 'goods'. The term 'goods' was defined to not include an animal, but the scope of the term and the section was uncertain. Section 55 instead refers to abandoned '**items**', which is defined in the dictionary Schedule of the Local Law and includes vehicles and vessels. This section also applies to a vessel abandoned on a road. However, this section, does not apply to abandoned vehicles on a road. Where a vehicle (including any goods, equipment or thing contained in, on or about the vehicle) is abandoned on a road, Council will follow the process in section 100 of the TORUM Act.

Section 56 - Local government power to seize and cost recover

This section expands on section 28 of the 2011 Administration 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 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 or road.

For example: if a shopping trolley has been found outside its retail premises, Council may seize and impound the shopping trolley in the interests of public safety. It may then recover the costs of seizing and impounding from the retailer as a debt.

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

Section 57 - Dealing with seized and 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 and roads within the local government area (by seizing and impounding items);
- Council's desire to have transparent processes for managing seized and impounded items; and
- ensuring the owners of 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 58 - Performance of work

This section provides a person must make good any damage caused directly or indirectly by the person's non-compliance with a provision of this Local Law. Council may perform the work when the person has failed to perform work required by:

- the duty to make good any damage caused directly or indirectly by the person's non-compliance with a provision of this Local Law, as under this section;
- a compliance notice issued under this Local Law; or
- a condition of an approval.

Council may then recover the amount it properly and reasonably incurs as a result of performing the work as a debt payable by the person who failed to perform the work. Council must notify this person of the amount of debt. This is a discretionary power.

This section also empowers a Magistrates Court to order the person found guilty of an offence under this Local Law, to perform the work specified in subsection (7)(a) or to pay to Council the amount properly and reasonably incurred by Council in performing the work.

In this section, a person includes a '*responsible person*'.

Section 59 - Permission required to perform obligation

This section provides that, if the Local Law or a compliance notice under section 53 requires a person (the 'liable person') to perform an obligation (for example, to maintain or repair an awning or a driveway crossover under a compliance notice) (an "original obligation") and performing the obligation would contravene another law (for example, the *Planning Act 2016*) unless the person had an approval or permission to perform the obligation, the liable person is not liable for an offence under the Local Law for failing to perform the original obligation. However, the liable person must take all reasonable steps to obtain the approval or permission because the liable person remains, at all times, responsible to perform the obligation (as the case may be).

Council can, though, still give a liable person a compliance notice requiring the person to take other action. Also, the liable person must continue to perform any part of the original obligation that may be performed without the permission. It is important to note that, under section 58, Council may perform work that a person has failed to perform under a provision of this Local Law.

Division 4 - Offence proceedings in Magistrates Court

Section 60 - 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 52 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 61 - 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, each person can be held liable, with or separate from the other. *For example, multiple people are driving on public land without an approval.* 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 62 - 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 63 - 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 the 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 on land they own or occupy. This section is relevant to the maintenance obligations for awnings under section 19.

This section retains the defence in section 31 of the 2011 Administration Local Law by providing that it provides 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.

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

Part 6 - Reviewing decisions

Section 64 - Application for review

This section retains section 22 of the 2011 Administration Local Law, which provides that a person who is given, or is 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 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 under sections 52 and 53.

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

Section 65 - 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 66 - 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 Council refuses an application for an 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 activity.

Part 7 - Administrative provisions

Section 67 - Fees

This section retains section 35 of the 2011 Administration Local Law. Chapter 4, part 2 of the *Local Government Act 2009* allows Council to set cost-recovery fees under a Local Law or by resolution of Council. A cost recovery fee can be, for example, a fee for an application for an approval 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 specific provision to the contrary is made in a Local Law or resolution.

Section 68 - Rewards

This section retains in part section 14 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 undertaking a restricted activity in a manner outside its extent of restriction.* The amount of the reward, and the conditions on which it is payable, must be decided by Council via resolution.

Section 69 - Subordinate Local Laws

This section retains section 39 of the 2011 Administration 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 8 is achieved.

Section 70 - Extrinsic materials

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 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 8 - Transitional and repeal provisions

Section 71 - Local Law repeal

This section provides that the *Moreton Bay Regional Council Local Law No. 4 (Local Government Controlled Areas and Roads) 2011* and its Subordinate Local Law are repealed (**the 2011 Local Law**). This Local Law has the effect of replacing those laws.

Section 72 - 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:

- the opening hours for an area of public land;
- temporarily closing an area of public land to public access; and
- notices showing the opening hours at each public entrance to an area of public land.

Section 73 - Other transitional arrangements

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

Schedule - Dictionary

This Schedule contains the dictionary of defined words used and referred to in the Local Law. Plain English explanations of select definitions contained in this Schedule are provided below.

Road

The State (including through the Department of Transport and Main Roads) is the regulatory authority for many aspects relating to roads and road use. As such, there are instances where a local government is not permitted to regulate activities relating to roads and road use. This Local Law is only intended to cover matters which are not regulated by State legislation, or matters which State legislation specifically authorises local governments to regulate. There are four separate definitions of **‘road’** in the Schedule of the Local Law, where each is required in different circumstances to ensure the Local Law can operate effectively and in a way that is not inconsistent with State legislation.

road (a)

Paragraph (a) of the definition of “road” relates only to sections 12 and 13 of the Local Law. Under these sections, Council can resolve to allow or restrict an activity on public land or road. See explanations for sections 12 and section 13 in this Explanatory Note. For sections 12 and 13, “road” is defined in section 11 of the Local Law. Section 11 states that “road” has the same meaning as in the *Local Government Act 2009* (LGA), at subsections 59(2) and 59(3). The effect of this is that sections 12 and 13 do not apply to a State-controlled road. The term **‘State-controlled road’** is defined in the LGA with reference to the definition in the *Transport Infrastructure Act 1994*.

road (b)

Paragraph (b) of the definition of “road” relates only to section 22 of the Local Law. Under that section, Council can prescribe by Subordinate Local Law activities that are restricted on public land and roads (or an area of public land and road) (**prescribed restricted activities**). See explanation for section 22 in this Explanatory Note.

Section 22 requires a specific definition of “road” as Council is limited by State legislation in the activities it is permitted to regulate on a State-controlled road. Those activities that Council is not able to regulate on a State-controlled road, may be regulated under other State legislation.

For section 22, “road” has the same meaning as in the *Local Government Act 2009*, at subsections 59(2) and 59(3), such that it does not apply to a State-controlled road. Should Council wish to regulate prescribed restricted activities on State-controlled roads, this definition of “road” will need to be amended to also include State-controlled roads prescribed by Subordinate Local Law, despite section 59(3)(a) of the LGA and subject to agreement with the chief executive under section 66(5)(b) of the *Transport Operations (Road Use Management) Act 1995* (**TORUM Act**).

road (c)

paragraph (c) of the definition of “road” relates only to the definition of **‘road verge’**, which is relevant for sections 15 and 16 of the Local Law. See explanations for sections 15 and 16 in this Explanatory Note. A **‘road verge’** is defined in the Local Law as the area of land between the front property boundary of land adjacent to a road and the back of the road kerb, or if there is no road kerb— the table drain, or if there is not road kerb and no table drain— the line of the roadside guide posts.

Paragraph (c) defines “road” for the purposes of the definition of **‘road verge’** as including an area that is either open to or used by the public and is developed for (or has one of its uses) the driving or riding of vehicles; or is dedicated to public use as a road, *but does not include* a bicycle path, footpath, shared path or nature strip, or an area declared under a regulation under the TORUM Act not to be a road. **‘road verge’** requires a specific definition of “road” to ensure that the Local Law can be functional and operate as

intended. For example, the road verge— being the area of land between the front property boundary adjacent to a road, and the road kerb, table drain or roadside guide posts (as the case may be)— would include a footpath (for example) as part of the road verge. Other definitions of “road” referred to in this Local Law may have excluded areas which are required to form part of the ‘road verge’ and would therefore not be appropriate for use in this instance.

However, section 16 (regarding self-assessable verge gardens— see section 16 of this Explanatory Note) does not apply to a State-controlled road, as verge gardens on a State-controlled road are regulated by the State government (though the Department of Transport and Main Roads), and therefore cannot be regulated under this Local Law. The terms ‘**State-controlled road**’ and ‘**TORUM Act**’ are defined in the dictionary Schedule of the Local Law.

road (d)

Paragraph (d) of the definition of “road” relates to all other references to road in the Local Law (unless otherwise specified) and has the same meaning as in the *Transport Infrastructure Act 1994*, and includes a footpath. The definition also includes ‘**State-controlled roads**’.

Is this law consistent with fundamental legislative principles?

The Local Law is generally consistent with fundamental legislative principles. While it imposes obligations on responsible persons to maintain driveway crossovers and road verges that are not on their own land, the Local Law only does so where the person's land has some connection with or receives the benefit of driveway crossover or road verge.

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.

