

City of Moreton Bay

Amendment Local Law No.1 (Moreton Bay Regional Council Local Law No.7 (Waste Management) 2018) 2023

Explanatory Notes

Version 2



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Short title

This Amendment Local Law may be cited as the *Amendment Local Law No. 1 (Moreton Bay Regional Council Local Law No. 7 (Waste Management) 2018) 2023*.

Reference to laws

- the *Moreton Bay Regional Council Local Law No. 7 (Waste Management) 2018* (which is amended by this Amendment Local Law) will be referred to throughout this document as '**the Local Law**';
- the *Moreton Bay Regional Council Local Law No. 1 (Administration) 2011* will be referred to throughout this document as '**the 2011 Administration Local Law**';
- the *Moreton Bay Regional Council Local Law No. 3 (Community and Environmental Management) 2011* will be referred to throughout this document as '**the 2011 Community and Environmental Management Local Law**'; and
- the *Moreton Bay Regional Council Subordinate Local Law No. 3 (Community and Environmental Management) 2011* will be referred to throughout this document as '**the 2011 Community and Environmental Management Subordinate Local Law**'.

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

As part of Council's review of its suite of local laws, Council aims to increase readability and accessibility by incorporating all provisions relevant to a local law in the one document. Previously, some of the local laws had to be read across multiple documents. Notably, the enforcement and administrative provisions for the local laws were previously contained separately in the 2011 Administration Local Law.

This Amendment Local Law amends the Local Law by inserting into the Local Law:

- the relevant administrative and enforcement provisions from the 2011 Administration Local Law;
- some new administrative and enforcement provisions; and
- some provisions which relate to waste management that were previously contained in the 2011 Community and Environmental Management Local Law and the 2011 Community and Environmental Management Subordinate Local Law.

This Amendment Local Law is required to bring the Local Law in line with Council's other Local Laws and to ensure the enforcement and administrative provisions remain enforceable after the 2011 Administration Local Law is repealed.

Plain English explanations of key sections of the Amendment Local Law

Note— minor amendments (e.g., changing 'local law' to 'Local Law' and renumbering of provisions) are not explained below.

Part 1 - Preliminary

Section 1 - Short title

This section establishes the short title of this Amendment Local Law.

Section 2 - Local Law amended

This section provides that this Amendment Local Law amends the Local Law.

Section 3 - Object

This section provides the scope and context for the provisions of this Amendment Local Law. These provisions and their content must be consistent with the object of this Amendment Local Law.

The objects of this Amendment Local Law are aimed at:

- ensuring the enforcement and administrative provisions relied on by the Local Law remain enforceable after the 2011 Administration Local Law is repealed;
- bringing the Local Law in line Council's other Local Laws; and
- incorporating provisions relating to waste management which were contained in the 2011 Community and Environmental Management Local Law and the 2011 Community and Environmental Management Subordinate Local Law.

Part 2 - Amendments to Local Law

Section 4 - Replacement of s 1 (Short title)

This section establishes the new title of the Local Law.

Section 10 - Amendment of s 8 (General requirements for keeping waste containers at serviced premises)

Section 11 on the Amendment Local Law inserts a new subsection 8(1A) into the Local Law. The new subsection 8(1A) retains subsection 9(4)(a) of the 2011 Community and Environmental Management Subordinate Local Law, which provides that, where a waste container for a serviced premises cannot be kept at a place within the property boundary of the premises, the occupier of the premises must ensure that the waste container is kept at the place directed by the authorised person.

The terms '**serviced premises**' and '**occupier**' are defined in the Local Law.

Section 19 - Insertion of new pts 3A, 3B and 3C

This section inserts a new Part 3A into the Local Law, which deals with the offences and enforcement provisions, review of decisions provisions and administrative provisions. Many of these provisions have been incorporated from the 2011 Administration Local Law. The headings below reflect the new section numbers in the Local Law.

New Part 3A - Offences and enforcement

New section 17A - Overview

This part 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.

New section 17B - Failing to ensure waste which is spilled during removal from a premises is cleaned up

This section retains subsection 9(4)(b) of the 2011 Community and Environmental Management Subordinate Local Law (which relates to subsection 19(1) of the 2011 Community and Environmental Management Local Law). Under this section it is an offence for an occupier to fail to ensure that any persons engaged to remove waste from a premises, immediately cleans up any waste spilled from the waste container during that removal.

The terms '**occupier**' and '**premises**' are defined in the Local Law.

New section 17C - Providing false or misleading information

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

New section 17D - Threatening an authorised person or other employee or agent of the local government

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 or any other employee or agent of Council at a Moreton Bay City Council waste facility. 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.

New section 17E - 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.

New section 17F - 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.

New section 17G - 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.

New section 17G 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.

New section 17H - 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 the Local Law. It is an offence for a person to not comply with such a direction.

New section 17I - 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 this Local Law. An authorised person may give the person who this the Local Law, or who is involved in the contravention, a compliance notice. A compliance notice must contain those matters stated in subsection (4), including the timeframe to remedy the breach and the consequences of failing to do so. It is an offence not to comply with a compliance notice.

An authorised person may 'give' a compliance notice by delivering it to the person personally, or by leaving it at, or sending it to the person's place of residence or business. See *Acts Interpretation Act 1954*, section 39.

The purpose of this section is to enable an authorised person to give a person responsible an opportunity to stop or remedy a breach of the Local Law, if appropriate to do so.

For example, where an occupier of premises fails to keep a waste container clean and in good repair, which is an offence under section 7.

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 notice may result in Council issuing fines or commencing legal proceedings.

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

When 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 New section 17P. The requirements for a decision notice are set out in the definition of **‘decision notice’** in the dictionary Schedule of this Local Law.

New section 17J - Local government power to seize and cost recovery

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.

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

New section 17K - Dealing with impounded items

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

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

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

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

- if in the reasonable opinion of the authorised person, the commercial value of the impounded item is so slight that it would not cover the reasonable cost of seizing, impounding and selling the impounded item, the item can be disposed of as the chief executive officer directs. The

reasonable costs can be determined having regard to the costs associated with seizing, impounding and selling an item by auction, including an officer's time in facilitating this; or

- sell the item through a public auction. If the item does not sell at auction within a reasonable time, the item can be disposed of as the CEO directs (for example, by private sale, giving away the item or destroying the item).

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

This section aims to strike a balance between:

- Council's need to manage and responsibly maintain land 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.

New section 17L - 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 11 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.

New section 17M - 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, where two people are disturbing or interfering with the contents of a waste container, which is an offence under section 7.

The aim of this section is to ensure any and all responsible parties can be held accountable via compliance and enforcement mechanisms under the Local Law.

New section 17N - 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 the Local Law if a person was not criminally responsible in accordance with the Criminal Code, chapter 5.

New section 17O - Owners and occupiers must ensure compliance with this Local Law

This section provides that owners and occupiers of places must ensure that an offence under the Local Law is not committed in or on a place. Failure to do so means the owner or occupier also commits an offence. The intent of this provision is to ensure persons take responsibility for activities occurring in

places they own or occupy. This section retains the defence in section 31 of the 2011 Administration Local Law by providing a defence for an owner or occupier of a place where the offence occurred to prove that they did not have knowledge of the act/omission which led to an offence, and they could not have reasonably prevented it. Council recognises that there are some circumstances where it may not be reasonable or fair to hold the owner or occupier of a place responsible for an offence.

The words '**place**', '**owner**' and '**occupier**' are defined in the Local Law.

New Part 3B - Reviewing decisions

New section 17P - 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 decisions to issue compliance notices under New section 17I reviewed internally by Council.

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

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

New section 17Q - 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.

New section 17R - 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 issues a compliance notice and the applicant applies for a review of that decision, Council's decision to issue a compliance notice is valid while the review process is underway, and the person must comply with the compliance notice.

New Part 3C - Administrative provisions

New section 17S - Fees

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

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

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

New section 17T - Rewards

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

For example, Council may offer a reward for information regarding someone placing material that is aflame into a waste container.

New section 17U - Extrinsic material

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

Section 23 - Insertion of new section 20 (Other transitional arrangements)

This section inserts a new section 20 relating to transitional provisions for the 2011 Administration Local Law (which Local Law previously relied on). The transitional provisions for decisions made under the 2011 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 Local Law and for this reason, the transitional provisions for decisions made under the 2011 Local Law, to the extent they relate to the Local Law, are contained in the CUPLR LL, part 7. This new section 20 simply directs to reader to the CUPLR LL for the transitional arrangements.

Section 24 - Amendment of Schedule 1 (dictionary)

This section inserts and amends the meaning of words commonly used in the Local Law.

Is this law consistent with fundamental legislative principles?

The Local Law is generally consistent with fundamental legislative principles.

Is this law consistent with Human Rights?

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

