

City of Moreton Bay

Bathing Reserves Local Law 2023

Explanatory Notes

2023 | Version 1.0



Table of Contents

Short title	4
What is this Local Law trying to achieve and why?	4
How will the Local Law achieve those aims?	5
Who did Council seek feedback from in forming this law?	7
Plain English explanations of each section of the Local Law	8
Part 1 - Preliminary	8
Division 1 - Introductory provisions	8
Division 2 - Object and achievement of Local Law	8
Division 3 - Interpretation	9
Division 4 - Operation of Local Law	10
Part 2 - Appointment and powers of authorised persons	10
Division 1 - What this part is about	10
Division 2 - Appointment of authorised persons	10
Division 3 - Powers of authorised persons	12
Part 3 - Bathing reserves	14
Division 1 - What this part is about	14
Division 2 - Bathing reserve signs	14
Division 3 - Designation of bathing areas	14
Division 4 - Flags and Signage	14
Part 4 - Reservation for life-saving training	15
Division 1 - What this part is about	15
Division 2 - Setting aside areas for training	15
Part 5 - Use of aquatic equipment in bathing reserves	15
Division 1 - What this part is about	15
Division 2 - Prohibitions, restrictions and reservations for use of aquatic equipment	16
Part 6 - Behaviour in bathing reserves	17
Division 1 - What this part is about	17
Division 2 - Dangerous behaviour in bathing reserves	17
Division 3 - Alarms and all-clears	18
Part 7 - Life-saving clubs	18
Division 1 - What this part is about	18
Division 2 - Life-saving clubs and patrols	18
Part 8 - Offences and enforcement	19
Division 1 - What this part is about	19
Division 2 - Offences	19
Division 3 - Enforcement	20
Division 4 - Offence proceedings in Magistrates Court	20
Division 5 - Defences	21

Part 9 - Reviewing decisions 21

Part 10 - Administrative provisions 21

Part 11 - Transitional and repeal provisions 22

Is this law consistent with fundamental legislative principles? 24

Is this law consistent with Human Rights? 24



Short title

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

What is this Local Law trying to achieve and why?

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

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

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

This Local Law, for example:

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

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

How will the Local Law achieve those aims?

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

This Local Law achieves its purposes by providing for the:

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



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

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

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

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

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

(2) Reservation for life-saving training

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

(3) Use of aquatic equipment in bathing reserves

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

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

Other types of aquatic equipment cannot be used in a bathing reserve at all (e.g., *motorised watercraft, spear*

fishing, kayaks). This equipment poses a significant risk of injury to others and generally endangers users of the bathing reserve.

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

(4) Regulation of behaviour in bathing reserves

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

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

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

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

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

(6) Appointment and powers of authorised persons

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

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

For example, the power to remove or reduce danger within a bathing reserve.

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

(7) Enforcement within bathing reserves

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

- issue a compliance notice (to give the person an opportunity to take certain steps to remedy the breach);
- issue a fine (which aims to deter the person from continuing to commit breaches);
- commence prosecution (which aims to both deter and punish the person for either continuing to commit

- breaches, or committing breaches of a more serious nature); and
- seize and impound an item or thing.

Who did Council seek feedback from in forming this law?

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

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

Feedback from stakeholders was considered in developing this Local Law.

Plain English explanations of each section of the Local Law

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

Part 1 - Preliminary

Division 1 - Introductory provisions

Section 1 - Short title

This section establishes the short title of this Local Law.

Division 2 - Object and achievement of Local Law

Section 2 - Object

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

The Local Law aims to:

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

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

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

Division 3 - Interpretation

Section 4 - Definitions

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

Section 5 - Bathing Reserves

This section defines **'bathing reserve'**. A bathing reserve relates to a part of the foreshore placed under Council's control by the State government via a gazette notice (section 62 *Local Government Regulation 2012*). The intent of this Local Law is only to apply to bathing reserves under Council's control. The Local Law cannot be used for regulating other areas used for swimming such as dams, creeks and other recreational waterways. Council's other Local Laws may regulate these activities.

Section 6 - Bathing area

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

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

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

Section 7 - Aquatic equipment

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

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

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

Division 4 - Operation of Local Law

Section 8 - Relationship with other Acts

This section clarifies that this Local Law is intended to be consistent with and in addition to those laws regulating the use or development of land.

Part 2 - Appointment and powers of authorised persons

Division 1 - What this part is about

Section 9 - Overview

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

Division 2 - Appointment of authorised persons

Section 10 - Who are authorised persons

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

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

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

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

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

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

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

Section 11 - Limitation on authorised person's powers

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

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

Such limitations might include a limit to:

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

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

Section 12 - Authorised person's appointment conditions

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

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

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

Section 13 - Protection from liability

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

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

Section 14 - Authorised person's identity card

This section retains section 29 of the 2011 Local Law, which requires all authorised persons to hold an identity

card issued by Council or relevant life-saving club.

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

It is also important they return these cards once their appointment has ended. Failure to return an identify card is an offence. This section does not prevent the giving of a different identity card to a person for this part and for other purposes.

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

For example, particulars may include photographs and signatures of the authorised person.

Section 15 - Production of identity card

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

Division 3 - Powers of authorised persons

Section 16 - Power to remove or reduce danger

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

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

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

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

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

Section 17 - Power to require bathers to leave water

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

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

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

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

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

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

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

Section 19 - Dealing with impounded items

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

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

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

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

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

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

This section aims to strike a balance between:

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

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

Part 3 - Bathing reserves

Division 1 - What this part is about

Section 20 - Overview

This section provides an overview of this part, which describes—

- how bathing reserves are to be signed; and
- how bathing areas are to be designated; and
- how conditions in bathing reserves and bathing areas are to be managed.

Division 2 - Bathing reserve signs

Section 21 - Signs indicating existence of bathing reserve

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

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

For example, the use of certain aquatic equipment may be restricted or prohibited within the bathing reserve.

Division 3 - Designation of bathing areas

Section 22 - Bathing areas

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

Division 4 - Flags and Signage

Section 23 - Flags to inform bathers about prevailing conditions

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

Section 24 - Closure of bathing reserves

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

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

Section 25 - Interference with flags and life-saving equipment

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

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

Section 25 - Compliance with Australian Standards

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

Part 4 - Reservation for life-saving training

Division 1 - What this part is about

Section 27 - Overview

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

Division 2 - Setting aside areas for training

Section 28 - Reservation for life-saving training

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

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

Part 5 - Use of aquatic equipment in bathing reserves

Division 1 - What this part is about

Section 29 - Overview

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

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

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

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

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

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

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

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

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

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

Section 32 - Reservation of areas for use of aquatic equipment

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

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

Part 6 - Behaviour in bathing reserves

Division 1 - What this part is about

Section 33 - Overview

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

Division 2 - Dangerous behaviour in bathing reserves

Section 34 - Dangerous object

This section retains section 14 of the 2011 Local Law, which creates an offence to *bring* into, or *use* or *have* dangerous objects or dangerous items of aquatic equipment in a bathing reserve. The scope of this offence has been expanded to also include *having* a dangerous object or dangerous item of aquatic equipment in a bathing reserve. The provision aims to cover any potentially dangerous objects or items of aquatic equipment that are not specifically prohibited under section 30. Unlike section 35, this section only applies to dangerous objects or items of aquatic equipment in a bathing reserve.

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

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

Section 35 - Prohibited equipment

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

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

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

For example, prohibited equipment authorised by an authorised person.

Section 36 - Dangerous conduct

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

Division 3 - Alarms and all-clears

Section 37 - Emergency evacuation alarm

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

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

Section 38 - False alarm

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

Part 7 - Life-saving clubs

Division 1 - What this part is about

Section 39 - Overview

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

Division 2 - Life-saving clubs and patrols

Section 40 - Recognised life-saving clubs

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

Section 41 - Enclosure for life-saving patrols

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

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

Section 42 - Distinctive clothing

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

Part 8 - Offences and enforcement

Division 1 - What this part is about

Section 43 - Overview

This 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.

Division 2 - Offences

Section 44 - Obstruction of authorised persons and lifesavers

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

It is also an offence for a person to use insulting, threatening or abusive language to an authorised person or a member of a life-saving patrol. It is also an offence to give false or misleading information to an authorised person in response to a request that an authorised person is entitled to make under the LGA. Section 44 has been expanded to include further protections for authorised persons. The intent is to protect authorised persons and lifesavers and enable them to undertake their duties. Given the seriousness of this offence, the maximum penalty has been increased from 20 penalty units to 50 penalty units.

Section 45 - Impersonation of authorised persons and lifesavers

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

Section 46 - Attempts to commit offences

This section provides that a person who attempts to commit an offence under this Local Law commits an offence. This means that even if a person unsuccessfully attempts to commit an offence, the person has committed the offence of 'attempt'. 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 47 - Liability of third parties

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

Division 3 - Enforcement

Section 48 - 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 49 - 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 compliance notice must contain those matters stated in subsection (4), including the timeframe to stop or 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 remedy a breach of this Local Law, if appropriate to do so. *For example, where a person has damaged a sign exhibited under this Local Law, which is an offence under section 25.*

Compliance notices allow Council to work with the person to ensure lawful behaviour within our bathing reserves. This aligns with Council's general enforcement approach, emphasising educating the community first, and escalating to stronger methods of enforcement as required. Non-compliance with a notice may result in Council issuing fines or commencing legal proceedings.

When an authorised person issues a compliance notice under this section, they must provide a notice of the decision to the person. This means the person given the compliance notice may apply to review the giving of the notice under section 53 of this Local Law. The requirements for a decision notice are set out in the definition of '**decision notice**' in the dictionary Schedule of this Local Law.

Division 4 - Offence proceedings in Magistrates Court

Section 50 - Enforcement orders

This section gives the Magistrates Court discretion to make an enforcement order requiring a person to take certain action within a specified period. The purpose of this 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., the person has not complied with a compliance notice*). 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 51 - Joint and several liability

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

Division 5 - Defences

Section 52 - Defence of reasonable excuse

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

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.

Part 9 - Reviewing decisions

Section 53 - Application for review

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

A review application must be made within the period stated in subsection (2) and be accompanied by a statement of 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 do so through the administrative actions complaints process, which Council must administer under the *Local Government Act 2009*.

Section 54 - Review decision

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

Section 55 - Stay of 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 an authorised person issues a compliance notice and the recipient applies for a review of that decision, Council's decision to issue the compliance notice is still valid while the review process is underway, and the person must take the specified action in the compliance notice.

Part 10 - Administrative provisions

Section 56 - Fees

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

The purpose of this section and the provisions of the *Local Government Act 2009* are to ensure that Council

is transparent and accountable to the community in charging fees under this Local Law. Cost recovery fees cannot be more than the cost to Council of taking the action for which the fee is charged.

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

Section 57 - Rewards

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

For example, Council may offer a reward for information regarding someone interfering with life-saving equipment.

Section 58 - Subordinate Local Laws

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

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 11 is achieved.

Section 59 - Extrinsic material

This section enables Council to make an explanatory note (which includes this document), which can be used to assist in the interpretation of this Local Law. The explanatory note must be passed by a resolution of Council and published on Council's website. The effect of this provision is that, where the meaning of a section of the Local Law is unclear or 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 11 - Transitional and repeal provisions

Section 60 - Local Law repeal

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

Section 61 - 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:

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

Section 62 - Other transitional provisions

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

LL, part 7. This section 62 simply directs to reader to the CUPLR LL for the transitional arrangements.

Is this law consistent with fundamental legislative principles?

The Local Law is generally consistent with fundamental legislative principles.

Is this law consistent with Human Rights?

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

