



City of Moreton Bay

Camping on Public Land Local Law 2023

Explanatory Notes

2023 | Version 1.0



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Short title

This Local Law may be cited as the *Camping on Public Land Local Law 2023*.

What is this Local Law trying to achieve and why?

The Moreton Bay City is one of great natural beauty, from the mountains to the sea and Council maintains spacious areas of public land for the community to use and enjoy. Council aims to encourage further outdoor recreation (see the MBRC Outdoor Recreation Plan 2019-2031) and to have local laws that support this. This Local Law will support outdoor recreation by allowing for certain areas of public land to be used for camping. However, camping on public land requires careful regulation to ensure it does not unreasonably impact the fitness for use and amenity of public land, the environment, public health and safety or neighbouring properties. The following examples highlight some potential negative impacts if camping on public land is not carefully regulated:

- camping on areas of public land which are ill-suited for camping (for example, the middle of a jetty)
- public land being used for camping may diminish the ability for the public to use those areas as intended;
- the amenity of usually vibrant public parks may be diminished by refuse generated by long term camping; and
- access to public land for emergency response, and emergency response action, may be impeded by the presence of campers on that land.

In light of this, Council aims to create a new, modern Local Law, that facilitates options for camping on public land, while also balancing the need to ensure appropriate regulation of camping, to minimise any potential issues. Council has also considered the needs of people experiencing homelessness in the drafting of this Local Law.

How will the Local Law achieve those aims?

Council aims to create a modern Local Law that is easy to read and navigate. As such, all matters relating to camping on public land are contained in this Local Law. It will also provide Council with sufficient discretion to tailor each approval (where approval is required) to the needs of the community and applicants. This Local Law achieves its purposes by:

- prohibiting camping on public land, except in certain circumstances;
- providing offences and enforcement mechanisms for breaches of this Local Law;
- establishing a framework for the local government to declare certain areas of public land as camping grounds where camping is allowed subject to certain conditions; and
- establishing a framework to grant approvals to camp on public land (a 'camping approval').

(1) Camping grounds

Under this Local Law Council may, by resolution, declare areas of public land to be camping grounds. Camping grounds are subject to certain standard conditions in addition to any area specific conditions declared to apply by Council (also by way of resolution).

(2) Prohibition on camping on public land public land

Outside of certain circumstances, it is unlawful for a person to camp on public land. This is to allow Council to appropriately manage the risk factors around camping.

The circumstances in which a person may lawfully camp on public land are outlined in the commentary on section 9 below.

(3) Enforcement mechanisms

This Local Law creates several offences in relation to unlawful camping on public land. Council may use the enforcement mechanisms of fining and prosecution generally available it under the Local Law.

This Local Law also allows Council to issue several different kinds of notices, in different circumstances, to address the risks posed by unlawful camping on public land without going so far as to either issue a fine to or commence a prosecution against the offending person. This is to enable Council to seek compliance first by education, then by notice, then, as last resorts, by fine or prosecution. These types of notices are discussed in the commentary on sections 22 and 23.

(4) Camping approvals

Under this Local Law a person may camp on public land if the person has an approval granted under this Local Law. A straightforward application, information request and decision-making process is established in part 3 of this Local Law and discussed in commentary on that part below.



Who did Council seek feedback from in forming this law?

In March 2021, Council sought feedback from the community to identify key issues regarding the regulation of camping under our local laws and invited recommendations on how those issues could be addressed. This consultation took the form of a public survey, as well as invitations to relevant peak body organisations and state departments.¹

Council reviewed all responses and identified issues that were the most prevalent for the community. In July 2021, targeted consultation on these specific issues occurred via a second public survey and further invitations to the relevant peak body and State departments. An overview of the community feedback on the issues relevant to camping is provided below.

Camping on Public Land		
Survey question	Responses received	Outcome
Should camping be allowed on public land in certain designated areas?	993 ²	Yes = 71.60% No = 24.57% Unsure = 3.83%

The majority of respondents were of the view that camping on public land should be allowed in designated areas.³ The feedback received by Council during consultation was considered in developing this Local Law.

¹ Australian Camps Association, Australian Caravan Club, Bellara Caravan Park, Bramble Bay Caravan Park, Bribie Island Caravan Park Woorim, Caboolture River Caravan Park, Caboolture Show Society, Campervan and Motorhome Club of Australia, Campstay, Caravan Industry Association of Australia, Caravan Parks Association of Queensland Ltd, Caravan Trade and Industries Association of Queensland, Caravanning Queensland, Clontarf Village Cabin Park, Council or Mayors (SEQ), Dayboro Show Society, Department of Agriculture and Fisheries, Department of Communities, Housing and Digital Economy, Department of Resources, Department of Transport and Main Roads, Endeavour Caravan Park, Hipcamp, Lifestyle Villages Dakabin, Moreton Bay Region Industry & Tourism, Pines Cara Park, Pine Rivers Show Society, Redcliffe Show Society, Samford Show Society, Sandstone Point Holiday Resort, Scarborough Holiday Village, Scouts Queensland, Silver Shores Caravan Park and Woodford Show Society.

² Council also consulted the public on this question via social media. While the responses provided via social media were considered, they were not counted in these totals.

³ Council also asked the community: "What types of public areas should Council consider designating for camping?"

Plain English explanations of each section of the Local Law

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

Part 1 - Preliminary

Division 1 - Introductory provisions

Section 1 - Short title

This section establishes the short title of this Local Law.

Division 2 - Objects and achievement of Local Law

Section 2 - Objects

This section sets out the objects of the Local Law and provides for the broad context and scope for each provision. The provisions of this Local Law must be consistent with the objects of this Local Law which seeks to facilitate camping on public land and ensure that camping on public land does not unreasonably impact on the:

- the fitness for use and amenity of public land;
- environment;
- public health and safety; and
- properties near public land.

Fitness for use, as a concept in this Local Law, relates to the ability for public land to be used in the ordinary way the community expects it to be. For example, a public park is fit for use as a place for children to play. So, the fitness for use of public land is diminished where it becomes dangerous or inconvenient for the community to use land in the ways they ordinarily expect to be able to. For example, a jetty becomes less fit for use if it is used for camping.

Amenity, as a concept in this Local Law, relates to the desirability of public land in relation to its purpose. For example, a public nature walk has high amenity if it is in a state of relatively undisturbed natural beauty. So, the amenity of public land is diminished where it becomes less desirable in relation to its purpose. For example, a pristine nature walk suffers diminished amenity from the presence of, and refuse associated with, long term or large amounts of camping.

Properties near public land may involve consideration of the impact to residential properties as well as commercial and agricultural properties. Some obvious impacts will be around noise and privacy. The impact of a declared camping ground on the operations of a business on neighbouring land may also be a consideration. The declaration of camping grounds is not intended to negatively impact such operations. Impacts to be considered may include potential restrictions on those operations. For example, in considering the declaration of a camping ground, or the issuing of an approval to camp, it may be appropriate to consider the potential impact on the ability of a neighbouring agribusiness to operate normally (e.g., spraying crops, machinery noise).

The remaining concepts in this section take on their ordinary meaning.

Section 3 - How objects of Local Law are to be achieved

This section sets out how the objects of the Local Law will be achieved. This includes through:

- establishing the concept of camping on public land;
- prohibiting camping on public land, except in certain circumstances;
- providing mechanisms for enforcement where there is non-compliance with conditions of an approval or provisions of this Local Law;
- establishing a framework for the local government to declare certain areas of public land as camping grounds where camping is allowed subject to certain conditions; and
- establishing a framework to grant approvals to camp on public land.

Division 3 - Interpretation

Section 4 - Definitions

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

Section 5 - Camping

This section defines the key concept of '**camping**'. Camping is defined to mean staying in an area with the intention of remaining there overnight. This is a broad definition which includes, among other things, staying in an area in a vehicle, a caravan, a tent, a boat or with no shelter.

This key concept is intended to capture and regulate various prohibited and restricted activities once regulated under *Local Law No. 4 (Local Government Controlled Areas and Roads) 2011* to the extent that those activities involve camping, including:

- “camp or remain overnight in a vehicle on a local government controlled road or road related area”;
- “camp or remain overnight in a local government area”;
- “camping or sleeping overnight on a landing, jetty or boat ramp”; and
- “occupy a vehicle or vessel for the purpose of habitation in or on a local government controlled area”.

Section 6 - Public land

This section defines the key concept of '**public land**'. Public land is defined broadly to include any land, water or fixture controlled by Council. This is necessary to capture any Council controlled area within the Moreton Bay City where there is an intended use and level of amenity which ought to be protected against certain types of camping. Public land includes all Council roads.

Public land includes, for example, parks, reserves, gazetted foreshores, jetties and canals.

Division 4 - Operation of Local Law

Section 7 - 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 and road (e.g., the *Planning Act 2016*) or the use of trust land and roads (e.g., the *Land Act 1994* and *Land Regulation 1995*).

Nothing in this Local Law is intended to establish an alternative development process and any obligation or requirement imposed by or under this Local Law does not involve an assessment of development.

To the extent that any camping on public land constitutes development as that term is defined in the *Planning Act 2016*, that camping ought to be assessed pursuant to the development process in that Act. This Local Law should not be relied on to approve any activity dealt with, or that could have been dealt with, under a development approval, an existing land use right.

Part 2 – Camping grounds

Division 1 - What this part is about

Section 8 - Overview

This section outlines what is provided for in part 2 of this Local Law.

Division 2 - Camping grounds

Section 9 - Declaration of camping grounds by resolution

This section provides that Council may, by resolution, declare public land, or a part of public land, to be a camping ground. While this section does not require public consultation by Council prior to a declaration of a camping ground, there may be circumstances where Council may wish to undertake public consultation (if, for example, the proposed camping ground is near residential properties). There is nothing in this section which prevents Council from undertaking such consultation, or, similarly, developing operational processes and procedures to guide the decision-making process.

A person may lawfully camp at a camping ground subject to their compliance with the standard camping ground conditions and any declared conditions for that camping ground.

Section 10 - Standard camping grounds conditions

This section outlines the standard conditions that apply to all declared camping grounds.

Subsection (1) requires that a person must not camp at a camping ground in a way that interferes with the ordinary use and enjoyment of the public land on which the camping ground is present. This is to ensure that camping grounds remain usable and enjoyable for all.

For example, a person must not camp in a part of a camping ground that blocks access for others to use that camping ground or be so loud in a camping ground that it is no longer enjoyable for others to camp there.

Subsection (2) is intended to require a person to remediate any alteration (including any damage) caused by their camping at a camping ground. This is to minimise the degradation over time caused to camping grounds as a result of camping. The word “alteration” has the same meaning as in the *Alteration of Public Land Local Law 2023* and has a broad meaning.

Section 11 - Declaration of camping grounds conditions by resolution

This section provides that Council may, by resolution, declare conditions that apply to all camping grounds, or specific camping grounds in the City. This is to allow Council to enable certain kinds of camping, or address certain risks, where appropriate for all or some of the camping grounds in the City. For example, if fires are allowed at the camping ground, Council may declare a condition that open fires and fires for cooking be contained within a properly constructed fireplace or properly constructed barbecue and elevated off the ground.

Subsection (2) sets out that where there is inconsistency between a condition declared under this section and a standard condition imposed under section 10, the condition declared under this section will be the condition that applies.

Part 3 - Offences and enforcement

Division 1 - What this part is about

Section 12 - 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 13 - Offence to camp on public land

This section provides for the central offence under this Local Law, namely the offence of camping on public land outside of the allowed circumstances. The allowed circumstances for camping on public land are outlined in subsections (1)(a) to (1)(h). A person does not commit this offence where they camp on public land:

- (a) which is a camping ground in accordance with the conditions of that camping ground. The term '**camping ground**' is defined in the dictionary Schedule and means an area that Council has declared by resolution to be a camping ground under section 9. Council can also declare conditions for specific camping grounds;

For example, a person may camp on public land that is a camping ground (i.e., as declared by Council resolution) for as long as is allowed in the conditions of that camping ground (i.e. as declared by Council resolution), provided they abide by all the other conditions of that camping ground.

- (b) in accordance with a camping approval issued under this Local Law. This subsection enables the application and approval process in part 3 of this Local Law;

For example, a 2 day camping school excursion where the camping is the subject of a camping approval allowing it to proceed.

- (c) which is a Council controlled caravan park (including where the caravan park offers camping grounds for tents). Many of these caravan parks are operated under management agreements with the Council;

- (d) where they are allowed to do so by some other law (including another Local Law). This is to avoid inconsistency and duplication between regulatory schemes.

- (e) as an employee, agent, contractor or volunteer of Council and are acting within the course of their duties in one of those capacities. This allows for camping where it is necessary or convenient for Council to carry out its functions;

For example, a Council worker staying in a remote area overnight before carrying out works in the course of their duties.

- (f) in accordance with a contract with Council. This allows people to camp on public land under a contract where Council has, through that contract, said they may do so;

For example, a local group of horse enthusiasts arranges a 3 day camping trip at a Council controlled equestrian facility by way of contract with Council.

- (g) where it necessary to lessen or prevent an urgent and serious risk to personal or public health and safety;

For example, emergency responders camping on Council parks unaffected by flooding to more readily access and assist nearby properties which are affected by flooding.

- (h) where it is necessary to lessen or prevent an urgent and serious risk of environmental harm or property damage;

For example, biosecurity officers camping in a Council nature reserve to treat the outbreak of a pest species.

- (i) where it is PEH camping.

Paragraphs (g) and (h) above, acknowledge the clear public benefit in allowing people to camp on public land where it is necessary to lessen or prevent certain risks. The term ‘**environmental harm**’ is defined in the dictionary Schedule.

Paragraph (i) refers specifically to PEH (people experiencing homelessness) camping assessed as such under a framework established by Council under section 47 of this Local Law.

For interpretation of the word “camp” see section 32 of the *Acts Interpretation Act 1954* in the context of the word ‘**camping**’, which is defined in section 5 of this Local Law.

Per subsection (2), the prohibition against camping has no application to camping under a native title right to camp on the relevant land. See also Council’s consideration of human rights on page 21.

Section 14 - 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 objects of this Local Law, or community expectations.

Section 15 - Threatening an authorised person

This section retains the offence in section 21 of the 2011 Local Law, which makes it an offence to threaten, insult or use abusive language to an authorised person. The intention of this provision is to protect the safety of authorised persons and enable them to perform their roles and responsibilities under the Local Law in 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 16 - Failure to comply with conditions of approval

This section makes it an offence if a person camping on public land under a camping approval fails to comply with their approval, including the conditions provided for in their approval. The power to impose conditions (see sections 34 and 37) enables Council to ensure the camping approved under each camping approval is undertaken in a manner that aligns with the objects of this Local Law. This section aims to ensure that any risks posed by camping are minimised and deter those camping on public land from ignoring the conditions imposed on their camping approvals by imposing penalties for non-compliance.

Section 17 - 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 18 - Joint and several liability

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

For example, if two people camp in a park in contravention of section 13 of this Local Law, both would be liable for doing so.

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.

Section 19 - 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 20 - 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 20 of this Local Law 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 21 - 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 22 - Compliance notice for contravention of Local Law

This section retains in part section 26 of the 2011 Local Law and applies if a person contravenes this 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 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 for a contravention of this Local Law an opportunity to remedy that contravention.

For example, where a person is camping on public land in a way that blocks pedestrian access and so interferes with the ordinary use of the land, an authorised person may give them a compliance notice requiring them to move their camp or otherwise stop camping.

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 amending, suspending or cancelling an approval, or 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 44. The requirements for a '**decision notice**' are set out in the definition of decision notice in the dictionary schedule of this Local Law.

Section 23 - Stop notice

This section retains, in part, section 29 of the 2011 Local Law, which allows an authorised person to issue a stop notice to a person, requiring them to immediately stop camping, where the authorised person reasonably believes the camping:

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

those urgent and/or serious threats specified in subsections (1)(a)-(g).

For section 23(1)(g), a serious obstruction to the use of the public land for its intended purpose relates to the object in section 2(b)(i). For example, where PEH Camping occurs in a location that affects the ability of others to use the public land for its intended purpose (e.g., a park).

The intention of this provision is to act as an interim measure to immediately stop a person from camping, giving Council the opportunity to:

- (a) attend to the urgent and/or serious matters giving rise to the issuing of the stop notice, or
- (b) where an approval has been issued, commence the process for suspending the approval under section 43 and possible cancelling it under section 42 (if required).

If an authorised person wishes to put an immediate stop to a person's activity that is in breach of the Local Law, it may be more appropriate for them to give the person an oral direction under section 21 or issue a compliance notice requiring the person to cease the offending activity immediately.

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

Section 24 - Power to take action required under a notice to act

This section provides that, where a person has been given a notice under this Local Law which requires them to take some action by a certain time (a '**notice to act**'), and they have not done so by that time,

Council may take whatever action was required to be done. Council may recover the cost for this from the person who was required to take the action under the notice after providing them with a notice of the amount of the debt.

This section makes it so that, if the process of education and voluntary compliance for a contravention made possible by the various notice provisions of this Local Law fails, Council is able to step in to remedy the contravention. In such a case, Council will ordinarily incur some expense. This provision empowers Council to recover the expenses it properly and reasonably incurs in remedying a contravention from the person responsible for the contravention rather than that cost being borne by the community.

Section 25 - Local government power to seize and cost recovery

This section expands on section 28 of the 2011 Local Law and provides for circumstances in which an authorised person may seize and impound an item brought onto or erected or installed in, on, across, under or over public land 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 public land.

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

Section 26 - 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 (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.

Division 4 - Offence proceedings in Magistrates Court

Section 27 - 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.

For example, where a person has been required to stop camping on public land by a certain time under a compliance notice but has not done so by the required time.

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.

Division 5 - Defences

Section 28 - Defence of reasonable excuse

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

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 Act 1899, Chapter 5.

Part 4 - Approvals

Division 1 - What this part is about

Section 29 - Overview

This section sets out the matters dealt with in part 4.

Division 2 – Camping on public land approvals

Subdivision 1 - Application process

Section 30 - Making an application

This section sets out the way in which an application needs to be made to Council and what it must be accompanied by.

Subdivision 2 – Timeframes for deciding applications

Section 31 - 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. Council recognises that timeframes provide accountability and keep the decision-making process progressing for both parties.

Section 32 - 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.

Section 33 - 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 30. 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 34 - Deciding an application

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

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

If there are risks that need to be mitigated Council can approve the application but impose conditions, to ensure the parking approval is consistent with the objects of this Local Law. See section 37 regarding the conditions that may be imposed on an approval

If it is not possible to condition a parking approval in a way which sufficiently mitigates risks or ensures the objects of this Local Law, Council can 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 44. The requirements for a decision notice are set out in the definition of **‘decision notice’** in the dictionary Schedule of this Local Law.

Section 35 - Effect of failure to decide application on time

This section provides that if an application is not decided by Council in the timeframe specified in sections 31 and 32 of the Local Law, or such further period as agreed to by the applicant, the application is taken to be refused. This ensures that, in circumstances where a camping approval is required for camping to be lawful, the camping cannot lawfully go ahead unless Council has properly assessed and approved an application for it. If a decision is taken to be refused because Council did not make a decision on time, the applicant will need to re-apply. Where an applicant reapplies for approval, the timeframes for deciding an application will re-commence.

Section 36 - Third-party certification

This section retains section 12 of the 2011 Local Law, which gives Council the power to accept evidence from a qualified third-party that a particular application 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 37 - Permitted conditions

Under Section 34, 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 37(1) provides that any condition imposed on an approval must relate to the objects of this Local Law. This section provides Council with the flexibility to impose tailored, purpose-based conditions.

For example, Council may impose a condition on a camping approval that limits the time for which the camper may camp.

Section 38 - Term of approval

This section specifies that a camping approval is valid for the term specified by Council in the approval. This section gives Council flexibility to determine an appropriate length for a camping approval having regard to the objects of the Local Law and the nature of the camping approved.

For example, if a camping approval allows for camping at a Council facility then that approval may be for a short term to avoid the operations of that facility being interrupted.

Subdivision 4 - Administering approvals

Section 39 - Definition for this subdivision

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

Section 40 - Renewal and transfer of approval

This section provides approval holders with the flexibility to renew or transfer their approval for the continuation of camping on 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 camping 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 camping 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 44. The requirements for a decision notice are set out in the definition of '**decision notice**' in the dictionary schedule of this Local Law.

Section 41 - Approval holder may apply to amend conditions

This section retains section 16 of the 2011 Local Law. It allows an approval holder to apply to Council to amend the conditions of an approval. This section recognises that circumstances may change and allows Council the flexibility to amend camping approval conditions to respond to those changes and enable the holder of a camping approval to camp despite those changed circumstances where it is appropriate for them to do so.

Council must decide an amendment application by either granting or refusing the application, having regard to the objects 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 44. 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 42.

Section 42 - 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 44. 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 43 or a stop notice under section 23.

Section 43 - Procedure for immediate suspension of approval

This section retains section 19 of the 2011 Local Law, which gives Council the power to immediately suspend an approval. Council recognises there are certain urgent circumstances which make it necessary for approved camping to immediately cease.

For example, where the continuation of the approved camping 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 - Reviewing decisions

Section 44 - Application for review

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

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

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

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

Section 45 - Review decision

This section retains section 23 of the 2011 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 46 - Stay of original decision

This section retains in part, section 24 of the 2011 Local Law, providing that a review application does not stay the original decision. 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 camp if it cannot otherwise be lawfully undertaken.

Part 6 - Administrative provisions

Section 47 - Local government may adopt PEH camping framework

This section allows Council to adopt a PEH camping framework. Camping on public land assessed under this framework as PEH camping will not contravene this Local Law.

Section 48 - Local government must keep a register of camping grounds and camping grounds conditions

This section places an obligation on Council to keep a register of each camping ground in the City and the conditions that apply to those camping grounds. This is to facilitate public awareness of the location of camping grounds and the conditions that apply.

Section 49 - Documents local government must keep available for inspection

This section places an obligation on Council ensure the registers (kept under section 48) are available for inspection.

Section 50 - Fees

This section retains section 35 of the 2011 Local Law. Chapter 4, part 2 of the *Local Government Act 2009* allows Council to set cost-recovery fees under a Local Law or by resolution of Council. A cost recovery fee can be, for example, a fee for an application to camp on public land 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 51 - Rewards

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

For example, if there is some evidence of unlawful camping (for example, camping refuse), and no public safety cameras recorded who was responsible for it, information about that matter may be sought and incentivised by reward.

Section 52 - Subordinate Local Laws

This section retains section 39 of the 2011 Local Law. It allows Council to make Subordinate Local Laws in relation to camping on public land. The purpose of this section is to define the scope of what Council can regulate by Subordinate Local Law.

Section 53 - 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.

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*. A person who holds a native title right to camp on public land is not subject to the general prohibition on camping in section 13 of the Local Law. To the extent that prohibition may otherwise affect the exercise of any distinct cultural rights of Aboriginal peoples that relate to public land, it does so to achieve the objects of the Local Law.

