

# City of Moreton Bay

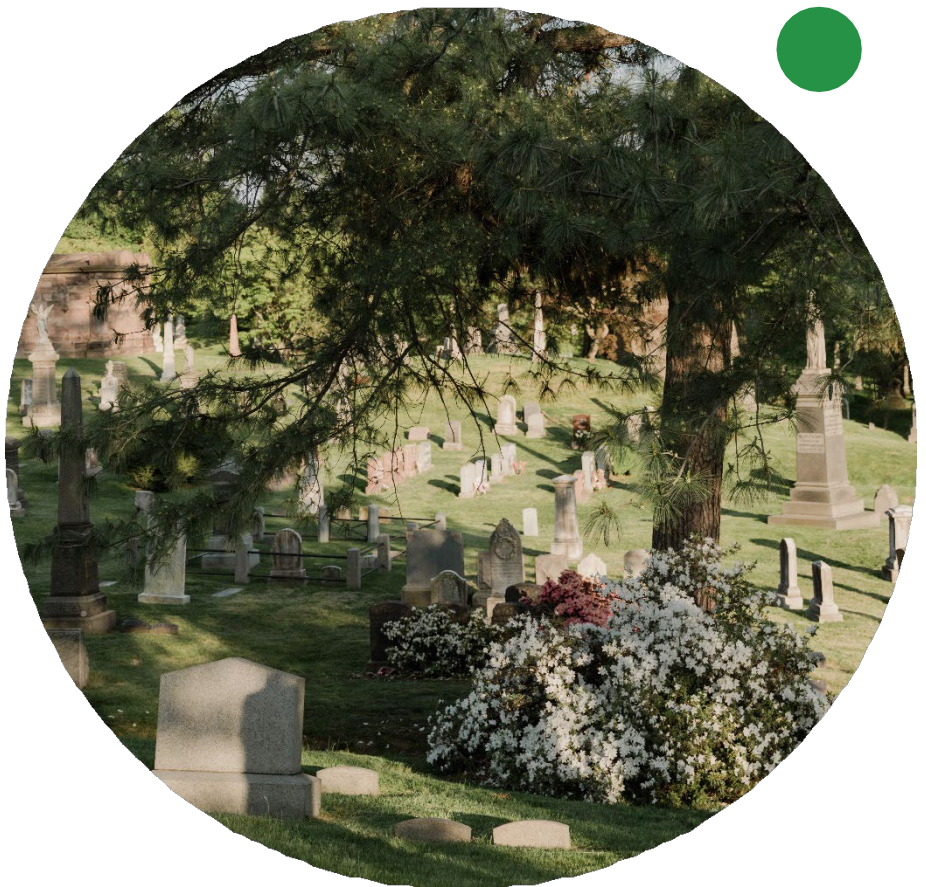
# Cemeteries

# Local Law

# 2023

Explanatory Notes

2023 | Version 1.0



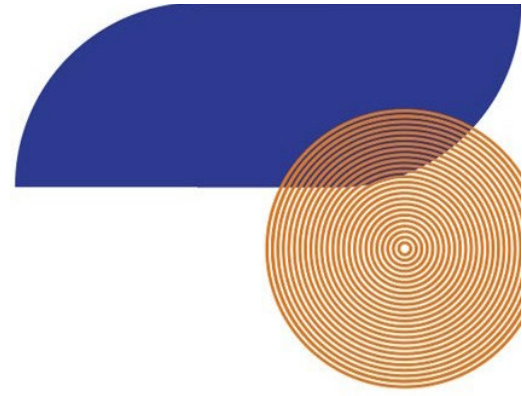
## Table of Contents

<b>Short title</b> .....	<b>3</b>
<b>What is this Local Law trying to achieve and why?</b> .....	<b>3</b>
<b>How will the Local Law achieve those aims?</b> .....	<b>3</b>
<b>Who did Council seek feedback from in forming this law?</b> .....	<b>6</b>
<b>Plain English explanations of each section of the Local Law</b> .....	<b>7</b>
Part 1 - Preliminary.....	7
Division 1 - Introductory provisions.....	7
Division 2 - Object and achievement of Local Law.....	7
Division 3 - Interpretation.....	8
Division 4 - Operation of Local Law.....	9
Part 2 - Approvals.....	10
Division 1 - What this part is about.....	10
Division 2 - Approvals.....	10
Part 3 - Record keeping for prescribed activities.....	14
Part 4 - Offences and enforcement.....	15
Division 1 - What this part is about.....	15
Division 2 - Offences.....	15
Division 3 - Powers of the local government.....	16
Division 4 - Offence proceedings in Magistrates Court.....	20
Division 5 - Defences.....	20
Part 5 - Reviewing decisions.....	20
Part 6 - Administrative provisions.....	21
<b>Is this law consistent with fundamental legislative principles?</b> .....	<b>23</b>
<b>Is this law consistent with Human Rights?</b> .....	<b>24</b>



# Short title

This Local Law may be cited as the *Cemeteries Local Law 2023*.



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

The operation and management of cemeteries is not regulated by the Queensland State Government, except to the extent the cemetery is on trust land for cemetery purposes. Each local government is responsible for regulating the operation of cemeteries and the burial of human remains within their local government area.

City of Moreton Bay acknowledges the importance of providing cemeteries for the community to bury loved ones and to honour them with memorials that celebrate their life. Council recognises the trust the community places in Council to ensure that Council operated cemeteries are well cared for and appropriately managed and that loved ones buried are treated with dignity and respect. The role of Council is to balance community expectations against public health, safety, amenity and environmental impacts when regulating the operation of its cemeteries. Such considerations are also relevant for the operation of privately run cemeteries within our City.

There may also be circumstances where members of the community wish to bury loved ones outside of a cemetery. It is important for Council to have processes in place to facilitate this where appropriate.

The object of this Local Law is to minimise risks to health and safety, protect visual and public amenity and minimise environmental harm arising from the operation of cemeteries and burial of human remains across the City.

Council aims to create a new Local Law that is easy to read and navigate. Laws about the operation of cemeteries and burials were previously contained in the *Moreton Bay Regional Council Local Law No.1 (Administration) 2011* (the **2011 Local Law**). That Local Law also dealt with a range of Local Law matters unrelated to cemeteries and burials. This new Cemeteries Local Law creates an independent Local Law for the operation of cemeteries and burials.

## How will the Local Law achieve those aims?

This Local Law achieves its aims by requiring a person to obtain an approval from Council before:

- operating a cemetery;
- disturbing or burying human remains within a Council cemetery;
- erecting, installing, interfering, or placing a memorial, columbarium, mausoleum or vault within a Council cemetery; or
- disturbing or burying human remains outside a cemetery.

### (1) *Approvals generally*

This Local Law deals with four cemetery-related activities previously dealt with under the 2011 Local Law. In addition to now having a dedicated Cemeteries Local Law, Council has also introduced one approval process

for all four cemetery-related activities. This will ensure a consistent and simplified approach to the approval process. This Local Law aims to provide greater flexibility for Council to determine application requirements and approval conditions. This will allow Council to respond to applications on a case-by-case basis, and to condition each application accordingly. Council believes that an approval process structured in this way will help Council better achieve the aims of this Local Law.

## *(2) Approvals for the operation of cemeteries*

There are several Council-operated and privately operated cemeteries across the City. Council aims to ensure these cemeteries are safe, accessible and visually attractive for the community. Under the 2011 Local Law, a person needed an approval from Council before operating a cemetery. Council believes this remains the most appropriate way to manage the risks associated with the operation of a cemetery, in a way that is still consistent with community expectations. This is especially important given there is minimal State law regulating cemeteries. By providing an application and approval process, Council can ensure cemeteries are operated in a way that is consistent with the purposes of this Local Law.

It is noted this Local Law regulates the operation of a cemetery. The use of the land for a cemetery is regulated by the Moreton Bay City Council Planning Scheme. The creation of this Local Law is not intended to interfere with this planning process.

## *(3) Approvals for disturbing or burying human remains within a Council operated cemetery*

Human remains can carry a variety of toxins, bacteria and other contaminants and any activity involving human remains has the potential to create significant public health, safety, or environmental risk if not undertaken appropriately. While Council acknowledges that burying a loved one is important, we want to also ensure that burials take place in suitable locations, where appropriate precautions can be undertaken, to prevent harm to the community and the natural environments surrounding our cemeteries.

There may also be circumstances in which the disturbance of human remains may be required, including where:

- relatives of the deceased wish to move remains from one cemetery to another; or
- the grave site needs to be opened for the burial of another body in the same grave in accordance with the wishes of the burial rights holder.

Under the 2011 Local Law, you needed an approval from Council to bury or disturb human remains in a Council operated cemetery. Council believes this continues to be the most appropriate way to manage the burial or disturbance of human remains in Council operated cemeteries, in a way that is consistent with community expectations.

Once Council approves an application for a burial within one of our cemeteries, the person who made the application (i.e., by completing and/or signing the relevant application form), is considered the burial rights holder. They will obtain the burial right over the gravesite. This is a right at law. This means that the burial rights holder can choose to be buried within the same gravesite or approve the burial of other loved ones at the gravesite. Most gravesites at Council cemeteries are designed to hold 3 interments.

There are some circumstances where it may be appropriate for Council to intervene with the burial right (for example, where the burial rights holder has passed away). Under the 2011 Local Law, Council had the power to impose certain conditions on the approval regarding burial rights. Similar powers are retained under this new Local Law, by allowing Council the flexibility to impose any condition on an approval, as relevant to the object of this Local Law.

## *(4) Approvals for erecting, installing, or placing, or interfering with, a memorial, columbarium, mausoleum or vault in a Council operated cemetery*

Council appreciates that establishing a memorial for a loved one at their final resting place is an important tradition that aids the grieving process and provides an opportunity to celebrate and honour a person's life. Council seeks to continue to support this activity at Council operated cemeteries via this Local Law while balancing any impact on amenity, safety and maintenance activities.

Council notes that safety, amenity and maintenance issues can arise where memorials are not constructed appropriately, are not well-maintained or where excessive memorialization occurs. Under the 2011 Local Law, a person needed an approval from Council to erect or install a memorial, columbarium, mausoleum or vault in a Council operated cemetery. This remains the most appropriate way to manage this activity, as it allows Council to manage safety, amenity and maintenance issues in a way that is consistent with community expectations.

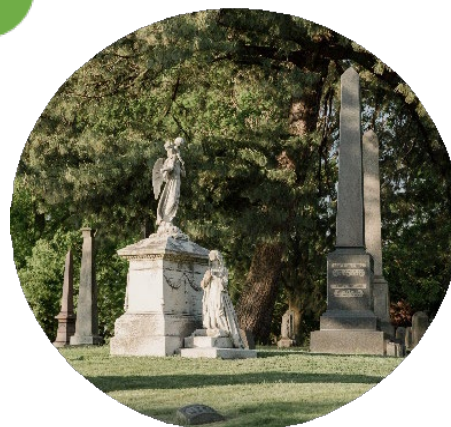
Council acknowledges that in addition to traditional memorials (such as headstones), the community often place other ornaments and memorabilia at gravesites. Such items may include flowers, photo frames, statues and clothing. It would be impractical for Council to require an approval for the placement of these kinds of items. Accordingly, approvals are not required for memorialisation smaller than a headstone, provided there is compliance with Council's guidelines.

*(5) Approvals for disturbing or burying human remains outside a cemetery*

Council recognises there may be some instances where members of the community wish to bury loved ones outside of a cemetery (i.e., on private land), to maintain special family, cultural and/or historical connections. This has the potential to create health, safety and environmental risks if not undertaken appropriately. Burials on private land may also impact future landowners, should ownership of the land change over the years. If burials on private land are not regulated or recorded, new landowners may be unaware that a burial has occurred previously at their property, and whether it has been undertaken safely and lawfully.

Under the 2011 Local Law, a person needed an approval from Council to disturb or bury human remains outside of a cemetery. Council believes this continues to be the most appropriate way to manage the risks associated with these activities in a way that is consistent with community expectations, particularly given the absence of any Queensland law regulating this activity.

The scattering of ashes outside a cemetery (whether on private or public land) can continue to occur without approval.



# 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:

- The Australasian Cemeteries and Crematoria Association;
- Australian Funeral Directors Association;
- Master Builders Queensland;
- Moreton Bay Region Industry and Tourism (MBRIT);
- Local Government Association of Queensland;
- Moreton Bay Business Association;
- Department of Local Government, Racing and Multicultural Affairs; and
- Department of Energy and Public Works.

The feedback received from these stakeholders was considered in developing this Local Law.

# 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 - 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 aims to regulate and facilitate the operation of cemeteries and activities regarding human remains, in a way that minimises risks to human health, safety and the environment, and protects visual and public amenity.

The regulation of these activities aims to:

- **minimise risks to public health and safety:** Activities involving human remains (both within, or outside a cemetery), have the potential to create significant public health and safety risks. Human remains can carry toxins, bacteria and other contaminants that can have harmful impacts on community health, if appropriate measures are not taken. *For example, if human remains are not appropriately buried, the exposure of these remains may cause public health concerns.*
- **minimise risks to the environment:** Human remains can have harmful impacts on the natural environments that surround cemeteries and other final resting places. *For example, if human remains are not appropriately buried, toxins and contaminants may enter surrounding soil or waterways.*
- **protect visual and public amenity:** Council recognises that all cemeteries across the City need to be well maintained to protect the visual amenity of the area. *For example, the installation of memorials at Council cemeteries will need to meet appropriate standards, to protect the visual amenity of the cemetery.* Council also acknowledges that our cemeteries are public facilities, that need to be easily accessible and available for use by all members of the community. *For example, if items left at gravesites are not appropriately managed, they may impede public access and use across Council cemeteries, diminishing public amenity.*

### 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. This includes through:

- implementing a framework for assessing and approving the following activities:
  - operation of a cemetery;
  - disturbance or burial of human remains within a local government cemetery;
  - erection, installation, or placement of, or interference with, a memorial, columbarium, mausoleum or vault within a local government cemetery; and
  - disturbance or burial of human remains outside a cemetery; and
- providing mechanisms for enforcement where there is non-compliance with conditions of an approval or provisions of this Local Law.

### Division 3 - Interpretation

#### Section 4 - Definitions

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

#### Section 5 - Prescribed activity

This section defines '**prescribed activity**' as any of the following:

- operation of a cemetery;
- disturbance or burial of human remains within a local government cemetery;
- erection, installation, or placement of, or interference with, a memorial, columbarium, mausoleum or vault within a local government cemetery; or
- disturbance or burial of human remains outside a cemetery.

These are the activities that require approval under this Local Law and is consistent with the activities that required approval under the 2011 Local Law.

Interference with a grave or a memorial, columbarium, mausoleum or vault was previously a restricted activity under *Subordinate Local Law No.4 (Local Government Controlled Areas and Roads) 2011*. An 'interference' may include, for example, the removal or repair of a headstone. This activity has now been incorporated into the prescribed activities above, where interference with a grave is intended to be dealt with by dot point 2 above (disturbance or burial of human remains within a local government cemetery) and where interference with a memorial, columbarium, mausoleum or vault is intended to be dealt with by dot point 3.

Section 83 of the *Land Act 1994* is also relevant for the exhumation of human remains from trust land for cemetery purposes and requires the consent of the Minister.

#### Section 6 - Excluded activity

This section defines '**excluded activity**', to include any of the following:

- the scattering of ashes; and
- the placement of items at a gravesite within a Council cemetery, provided the items are smaller than the headstone (where there is a headstone) and comply with the relevant guideline.

These activities have been excluded from the definition of '**prescribed activity**' under this Local Law. This means that a person does not need to obtain Council's approval under this Local Law to undertake the activity.

#### *Scattering of ashes*

Council considers an approval is not required for the scattering of ashes as it has little impact on the



environment, public health and safety or visual amenity. This position is also consistent with the approach taken by the Department of Environment and Science where a permit is not required to scatter ashes in areas managed by the Queensland Parks and Wildlife Service.

#### *Placing items at a gravesite*

Council considers an approval is not required for the placement of items on a gravesite, where the item is smaller than a headstone and complies with Council's guideline, as generally this will have little impact on the environment, public health and safety or visual amenity. Council has the power to make a guideline under section 51 of this Local Law.

Since the commencement of the 2011 Local Law, Council has become aware of risks to public safety, visual and public amenity arising from excessive amounts or certain types of items being placed at gravesites. Council intends to manage those risks by requiring people to comply with the guideline when placing items at a gravesite. Items that do not comply with the guideline will require an approval for the "erection, installation or placement of, or interference with, a memorial, columbarium, mausoleum or vault within a local government cemetery".

## **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 any provision of the *Local Government Act 2009* and any laws regulating:

- the use or development of land;
- the exhumation of human remains, ordered by a coroner under the *Coroners Act 2003 (the Coroners Act)*; or
- the management of trust land for cemetery purposes under the *Land Act 1994*.

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 prescribed activity constitutes development as that term is defined in the *Planning Act 2016*, that use ought to be assessed pursuant to the development process in that Act. This Local Law should not be relied on to regulate any activity dealt with, or that could have been dealt with, under a development approval, an existing land use right. However, this Local Law can regulate matters relating to a prescribed activity to the extent that it is not a matter that can be regulated under the *Planning Act 2016*.

Section 20 of the Coroners Act allows the State Coroner to order human remains to be exhumed or cremated remains to be recovered. In doing so, the State Coroner is required to provide notice to the relevant cemetery operator (i.e., Council, for Council operated cemeteries), but is not required to seek their approval. This Local Law intends to ensure consistency with this legislation, recognising an approval for the prescribed activity of disturbing human remains within a Council cemetery is not required where permitted by the Coroners Act.

Sections 79-83 of the *Land Act 1994* deals with the management of trust land for cemetery purposes and sets out obligations on trustees relating to cemetery registers, removal of structures that present a public health and safety risk, the closure and reopening of a cemetery and exhumations. The provisions in this Local Law are in addition to these provisions. Reserves for cemetery purposes are generally not created today; cemeteries would usually be held in freehold and managed by the relevant local government.

# Part 2 - Approvals

## Division 1 - What this part is about

### Section 8 - Overview

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

## Division 2 - Approvals

### *Subdivision 1 - Application process*

#### Section 9 - Need for approval

This section retains section 7 of the 2011 Local Law, which provides that an approval is required to undertake a prescribed activity under this part of the Local Law. It is an offence to undertake a prescribed activity without an approval. Council requires approvals to be obtained for a prescribed activity so that Council is aware of the prescribed activity, and it is carried out in a manner which minimises any risks to health and safety, the environment and protects visual and public amenity.

#### Section 10 - Making an application

This section partly retains section 8 of the 2011 Local Law with respect to a prescribed activity. It sets out the way in which an application for an approval needs to be made to Council and what it must be accompanied by. Under the 2011 Subordinate Local Law, Council imposed several application requirements, including mandating extensive documents and materials to accompany an application. In this Local Law, Council has aimed to achieve more flexibility, removing excessive application requirements so that only essential documents are required. The intention of this amendment is to ensure the community has a simple, straightforward application process to navigate.

### *Subdivision 2 - Timeframes for deciding applications*

#### Section 11 - 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. However, Council recognises that timeframes provide accountability and keep the decision-making process progressing for both parties.

Council recognises that under this Local Law, there are four different prescribed activities, that may require different levels of assessment. Most prescribed activities regulated under this Local Law can be considered quickly (i.e., within 5 days), however, the “operation of cemeteries”, is likely to require further consideration to decide an outcome. Council has carefully considered this and has determined 21 business days to be sufficient to decide all properly made applications for all prescribed activities under this Local Law. This time period aims to ensure Council has sufficient time to assess an application, while also considering the community’s expectation to have their application decided efficiently.

#### Section 12 - Timeframe for deciding applications when further information is needed

This section sets out the timeframe within which Council must decide a properly made application where Council requires further information from the applicant to make a decision. Under this section, Council can make an information request to the applicant and the applicant must respond within the timeframe stated in the section. Council then has further time to consider this information and make a decision. If the further information is not provided by the applicant within the timeframe, Council can still decide the application. The purpose of this section is to allow the parties to request and provide further information necessary for Council to properly assess and decide the application.

*For example, Council receives an application for a burial within a Council cemetery but requires*

*further information regarding the method of burial, before it is able to make a decision.*

### **Section 13 - 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 10. 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 14 - 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 object 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 approval is consistent with the object of this Local Law.

If it is not possible to condition an approval in a way which sufficiently mitigates risks or ensures the object of this Local Law, Council can refuse the application. See section 17 regarding the conditions that may be imposed on an approval.

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

#### *Conditions*

If there are risks that need to be mitigated Council can approve the application but impose conditions, to ensure the prescribed activity is undertaken in a manner consistent with the object of this Local Law. *For example, Council may condition an approval for a burial on private land to take place at a particular location, where environmental risks are minimal.* If it is not possible to condition the prescribed activity in a way which sufficiently mitigates risks or ensures the object of this Local Law, Council can refuse the application. *For example, Council may refuse an application for a burial on private land, if Council is unable to condition the application to mitigate environmental concerns.*

#### *Eligibility criteria*

Council can refuse an application for a prescribed activity if the application does not satisfy the eligibility criteria prescribed in the Subordinate Local Law. *For example, Council may specify eligibility criteria regarding the disturbance or burial of human remains within a local government cemetery by requiring a person to have defined links to the Moreton Bay community to be buried in certain Council cemeteries.*

#### *Inconsistent with another approval*

Council can refuse an application for a prescribed activity where approval would be inconsistent with another approval. *For example, where Council has already granted an approval for a burial at a gravesite to a person (first person), it would be inconsistent with that approval to grant and approval to another person for the same site. In that case, the first person has the right to determine who can be buried at the gravesite as they are the burial rights holder.*

## **Section 15 - Effect of failure to decide application on time**

This section provides that if an application is not decided by Council in the timeframes specified in sections 11 and 12 of this Local Law, or such further period as agreed to by the applicant, the application is taken to be refused. This means that an applicant cannot undertake the proposed prescribed activity in the absence of Council's approval, even if the time in which the decision should have been made has passed. This ensures that prescribed activities cannot go ahead unless Council has properly assessed an application. If a decision is taken to be refused because Council did not make a decision on time, the applicant will need to re-apply. Where an applicant reapplies, the timeframes for deciding an application will re-commence.

## **Section 16 - 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 17 - Permitted conditions**

Under section 14, 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 object of the Local Law. Section 17(1) provides that any condition imposed on an approval must relate to the object of this Local Law. This differs from the approach in the 2011 Subordinate Local Law, which imposed onerous mandatory conditions on approvals. This approach was in-flexible, which sometimes made it difficult to achieve the best outcomes for both the community and Council. This new section gives Council greater flexibility to impose tailored, purpose-based conditions.

*For example, Council may impose a condition on an approval, that a burial must be conducted by a funeral director. This will enable Council to ensure that burials comply with health and safety requirements. This type of condition satisfies the object of this Local Law as it aims to minimise risks to human health and safety and minimise environmental harm.*

## **Section 18 - Term of approval**

This section provides that a prescribed activity approval is valid for the term specified by Council in the approval. Under the 2011 Subordinate Local Law, the term of approval for a prescribed activity differed depending on the prescribed activity. Council aims to maintain this flexibility in the new Local Law. This is because Council recognises that different terms of approval are required, depending on the type of prescribed activity being undertaken.

## **Subdivision 4 - Administering approvals**

### **Section 19 - Definitions for this subdivision**

This section defines a '*show cause notice*'.

### **Section 20 - Renewal and transfer of approval**

This section provides approval holders with the flexibility to renew or transfer their approval for the continuation of the prescribed activity. It also gives Council the ability to reconsider an approval to ensure it continues to meet the object of this Local Law.

An application to renew or transfer must be submitted before the expiry of the existing approval (subsection (1)). If the approval holder is seeking to transfer the approval to another person, this person must be part of the application process (subsection (3)). This is to ensure an approval is not transferred to another person without their knowledge or consent.

However, an approval holder cannot apply to renew or transfer their approval if Council has given the approval holder written notice that the approval is not renewable or transferable (subsections (4) and (5)). Written conditions of an approval or a decision notice will constitute written notice, such that if the conditions of an approval or a decision notice says that the approval is not renewable or transferable, then an approval holder cannot apply to renew or transfer the approval under this section.

Council must decide a renewal or transfer application by either approving it, approving it with amended conditions or refusing the application. Factors which Council may consider in deciding an application include the approval holder's history of compliance with approval conditions (where the application is a renewal application) and the object 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 48. The requirements for a decision notice are set out in the definition of '**decision notice**' in the dictionary Schedule of this Local Law.

### **Section 21 - 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 approval conditions to respond to those changes and enable the approval holder to continue the prescribed activity. Council must decide an amendment application by either granting or refusing the application, having regard to the object of this Local Law and the approval holder's history of compliance with approval conditions.

When Council makes a decision under this section, it must provide a notice of the decision to the applicant. This means the applicant may apply to review the decision under section 48. 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 22.

### **Section 22 - 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 48. 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 23 or a stop order under section 39.

### **Section 23 - 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 the prescribed activity to immediately cease. For example, where the continuation of the prescribed activity poses an urgent and serious threat to public health and safety.

*For example, Council may immediately suspend an approval for a burial within a Council cemetery during wet weather, as it would be unsafe for Council to dig a gravesite or for the community to walk through the cemetery during this weather.*

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 prescribed activity approval continues.

## **Part 3 - Record keeping for prescribed activities**

### **Section 24 - Record keeping obligation for operation of a cemetery**

This section reflects the mandatory condition imposed on all approvals for the operation of a cemetery in the 2011 Local Law, which requires operators to maintain a publicly available register containing:

- the name of every person buried, cremated or placed in the cemetery; and
- the date and form of the burial.

Council considers the maintenance of publicly available records is vital to the operation of all cemeteries, to ensure proper regulation. It allows Council to keep records of burials both within Council operated and privately operated cemeteries, including the details of the remains being buried, and the time and location of the burial. With this information, Council is not only able to manage public health and environmental risks, but is also able to facilitate lawful disturbances, such as exhumations where required. Accurate burial records also enable Council to preserve the historical significance of certain burial sites. For these reasons, this section imposes a standalone obligation on Council to maintain publicly available records in relation to the operation of cemeteries.

# Part 4 - Offences and enforcement

## Division 1 - What this part is about

### Section 25 - 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 26 - Undertaking a prescribed activity without an approval

This section retains section 6 of the 2011 Local Law, making it an offence for a person to undertake a prescribed activity without getting an approval under this Local Law. The purpose of this provision is to deter people from undertaking prescribed activities within the City, without being able to regulate the prescribed activity and impose appropriate conditions to protect public health, safety, amenity and the environment.

### Section 27 - Failure to comply with conditions of an approval

This section makes it an offence if a person undertaking a prescribed activity approval under this Local Law fails to comply with their approval, including the conditions provided for in their approval. The power to impose conditions (see sections 14 and 17) enables Council to ensure the prescribed activity is undertaken in a manner that protects public health and safety and minimises impacts on amenity and the environment. This section aims to ensure that any risks posed by the prescribed activity are minimised and deter those undertaking the prescribed activity from ignoring the conditions imposed on their approvals by imposing penalties for non-compliance.

### Section 28 - Discharging a firearm within a local government cemetery

This section makes it an offence for a person to discharge a firearm in a local government cemetery, unless permitted by a condition of an approval. This retains item 7, Schedule 2, of *Subordinate Local Law No.4 (Local Government Controlled Areas or Roads) 2011*, which restricted this activity. Council recognises that discharging a firearm can be an important component for military funerals. The aim of this section is to ensure public safety, by only allowing the use of a firearm within a Council cemetery only where conditioned as part of an approval to bury a person.

### Section 29 - Interfering with a funeral or commemorative service within a local government cemetery

This section makes it an offence for a person to interrupt, disturb or interfere with a funeral or commemorative service lawfully conducted within a local government cemetery. This retains item 4, Schedule 1 of *Subordinate Local Law No.4 (Local Government Controlled Areas or Roads) 2011*, which prohibited this activity. This section aims to ensure any funerals or commemorative services arising from a prescribed activity application to bury human remains can take place without interruptions, disturbances, or interference from any member of the wider community.

### Section 30 - Riding an animal or causing an animal to pull a vehicle within a local government cemetery

This section makes it an offence for a person to ride an animal or cause an animal to pull a vehicle within a local government cemetery, unless permitted by a condition of an approval. This retains item 7, Schedule 2, of *Subordinate Local Law No.4 (Local Government Controlled Areas or Roads) 2011*, which restricted this activity. Council understands that in some instances, the community may want to ride an animal (i.e., a horse),

or have an animal pull a vehicle (i.e., a cart or carriage), in connection with a funeral. *For example, a person wishes for Council to approve a coffin being transported to a gravesite via a horse and carriage, as part of their application to bury a loved one within a Council cemetery.* This section aims to allow this activity as part of an approval to bury a person within a Council cemetery, where Council can ensure safety and amenity.

### **Section 31 - Providing false or misleading information**

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

### **Section 32 - 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 33 - 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 34 - 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 35 - 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 35 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 36 - 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 37 - Production of records**

This section retains section 25 of the 2011 Local Law. Where an authorised person has entered a property under section 132 of the *Local Government Act 2009* to determine if conditions of a prescribed activity approval are being complied with, they may ask the occupier to produce records for inspection that are required to be kept under an approval. The purpose of this section is to assist authorised persons with their enquiries, to ensure approval holders are complying with their obligations under this Local Law. Because this power is linked to the power of entry under section 132 of the *Local Government Act 2009*, the definitions of '**occupier**' and '**property**' in this section are consistent with that Act.

### **Section 38 - 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 contravention of this Local Law includes a contravention of any approval condition. A compliance notice must contain those matters stated in subsection (4), including the timeframe to remedy the breach and the consequences of failing to do so. It is an offence not to comply with a compliance notice.

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

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

*For example, if Council issues a compliance notice for a memorial within a Council cemetery that has not been safely constructed in accordance with the approval, the notice may state specific actions the approval holder can take to ensure compliance with the conditions of their approval, so that it no longer contravenes this Local Law.*

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.

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

When an authorised person issues a compliance notice under this section, they must provide a notice of the decision to the person. This means the person given the compliance notice may apply to review the giving of the notice under section 48. The requirements for a decision notice are set out in the definition of '**decision notice**' in the dictionary Schedule of this Local Law.

## Section 39 - Stop orders

This section retains, in part, section 29 of the 2011 Local Law, which allows Council to issue a stop order to a relevant person requiring them to immediately stop a prescribed activity or an excluded activity, where the activity either:

- (a) causes;
- (b) exacerbates; or
- (c) inhibits Council's ability to respond to, those urgent and/or serious threats specified in subsection (2)(a)-(e).

This section allows Council to stop a person from undertaking an approved prescribed activity or an excluded activity for a period of no more than 5 business days. The intention of this provision is to act as an interim measure to immediately stop a person from carrying out a prescribed activity or an excluded activity, giving Council the opportunity to:

- attend to the urgent and/or serious matters giving rise to the stop order; or
- where an approval has been issued, commence the process for suspending the approval under section 23 and possibly cancelling it under section 22 (if required).

If an authorised person wishes to put an immediate stop to a person's activity that is a breach of the Local Law, it may be more appropriate for them to give the person an oral direction under section 36 or to issue a compliance notice requiring the person to cease the offending activity immediately.

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

This section will usually be relied on where a person has an approval to carry out a prescribed activity or a person is undertaking an excluded activity. If an authorised person wishes to put an immediate stop to a person's activity that is a breach of this Local Law, then the authorised person could issue a compliance notice or a general direction requiring the person to cease the offending activity immediately.

## Section 40 - Local government power to seize and cost recover

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 land or road within the local government area in a manner that contravenes the Local Law. This section gives an authorised person the power to seize the item in two circumstances:

- where immediate removal of the item is necessary in the interest of public health or safety, or to prevent environmental harm, property damage or loss of amenity; or
- where a compliance notice has been issued to the owner to remove the item and the owner has failed to do so. In this circumstance, Council will need to wait for the review period for the compliance notice to expire, before seizing the item.

Council has the power to recoup the cost of seizing and impounding an item under this section, as a debt from the person responsible for it being on the land or road. *For example, if a person installs a memorial within a Council cemetery in a manner that does not comply with this Local Law, Council can remove the memorial, and bill the owner for the cost of removing the memorial.*

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

## Section 41 - Dealing with seized and 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.

## **Section 42 - Local government power to reinstate site and cost recover**

This section allows Council to carry out reinstatement works where:

- human remains are buried in the wrong grave (e.g. a mistake is made and human remains are buried in a plot that was reserved by another person); or
- a prescribed activity on public land or road causes damage, and that damage is not rectified by the person that has undertaken the prescribed activity.

It also gives Council the ability to recover reasonable costs for the reinstatement works as a debt from the person that carried out the prescribed activity. This is a discretionary power. There may be circumstances in which it is not reasonable or appropriate to recover the costs from a person who carried out the prescribed activity. For example, where the damage is a result of circumstances outside the control of the person undertaking the prescribed activity (i.e., weather causing flood damage to the public land).

## **Section 43 - Maintenance, repair and removal of memorials, columbarium, mausoleums and vaults**

This section reflects a condition under the 2011 Subordinate Local Law for the erection, installation, or placement of, or interference with, a memorial, columbarium, mausoleum, or vault within a local government cemetery. It gives Council the discretionary power to make safe, maintain, repair, or remove a memorial, columbarium, mausoleum, or vault in certain circumstances relevant to public safety and amenity.

Where Council proposes to remove a memorial, columbarium, mausoleum or vault it is required to provide notice to the approval holder or, where that person is unable to be contacted, to another family member of the deceased, before Council proceeds with the removal. This is a discretionary power of Council. This section is not intended to require Council to respond to circumstances where a memorial, columbarium, mausoleum, or vault has been vandalised or fallen into disrepair. It is ultimately the responsibility of the approval holder to

maintain memorials, columbarium, mausoleums and vaults.

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

### **Section 44 - Enforcement orders**

This section gives the Magistrates Court discretion to make an enforcement order requiring a person to take certain action within a specified period. The purpose of this section is to give the presiding Magistrate power to order a person to comply with a direction to secure compliance with this Local Law. This is particularly useful where a person has previously been given opportunities to comply by Council officers but has refused to do so (e.g., *has not complied with a compliance notice to remedy the installation of a memorial within a Council cemetery*). 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 45 - 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, where a burial takes place on private land, and there are two joint owners of the land where the burial is taking place, Council can hold each of these owners liable.*

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 46 - 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.

### **Section 47 - Owners and occupiers must ensure compliance with this Local Law**

This section provides that owners and occupiers of places must ensure that an offence under this Local Law is not committed in or on a place. Failure to do so means the owner or occupier also commits an offence. The intent of this provision is to ensure persons take responsibility for activities occurring in places they own or occupy. This section retains the defence in section 31 of the 2011 Local Law by providing a defence for an owner or occupier of a place where the offence occurred to prove that they did not have knowledge of the act/omission which led to an offence, and they could not have reasonably prevented it. Council recognises that there are some circumstances where it may not be reasonable or fair to hold the owner or occupier of a place responsible for an offence.

*For example, human remains have been buried at a large, rural private property, without an approval. As the property is very large, the landowner was not aware that someone had entered their land and buried human remains at the property. Such circumstances could give rise to the current landowner utilising this defence.*

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

## **Part 5 - Reviewing decisions**

### **Section 48 - Application for review**

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

have the following types of decisions reviewed internally by Council:

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

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 49 - 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 50 - 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 a prescribed activity approval and the applicant applies for a review of that decision, Council's refusal is still valid while the review process is underway, and the person is not allowed to undertake the prescribed activity.*

## **Part 6 - Administrative provisions**

### **Section 51 - Power to make a guideline**

This section gives Council the power to make a guideline about the placement of items at gravesites within a Council cemetery. The guideline may establish requirements around the types of items that may be placed at gravesites in Council cemeteries, where or how they must be placed and any prohibited items.

### **Section 52 - 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 for a prescribed activity, 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 53 - 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.

### **Section 54 - Subordinate Local Laws**

This section retains section 39 of the 2011 Local Law. It allows Council to make Subordinate Local Laws in relation to a prescribed activity. This includes, for example, the making of a Subordinate Local Law which specifies eligibility criteria for an application for a prescribed activity. The purpose of this section is to define the scope of what Council can regulate by Subordinate Local Law.

### **Section 55 - 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.

### **Section 56 - Transitional provisions**

The transitional provisions for decisions made under the 2011 Local Law are all contained in the *Commercial Use of Public Land and Roads Local Law 2023 (CUPLR LL)*. The CUPLR LL repeals the 2011 Local Law and for this reason, the transitional provisions for decisions made under the 2011 Local Law, including decisions about the operation of cemeteries and handling human remains, are contained in the CUPLR LL, part 7. This section 56 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.

## ***Rights and liberties of the individual***

This Local Law provides a clear framework for obtaining an approval to undertake a prescribed activity. Requiring an approval for the burial or disturbance of human remains outside a cemetery may be perceived as infringing on a person's right to utilise their private land at their discretion. Nonetheless, Council acknowledges that requiring an approval for this activity is consistent with the 2011 Local Law and the approval process has not been designed to limit the rights of individuals. The Local Law is aimed at facilitating this type of activity, while also ensuring community health, safety and the environment are protected. As such, Council considers imposing an approval process on this activity is reasonably necessary and appropriate to ensure the object of this Local Law.

## ***Sufficient regard to Aboriginal tradition and Island custom***

In some First Nations communities, burials may take place on land which has cultural significance to the community or individual. This land may be private land, outside a purpose-built cemetery.

Requiring a permit for burials outside a cemetery, or relocation of burials currently located in purpose-built cemeteries to private land, has the potential to limit burials on land culturally significant to First Nations persons and communities. This is particularly the case if the conditions imposed on approvals are inconsistent with traditional burial practices. However, it is noted that while an approval process will require conditions to be placed on approvals for burials on, or relocation of burials to private land, this process is unlikely to limit these activities to the extent that they will be unattainable for First Nations communities. The flexibility provided by a purpose-based approval process is intended to ensure these activities are facilitated for all applicants, including First Nations communities, with conditions only being imposed to the extent necessary to protect public health, safety, amenity and the environment.

# Is this law consistent with Human Rights?

This Local Law is generally compatible with the human rights protected by the *Human Rights Act 2019* (**the HR Act**). It limits human rights only to the extent that is reasonable and demonstrably justifiable in accordance with section 13 of the HR Act.

As noted above, the approval process for the prescribed activity of the burial or relocation of human remains outside a cemetery, may limit the cultural rights of Aboriginal and Torres Strait Islander peoples under section 28(2)(a) of the HR Act. Requiring an approval for these activities may limit the rights of First Nations communities to engage in cultural practices regarding burials outside of cemeteries. However, the approval process for these activities has not been designed to restrict them from occurring but instead, aims to provide clear parameters around the undertaking of these activities, to ensure health, safety, amenity, and the environment is protected for the whole of the City. As such, Council does not consider there is a breach of human rights afforded to First Nations communities within the City as a result of this approval process, as Council will continue to facilitate these activities, utilising the flexible condition process established by this Local Law, to ensure conditions are only imposed to protect the purposes of this Local Law.

