



**Cemeteries
Local Law 2023**

Moreton Bay City Council Cemeteries Local Law 2023

Contents

	Page
Part 1	Preliminary
Division 1	Introductory provisions
1	Short title..... 5
Division 2	Object and achievement of Local Law
2	Object 5
3	How object of Local Law is to be achieved..... 5
Division 3	Interpretation
Subdivision 1	Dictionary
4	Definitions..... 5
Subdivision 2	Key concepts
5	Prescribed activity 5
6	Excluded activity 6
Division 4	Operation of Local Law
7	Relationship with other Acts 6
Part 2	Approvals for prescribed activities
Division 1	What this part is about
8	Overview 6
Division 2	Approvals
Subdivision 1	Application process
9	Need for approval 7
10	Making an application 7
Subdivision 2	Timeframes for deciding applications

11	Timeframe for deciding applications when no further information is needed.....	7
12	Timeframe for deciding applications when further information is needed	7
13	Timeframe for dealing with applications that are not properly made	8
Subdivision 3 Deciding an application		
14	Deciding an application.....	8
15	Effect of failure to decide application on time	9
16	Third-party certification	9
17	Permitted conditions.....	9
18	Term of approval	9
Subdivision 4 Administering approvals		
19	Definitions for this subdivision	9
20	Renewal and transfer of approval	10
21	Approval holder may apply to amend conditions.....	11
22	Local government may amend, suspend or cancel approval.....	11
23	Procedure for immediate suspension of approval	13
Part 3 Record keeping obligations for prescribed activities		
24	Record keeping obligation for operation of a cemetery	13
Part 4 Offences and enforcement		
Division 1 What this part is about		
25	Overview	14
Division 2 Offences		
26	Undertaking a prescribed activity without an approval.....	14
27	Failure to comply with conditions of an approval	14
28	Discharging a firearm within a local government cemetery	14
29	Interfering with a funeral or commemorative service within a local government cemetery	14
30	Riding an animal or causing an animal to pull a vehicle within a local government cemetery	14

31	Providing false or misleading information	15
32	Threatening an authorised person	15
33	Attempts to commit offences.....	15
34	Liability of third parties	15
Division 3	Powers of the local government	
35	Appointment of authorised persons	15
36	Directions generally	15
37	Production of records	16
38	Compliance notice for contravention of Local Law.....	16
39	Stop orders.....	17
40	Local government power to seize and cost recover.....	18
41	Dealing with impounded items	18
42	Local government power to reinstate site and cost recover	19
43	Maintenance, repair and removal of memorials, columbarium, mausoleums and vaults	20
Division 4	Offence proceedings in Magistrates Court	
44	Enforcement orders	20
45	Joint and several liability	20
Division 5	Defences	
46	Defence of reasonable excuse.....	21
47	Owners and occupiers must ensure compliance with this Local Law.....	21
Part 5	Reviewing decisions	
48	Application for review	21
49	Review decision.....	21
50	Stay of operation of original decision	22
Part 6	Administrative provisions	
51	Power to make a guideline	22
52	Fees	22

53	Rewards.....	23
54	Subordinate Local Laws.....	23
55	Extrinsic material.....	23
56	Transitional provisions.....	23
Schedule	Dictionary.....	24

Moreton Bay City Council Cemeteries Local Law 2023

Part 1 Preliminary

Division 1 Introductory provisions

1 Short title

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

Division 2 Object and achievement of Local Law

2 Object

The object of this Local Law is to regulate the operation of cemeteries and other activities regarding human remains in a way that—

- (a) minimises risk to human health and safety; and
- (b) protects visual and public amenity of local government cemeteries; and
- (c) minimises environmental harm.

3 How object of Local Law is to be achieved

The object of this Local Law is to be achieved by—

- (a) providing a framework to grant an approval for a prescribed activity; and
- (b) providing mechanisms for enforcement where there is non-compliance with conditions of an approval or provisions of this Local Law.

Division 3 Interpretation

Subdivision 1 Dictionary

4 Definitions

The dictionary in the Schedule defines particular words used in this Local Law.

Subdivision 2 Key concepts

5 Prescribed activity

- (1) Subject to subsection (2), a *prescribed activity* is any of the following—
- (a) operation of a cemetery; or

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

(2) However, a *prescribed activity* does not include an excluded activity.

6 Excluded activity

An *excluded activity* is any of the following—

- (a) scattering cremated remains; or
- (b) placement of items at a gravesite within a local government cemetery where the items—
 - (i) where there is a headstone— are smaller than the headstone; and
 - (ii) comply with a guideline of the local government.

Division 4 Operation of Local Law

7 Relationship with other Acts

This Local Law is in addition to and does not derogate from—

- (a) any other laws that may regulate—
 - (i) the use or development of land; or
 - (ii) the exhumation of human remains, ordered by a coroner under the *Coroners Act 2003*; or
 - (iii) the management of trust land for cemetery purposes under the *Land Act 1994*; or
- (b) any provision of the *Local Government Act 2009*.

Part 2 Approvals for prescribed activities

Division 1 What this part is about

8 Overview

This part details—

- (a) the circumstances in which an approval is required to undertake a prescribed activity; and
- (b) the process for obtaining an approval for a prescribed activity under this Local Law.

Division 2 Approvals

Subdivision 1 Application process

9 Need for approval

A person must obtain an approval under this part to undertake a prescribed activity (*approval*).

10 Making an application

- (1) An application for an approval (*application*) must be—
 - (a) made in the form prescribed by the local government; and
 - (b) accompanied by—
 - (i) the documents required by the prescribed form; and
 - (ii) the prescribed fee for the application.
- (2) If the application relates to a prescribed activity on private land, the application must be accompanied by the written consent of the owner of the place, to the extent that the applicant is not the owner.
- (3) The local government—
 - (a) must accept an application that the local government is satisfied complies with subsections (1) and (2); and
 - (b) must not accept an application unless the local government is satisfied the application complies with subsection (2); and
 - (c) may accept an application that the local government is satisfied does not comply with subsection (1).
- (4) An application that complies with subsections (1) and (2), or that the local government accepts under subsection (3)(c), is a properly made application (*properly made application*).
- (5) The local government may prescribe forms for this Local Law.

Subdivision 2 Timeframes for deciding applications

11 Timeframe for deciding applications when no further information is needed

- (1) This section applies if the local government—
 - (a) receives a properly made application; and
 - (b) does not require any further information in relation to the application.
- (2) The local government must decide the application within 21 business days of receiving it, or a further period agreed with the applicant.

12 Timeframe for deciding applications when further information is needed

- (1) This section applies if the local government—
 - (a) receives a properly made application; and
 - (b) requires further information in relation to the application.

- (2) The local government may make an information request to the applicant within 21 business days of receiving an application, or a further period agreed with the applicant.
- (3) An applicant must respond to an information request within 10 business days of receiving it, or a further period agreed with the local government (*information request response period*).
- (4) The local government must decide the application within 10 business days of the earlier of—
 - (a) an information request response being received; or
 - (b) the information request response period ending.
- (5) In this section—

information request means a notice to the applicant, requiring them to provide further information or documents in relation to the properly made application.

information request response means a response to an information request.

13 Timeframe for dealing with applications that are not properly made

If the local government receives an application which is not a properly made application, the local government must—

- (a) provide the applicant with written notice to that effect within 5 business days of receiving the application, or a further period agreed with the applicant; and
- (b) take no further action in relation to the application.

Subdivision 3 Deciding an application

14 Deciding an application

- (1) The local government must, after carrying out an assessment of a properly made application, decide to—
 - (a) approve the application; or
 - (b) approve the application, but impose conditions on the approval; or
 - (c) refuse the application.
- (2) The local government may refuse an application under subsection (1)(c) if—
 - (a) the local government considers that approving the application would be inconsistent with the object of this Local Law; or
 - (b) the eligibility criteria, prescribed by a Subordinate Local Law, for a prescribed activity has not been satisfied; or
 - (c) the granting of the application would be inconsistent with an approval already granted under this Local Law.
- (3) For a decision made under subsection (1), the local government must give a decision notice to the applicant.

15 Effect of failure to decide application on time

The local government is taken to have refused an application if the local government fails to decide a properly made application in accordance with—

- (a) section 11(2); or
- (b) section 12(4).

16 Third-party certification

(1) In deciding an application under this part, the local government may accept the certificate of a third-party certifier as evidence about any application requirement that is mentioned in a Subordinate Local Law for this subsection.

(2) In this section—

application requirement means a matter that the local government must be satisfied about, or have regard to, before granting an application for an approval under this Local Law.

third-party certifier means—

- (a) an individual or organisation declared under a Subordinate Local Law for this paragraph as a third-party certifier for particular application requirements; or
- (b) an individual or organisation that has the qualifications prescribed under a Subordinate Local Law for this paragraph as necessary to provide a certificate about particular application requirements.

17 Permitted conditions

Any condition imposed on an approval must relate to the object of this Local Law.

18 Term of approval

An approval is valid for the term specified in the approval.

Subdivision 4 Administering approvals

19 Definitions for this subdivision

In this subdivision—

show cause notice means a written notice stating—

- (a) the proposed action; and
- (b) the grounds for the proposed action; and
- (c) an outline of the facts and circumstances that are the basis of the grounds; and
- (d) if the proposed action is suspension of the approval— the proposed suspension period; and
- (e) that the approval holder may make written submissions within the stated reasonable time as to why the proposed action should not be taken.

20 Renewal and transfer of approval

- (1) Subject to subsections (4) and (5), an approval holder may, before the end of the term of the approval granted under section 14 (the *existing approval*), apply to the local government to transfer the approval (*transfer application*), or renew the approval (*renewal application*).
- (2) An application under this section must be—
 - (a) made in the form prescribed by the local government; and
 - (b) accompanied by—
 - (i) the documents required by the prescribed form; and
 - (ii) the prescribed fee for the application.
- (3) For a transfer application, the approval holder must apply together with the person to whom the approval is proposed to be transferred (*proposed transferee*).
- (4) An approval holder may not apply to renew an existing approval where the local government has given the approval holder written notice that the existing approval is not renewable.
- (5) An approval holder may not apply to transfer an existing approval where the local government has given the approval holder written notice that the existing approval is not transferable.
- (6) For a renewal application, the local government may determine the term of the renewal.
- (7) Subdivision 2 applies to a renewal application or a transfer application as if it were a properly made application.
- (8) The local government must, after carrying out an assessment of a renewal application or transfer application, decide to—
 - (a) grant the application; or
 - (b) grant the application and amend the conditions of the existing approval; or
 - (c) refuse the application.
- (9) In deciding a renewal application or a transfer application under subsection (8), the local government may have regard to—
 - (a) the object of this Local Law; and
 - (b) if the application is a renewal application— whether the conditions of the existing approval have been or are being complied with by the applicant.
- (10) For a decision made under subsection (8), the local government must give a decision notice to—
 - (a) for a renewal application— the applicant; or
 - (b) for a transfer application— the applicant and proposed transferee.
- (11) The local government may amend the conditions of the existing approval under subsection (8)(b) without following the procedure in section 22.
- (12) If an approval holder makes a renewal application, the existing approval remains in force until—

- (a) if the renewal application is granted, with or without amendment of the conditions— the date the renewal application is granted; or
- (b) if the renewal application is refused—
 - (i) and the applicant applies for a review of the decision under part 5— the date the applicant is given notice of the review decision; or
 - (ii) and the applicant has not applied for a review of the decision under part 5— 15 business days after the applicant is given a decision notice under subsection (10).

21 Approval holder may apply to amend conditions

- (1) An approval holder may apply to the local government to amend the conditions of the approval (*amendment application*).
- (2) An amendment application must be—
 - (a) made in the form prescribed by the local government; and
 - (b) accompanied by—
 - (i) the documents required by the prescribed form; and
 - (ii) a statement of the proposed amendment and reasons for it; and
 - (iii) the prescribed fee.
- (3) Sections 11 and 12 apply to an amendment application as if it were a properly made application.
- (4) The local government must, after carrying out an assessment of an amendment application, decide to—
 - (a) grant the application; or
 - (b) refuse the application.
- (5) In deciding an amendment application under subsection (4), the local government may have regard to—
 - (a) the object of this Local Law; and
 - (b) whether the conditions of the existing approval have been or are being complied with by the applicant.
- (6) For a decision made under subsection (4), the local government must give a decision notice to the applicant.
- (7) The local government may amend the conditions of the approval under this section without following the procedure in section 22.

22 Local government may amend, suspend or cancel approval

- (1) This section applies if the local government is satisfied that one of the following grounds for amending, suspending or cancelling an approval exists—
 - (a) amendment, suspension or cancellation is necessary—
 - (i) for the protection of public health or safety; or
 - (ii) to prevent environmental harm; or

- (iii) to prevent property damage or loss of amenity; or
 - (iv) to allow for works on roads or public land; or
 - (v) to improve access to a road; or
 - (vi) to improve the efficiency of vehicle or pedestrian traffic; or
 - (b) another approval required for the prescribed activity under an Act has been suspended or cancelled; or
 - (c) in undertaking the prescribed activity, the approval holder has failed to comply with an Act; or
 - (d) the approval holder has failed to comply with a condition of the approval; or
 - (e) the approval holder has failed to comply with—
 - (i) a direction under section 36; or
 - (ii) a compliance notice; or
 - (iii) a stop order; or
 - (f) the approval was granted because of a document or representation that was—
 - (i) false or misleading; or
 - (ii) obtained or made in another improper way.
- (2) Before taking action to amend, suspend or cancel an approval (***proposed action***), the local government must give the approval holder a show cause notice.
- (3) If a show cause notice is issued, the approval holder may, within a stated reasonable time of at least 15 business days after the notice is given (***stated reasonable time***), make written submissions to the local government as to why the proposed action should not be taken.
- (4) Notwithstanding subsection (3), where the approval holder consents or agrees to the proposed action, they may waive their right to provide written submissions within the stated reasonable time.
- (5) The local government must consider all submissions made in accordance with subsection (3).
- (6) If the local government decides that—
- (a) a ground under subsection (1) no longer exists to take the proposed action, the local government must take no further action in respect of the show cause notice; or
 - (b) a ground exists to take the proposed action, the local government may—
 - (i) if the proposed action was to amend the approval— amend the approval; or
 - (ii) if the proposed action was to suspend the approval— suspend the approval for no longer than the period stated in the notice; or
 - (iii) if the proposed action was to cancel the approval— amend the approval, suspend it for a period or cancel it.

- (7) For any decision made under subsection (6), the local government must give a decision notice to the approval holder.
- (8) This section does not limit the power a local government may have apart from this section to amend, suspend or cancel an approval.

23 Procedure for immediate suspension of approval

- (1) Despite section 22, the local government may immediately suspend an approval if the local government believes that the continuation of the prescribed activity by the approval holder poses—
 - (a) an urgent and serious threat to public health or safety; or
 - (b) an urgent and serious risk of environmental harm, property damage or loss of amenity; or
 - (c) a serious obstruction to urgent works on roads or public land; or
 - (d) a serious obstruction to road access; or
 - (e) a serious or urgent threat to the safety of vehicle or pedestrian traffic.
- (2) The local government must give a notice to the approval holder about the decision to immediately suspend the approval (*suspension notice*), together with a show cause notice about the proposed action under section 22.
- (3) The suspension operates immediately upon the notices in subsection (2) being given to the approval holder.
- (4) The suspension continues to operate until the earliest of the following occurs—
 - (a) the local government cancels the suspension; or
 - (b) the local government gives the approval holder a decision notice under section 22(7) for a decision made under section 22(6); or
 - (c) 15 business days have passed since the expiry of the stated time for the making of written submissions regarding the show cause notice; or
 - (d) 15 business days have passed since the approval holder notifies the local government that it has made its final written submissions regarding the show cause notice.

Part 3 Record keeping obligations for prescribed activities

24 Record keeping obligation for operation of a cemetery

- (1) A relevant person for the operation of a cemetery must keep and maintain a publicly available register containing all relevant information concerning burials at the cemetery (*burials register*).
- (2) A burials register must—
 - (a) be maintained at a place approved by the local government for this purpose; and
 - (b) be available for inspection by members of the public at reasonable times.
- (3) In this section—

relevant information means—

- (a) the names of all persons whose remains have been buried in the cemetery; and
- (b) the date and form of the burial.

Part 4 Offences and enforcement

Division 1 What this part is about

25 Overview

This part outlines—

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

Division 2 Offences

26 Undertaking a prescribed activity without an approval

A person must not undertake a prescribed activity without an approval.

Maximum penalty— 50 penalty units.

27 Failure to comply with conditions of an approval

A person must not contravene an approval.

Maximum penalty— 50 penalty units.

28 Discharging a firearm within a local government cemetery

A person must not discharge a firearm in a local government cemetery, unless permitted by a condition of an approval.

Maximum penalty— 20 penalty units.

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

A person must not interrupt, disturb or interfere with a funeral or commemorative service lawfully conducted within a local government cemetery.

Maximum penalty— 20 penalty units.

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

A person must not ride an animal or cause an animal to pull a vehicle within a local government cemetery, unless permitted by a condition of an approval.

Maximum penalty— 20 penalty units.

31 Providing false or misleading information

A person must not give information in connection with this Local Law (either orally or in a document) that the person reasonably knows or ought to have known is false or misleading.

Maximum penalty— 20 penalty units.

32 Threatening an authorised person

A person must not threaten, insult or use abusive language to an authorised person.

Maximum penalty— 50 penalty units.

33 Attempts to commit offences

- (1) A person who attempts to commit an offence under this Local Law commits an offence.

Maximum penalty— half the maximum penalty for committing the offence.

- (2) The provisions of the *Criminal Code* (relevant to attempts to commit offences) apply to the attempt.

34 Liability of third parties

- (1) Any person involved in a contravention of this Local Law commits an offence.

Maximum penalty— the penalty for which any person who committed the contravention would be liable.

- (2) For subsection (1), a person involved in a contravention of this Local Law is any person who—

- (a) has aided, abetted, counselled or procured the contravention; or
- (b) has induced, whether by a threat or a promise or otherwise, the contravention; or
- (c) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention; or
- (d) has conspired with another person to effect the contravention; or
- (e) has knowingly benefited from or knowingly was capable of benefiting from the contravention.

Division 3 Powers of the local government

35 Appointment of authorised persons

The document that appoints an authorised person must state this Local Law, or the provisions of this Local Law, as the Local Law or the provisions for which the person is appointed as an authorised person.

36 Directions generally

- (1) An authorised person may direct a person contravening this Local Law to—

- (a) cease any conduct or activity which contravenes this Local Law; and

- (b) take such action determined by the authorised person to ensure that the person does not contravene this Local Law.
- (2) A person must comply with a direction of an authorised person given under subsection (1).

Maximum penalty for subsection (2)— 50 penalty units.

37 Production of records

- (1) This section applies where an authorised person has entered a property under the *Local Government Act 2009* to find out whether the conditions of an approval have been complied with.
- (2) The authorised person may require the occupier of the property or another relevant person to produce for inspection records that are required by the conditions of an approval.
- (3) A person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty— 10 penalty units.

- (4) In this section—

occupier of the property includes a person who reasonably appears to be the occupier of, or in charge of, the property.

property has the same meaning as in the *Local Government Act 2009*.

38 Compliance notice for contravention of Local Law

- (1) This section applies if a person contravenes this Local Law.
- (2) An authorised person may give a notice, in writing (*compliance notice*), to—
 - (a) a person who contravenes this Local Law; or
 - (b) any person involved in the contravention of this Local Law under section 34.
- (3) The compliance notice may require a person to—
 - (a) stop a contravention, if the contravention is of a continuing or recurring nature; or
 - (b) take reasonable steps necessary to stop or remedy the contravention, by the date and time specified in the compliance notice, whether or not the contravention is of a continuing or recurring nature.
- (4) The compliance notice must state the following—
 - (a) the particular provision of this Local Law the authorised person believes is being, or has been, contravened; and
 - (b) briefly, how the provision of this Local Law is being, or has been, contravened; and
 - (c) the date and time by which the person must stop or remedy the contravention; and
 - (d) the reasonable steps necessary to remedy the contravention or avoid further contravention; and

- (e) that it is an offence to fail to comply with the compliance notice; and
- (f) the maximum penalty for failing to comply with the compliance notice.

Examples of reasonable steps to avoid further contravention in paragraph (d)—

- *The repetition of a specified action at stated intervals for a certain period.*
- *Stopping taking an action that is prohibited by this Local Law.*

- (5) The date and time under subsection (4)(c) must be reasonable having regard to—
 - (a) the action required to stop or remedy the contravention; and
 - (b) the risk to public health and safety, the risk of damage to property or loss of amenity and the risk of environmental harm posed by the contravention; and
 - (c) how long the person has been aware of the contravention.
- (6) The compliance notice must include, or be accompanied by, a decision notice.
- (7) A person who is given a compliance notice must comply with the compliance notice.

Maximum penalty for subsection (7)— 50 penalty units.

Note—

a compliance notice may be a remedial notice under the Local Government Act 2009, chapter 5, part 2, division 2.

39 Stop orders

- (1) This section applies if a relevant person is undertaking—
 - (a) a prescribed activity; or
 - (b) an excluded activity.
- (2) An authorised person may give a relevant person an order to immediately stop the activity, if the authorised person believes that the continuation of the activity causes, exacerbates or impedes the local government’s ability to respond to—
 - (a) an urgent and serious threat to public health or safety; or
 - (b) an urgent and serious risk of environmental harm, property damage or loss of amenity; or
 - (c) a serious obstruction to urgent works on roads or public land; or
 - (d) a serious obstruction of access to a road; or
 - (e) a serious or urgent threat to the safety of vehicle or pedestrian traffic.
- (3) An order under this section—
 - (a) may be given orally or in writing; and
 - (b) operates until the earliest of the following happens—
 - (i) the expiry of the period, of no more than 5 business days, specified by the authorised person when the order is given; or
 - (ii) where there is an approval— the local government immediately suspends the approval under section 23.

- (4) An authorised person must confirm an oral order in writing by the next business day following the giving of the order.
- (5) A person who receives an order under this section must comply with the order.
Maximum penalty for subsection (5)— 50 penalty units.
- (6) This section does not affect the local government’s powers under another law.

40 Local government power to seize and cost recover

- (1) An authorised person may seize, by dismantling if necessary, and impound an item where the item has been brought onto or installed in, on, across, under or over land or road within the local government area in a manner that contravenes this Local Law, if—
 - (a) in the reasonable opinion of the authorised person, the immediate removal of the item is necessary in the interests of public health or safety or to prevent environmental harm, property damage or loss of amenity; or
 - (b) a person has not complied with a compliance notice requiring the person to remove the item.
- (2) The local government may recover the cost of action taken under this section as a debt from the person responsible for the item seized under subsection (1) being brought onto or installed in, on, across, under or over land or road within the local government area.

41 Dealing with impounded items

- (1) This section applies where an item has been seized and impounded under section 40 (an *impounded item*).
- (2) If an impounded item is, in the reasonable opinion of an authorised person, perishable or of negligible commercial value, then the local government may immediately dispose of it as the chief executive officer directs.
- (3) If the local government possesses an impounded item, then a person may reclaim that impounded item from the local government by—
 - (a) making a written application to the chief executive officer to reclaim the impounded item; and
 - (b) producing proof, to the satisfaction of the chief executive officer, that the person is the owner of the impounded item; and
 - (c) paying the prescribed fee for the impounding of the impounded item.
- (4) If an impounded item is not reclaimed under subsection (3) within 20 business days of the item being seized and impounded under section 40, that item is forfeited to the local government.
- (5) If an impounded item has been forfeited to the local government under subsection (4), then the local government may dispose of that impounded item—
 - (a) 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— as the chief executive officer directs; or

- (b) by sale through a public auction; or
 - (c) if the impounded item has been offered for sale under paragraph (b) but has not been sold within a period that, in the reasonable opinion of the authorised person, is reasonable for the sale of that type of item— as the chief executive officer directs.
- (6) Where an impounded item has been sold under this section, the proceeds of the sale must be applied in order—
- (a) firstly, towards the direct and indirect costs of the sale; and
 - (b) secondly, towards the local government in an amount equivalent to the prescribed fee for the impounding of the impounded item as if it was to be reclaimed under subsection (3); and
 - (c) thirdly, if there is an amount owing to an entity under a security interest registered for the property under the *Personal Property Securities Act 2009* (Cth)— in payment of the amount owing under the security interest; and
 - (d) fourthly, to the former owner of the impounded item.
- (7) If no person establishes a valid claim for the amount to which the former owner of an impounded item that has been sold under this section is entitled to under subsection (6)(d) within 3 months of the date of that entitlement arising, the amount becomes the property of the local government.
- (8) Except where expressly stated, the local government incurs no liability to a person, and no person has any claim for relief or compensation against the local government, in respect of any action taken by the local government under this section or section 40, if the local government has acted in good faith and without negligence.

42 Local government power to reinstate site and cost recover

- (1) This section applies where a prescribed activity takes place on public land or road (the *site*), and
- (a) human remains are buried in the wrong grave; or
 - (b) the operation of the prescribed activity has caused damage to the site which has not been adequately rectified or reinstated by the relevant person.
- (2) The local government may—
- (a) carry out works to rectify a burial occurring in an incorrect grave; or
 - (b) carry out reinstatement works reasonably required to return the site to its original state.
- (3) The local government may recover costs reasonably incurred for the reinstatement works, as a debt from the relevant person.
- (4) If the local government seeks to recover the cost as a debt under subsection (3), then the local government must give the relevant person notice of the amount of the debt.
- (5) In this section—
- original state*** means the condition the site was in prior to the relevant person commencing use of the site in accordance with the approval.

43 Maintenance, repair and removal of memorials, columbarium, mausoleums and vaults

- (1) The local government may make safe, maintain, repair or remove a memorial, columbarium, mausoleum or vault in a local government cemetery if it—
 - (a) has been vandalised; or
 - (b) becomes unsafe; or
 - (c) has fallen into a state of disrepair; or
 - (d) presents a risk to public safety; or
 - (e) detracts from the visual amenity of the local government cemetery.
- (2) Before the local government takes any action to remove under subsection (1), it must give reasonable written notice of its intention to remove to—
 - (a) the relevant person; or
 - (b) where the relevant person is uncontactable, to those members or the family of the deceased person, whose identity are known.
- (3) Notwithstanding subsection (2), the local government does not need to give reasonable written notice where there is an immediate risk to public safety.
- (4) In this section—

reasonable written notice means a written notice given at least 5 days before the local government intends to remove the memorial, columbarium, mausoleum or vault that informs the person of—

- (a) the local governments intention to remove; and
- (b) the reason for the intended removal.

Division 4 Offence proceedings in Magistrates Court

44 Enforcement orders

- (1) After hearing proceedings for an offence against this Local Law, a Magistrates Court may make an order (an *enforcement order*) for the defendant to take stated action within a stated period.
- (2) The enforcement order may be in terms the Court considers appropriate to secure compliance with this Local Law.
- (3) An enforcement order must state the period within which the defendant must comply with the order.
- (4) An enforcement order may be made under this section in addition to the imposition of a penalty.

45 Joint and several liability

- (1) Where this Local Law imposes a liability on an owner or occupier of a place, or a person engaged in a particular activity, and 2 or more persons are the owners or occupiers of the relevant place, or are jointly engaged in the relevant activity, the liability is joint and several.

- (2) This section applies both to civil liabilities and liabilities enforced by summary proceedings under the *Justices Act 1886*.

Division 5 Defences

46 Defence of reasonable excuse

If a person is charged with an offence involving a contravention of this Local Law, it is a defence to prove that the person had a reasonable excuse for the contravention.

47 Owners and occupiers must ensure compliance with this Local Law

- (1) Except where the owner and occupier of a place is the local, State or Commonwealth government, the owner and occupier of the place must ensure that an offence is not committed in or on a place.
- (2) If an offence is committed in or on a place, the owner and occupier of the place also commits an offence, namely the offence of failing to ensure that an offence is not committed in or on the place.

Maximum penalty— the penalty for the commission of the offence in or on the place.

- (3) Evidence that an offence has been committed on a place is evidence that the owner and occupier of the place committed the offence of failing to ensure that the offence is not committed in or on the place.
- (4) However, it is a defence for an owner or occupier to prove that—
- (a) the owner or occupier exercised reasonable diligence to ensure that an offence was not committed in or on the place; and
 - (b) the offence was committed in or on the place without that person's knowledge or consent.

Part 5 Reviewing decisions

48 Application for review

- (1) A person who is given, or is entitled to be given, a decision notice may apply to the local government for a review of the decision (a ***review application***).
- (2) The review application must be made within 15 business days of—
- (a) if the person is given a decision notice— the day the person receives the notice; or
 - (b) if paragraph (a) does not apply— the day the person otherwise becomes aware of the decision.
- (3) The review application must be in writing and accompanied by a statement of the grounds on which the applicant seeks the review of the decision.

49 Review decision

- (1) The local government must review the original decision within 20 business days of receiving a review application and make a decision (the ***review decision***) to—
- (a) confirm the original decision; or

- (b) amend the original decision; or
 - (c) substitute another decision for the original decision.
- (2) The application must not be dealt with by—
- (a) the person who made the original decision; or
 - (b) a person in a less senior office than the person who made the original decision unless that person was the chief executive officer.
- (3) The local government must, within 5 business days of the review decision being made, give the applicant notice of the decision (the **review notice**).
- (4) If the review decision is not the decision sought by the applicant, the review notice must also state the reasons for the review decision.
- (5) If the local government does not give the review notice to the applicant in accordance with subsection (3), the local government is taken to have made a review decision confirming the original decision.

50 Stay of operation of original decision

A review application does not stay the original decision that is the subject of the application.

Part 6 Administrative provisions

51 Power to make a guideline

- (1) The local government may make a guideline about the placement of items at a gravesite in a local government cemetery (**guideline**).
- (2) The local government must publish the guideline on the local government's website.
- (3) Without limiting subsection (1), the guideline may deal with the following matters—
 - (a) items that can be placed at a gravesite in a local government cemetery; and
 - (b) where or how items may be placed at a gravesite in a local government cemetery; and
 - (c) items that are prohibited from being placed at a gravesite in a local government cemetery.

52 Fees

- (1) If this Local Law provides for payment of a fee and does not itself fix the amount of the fee, the fee is to be fixed by resolution under the *Local Government Act 2009*, chapter 4, part 2.
- (2) A resolution fixing a fee may provide for the reimbursement of the fee in appropriate circumstances.
- (3) Unless specific provision to the contrary is made in this Local Law or resolution fixing a fee, the local government may, in an appropriate case, waive or partially remit a fee.

53 Rewards

- (1) The local government may, by public notice, offer a reward for information leading to the conviction of a person for an offence against this Local Law.
- (2) The amount of the reward, and the conditions on which it is payable, must be decided by resolution of the local government.

54 Subordinate Local Laws

The local government may make Subordinate Local Laws about—

- (a) any eligibility criteria relevant to a prescribed activity under section 14(2)(b); and
- (b) any application requirement for which a third-party certifier's certificate may be accepted by the local government under section 16(1); and
- (c) declaring an individual or organisation as a third-party certifier for particular application requirements under section 16(2)(a); and
- (d) prescribing qualifications necessary for an individual or organisation to provide a certificate about particular application requirements under section 16(2)(b).

55 Extrinsic material

- (1) The local government may make an explanatory note to assist in the interpretation of this Local Law.
- (2) The local government makes an explanatory note by—
 - (a) passing a resolution to make the explanatory note; and
 - (b) publishing the explanatory note on the local government's website.
- (3) An explanatory note made in accordance with this section is declared to be a relevant document for the purposes of section 14B of the *Acts Interpretation Act 1954* (as modified by section 15 of the *Statutory Instruments Act 1992*).

Note—

Pursuant to part 4, division 1 of the Statutory Instruments Act 1992, the Acts Interpretation Act 1954 (AIA) is modified so that a document declared by a Local Law to be a "relevant document" for the purposes of section 14B of the AIA is extrinsic material which may assist in the interpretation of a provision of this Local Law.

56 Transitional provisions

The transitional provisions for decisions made under the repealed *Moreton Bay Regional Council Local Law No.1 (Administration) 2011* relating to the—

- (a) operation of cemeteries; and
 - (b) disturbance, burial or disposal of human remains; and
 - (c) erection or installation of a memorial, columbarium, mausoleum or vault; and
 - (d) undertaking of regulated activities regarding human remains,
- are set out in the *Commercial Use of Public Land and Roads Local Law 2023*, part 7.

Schedule Dictionary

Section 4

Act—

- (a) has the same meaning as in the *Acts Interpretation Act 1954*, sections 6 and 7; and
- (b) includes a local law made by the local government.

agent includes a contractor, assistant, driver and any other person aiding the person undertaking a prescribed activity for which an approval has been issued under this Local Law.

amend for an approval, includes varying a condition, removing a condition or adding a condition.

amendment application see section 21(1).

application see section 10(1).

application requirement see section 16(1).

approval see section 9.

authorised person means a person—

- (a) appointed by the chief executive officer as an authorised person under section 202 of the *Local Government Act 2009*; and
- (b) whose instrument of appointment provides that they are an authorised person for this Local Law, or provisions of this Local Law.

burial includes—

- (a) the act of placing human remains or the ashes of such in either a grave, niche, columbarium, mausoleum, vault, memorial garden, at sea, or by another method approved by the local government; and
- (b) the cremation of human remains.

burials register see section 24(1).

cemetery means a place approved under the *Planning Act 2016* for the burial or disturbance of human remains and includes—

- (a) a crematorium; or
- (b) a columbarium; or
- (c) a mausoleum or vault; or
- (d) a garden of remembrance; or
- (e) other structures and improvements the local government considers appropriate.

chief executive officer means the chief executive officer of the local government.

compliance notice means a compliance notice given under section 38.

decision means—

- (a) a decision made by the local government under sections 14, 20, 21 or 22; or
- (b) a decision made by an authorised person to give a compliance notice under section 38.

decision notice, for a decision, means a written notice stating the following—

- (a) the decision; and
- (b) any relevant details about the decision; and
- (c) the reasons for the decision; and
- (d) that the person to whom the notice is given may apply for a review of the decision within 15 business days after the notice is given; and
- (e) how to apply for a review.

Examples for paragraph (b)—

- *Conditions on an approval.*
- *The date on which the decision takes effect or actions required under the notice must be taken.*

enforcement order see section 44(1).

environmental harm has the same meaning as in the *Environmental Protection Act 1994*.

excluded activity see section 6.

existing approval see section 20(1).

guideline means a guideline made by the local government under section 51(1).

human remains means the body or part of the body of a deceased person but does not include a part of the body of a deceased person lawfully removed for transplantation, scientific examination or instruction in anatomy or any other branch of medicine.

impounded item see section 41(1).

information request see section 12(5).

information request response see section 12(5).

information request response period see section 12(3).

item means any material thing, including a building or structure or vehicle, other than an animal.

land—

- (a) has the same meaning as in the *Planning Act 2016*, Schedule 2; and
- (b) includes land occupied by water.

local government means Moreton Bay City Council.

Local Government Act has the same meaning as in the *Local Government Act 2009*.

local government area means the local government area of the local government under the *Local Government Act 2009*, including an area taken to be part of a local government area under a Local Government Act.

Examples of areas taken to be part of a local government area—

- *Bathing reserves.*
- *Foreshore.*

local government cemetery means a cemetery under the control of the local government, including a cemetery located on land owned by the local government or on land for which the local government is the trustee.

Local Law includes any Subordinate Local Laws made under this Local Law.

memorial includes—

- (a) a headstone; and
- (b) an inscribed plaque or commemorative plate; and
- (c) monumental, ornamental or other structures erected on a grave site; and
- (d) any other item erected or placed in a cemetery to mark the site where human remains have been buried or placed or to commemorate a deceased person.

Examples for paragraph (d)—

- *Fresh flowers.*
- *Wreaths.*
- *Personal tributes.*

occupier, of a place, means—

- (a) the person who occupies, or has the control or management of, or is apparently in charge of, the place; and
- (b) includes a person who has a lease, licence, permission, approval, right or authority to occupy the place, including under an Act.

occupier of the property see section 37(4) .

operation of a cemetery means to operate any place within the local government area for the burial or disturbance of human remains by—

- (a) burial; or
- (b) cremation; or
- (c) exhumation; or
- (d) placement in a columbarium, mausoleum or vault; or
- (e) placement in a garden or remembrance or other structure the local government considers appropriate.

original decision means a decision the subject of a review application under section 48.

original state see section 42(5).

owner, of premises, means the registered owner of the premises.

place means any road, land, property, building, vehicle, boat or structure and includes any part of a place.

planning scheme means the local government’s planning scheme.

prescribed activity see section 5.

prescribed fee means a fee fixed by the local government under section 52 or under the *Local Government Act 2009*, section 97.

prescribed form means a document which the local government makes available at its administration centres or on its website for the purpose of making an application, an amendment application, a transfer application or a renewal application under this Local Law.

private land means land that is not—

- (a) public land; or
- (b) a road.

properly made application see section 10(4).

property—

- (a) for section 37, see section 37(4); or
- (b) otherwise, has the same meaning as in the *Acts Interpretation Act 1954*.

proposed action see section 22(2).

proposed transferee see section 20(3).

public land means the whole or part of any land, facilities and other infrastructure owned, held in trust or otherwise controlled by the local government, other than a road.

Examples of public land—

- *Parks, reserves, and gazetted foreshores.*
- *Camping grounds or caravan parks on land owned or controlled by the local government.*
- *Local government swimming pools.*
- *Local government cemeteries.*
- *Council chambers and local government offices.*
- *Jetties.*
- *Canals.*

public notice means a notice that is published in a newspaper that is circulating generally in the local government area or on the local government's website.

reasonable written notice see section 43(4).

relevant information see section 24(3).

relevant person—

- (a) for section 39, means—
 - (i) an approval holder for the prescribed activity or an employee or agent of the approval holder, currently undertaking the prescribed activity; or
 - (ii) the person undertaking an excluded activity; or
- (b) otherwise, means the approval holder for the prescribed activity or an employee or agent of the approval holder, currently undertaking the prescribed activity.

renewal application see section 20(1).

review application see section 48(1).

review decision see section 49(1).

review notice see section 49(3).

road has the same meaning as in the *Local Government Act 2009*.

show cause notice see section 19.

site see section 42(1).

stated reasonable time see section 22(3).

stop order means an order given under section 39.

suspension notice see section 23(2).

third-party certifier see section 16(2).

transfer application see section 20(1).

vehicle has the same meaning as in the *Transport Operations (Road Use Management) Act 1995*.