

City of Moreton Bay



Parking Local Law 2023

Explanatory Notes

2023 | Version 1.0



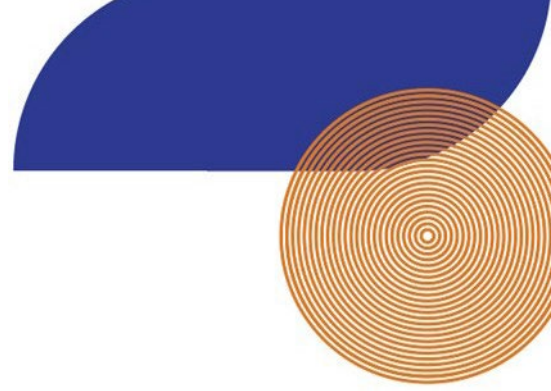


Table of Contents

Short title	3
What is this Local Law trying to achieve and why?	3
How will the Local Law achieve those aims?	4
Who did Council seek feedback from in forming this law?	6
Plain English explanations of each section of the Local Law	8
Part 1 - Preliminary.....	8
Division 1 - Introductory provisions	8
Division 2 - Object and achievement of Local Law.....	8
Division 3 - Interpretation	9
Part 2 - Parking Approvals	10
Division 1 - What this part is about.....	10
Division 2 - Approvals.....	10
Part 3 - Regulation of parking	14
Division 1 - Declaration of Parking Areas.....	14
Division 2 - Restrictions on parking in certain circumstances.....	15
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.....	17
Division 5 - Defences.....	18
Part 5 - Minor traffic offence infringement notice penalties	18
Part 6 - Reviewing decisions	18
Part 7 - Administrative provisions	19
Part 8 - Repeal and transitional provisions.....	20
Is this law consistent with fundamental legislative principles?	21
Is this law consistent with Human Rights?	21

Short title

This Local Law may be cited as the Parking Local Law 2023.



What is this Local Law trying to achieve and why?

Parking across Queensland is primarily regulated by the *Transport Operations (Road Use Management) Act 1995* (the **TORUM Act**) and the *Transport Operations (Road Use Management - Road Rules) Regulation 2009* (the **Road Rules**). This legislation provides local governments the power to regulate parking in their local government areas.

The regulation of parking is essential to ensuring the Moreton Bay City is a safe, accessible and an enjoyable place to live and work. Regulating parking helps to ensure vehicles are only parked in suitable and safe locations.

Council's regulation of parking also aims to establish solutions for parking issues raised by the community that impact public safety, road safety and amenity across the City. To help address these issues, this Local Law will allow Council to restrict parking in certain areas and allow vehicles to park in a certain manner. The Local Law does so in a way that complements the TORUM Act, minimises risks to public safety and road safety, and protects visual and public amenity.

Council aims to create a new local law that is easy to read and navigate. Laws regulating parking were previously contained in the *Moreton Bay Regional Council Local Law No.1 (Administration) 2011* (the **2011 Local Law**) and the *Moreton Bay Regional Council Local Law No.5 (Parking) 2011* (the **2011 Parking Local Law**). This meant parking was regulated across two local laws, one of which dealt with a range of local law matters unrelated to parking. This new Parking Local Law creates an independent local law for all regulation of parking.

How will the Local Law achieve those aims?

This Local Law achieves its purposes by:

- providing a framework to grant parking approvals;
- allowing Council to declare traffic areas;
- allowing Council to declare off-street regulated parking areas;
- prescribing penalties for minor traffic offences;
- enabling Council to prescribe requirements for vehicles parked on the road verge (only where this parking is permitted by a parking sign).

(1) Parking Approvals

Under the TORUM Act, Council has the power to regulate parking. This includes issuing parking approvals. This Local Law provides the framework to grant parking approvals to allow people to:

- park in a way that is different to what a parking sign says or where a parking fee would otherwise be required. This kind of parking approval allows a person to park their vehicle on the road even if there is a parking sign that limits the time a vehicle can normally park (e.g., 2 hour parking sign) or where a person would normally be required to pay a parking fee. Council issues a parking permit as evidence of the parking approval.
- park in a loading zone as a commercial vehicle, meaning they can park longer than a non-commercial vehicles. This kind of parking approval allows a person to stop a vehicle in a loading zone for 30 minutes, or another time indicated by a loading zone sign. Council issues a commercial vehicle identification label as evidence of the parking approval.

The approval process under the 2011 Local Law has been streamlined under this Local Law. 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 an approval process structured in this way will help Council better achieve the object of this Local Law.

(2) Declaration of traffic areas and off-street regulated parking areas

Traffic areas can be declared by Council to manage parking in high traffic or high demand locations. They allow Council to determine the types of vehicles that can be parked in certain locations, and how long they can be parked for. Regulating parking via traffic areas allows all members of the community access to parking spaces in these areas during busy times. As the demand for parking in certain areas of the City grows, it may become necessary for Council to regulate parking in off-street car parks. Under this Local Law, Council can declare certain off-street car parks as “off-street regulated parking areas”. This allows Council to regulate parking in those carparks by, for example, imposing time limits. This will help to ensure all of the community is able to make use of the parking available to access desirable public areas or facilities (i.e., parks, beaches and community facilities).

(3) Infringement notice penalties for minor traffic offences

The TORUM Act gives Council the power to establish penalty amounts for minor traffic offences within our City. Minor traffic offences ensure that parking only takes place in appropriate locations and in an appropriate manner, to ensure the safety and amenity of the City. These penalties aim to deter unlawful parking and help ensure the safety and amenity of the City.

(4) Impose requirements for vehicles parked on the road verge

Vehicles parked on either side of narrow roads can create public and road safety and access issues for the community. To alleviate these issues, drivers sometimes park their vehicles with two wheels on the road and two wheels on the verge (2 up/2 down parking). The Road Rules prohibit 2 up/2 down parking in built-up areas unless there is a parking sign that allows it.

Council recognises that while 2 up/2 down parking may minimise some access and safety concerns, it may also create additional issues if not properly managed, including:

- Impeding footpath access;
- causing damage to grass verges; or
- causing damage to public infrastructure (e.g., stormwater pipes, telecommunications cables and formed footpaths).

Council considers that if it were to allow 2 up/2 down parking in built-up areas in future (via parking signs), requirements would need to be imposed to manage these issues. Under this Local Law Council can make and enforce those requirements.

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 local laws regulating parking and invited recommendations on how those issues could be addressed. This consultation took the form of a public survey as well as invitations to relevant peak body organisations and State Government departments.

In July 2021, Council undertook targeted consultation regarding 2 up/2 down parking and the parking of recreational vehicles, trailers and vessels on residential streets. This consultation took the form of another public survey and submissions were invited from the following peak body organisations and State Government departments:

- Australian Caravan Club;
- Boating Industry Association;
- Campervan and Motorhome Club of Australia;
- Caravan Industry Association of Australia;
- Caravan Parks Association of Queensland;
- Caravanning Queensland;
- Caravan Trade and Industries Association of Queensland;
- Heavy Vehicle Industry Australia;
- Queensland Police Service;
- Queensland Trucking Association;
- Department of Transport and Main Roads; and
- Department of Local Government, Racing and Multicultural Affairs.

2 up/2 down parking

An overview of the community's feedback in response to the consultation on 2up/2down parking is provided below.

2 up/2 down parking			
Survey question	Responses received ¹	Outcome	
Should Council allow cars to park with two wheels up on a road verge in narrow streets?	983	Yes	= 85.2%
		No	= 13.8%
		Unsure	= 0.92%

The results from the public survey demonstrate that the community is supportive of 2 up/2 down parking. Common themes of the public survey results indicate that those who were not supportive were concerned about the impact this kind of parking has on footpath access, grass verges and underground infrastructure. In

¹ Council also consulted the public on this question via social media. While the responses provided via social media were considered, they were not counted in these totals.

response to this feedback, this Local Law allows Council to impose specific requirements for 2 up/2 down parking. These requirements will only apply in a built-up area where 2 up/2 down parking has been allowed via parking signs and will be enforceable under this Local Law.

Parking of recreational vehicles, trailers and vessels on residential streets

An overview of the community’s feedback in response to the consultation on the parking of recreational vehicles, trailers and vessels (which were referred to as “large vehicles” during this consultation) on residential streets is provided below.

Parking of large vehicles on residential streets		
Survey question	Responses received ²	Outcome
Should large vehicles (e.g. RVs, boats, trucks, trailers) be permitted to park on residential streets?	743	Yes = 31.14% No = 66.26% Unsure = 2.60%

The results from the public survey demonstrate that the community is not supportive of the parking of these recreational vehicles, trailers and vessels on residential streets. Common themes of the public survey results indicate that the parking of recreational vehicles, trailers and vessels on roads:

- blocks safe and easy access through streets;
- is unsightly where recreational vehicles, trailers and vessels are “stored” on roads for extended periods of time;
- prevents road users from being able to view oncoming traffic;
- interferes with line of sight when trying to enter or exit properties; and
- impedes access for emergency vehicles, particularly in narrow streets.

However, those members of the community who are supportive of recreational vehicles, trailers and vessels parking on roads indicated that:

- if a person pays registration on a recreational vehicle, trailer or vessel, it should be able to be parked on a road;
- recreational vehicles, trailers and vessels that comply with relevant road rules and do not impede vision for road users should be able to be parked on a road;
- most properties do not have adequate parking options for these types of vehicles, so they need to be parked on the road; and
- if they are being used regularly, there should be no issues with recreational vehicles, trailers and vessels being parked on a road.

In response to this feedback, Council will continue to regulate the parking of these vehicles in accordance with the Road Rules. There is no specific regulation for these vehicles under this Local Law.

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

Plain English explanations of each section of the Local Law

Note: *The Local Law No.1 (Administration) 2011* will be referred to throughout this section as ‘the **2011 Local Law**’. The *Subordinate Local Law No.1 (Administration) 2011* will be referred to as ‘the **2011 Subordinate Local Law**’. The *Local Law No.5 (Parking) 2011* will be referred to as ‘the **2011 Parking Local Law**’. The *Subordinate Local Law No.5 (Parking) 2011* will be referred to as ‘the **2011 Subordinate Parking Local Law**’.

Part 1 - Preliminary

Division 1 - Introductory provisions

Section 1 - Short title

This section establishes the short title of this Local Law.

Division 2 - Object and achievement of Local Law

Section 2 - Object

This section sets the broad context and scope for each provision within this Local Law. The content of these provisions must be consistent with the object of this Local Law, which aims to regulate parking on roads, traffic areas and off-street regulated parking areas, to:

- **complement chapter 5, part 6 of the TORUM Act:** The TORUM Act gives Council certain powers to regulate parking across the City. This Local Law complements the TORUM Act by providing provisions and an approval process that give effect to these powers.

For example, this Local Law provides an approval process for the issuing of parking approvals for vehicles parked contrary to an official traffic sign, which is a power afforded to Council under section 101 of the TORUM Act.

- **minimise risks to public safety:** Regulating parking is essential to ensuring public safety across the City. Roads and road verges, which includes footpaths, are areas for used by both vehicles and pedestrians. If vehicles are parked in a manner that impedes pedestrian use of footpaths or blocks their view of oncoming traffic while they are trying to travel across roads, they create a public safety risk for pedestrians. The parking of certain types of vehicles on roads can also create public safety risks.
- **minimise risks to road safety:** Protecting road safety is paramount in regulating parking across the City. If vehicles are not parked in suitable locations or in an appropriate manner, they may block the view of oncoming traffic for motorists, impeding their ability to safely access and exit their property, or travel on roads.
- **minimise risk to public infrastructure:** Council aims to ensure the parking of vehicles does not create risks for public infrastructure, such as footpaths and drainage infrastructure.

For example, vehicles parked on road verges (i.e., 2 up/2 down parking), may cause damage to footpaths and stormwater pipes contained within the road verge. Council may need to prescribe requirements for this type of parking to minimise any damage to public infrastructure.

- **protects visual and public amenity:** Council aims to ensure our City is accessible and visually appealing for residents and visitors. Regulating parking ensures vehicles are only parked in appropriate locations, ensuring streets are not visually cluttered with vehicles, and access to public areas and facilities are not impeded by the inappropriate parking of vehicles.

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:

- providing a framework for issuing parking approvals;
- declaring traffic areas and off-street regulated parking areas;
- prescribing penalties for parking offences;
- allowing requirements to be imposed for parking on the road verge (where this is allowed via a parking sign).

Division 3 - Interpretation

Section 4 - Definitions

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

Section 5 - Parking approval

This section defines a **'parking approval'**. It covers two kinds of parking approvals:

- an approval to park in a way that is different to what a parking sign says; and
- an approval to have a commercial vehicle identification label (**CVIL**).

This definition is relevant for other parts of this law, particularly part 2 of this Local Law. Parking approvals for people with disabilities are not covered by this Local Law, as they are issued by the State Government in accordance with section 111 of the TORUM Act.

Section 6 - Parking permit

This section defines a **'parking permit'**. Parking permits are issued to people who have approvals to park in a way that is different to what a parking sign says. The permit is the document displayed on the car or issued to the driver to evidence the parking approval (see section 11 'Parking a vehicle contrary to an official traffic sign').

Section 7 - Commercial vehicle identification label

This section defines a **'commercial vehicle identification label'**. These labels are issued to people who have a CVIL parking approval. The label is displayed on the car to evidence the parking approval.

Section 8 - Relationship with other Acts

This section clarifies that this Local Law is intended to be consistent with and in addition to those laws regulating the use or development of land, or parking under chapter 5, part 6 of the TORUM Act.

The TORUM Act is the primary legislation dealing with road use and the regulation of parking across Queensland. It gives Council certain heads of power to regulate parking across the City. It allows Council to create local laws to regulate parking on certain matters, including:

- establishing off-street regulated parking areas;
- establishing traffic areas;
- allowing for vehicles to park in a way that is different to what a parking sign says;
- allowing vehicle to obtain a commercial vehicle identification label; and
- establishing parking fees.

However, the TORUM Act only allows Council to regulate parking in accordance with these powers, it does not provide any mechanisms or processes for their implementation. The TORUM Act also allows Council to regulate parking across the City in other ways, such as via traffic signs and paid parking. Such powers are not then repeated in this Local Law. As a result, it is crucial that in regulating parking across the City, Council utilises not only this Local Law but also the TORUM Act.

Part 2 - Parking Approvals

Division 1 - What this part is about

Section 9 - Overview

This section provides that part 3 regulates the issuing of parking approval.

Division 2 - Approvals

Subdivision 1 - Parking approvals

Section 10 - Local government may issue parking approvals

This section provides Council with the power to issue a parking approval under this Local Law. The term '*parking approval*' is defined in section 5.

Approval to park contrary to a parking sign

Under section 74 of the TORUM Act, it is an offence to park contrary to a parking sign. However, section 101 of the TORUM Act allows Council to regulate parking in its area, including by allowing a person to park their vehicle contrary to a parking sign where they display a parking permit issued by Council. This Local Law provides the process for obtaining the parking approval and associated parking permit.

This section also allows Council to prescribed by Subordinate Local Law the persons who can be issued with this kind of parking approval, the circumstances in which the approval may be issued and the type of parking permits that can be issued.

Approval for a commercial vehicle identification label

Under section 179 of the Road Rules, it is an offence to stop in a loading zone except in certain circumstances, including where the vehicle is displaying a commercial vehicle identification label (**CVIL**). In that case, the vehicle can park in a loading zone for up to 30 minutes any other time permitted by the loading zone sign. The TORUM Act does not provide a process for the issuing of a CVIL. Section 101 of the TORUM Act allows Council to provide for the process under a Local Law. As such, this Local Law provides the process for obtaining the parking approval and the associated CVIL.

This section also allows Council to prescribed by Subordinate Local Law the types of vehicles for which a parking approval may be issued and the types of CVILs that may be issued.

For example, a commercial vehicle may be issued with a commercial goods vehicle CVIL.

There is no offence in this local law for parking in a loading zone without displaying a CVIL or for not complying with a condition of a parking approval for a CVIL. The offence is an offence against either section 179 of the Road Rules or section 74 of the TORUM Act and enforcement action will be taken under that legislation.

Section 11 - Parking a vehicle contrary to an official traffic sign

This section allows a vehicle that displays a parking permit to be parked contrary to a parking sign. It only applies in situations where a person parks contrary to a parking sign that specifies how long a vehicle can be parked for or where it is paid parking.

The section allows a person to park contrary to a parking sign in the following circumstances:

- Where Council has issued a physical (e.g., paper, card or sticker) parking permit, the person must display the permit on the vehicle as well as comply with any conditions of the parking approval under which the permit was issued; or
- Where Council issues a digital parking permit (e.g., electronic), that permit does not need to be displayed on the vehicle, but the person parking the vehicle still needs to have the digital permit and must comply with any conditions of the parking approval under which the permit was issued.

If a person complies with this section, they will not commit an offence under section 74 of the TORUM Act. If a person fails to comply with this section, they will commit an offence against section 74 of the TORUM Act and enforcement action will be taken under that legislation, not this Local Law.

Subdivision 2 - Application process

Section 12 - Making an application

This section partly retains section 8 of the 2011 Local Law, which sets out the way in which an application for a parking 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 3 - Timeframes for deciding applications

Section 13 - 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 for a parking approval. However, Council recognises that timeframes provide accountability and keep the decision-making process progressing for both parties.

Section 14 - 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 parking approval to obtain a parking permit. Council may require further information regarding whether the applicant already has adequate off-street parking at their residence.

Section 15 - 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 12. 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 16 - Deciding an application

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

- it is not properly made;
- the granting of the parking approval would be inconsistent with the object of the Local Law; or
- the matters prescribed by section 10(2) are not satisfied (for example, the circumstances in which a parking approval for a parking permit can be issued).

If there are risks that need to be mitigated Council can approve the application but impose conditions, to ensure the parking approval is consistent with the object of this Local Law. See section 19 regarding the conditions that may be imposed on an approval

If it is not possible to condition a parking approval in a way which sufficiently mitigates risks or ensures the object of this Local Law, Council can refuse the application.

When Council makes a decision under this section, it must provide a notice of the decision to the applicant. This means the applicant may apply to review the decision under section 42. The requirements for a decision notice are set out in the definition of **'decision notice'** in the dictionary Schedule of this Local Law.

Section 17 - Effect of failure to decide application on time

This section provides that if an application is not decided by Council in the timeframe specified in sections 13 and 14 of the Local Law, or such further period as agreed to by the applicant, the application is taken to be refused. This means an applicant cannot park a vehicle in a manner for which a parking approval is required in the absence of Council's approval, even if the time in which the decision should have been made has passed. This ensures parking in a loading zone or contrary to a parking sign does not occur, 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 18 - 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. Council acknowledges its responsibility where it has not decided an application within the specified timeframe.

Section 19 - Permitted conditions

Under section 16, 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 19(1) provides that any condition imposed on a parking 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 19 gives Council greater flexibility to impose tailored, purpose-based conditions.

Section 20 - Term of approval

This section specifies that a parking approval is valid for the term specified by Council in the approval. Previously a parking approval could only be issued for a term of up to 12 months. This section gives Council more flexibility to determine an appropriate length for an approval having regard to the object of the Local Law and the nature of the approval being issued.

Subdivision 4 - Administering approvals

Section 21 - Definitions for this subdivision

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

Section 22 - Renewal and transfer of approval

This section provides that a parking approval is not renewable or transferable under this Local Law.

Section 23 - 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 condition 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 parking their vehicle in accordance with a parking approval. Council must decide an amendment application by either granting or refusing the application, having regard to the object of the 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 42. 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 following the process in section 24.

Section 24 - 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 his or her right to do so. An approval holder may choose to do this in circumstances where he or she consents or agrees to the proposed action (for example, to allow for works on public land or roads) (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 42. 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 25.

Section 25 - Procedure for immediate suspension of approval

This section retains section 19 of the 2011 Local Law, which gives Council the power to immediately suspend a parking approval. Council recognises there are certain urgent circumstances which make it necessary for the parking of the vehicle to immediately cease. For example, where the continuation of the parking of a vehicle poses an urgent and serious threat to public safety.

While this may impact the approval holder, it is intended to be used only where there is an urgent and/or serious need. The suspension can only operate for a limited period of time, until the risk is minimised, or Council decides to either amend, suspend or cancel the approval. As such, this provision is intended as a temporary measure while Council decides how to proceed with an approval.

Under this section, Council is required to give the approval holder both a suspension notice and a show cause notice. The show cause notice invites the approval holder to make written submissions to Council, as to why Council should not proceed to permanently amend, suspend or cancel the approval. This gives the approval holder an opportunity to demonstrate why permanently amending, suspending or cancelling the approval would be unjust. Council may then decide to either amend, suspend or cancel the approval, or alternatively lift the suspension. If Council lifts the suspension, the existing parking approval continues.

Part 3 - Regulation of parking

Division 1 - Declaration of Parking Areas

Section 26 - Declaration of traffic areas

This section retains section 5 of the 2011 Parking Local Law. It allows Council to declare the whole or part of the City as a traffic area via Subordinate Local Law. The Subordinate Local Law must then clearly define the boundaries of the traffic area. Section 102 of the TORUM Act allows Council to define the boundaries of a traffic area under a local law.

Once a traffic area has been declared, the TORUM Act (section 102(4)) allows Council to install parking signs to regulate:

- the times when a vehicle may only be parked for a maximum specified time;
- the times when a vehicle may only be parked by paid parking; and
- the types of vehicles a person may park.

Section 27 - Declaration of off-street regulated parking areas

This section retains section 6 of the 2011 Parking Local Law. It allows Council to declare an area of land controlled by Council as an "off-street regulated parking area", via Subordinate Local Law. The Subordinate Local Law must define the boundaries of the off-street regulated parking area. Section 101 of the TORUM Act allows Council to regulate parking on an off-street regulated parking area.

Off-street regulated parking areas are not limited to roads and can include different types of land controlled by Council, such as parks, reserves, or land near shopping districts or community facilities. These parking areas can also be on land which Council controls under an agreement with the landowner (or the person with an interest in the land). *For example, where Council has an agreement with a landowner to regulate parking within a shopping centre car park.*

The terms '**off-street regulated parking area**' and '**land controlled by the local government**' are defined within the section.

Division 2 - Restrictions on parking in certain circumstances

Section 28 - Parking on road verges

This section relates to the parking of vehicles on the road verge in built-up areas, for example with 2 wheels on the road and two wheels on the road verge (**2 up/2 down parking**). Under s 197 of the Road Rules, a person can only park on the verge in a built-up area if there is a parking sign allowing it or it is otherwise allowed under the Road Rules. Council has power under the TORUM Act to install a parking sign allowing parking on the road verge (sections 101 and 102 of the TORUM Act). Under section 101 of the TORUM Act, Council may regulate the parking of vehicles on an area which has been dedicated to public use as a road. This may also include areas usually thought of as a carriageway, footpath, verge, nature strip, median or dividing strip. Council's power to regulate parking includes being able to regulate the way a vehicle is parked, such as 2 up/2 down parking.

Council understands that in narrow streets, vehicles parked legally on both sides of a road can create access issues for other drivers, can impact views of oncoming traffic for pedestrians and other vehicles and can obstruct emergency vehicles. To alleviate these issues, some drivers park their vehicle either wholly or partly on the road verge. Council recognises that while parking on a road verge may minimise some safety and amenity concerns, it may also create additional issues if not properly managed, including:

- impeding footpath access; and
- damaging grass or other public infrastructure (e.g., stormwater pipes and telecommunications cables).

Under section 28 of the Local Law, Council can prescribe (by Subordinate Local Law) requirements that drivers must comply with if they park on the road verge in a built-up area in accordance with a parking sign allowing for verge parking. Such requirements may for example specify the minimum distance between a parked vehicle and a constructed footpath. Any requirements prescribed by Council under this section do not apply to parking on the road verge in a built-up area where there is no parking sign allowing it. In that case, parking on the road verge will be a contravention of s 197 of the Road Rules. Section 197 of the Road Rules does not apply to parking on the road verge in an area that is not a built-up area. Similarly, section 28 of the Local Law only applies to road verges in built-up areas. The term 'built-up area' is defined in the Road Rules.

Part 4 - Offences and enforcement

Division 1 - What this part is about

Section 29 - Overview

This part outlines:

- offences relating to this Local Law;
- the enforcement mechanisms available to Council;
- offence proceedings in the Magistrates Court; and
- defences for offences against this Local Law.

Division 2 - Offences

Section 30- Failure to comply with requirements for parking on road verge

Under this section, it is an offence for a driver to park on a road verge in a way that does not comply with the requirements prescribed under section 28 of this Local Law.

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 also 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 - 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 the 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 a parking approval condition), if appropriate to do so.

For example, if a person has obtained a parking permit, and is required to display the permit as a condition of their approval, but fails to do so, Council may issue a compliance notice requiring the approval to be displayed.

Compliance notices allow Council to work with the person to ensure activities within our community are being undertaken in a lawful manner. This aligns with Council's general enforcement approach, emphasising educating the community first and escalating to stronger methods of enforcement as required. Non-compliance with a notice may result in Council amending, suspending or cancelling an approval, or issuing fines or commencing legal proceedings.

When an authorised person issues a compliance notice under this section, they must provide a notice of the decision to the person. This means the person given the compliance notice may apply to review the giving of the notice under section 42. The requirements for a decision notice are set out in the definition of '**decision notice**' in the dictionary Schedule of this Local Law.

Division 4 - Offence proceedings in Magistrates Court

Section 38 - 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. 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 39 - 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.

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 40 - 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.

Part 5 - Minor traffic offence infringement notice penalties

Section 41 - Minor traffic offence infringement notice penalties

A minor traffic offence is defined in section 108(4) of the TORUM Act. It constitutes an infringement notice offence under the *State Penalties Enforcement Act 1999 (SPE Act)*. Section 108 of the TORUM Act allows Council to prescribe by local law an amount as the infringement notice penalty for a minor traffic offence committed in the Moreton Bay City.

This section retains section 9 of the 2011 Parking Local Law and allows Council to set the penalty (in penalty units) for minor traffic offences. This is done by Subordinate Local Law and it essentially sets out the amount of the parking fines for the various parking offences. The penalty cannot be more than 5 penalty units. The penalty amount is described in penalty units rather than a dollar amount to ensure it has longevity and is flexible enough to deal with any amendments to the value of the penalty under the SPE Act.

Under the TORUM Act, if Council prescribes a penalty for a minor traffic offence the penalty applies to the exclusion of another infringement notice penalty under the SPE Act for the minor traffic offence committed the City. Council has the option of prescribing a penalty for a minor traffic offence under the local law or alternatively relying on persons authorised under the TORUM Act to issue infringement notices for minor traffic offences listed under part 12 of the Road Rules.

Part 6 - Reviewing decisions

Section 42 - 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 parking 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 do so through the administrative actions complaints process, which Council must administer under the *Local Government Act 2009*.

Section 43 - 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 44 - Stay of operation 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 parking 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 park the vehicle contrary to a parking sign.

Part 7 - Administrative provisions

Section 45 - 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 the parking approval. 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 for resolution.

Section 46 - Rewards

This section retains section 33 of the 2011 Local Law and allows Council to offer a reward for information leading to the 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 47 - Subordinate Local Laws

This section retains section 39 of the 2011 Local Law and section 10 of the 2011 Parking Local Law. It allows Council to make Subordinate Local Laws for this Local Law.

Regarding the making of subordinate local laws about repeal and transitional provisions, the intention is that a subordinate local law could be made where considered absolutely necessary and, then, likely to address some process in how a decision would be handled to ensure the intended effect of part 8 is achieved.

Section 48 - Extrinsic materials

This section enables Council to make an explanatory note (which includes this document), which can be used to assist in the interpretation of this Local Law. The explanatory note must be passed by a resolution of Council and published on Council's website. The effect of this provision is that, where the meaning of a section of the Local Law is unclear or debated, Council can refer to the explanation of that section in this Explanatory Note (or another Explanatory Note passed by Council resolution) to try and determine the meaning of the section.

The information provided in the Explanatory Note should not be treated as an exhaustive statement on the subject, but rather a tool to inform of the operation and intent behind each provision.

Part 8 - Repeal and transitional provisions

Section 49 - Local Law repeal

This section repeals the *Moreton Bay Regional Council Local Law No.5 (Parking) 2011* and its subordinate local law (**repealed local law**). This Local Law has the effect of replacing those laws.

Section 50 - 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, to the extent they relate to the repealed Local Law (including parking approvals), are contained in the CUPLR LL, part 7. This section 50 simply directs to reader to the CUPLR LL for the transitional arrangements.

Is this law consistent with fundamental legislative principles?

The Local Law is generally consistent with fundamental legislative principles.

Is this law consistent with Human Rights?

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

