



City of Moreton Bay

Commercial Use of Public Land and Roads Local Law 2023

Explanatory Notes

2023 | Version 1.0



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Short title

This Local Law may be cited as the *Commercial Use of Public Land and Roads Local Law 2023*.

What is this Local Law trying to achieve and why?

City of Moreton Bay is committed to business opportunities and growth. With vast areas of public space and parks, Moreton Bay is primed for local business development, evolution and innovation. This Local Law applies to businesses operating on public land and roads.

Council aims to create a Local Law that is easy to understand and navigate. The Council's previous Local Law relating to commercial use of public land and roads:

- was contained in the *Local Law No. 1 (Administration) 2011*, which also dealt with a wide range of other matters;
- differentiated between types of commercial uses and had different approval processes for each; and
- did not have any mechanisms in which to deal with low impact commercial uses.

This Local Law brings all the rules relating to commercial use of public land and roads (including assessment and approval processes, review processes and offences) into one place. Council aims to create a Local Law that is flexible, where the application, assessment and approval requirements can be tailored based on the nature, scale, impacts and risk associated with a commercial use of public land and roads. As a Small Business Friendly Council, Council intends for this to help reduce red-tape and support our Regional Economic Development Strategy 2020-2041. This Law also aims to protect the public and the environment and ensure that any commercial use of public land and roads is for "community benefit".

Public land is primarily for the benefit of the community. As such, any commercial use of public land and roads should, for example, support the primary use of the land, meet a community need or demand or enhance the visitor and local experience of the area in the vicinity of the commercial use of public land or road. Regulating commercial uses of public land and roads also ensures that the impact on the community is minimal and that any damage caused by commercial operators are appropriately rectified.

As Australia's third largest Council, there is unlimited business potential that we can harness to provide unique experiences for our community on public land and roads. Council believes there exists a harmonious balance between the interests of the community and those commercial operators wanting to undertake business ventures in public spaces. In striking that balance, this Local Law will help make Moreton Bay bigger, bolder and brighter.

How will the Local Law achieve those aims?

Council aims to create a modern Local Law that is easy to read and navigate. As such, all matters relating to the commercial use of public land and roads are contained within this Local Law. It will also provide Council with sufficient discretion to tailor each approval for the needs of the community and applicants.

This Local Law achieves these purposes by providing for the:

- framework for approving commercial use of public land and roads;
- mechanism for Council to establish other approval systems; and
- offences and enforcement mechanisms used to ensure compliance with this Local Law.

(1) Framework of commercial use of public land and roads approvals

The commercial use of public land and roads means the soliciting or carrying on the supply of goods and services for profit on public land and roads. To ensure that public land and roads are preserved for the benefit of the community and managed appropriately, Council considers that commercial uses should require an approval from Council. This also allows Council to ensure that commercial use of public land and roads does not impact public health, safety and amenity or cause environmental harm. This Local Law sets out the process for applying for an approval.

This law also changes the way in which Council may consider applications. The Local Law provides Council with the discretion to consider whether a business should operate on public land, having regard to whether the proposed commercial use confers a “community benefit”. This will allow Council to carefully manage the interests of commercial operators with the needs of the community and the economic development of the City.



(2) Mechanism for Council to establish other approval systems

This Local Law applies to all commercial uses on public land and roads. However, some commercial uses have a low impact and an application and formal approval may not be necessary. This Local Law provides a mechanism for Council to establish a self-assessment system for low impact commercial uses (for example, busking). This will significantly reduce ‘red-tape’ and create more opportunities for low impact businesses to thrive throughout the City.

(3) Offences and enforcement mechanisms used to ensure compliance of this Local Law

To ensure that public land and roads are being used appropriately, Council considers it necessary to implement certain compliance and enforcement mechanisms. Particularly, to protect public safety, Council considers it necessary to create the following offences, including:

- offence to undertake a commercial use without approval;
- offence to not comply with conditions of approval; and
- offence to not comply with minimum requirement of a self-assessment system.

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 Law regulating the commercial use of public land and roads 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.¹ Council reviewed all responses and identified issues that were the most prevalent for the community.

In July 2021, Council undertook targeted consultation on the following questions via a second public survey and further invitations to the relevant peak bodies and State Government departments:²

Conducting Business on Public Land Survey		
Survey question	Responses received	Outcome
Should businesses on public land be able to operate there indefinitely (i.e., other business will not have the opportunity to use that spot until the current business chooses not to renew their permit)?	649	Yes = 33.3% No = 54.4% Unsure = 12.3%
Should Council be making it easier for businesses to operate on public land temporarily (e.g., food trucks)? ³	690	Yes = 68.4% No = 24.6% Unsure = 7%
Should Council designate certain areas for busking? ⁴	558	Yes = 54.5% No = 36.8% Unsure = 8.7%

Common themes arising from the consultation responses include the following:

- Any commercial use of public land and roads approval should be temporary. However, these approvals should still be able to be renewed subject to Council discretion. Suggestions for tender or an expression of interest process for renewals were made.
- Reducing 'red-tape' by making the application process simpler and streamlining particular business approvals.
- Support for designating areas for busking and are able to be booked in advance. There was some concern that proper Council oversight and enforcement needs to occur to ensure potential nuisance can be minimised.

¹ Including MBRIT, Department of Transport and Main Roads, Workplace Health and Safety Electrical Safety Office, Office of Industrial Relations and Department of Resources, Queensland Health, Lime Scooters, Neuron Mobility, Biosecurity Queensland, Department of Local Government, Racing and Multicultural Affairs, Australian Industry Group, Department of Employment, Small Business and Training, Moreton Bay Region Chambers of Commerce, Pine Rivers Chamber of Commerce, Redcliffe Peninsula Chamber of Commerce, Commerce Caboolture, Samford & Districts Chamber of Commerce, Department of Environment and Science, Fitness Australia.

² Consultation was also undertaken via social media and while responses provided via social media were considered, they are not counted in the totals.

³ Council also asked the community: "how should Council make it easier for businesses to operate on public land temporarily?"

⁴ Council also asked the community: "should Council require bookings for these designated busking areas?"

Key recommendations made during consultation that have been incorporated into the Local Law include:

- streamlined and flexible approval process for the commercial use of public land and roads;
- ability for Council to create a self-assessment system for low impact commercial uses (e.g., busking); and
- discretion to determine renewal processes in accordance with a Commercial Use of Public Land and Roads Policy.

Plain English explanations of each section of the Local Law

Note: The *Local Law No. 1 (Administration) 2011* (which is repealed by this Local Law) will be referred to throughout this section as ‘the **2011 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 - Objects and achievement of Local Law

Section 2 - Objects

This section sets out the objects of the Local Law and provides the broad context and scope for each provision of the Local Law. The objects of this Local Law are to facilitate the commercial use of public land and roads for community benefit and to ensure impacts on matters like public health and safety, the environment and amenity are appropriately managed.

- **For community benefit** - Having a ‘community benefit’ did not form part of the objects of the 2011 Local Law. This object helps ensure that any commercial use of public land and roads does not compromise the benefit of that land for the community. ‘**Community benefit**’ is defined in section 7.
- **Does not unreasonably impact public health and safety, private property, public infrastructure, utilities or maintenance requirements** - Any commercial use of public land and roads can pose risks to the community. Further, given the nature and location of public land and roads, commercial use of these areas can have a wide range of impacts. Part of the objects of this Local Law is to ensure these risks are considered and mitigated by commercial operators to protect the community.
- **Does not cause environmental harm**- Commercial uses of public land and roads may cause harm or nuisance to the environment. Part of the objects of this Local Law is to ensure these risks are identified and appropriately managed by commercial operators.
- **Preserve fitness for use and amenity** -
 - “fitness for use” as a concept in this Local Law, relates to the ability for public land and road to be used in the ordinary way the community expects it to be. For example, a public park is fit for use as a place for children to play. So, the fitness for use of public land is diminished where it becomes inconvenient for the community to use land in the ways they ordinarily expect to be able to. This ties in with the concept of “community benefit”; and
 - “amenity” as a concept in this Local Law, relates to the desirability of public land and roads in relation to its purpose. For example, a public nature walk has high amenity if it is in a state of relatively undisturbed natural beauty. So, the amenity of public land is diminished where it becomes less desirable in relation to its purpose.

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

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

- implementing a framework for assessing and approving commercial use of public land and roads;
- providing a mechanism in which to establish other approval systems (i.e. the self-assessment system); and
- providing mechanisms for enforcement where there is non-compliance with conditions of an approval or provisions of this Local Law.

Division 3 - Interpretation

Section 4 - Definitions

This section states that the dictionary in Schedule 2 defines particular words in the Local Law .

Section 5 - Commercial use of public land and roads

This section defines '**commercial use of public land and roads**'. The definition is consistent with the definition used in the 2011 Local Law. It captures the soliciting or carrying on the supply of goods and services for profit. The term "for profit" is intended to mean a commercial activity that makes money. It does not exclude those activities just because they are undertaken by a not-for-profit entity (e.g., a charity), unless those activities are specifically excluded as an "excluded business". Excluded businesses are excluded from the definition of '**commercial use of public land and roads**' and are listed in section 6.

Examples of a commercial use of public land and roads:

- *Itinerant vending (e.g., ice-cream trucks);*
- *Roadside vending (e.g., food trucks);*
- *Outdoor dining (e.g., footpath dining);*
- *Sale of goods (e.g., hire operators);*
- *Display of goods (e.g., fruit stands out front of business);*
- *Landing and mooring approvals (e.g., the commercial use of jetties and boat ramps); and*
- *Busking.*

This definition is intended to capture the following uses that were regulated as restricted activities under item 1 and item 2, Schedule 2 of *Subordinate Local Law No.4 (Local Government Controlled Areas or Roads) 2011*:

- Use a local government controlled area for commercial purposes;
- Use a building, structure or facility within or on a local government controlled area for a commercial purpose; and
- Use a local government controlled road for a commercial purpose.

It is intended that this Local Law will regulate all commercial uses of public land and roads. However, per section 5(2), this Local Law is not intended to, and does not, regulate the incidental use of roads or the road network in the course of a person supplying or carrying on the supply of goods and services. For example, this Local Law does not regulate the use of the road by a delivery truck driver. Generally, a registered vehicle, including a commercially registered vehicle, can use the road and the road network without any further approval beyond registration as long as the laws applying to the driving of the vehicle are complied with, including under the *Transport Operations (Road Use Management) Act 1995* and the *Heavy Vehicle National Law (Queensland)*.

Section 6 - Excluded business

This defines '**excluded business**'. The types of businesses listed do not require an approval for a commercial use of public land and roads and are not subject to a self-assessment system.

Generally, these businesses are exempt from requiring a Local Law approval as there is State legislation, another local law or a contractual arrangement (including a lease) that regulates the activity. Double regulation of the operation of these commercial activities would put unnecessary costs and burdens on businesses, which can negatively impact business innovation and productivity. Council intends to find the right balance between allowing businesses to use public land and roads, while maintaining these assets for the community generally.

For example, a business that has a lease with Council to operate a commercial use on public land would not require an approval under this Local Law. The reason for this is that the terms of a lease may deal with the commercial activities associated with the lease. A Local Law approval would then not be necessary, particularly after the business has negotiated with Council the terms and conditions of the lease.

Section 7 - Community benefit

This section defines '**community benefit**'. Council has decided to centre the Local Law around this theme to reflect the modern community sentiment around the use of public land and roads - any commercial use of public land and roads must provide benefits to the community. The definition of '**community benefit**' is not exhaustive. There may be other ways in which a commercial use may confer a benefit to the community. However, at a minimum Council considers a community benefit can be achieved in one or more of the following ways:

(1) *consistent with the primary purpose of the public land or road*

A commercial use of public land and roads should be consistent with the primary purpose of the land (i.e. where trust land - the community purpose for which the land was dedicated. Where freehold or leasehold land - the intended use when the land was set aside for the community. Where the land is road, consistent with the use of a road). This recognises that any secondary use that is commercial must not overpower or dominate the land and exclude the community from using the land. Overall, any commercial use of public land and roads should facilitate or benefit, not diminish, the purpose of the land.

(2) *consistent with any approved secondary use of trust land*

Council has certain obligations as trustee of land, particularly around use of the land. However, under the *Land Act 1994 (Land Act)* the State government can approve certain secondary uses of trust land that are otherwise inconsistent with the purpose for which the land was dedicated (sections 52(3) and 60(3) of the Land Act).

(3) *meets a community need or demand*

Commercial operators wishing to use public land or road should demonstrate that there is a gap in the local community that needs to be or should be filled by their commercial use. Commercial operators may demonstrate this with regard to the type of goods or services they provide. It must be noted that while a gap in the local community may be identified at the time of making an application for an approval, this may not always be the case in the future. Accordingly, "community need" should be an ongoing consideration. Council recognises that this approach aims to strike a balance between facilitating innovation, activating areas of the City and impacts on local communities.

(4) *enhances the visitor and local experience of the area in the vicinity of the commercial use of public land or road.*

Council acknowledges that commercial uses of public land and roads attract many regional, interstate and local tourists. Tourism boosts the revenue of local economies, creates jobs and business opportunities and hosts cultural exchanges between visitors and locals. Commercial operators of a commercial use of public land and roads should be able to demonstrate how their enterprise supports or contributes to most of these tourism benefits.

Division 4 - Operation of Local Law

Section 8 - Relationship with other Acts

This section clarifies that this Local Law is intended to be consistent with and in addition to those laws regulating the use or development of land (e.g., the *Planning Act 2016*), the use of trust land and roads (e.g., the *Land Act 1994* and *Land Regulation 1995*) and ongoing management of the commercial use of public land and roads.

Nothing in this Local Law is intended to establish an alternative development process and any obligation or requirement imposed by or under this Local Law does not involve an assessment of development. To the extent that any commercial use of public land and roads constitutes development as that term is defined in the *Planning Act 2016*, that use ought to be assessed pursuant to the development process in that Act. This Local Law should not be relied on to regulate any activity dealt with, or that could have been dealt with, under a development approval or an existing land use right.

However, this Local Law can regulate matters relating to the commercial use of public land and roads to the extent that it is not a matter that can be regulated under the *Planning Act 2016*. For example:

- Public liability insurance; and
- Reinstatement of public land and road following the end of the commercial use

Part 2 - Other approval systems

Division 1 - What this part is about

Section 9 - Overview

This section provides an overview of this part, which describes the other approval systems (other than the approval process in part 3) that the local government may establish for a commercial use of public land and roads.

Division 2 - Self-assessment system

Section 10 - Establishing a self-assessment system

Under this section Council may establish a self-assessment system for a commercial use of public land and roads that would ordinarily require an approval under this Local Law. It may establish these systems by Council resolution or a Subordinate Local Law.

A self-assessment system may be appropriate for low-risk commercial uses of public land and road. A self-assessment system may specify certain minimum requirements that a person must comply with in order to undertake the commercial use without an approval. It is an offence to undertake a commercial use of public land that does not comply with the minimum requirements.

For example, Council may establish a self-assessment system for busking. A person who wishes to busk on public land may refer to Council's website for minimum requirements for busking. The minimum requirements may require the busker to not create noise before or past a certain time, book a location via the online booking platform, produce confirmation of this booking for inspection by an authorised person and restore any damage caused by using the land for busking. In complying with these minimum requirements, the busker will not require an approval under part 3 of the Local Law. If the person cannot meet the minimum requirements, they will require an approval from Council under part 3.

Council may still apply this Local Law to a commercial use of public land and roads undertaken under a self-assessment system, particularly parts 1, 4, 5, 6 and 7 of this Local Law.

The intent of this provision is to reduce the 'red-tape' for low impact commercial uses of public land and roads.

It does so by limiting onerous approval processes and requiring compliance with only minimum requirements, as opposed to an extensive list of conditions.

Part 3 - Commercial use of public land and roads approvals

Division 1 - What this part is about

Section 11 - Overview

This section sets out the matters dealt with in part 3.

Division 2 - Approvals

Subdivision 1 - Application process

Section 12 - Need for approval

This section retains section 7 of the 2011 Local Law, which provides that an approval is required to undertake a commercial use of public land and roads under this part of the Local Law. It is an offence to undertake a commercial use of public land and roads without an approval (section 29). Council requires approvals to be obtained to ensure Council is aware of the commercial use and the commercial use is carried out in a manner which ensures it meets the objects of this Local Law.

However, Council believes that some commercial uses of public land and roads pose minimal risk to things like public health and safety and amenity, such that they should not require an approval. This includes where:

- the commercial use is undertaken in accordance with a self-assessment system established under this Local Law;
- a person sells produce on the side of the road immediately adjacent to the property where the produce is grown (for example, an honesty box); or
- a person undertakes a commercial use for a political or educational purpose or where an incorporated not-for-profit entity is fundraising, provided they comply with the following:
 - Only 'permitted structures' are used;
'Permitted structures', means up to two 3 metre by 6 metre (or under) marquees that are weighted correctly but not staked or pegged into the land. Council considers this may be necessary for shade, and that these marquees are generally safe, provided the manufacturer's requirements to weight the marquee down correctly are followed.
 - No amusement devices or rides are used;
Examples of an amusement device or an amusement ride provided in the section include a jumping castle, inflatable or collapsible slide and a ferris wheel. These are examples only and are not an exhaustive list. The use of an amusement device or an amusement ride on public land or road will require an approval under this Local Law, or under the Events Local Law 2023 to the extent the activity is an 'event';
 - No vehicle access on to public land (other than public carparks);
 - No access to Council's electricity or water supply;
This does not prevent a person from using existing facilities on the site (e.g., public toilets). Council supports the community's use of these facilities;
 - Is not a market; and
 - Does not involve the sale or supply of liquor.

An entity may be incorporated, for example, under the *Corporations Act 2001* (Cth) or the *Associations*

Incorporation Act 1981 (or equivalent legislation in other States). Reference to an 'incorporated not-for-profit' entity includes an incorporated charity. If the not-for-profit entity is unincorporated, then any fundraising by the entity will generally require an approval. Also, if fundraising is being undertaken by another entity for the benefit of an incorporated not-for-profit entity, then an approval may be required.

For example, a coffee cart that donates \$1.00 to the local football club (which is an incorporated not-for-profit entity) for every coffee sold at the coffee cart (where the coffee costs more than \$1.00) would not constitute fundraising by an incorporated not-for-profit entity.

Fundraising by an incorporated not-for-profit entity that occurs as part of an event or small gathering under the *Events Local Law 2023*, will be regulated under that Local Law. There are circumstances under the Events Local law where a gathering can occur without the need for an approval (s 6). That gathering can incorporate an element of fundraising (which is typically a commercial use of public land e.g., a sausage sizzle) if the fundraising is undertaken by an incorporated not-for-profit entity.

Section 13 - Making an application

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

Subdivision 2 - Timeframes for deciding applications

Section 14 - Timeframe for deciding applications when no further information is needed

This section sets out the timeframe within which Council must decide a properly made application, where no further information is required from the applicant. This timeframe may be extended where both parties agree.

Previously, Council did not have a set time within which it had to decide an application. However, Council recognises that timeframes provide accountability and keep the decision-making process progressing for both parties.

Section 15 - 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, a risk management plan that identifies risk associated with the activity and how the applicant will deal with them.*

Section 16 - 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 13. 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 17 - Deciding an application

This section requires Council to decide a commercial use of public land and roads application by either approving it, approving it subject to conditions or refusing it. Where an application is properly made, and the commercial use of public land and roads can be undertaken in a manner consistent with the objects of the Local Law, Council can approve the application. However, Council must be satisfied that the approving the application would confirm or be consistent with conferring, a community benefit.

If there are risks that need to be mitigated Council can approve the application but impose conditions, to ensure the commercial use of public land and roads is undertaken in a manner consistent with the objects of the Local Law. See section 20 regarding the conditions that may be imposed on an approval.

For example, where a food business wants to expand its footprint onto a footpath to create an outdoor dining experience, Council may consider a broad range of factors in accordance with the objects of this Local Law. For instance, a key consideration of commercial use of public land and roads applications may be whether the outdoor dining proposal unreasonably impacts the use of the footpath by obstructing pedestrian traffic and whether pedestrians will need to move away from any shelter as a result of the outdoor dining area.

If it is not possible to condition the commercial use of public land and roads in a way which sufficiently mitigates risks or ensures the objects of the Local Law or if approving the application would not confer, or be consistent with conferring, a community benefit, Council can refuse the application.

For example, where there are sufficient grounds to suggest that a proposed outdoor dining area will obstruct pedestrians on footpaths and the application cannot be conditioned to sufficiently mitigate this, Council may refuse the application and state the reasons why.

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

Section 18 - Effect of failure to decide application on time

This section provides that if an application is not decided by Council in the timeframes specified in sections 14 and 15 of the Local Law, or such further period as agreed to by the applicant, the application is taken to be refused. This means that an applicant cannot undertake the proposed commercial use of public land and roads in the absence of Council's approval, even if the time in which the decision should have been made has passed. This ensures that a commercial use of public land and roads cannot go ahead unless Council has properly assessed an application. If a decision is taken to be refused because Council did not make a decision on time, the applicant will need to re-apply. Where an applicant re-applies, the timeframes for deciding an application will re-commence.

Section 19 - Third-party certification

This section retains section 12 of the 2011 Local Law, which gives Council the power to accept evidence from a qualified third-party that a particular application requirement is met. It also enables Council to specify (by Subordinate Local Law):

- individuals or organisations that are considered to be third-party certifiers; or
- particular qualifications that individuals or organisations must have to be considered third-party certifiers under the Local Law.

The purpose of this section is to enable Council to rely on external expertise in assessing certain application requirements. This may assist Council's consideration of the application.

Section 20 - Permitted conditions

Under section 17, Council may approve an application subject to conditions. Council may condition an approval to mitigate risks and to ensure an approval is undertaken in a manner consistent with the objects of the Local Law. Section 20 provides that any condition imposed on an approval must relate to the objects 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 20 gives Council greater flexibility to impose tailored, purpose-based conditions.

For example, a paddle board hire operator obtains a commercial use of public land and roads approval from Council. To ensure that this business protects public safety, Council may require, as a condition, that the business maintains a public liability insurance policy prior to undertaking the activity. In this example, Council may also impose a condition to require the approval holder refrain from using amplified music so as to not disturb the amenity of the public land. Likewise, Council may require the approval holder to clean up and tidy site at the end of each trading day. These permitted conditions would be reasonably necessary to achieve the aims of the Local Law and ensure that the commercial use of public land confers a community benefit.

A person does not contravene a noise standard (under section 44Q of the *Environmental Protection Act 1994*) or cause an environmental nuisance (under section 440(3) of the *Environmental Protection Act 1994*) where an act is done, or omission made, under a condition of an approval given by Council.

Section 21 - Term of approval

This section provides that a commercial use of public land and roads approval is valid for the term specified by Council in the approval. Previously, an approval for a commercial use of public land and roads could only be issued for a term of 12 months. This section gives Council more flexibility to determine an appropriate length for an approval having regard to the objects of the Local Law and the nature of the approval being issued.

Subdivision 4 - Administering approvals

Section 22 - Definitions for this subdivision

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

Section 23 - Renewal and transfer of approval

This section provides approval holders with the flexibility to renew or transfer their approval for the continuation of a commercial use of public land and roads. It also gives Council the ability to reconsider an approval to ensure it continues to meet the objects of this Local Law.

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

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

Council must decide a renewal or transfer application by either approving it, approving it with amended conditions or refusing the application. Factors which Council may consider in deciding an application include the approval holder's history of compliance with approval conditions (where the application is a renewal application) and the objects of this Local Law. For renewal applications, Council has complete discretion and flexibility to determine the process of renewing existing approvals or term of renewal (if it decides to renew) (subsection (6)).

For example, for renewal applications for a commercial use of public land and roads, Council may decide to undertake an expression of interest process before renewing the approval.

For renewal applications, existing approvals will remain in effect for different periods of time depending on the outcome of the application. These timeframes preserve the applicant's right to seek review if Council refuses the renewal application.

When Council makes a decision under this section, it must provide a notice of the decision to the applicant. This means the applicant may apply to review the decision under section 45. The requirements for a decision notice are set out in the definition of '**decision notice**' in the dictionary Schedule of this Local Law.

Section 24 - Approval holder may apply to amend conditions

This section retains section 16 of the 2011 Local Law. It allows an approval holder to apply to Council to amend the conditions of an approval. This section recognises that circumstances may change and allows Council the flexibility to amend approval conditions to respond to those changes and enable the approval holder to continue a commercial use of public land and roads.

Council must decide an amendment application by either granting or refusing the application, having regard to the objects 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 45. The requirements for a decision notice are set out in the definition of '**decision notice**' in the dictionary Schedule of this Local Law.

Where an amendment is made at the request of the approval holder, Council can amend the approval without having to follow the process in section 25.

Section 25 - Local government may amend, suspend or cancel approval

This section allows Council to amend, suspend or cancel an approval in certain limited circumstances. This includes, for example, for the protection of public health and safety, or where the approval holder has failed to comply with the approval. Before making a decision, Council must provide the approval holder with a show cause notice. This gives the approval holder an opportunity to explain in writing why Council should not amend, suspend, or cancel the approval, as proposed. For example, the approval holder may have a reasonable excuse for not complying with a condition of an approval.

An approval holder does not have to make a submission in response to the show cause notice and may waive their right to do so. An approval holder may choose to do this in circumstances where they consent or agree to the proposed action (for example, Council's proposal to amend conditions to mitigate risk of environmental harm) (see subsection (4)). In that case, Council does not need to wait for the time stated in the show cause notice to pass before it makes a decision under subsection (6).

Where a submission is made by the approval holder, Council must consider the submission and then decide whether a reason to amend, suspend or cancel the approval still exists. If a reason no longer exists, Council will not take further action, meaning the existing approval remains in effect. If a reason still exists, Council can take the action proposed in the show cause notice. However, if Council proposed to cancel the approval, it is open to Council to either amend, suspend, or cancel the approval. This allows Council to consider the submissions made and determine whether amendment or temporary suspension of the approval would be more appropriate than a cancellation.

When Council makes a decision under this section, it must provide a notice of the decision to the approval holder. This means the approval holder may apply to review the decision under section 45. 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 26 or a stop order under section 37.

Section 26 - Procedure for immediate suspension of approval

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

For example, Council has been alerted that there is an imminent serious storm event, but a kayak hire operator continues their commercial use of public land and roads in accordance with their approval. To prevent an urgent and serious threat to public safety, Council may immediately suspend its commercial use of public land and roads approval.

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 commercial use of public land and roads approval continues.

Part 4 - Offences and enforcement

Division 1 - What this part is about

Section 27 - Overview

This part outlines:

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

Division 2 - Offences

Section 28 - Failure to comply with minimum requirements of a self-assessment system

This section creates an offence to not comply with the minimum requirements of a self-assessment system. The intent behind this offence is to ensure that a commercial use of public land and roads complies with the self-assessment system. This is particularly important given Council has given people more flexibility in operating under a self-assessment system, but Council still needs to retain oversight as to the use of its public land and roads.

Section 29 - Undertaking a commercial use of public land and roads without an approval

This section retains section 6 of the 2011 Local Law, making it an offence for a person to undertake a commercial use of public land and roads without getting an approval under this Local Law. The purpose of this provision is to deter people from undertaking a commercial use of public land and roads within the City, without Council being able to regulate the commercial use and impose appropriate conditions to achieve the objects of this Local Law.

Section 30 - Failure to comply with conditions of approval

This section makes it an offence if a person undertaking a commercial use of public land and roads under this

Local Law fails to comply with their approval, including the conditions provided for in their approval. The power to impose conditions (see sections 17 and 20) enables Council to ensure the commercial use of public land and roads is undertaken in a manner that achieves the objects of this Local Law, for instance, protecting public health and safety, amenity and the environment. This section aims to ensure that any risks posed by a commercial use of public land and roads are minimised and deter those undertaking the commercial use of public land and roads from ignoring the conditions imposed on their approvals by imposing penalties for non-compliance.

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 objects of this Local Law, or community expectations.

Section 32 - Threatening an authorised person

This section retains the offence in section 21 of the 2011 Local Law, which makes it an offence to threaten, insult or use abusive language to an authorised person. The intention of this provision is to protect the safety of authorised persons and enable them to perform their roles and responsibilities under the Local Law in a safe and effective manner. If a person commits an offence under this section, an authorised person can issue them with a penalty infringement notice. Given the seriousness of this offence, the maximum penalty has been increased from 20 penalty units to 50 penalty units.

Section 33 - Attempts to commit offences

This section provides that a person who attempts to commit an offence under this Local Law commits an offence. This means that even if a person unsuccessfully attempts to commit an offence, the person has committed the offence of attempting to commit an offence. The 'attempt' offence is not intended to operate, or be capable of operating, in respect of all offences. The offence of 'attempt' will only apply to those offences where it is possible to attempt the offence. In other words, an 'attempt' cannot reasonably and sensibly apply to that which is not capable of being attempted. To illustrate, to avoid doing something is not attempting not to do the thing; it simply is not doing the thing.

An attempt to commit an offence will most likely be capable of occurring, and being identified, where the offence involves:

- the doing of a positive act;
- the person taking steps with the intention to perform or otherwise carry out the positive act (and whether or not they are all the steps necessary to carry out the offending act); or
- an intervening event (not being an act necessary to perform the positive act) such that the person does not do the offending positive act.

The maximum penalties which apply to the offence of attempt under this section depend on, and will be half the penalty that applies to for 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 a Council employee's document of appointment must state this Local Law or the provisions of this Local Law, which the employee is appointed as an authorised person. This section ensures that officers are properly authorised to take certain actions under the Local Law, for example an authorised person may give a compliance notice for a breach of this Local Law under section 37. This ensures clarity and transparency in the exercise of those powers.

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

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

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

For example, where the operator of a food truck has not complied with an approval condition to remove all equipment at the close of their trading hours.

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 makes a decision to issue a compliance notice under this section, they must provide a notice of the decision to the applicant. This means the person given the compliance notice may apply to review the giving of the notice under section 45. The requirements for a decision notice are set out in the definition of '**decision notice**' in the dictionary Schedule of this Local Law.

Section 38 - Stop orders

This section retains, in part, section 29 of the 2011 Local Law, which allows Council to issue a stop order to a relevant person requiring them to immediately stop a commercial use of public land and roads, where the activity either:

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

those urgent and/or serious threats specified in subsection (2)(a)-(g).

For section 38(2)(g), a serious obstruction to the use of the public land for its intended purpose relates to the object in section 2(b)(iii).

This section applies to any commercial use of public land and roads (including where a commercial use is undertaken in accordance with a self-assessment system).

This section allows Council to stop a person from undertaking these activities for a period of no more than 5 business days. The intention of this provision is to act as an interim measure to immediately stop a person from carrying out a commercial use of public land and roads, including those undertaken in accordance with a

self-assessment system, giving Council the opportunity to:

- attend to the urgent and/or serious matters giving rise to the stop order; or
- where an approval has been issued, commence the process for suspending the approval under section 26 and possibly cancelling it under section 25 (if required).

It is an offence not to comply with a stop order issued under this section, which may trigger other enforcement measures. If a commercial use of public land and roads meets the minimum requirements under a self-assessment system for the activity, but after the expiry of the stop order the risks are still present at the site, Council may need to take other action to address the risks (for example, Council may exercise its power under another Local Law to temporarily close the area until it is able to be used by the community again).

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

Section 39 - Local government power to seize and cost recover

This section expands on section 28 of the 2011 Local Law and provides for circumstances in which an authorised person may seize and impound an item brought onto or erected or installed in, on, across, under or over land or road within the local government area in a manner that contravenes the Local Law. This section gives an authorised person the power to seize the item in two circumstances:

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

Council has the power to recoup the cost of seizing and impounding an item under this section, as a debt from the person responsible for it being on the land or road.

For example, an approval holder has been issued a compliance notice to remove an unlawful structure used for outdoor dining as part of their commercial use of public land and roads approval and has not done so. Council may hire a contractor to remove the structure from the public land. It may then recover the costs of hiring the contractor from the approval holder.

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

Section 40 - Dealing with impounded items

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

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

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

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

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

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

This section aims to strike a balance between:

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

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

Section 41 - Local government power to reinstate site and cost recover

This section provides that, where a commercial use of public land roads has caused damage to public land, road or public infrastructure, the approval holder or person undertaking the activity has an obligation to make the site safe and to notify Council of the damage. Council can then either:

- require the approval holder or person undertaking the activity to rectify the site to Council's satisfaction at the person's own cost; or
- rectify the site itself and recover the cost as a debt from the approval holder or person undertaking the activity.

This is a discretionary power. There may be circumstances in which it is not reasonable or appropriate to recover the cost from the approval holder or person undertaking the activity.

For example, where the damage is a result of circumstances outside the control of the person undertaking the activity (e.g., weather causing flood damage to the public land).

Division 4 - Offence proceedings in Magistrates Court

Section 42 - Enforcement orders

This section gives the Magistrates Court discretion to make an enforcement order requiring a person to take certain action within a specified period. The purpose of this section is to give the presiding Magistrate power to order a person to comply with a direction to secure compliance with this Local Law. This is particularly useful where a person has previously been given opportunities to comply by Council officers but has refused to do so (*for example, where a person has not complied with a compliance notice to install waste containers*). 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 43 - 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, each person can be held liable, with or separate from the other. *For example, multiple people are undertaking the same commercial use of public land without an approval*. 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 44 - Defence of reasonable excuse

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

For example, if it is a condition of a commercial use of public land and roads approval to leave the approved location in a clean and tidy state after each trading day. It might be a defence to a breach of this condition if the approval holder can prove that the approved location was left untidy due to a weather event (e.g., rubbish blown from other locations).

Part 5 - Reviewing decisions

Section 45 - Application for review

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

- decisions in relation to commercial use of public land and roads approvals (conditions imposed, refusals, etc);
- decision in relation to administering approvals (refusal to renew, refusal to amend conditions upon request, Council decisions to amend, suspend or cancel an approval); and
- decisions to issue compliance notices.

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

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

Section 46 - 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 47 - 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 commercial use of public land and roads approval and the applicant applies for a review of that decision, Council's refusal is still valid while the review process is underway, and the person is not allowed to undertake the commercial use of public land and roads.*

Part 6 - Administrative provisions

Section 48 - Fees

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

The purpose of this section and the provisions of the *Local Government Act 2009* are to ensure that Council is transparent and accountable to the community in charging fees under this Local Law. Cost recovery fees cannot be more than the cost to Council of taking the action for which the fee is charged.

Subsection (2) gives Council the flexibility to determine, by resolution, appropriate circumstances for the reimbursement of a fee. For example, where an approval is surrendered before the end of its duration, Council can resolve to give a partial reimbursement of the approval fee if considered appropriate. Under subsection (3) the local government may, where appropriate, waive or partially remit a fee, unless specific provision to the contrary is made in a Local Law or resolution.

Section 49 - Rewards

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

Section 50 - Subordinate Local Laws

This section retains section 39 of the 2011 Local Law. It allows Council to make Subordinate Local Laws in relation to a commercial use of public land and roads. This includes, for example third-party certifiers or establishing a self-assessment system. The purpose of this section is to define the scope of what Council can regulate by Subordinate Local Law. Regarding the making of subordinate local laws about repeal and transitional provisions, the intention is that a subordinate local law could be made where considered absolutely necessary and, then, likely to address some process in how a decision would be handled to ensure the intended effect of part 7 is achieved.

Section 51 - Extrinsic material

This section enables Council to make an explanatory note (which includes this document), which can be used to assist in the interpretation of this Local Law. The explanatory note must be passed by a resolution of Council and published on Council's website. The effect of this provision is that, where the meaning of a section of the Local Law is unclear or debated, Council can refer to the explanation of that section in this Explanatory Note (or another Explanatory Note passed by Council resolution) to try and determine the meaning of the section. The information provided in the Explanatory Note should not be treated as an exhaustive statement on the subject, but rather a tool to inform of the operation and intent behind each provision.

Part 7 - Transitional and repeal provisions

Section 52 - Local Law repeal

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

Section 53 - Transitional provision for outstanding applications made under the repealed Local Law

This section explains how to deal with applications that have been made under the 2011 Local Law, but which have not yet decided prior to the repeal of that law (**outstanding application**). The section gives Council the option of either:

- deciding the outstanding application under the 2011 Local Law, as if the law had not been repealed;
- decide the outstanding application under the corresponding new local law, as if the outstanding application was made under that law (if, for example, it is too difficult to continue with an application where there is a new local law in place that deals with like applications); or
- not dealing with the outstanding application and refunding the application fee to the applicant (for example, if the application was for an activity no longer regulated under the new local laws).

However, an outstanding application for a review of a decision made under the repealed Local Law must be decided under the repealed Local Law.

Section 54 - Transitional provisions for decisions made under the repealed Local Law, other than a keeping of animals approval

This section is intended to preserve all decisions (as that term is defined) made under the 2011 Local Law (other than a keeping of animals approval, which is dealt with in section 55) so that they remain in force for the term of the approval, even after the repeal of the 2011 Local Law.

The word '**decision**' is defined in subsection (5) to include an approval. The word '**approval**' is defined to mean an approval granted under the 2011 Local Law for a person to undertake a prescribed activity (which has the same meaning as in the 2011 Local Law). This section is not intended to transition or preserve ad hoc or informal consents, permissions, or authorisations that were not granted by the local government in accordance with the approval process in part 2 of the 2011 Local Law. However, those decisions may continue in effect in accordance with section 20 of the *Acts Interpretation Act 1954*. Any legal agreements that exist outside of the 2011 Local Law (for example, under a lease, licence or contract) will continue in accordance with the terms of those agreements.

The table in Schedule 1 lists the various prescribed activities dealt with under the 2011 Local Law and the corresponding new Local Laws which now deal with those activities. Prescribed matters no longer regulated under the new local laws are not mentioned, including:

- operation of camping grounds;
- operation of caravan parks;
- operation of public swimming pools; and
- operation of shared facility accommodation.

Council can rely on the provisions of the new Local Laws to regulate decisions made under the 2011 Local Law, including by amending, suspending or cancelling an approval or taking enforcement action.

However, this section states that an approval issued under the 2011 Local Law cannot be renewed under the new Local Laws. It is intended that the approval granted under the 2011 Local Law will cease at the end of the term specified in the approval. Approval holders must make a new application for an approval under the new Local Laws, they cannot renew their existing approval.

The transitional provisions for matters regulated under other local laws are set out in the following corresponding new local laws:

Repealed Local Law	New Local Law
Local Law No. 2 (Animal Management) 2011	Animal Management Local Law 2023
Local Law No. 3 (Community and Environmental Management) 2011	Community Standards for Private Land Local Law 2023
Local Law No. 4 (Local Government Controlled Areas and Roads) 2011	Community Standards for Public Land and Roads Local Law 2023
Local Law No. 5 (Parking) 2011	Parking Local Law 2023
Local Law No. 6 (Bathing Reserves) 2011	Bathing Reserves Local Law 2023

Section 55 - Transitional provisions for keeping of animals approvals granted under the repealed Local Law

This section applies specifically to approvals issued under the 2011 Local Law for the keeping of animals. It preserves these approvals so that they remain in force for the term of the approval, even after the repeal of the 2011 Local Law.

Section 55 also ensures that a person who was lawfully keeping an animal on their property prior to the commencement of this Local Law, can continue to keep the animal for its lifetime, even if this Local Law prohibits or restricts it. *For example:*

- *Under the Local Law No. 2 (Animal Management) 2011, a person on a property between 301m2 and 599m2 could keep 1 cat and 1 dog without approval, plus an additional cat and dog with approval (4 animals total). Under the new Animal Management Local Law 2023, on the same size property, a person can keep a maximum of 2 animals (either 1 cat and 1 dog or 2 cats or 2 dogs). A person who had approval under the previous Local Law to keep 2 cats and/or 2 dogs on their property can continue to keep the animals under Animal Management Local Law 2023, even though it exceeds the number caps for the property size.*
- *If the Animal Management Local Law 2023 requires an approval to keep an animal where one was not previously required under the law in force at the time the person commenced keeping the animal, the person is not required to obtain approval to keep that particular animal under the Animal Management Local Law 2023.*

However, subsection (4) contains an exception for cats and dogs kept by recognised animal breeders. Under the *Animal Management Local Law 2023*, a breeder of cats or dogs can only keep up to 6 cats or 6 dogs for breeding. If a breeder has been keeping more than 6 cats or dogs in accordance with an approval issued under the 2011 Local Law, they may continue to keep the animals for the term of that approval. However, after that term, should they wish to keep more than 6 cats or 6 dogs, an approval under the *Planning Act 2016* may be required.

Section 56 - Transitional provisions for self-assessable signs under the repealed Local Law

This section is intended to preserve the provisions of the 2011 Local Law relating to self-assessable signs for a period of 1 month. This will allow persons who are displaying self-assessable signs under the 2011 Local Law at the time of repeal, where those signs are not self-assessable under the *Signs Local Law 2023*, to continue to do so for 1 month. This transitional arrangement has been established to ensure that events or other activities occurring at the time of transition are not impacted by the repeal of the 2011 Local Law and commencement of the *Signs Local Law 2023*.

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*.

