Mareeba Shire Council

Local Law No. 3 (Community and Environmental Management) 2018

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Part 1 Preliminary

1 Short title

This local law may be cited as *Local Law No. 3 (Community and Environmental Management) 2018.*

2 Purpose and how it is to be achieved

(1) The purpose of this local law is to protect the environment and public health, safety and amenity within the local government's area.

(2) The purpose is to be achieved by providing for the elimination or reduction of risks and threats to the environment and public health, safety and amenity resulting from—

(a) inadequate protection against animal and plant pests; and

(b) vegetation overgrowth; and

(c) visual pollution resulting from accumulation of objects and materials; and

(d) fires and fire hazards not regulated by State law; and

(e) community safety hazards; and

(f) noise that exceeds noise standards.

3 Definitions—the dictionary

The dictionary in the schedule defines particular words used in this local law.

4 Relationship with other laws[1]

This local law is—

(a) in addition to and does not derogate from laws for pest management, regulation of fires and environmental protection; and

(b) to be read with *Local Law No. 1 (Administration) 2018*.

Part 2 Declared local pests

Division 1 Application

5 Application of part

This part does not apply to an animal or plant that is an invasive animal, invasive plant, prohibited matter, or restricted matter under the *Biosecurity Act 2014*.

[1] This local law and any subordinate local law made under it do not apply to the extent of any inconsistency with a law of the State or the Commonwealth. See the Act, section 27.

Division 2 Declaration of local pests

6 Declaration of local pests

(1) The local government may, by subordinate local law, declare an animal or plant of a specified species to be a local pest.

(2) Before the local government makes a declaration under this section, it must consult with the chief executive about the desirability of the declaration.

(3) A declaration under this section—

(a) must be published in a newspaper circulating generally in the local government's area; and

(b) comes into force on the date of publication.

(4) In this section—

chief executive means the chief executive of the department in which the *Biosecurity Act 2014* is administered.

7 Emergency declarations

(1) This section applies if the local government is satisfied urgent action is needed to avoid or minimise an immediate risk of environmental harm posed by a plant or animal.

(2) The local government may, by resolution, declare an animal or plant of the relevant species to be a local pest.

(3) A declaration under this section—

(a) must be published in a newspaper circulating generally in the local government's area; and

(b) comes into force on the date of publication; and

(c) comes to an end three months after the date of publication.

(4) In this section—

environmental harm see *Environmental Protection Act 1994*, section 14.

8 Application of declaration

A declaration may apply—

(a) to the whole of the local government's area or in a specified part or parts of the area; and

(b) generally or only in specified circumstances.

Division 3 Control of local pests

9 Power to search for declared local pests

(1) This section applies if an authorised person wants to enter a property to search for declared local pests.

(2) After giving reasonable written notice to the owner and the occupier of the property, the authorised person may—

(a) enter the property without the permission of the occupier; and

(b) take reasonable action to search for declared local pests.

(3) However, the authorised person—

(a) must, as soon as the authorised person enters the property, inform any occupier of the property—

(i) of the reason for entering the property; and

(ii) that the authorised person is authorised under this local law to enter the property, excluding a home on the property, without the permission of the occupier; and

(b) may enter a home that is on the property only with the permission of the occupier of the relevant part of the property.

(4) If the occupier gives permission under subsection (3)(b), the authorised person may ask the occupier to sign a document that confirms that the occupier has given permission.

10 Pest control notices

(1) An authorised person may, by compliance notice[2] given to the owner of land, require the owner[3] to take specified action to control declared local pests.

(2) The specified action may include action to—

(a) destroy declared local pests on the land; or

(b) minimise the risk of an outbreak of declared local pests on the land; or

(b) prevent or minimise seeding or reproduction by declared local pests; or

(c) contain infestation by declared local pests within a localised area; or

(d) reduce the density or extent of infestation by declared local pests; or

(e) remove harbour provided to declared local pests.

(3) The notice may require the repetition of a specified action at stated intervals or on the reappearance of the declared local pest within a specified period.

[2] See *Local Law No.1 (Administration) 2018*, section 27, regarding the requirements for compliance notices and the offence for not complying with a compliance notice.

[3] See the Act, section 140, in relation to the owner's right to enter property where the owner is not the occupier to take action to comply with a remedial notice, and section 141, in relation to an occupier's right to recover amounts incurred to satisfy an owner's obligations.

Division 4 Prohibition of sale and propagation

11 Prohibition on sale

A person must not—

(a) sell or supply a declared local pest; or

(b) offer or display a declared local pest for sale or supply.

Maximum penalty—50 penalty units.

12 Prohibition on introducing, propagating etc a declared local pest

(1) A person must not—

(a) introduce, propagate or breed a declared local pest; or

(b) provide harbour to a declared local pest.

Maximum penalty for subsection (1)—50 penalty units.

(2) However, subsection (1) does not apply to a person who has been prescribed under a subordinate local law for this subsection as exempt from the offence in subsection (1) in relation to a specified pest.

Example of persons that might be exempted from subsection (1) in relation to specified pests—

- Staff of research organisations such as universities or the CSIRO who require a particular pest for research purposes.
- An employee of a circus using a particular pest to provide entertainment to the public.
- Staff of an organisation using a particular pest as part of an education program.
- An employee of a zoo that keeps a particular pest.

(3) In this section—

introduce means to introduce, or cause to introduce, into the local government's area.

Part 3 Overgrown and unsightly allotments

13 Overgrown allotments

(1) This section applies where an authorised person forms the opinion that an allotment is overgrown with vegetation to such an extent that it—

(a) has seriously affected the visual amenity of the allotment; or

(b) is likely to attract or harbour reptiles or flying foxes.

(2) The authorised person may, by compliance notice[4] given to the responsible person for the allotment, require the responsible person to clear the vegetation to an extent specified in the notice.

[4] See footnote 5.

(3) However, the notice cannot prevent a use of land authorised under the Planning Act[5] or the *Environmental Protection Act 1994*.

(4) In this section—

vegetation includes a tree, bush, shrub, plant or grass, but does not include vegetation that is protected under a law[6] of the State or Commonwealth or under the local government's planning scheme.

14 Accumulation of objects and materials on allotments

(1) This section applies where an authorised person forms the opinion that objects or materials brought on to, or allowed to accumulate on, an allotment—

(a) have seriously affected the visual amenity of the allotment; or

(b) are likely to attract or harbour reptiles.

Examples for paragraph (a) of objects and materials that may seriously affect the visual amenity of an allotment—

- Discarded or disused machinery or machinery parts.
- Broken-down or severely rusted vehicles.
- Discarded bottles, containers or packaging.
- Refuse or scrap material.

(2) The authorised person may, by compliance notice[7] given to the responsible person for the allotment, require the responsible person to—

(a) remove objects or materials that are causing the circumstance mentioned in subsection (1)(a) or (b); or

(b) take other specified action to remedy the circumstance mentioned in subsection (1)(a) or (b).

Example of action that might be required under paragraph (b)—

Erecting an appropriate structure (in accordance with requirements under the Planning Act) to screen unsightly objects or materials from public view.

(3) However, the notice cannot prevent a use of land authorised under the Planning Act or the *Environmental Protection Act 1994*.

[5] See definition of *Planning Act* in the Act, schedule 4.
[6] For example, vegetation may be protected under the *Nature Conservation Act 1994*, the *Vegetation Management Act 1999*, the Planning Act, the *Queensland Heritage Act 1992*, the *Fisheries Act 1994* and the *Environment Protection and Biodiversity Conservation Act 1999 (Cwlth)*.
[7] See footnote 5.

Part 4 Fires and fire hazards

15 Regulation of lighting and maintaining fires in the open

(1) This section does not apply to the lighting or maintaining of a fire that is authorised under the *Fire and Rescue Service Act 1990*.[8]

(2) The local government may, by subordinate local law, prohibit or restrict the lighting or maintaining of fires in the open in the whole, or designated parts, of the local government's area.

Example—

The subordinate local law might prohibit the lighting of fires, or a particular type of fire, in the open, unless 1 or more of the following conditions is met—

- the fire is contained in an approved incinerator;
- the fire is established in a specified way and specified precautions are taken to prevent the spread of fire;
- the fire is lit and extinguished within a specified time.

(3) A person must comply with a prohibition or restriction imposed under this section.

Maximum penalty for subsection (3)—50 penalty units.

(4) A person must not light or maintain a fire if the fire exposes property to the risk of damage or destruction by fire.

Maximum penalty for subsection (4)—50 penalty units.

(5) However, a person does not commit an offence under subsection (3) or (4) if the person is authorised or required to light or maintain the fire in the performance of duties under another Act.

16 Fire hazards

(1) This section applies where an authorised person forms the opinion that a fire hazard exists on an allotment.

(2) The authorised person may, by compliance notice[9] given to the responsible person for the allotment, require the responsible person to take specified action to reduce or remove the fire hazard.[10]

[8] See the *Fire and Rescue Service Act 1990*, section 63, regarding fires authorised by notification, section 65 regarding fires authorised by permit and section 69, regarding notices requiring occupiers to take measures to reduce the risk of fire. For fires authorised by notification under section 63, see the Notification by the Commissioner of Fire and Rescue Service published in the gazette on 6 August 2004.

[9] See footnote 5.

[10] See also the *Fire and Rescue Service Act 1990*, section 69, under which the Fire Services Commissioner can publish a general notification in the gazette requiring occupiers of land to take measures to reduce the risk of fire occurring or the risk to persons, property or environment in the event of fire occurring.

(3) In this section—

fire hazard means—

(a) anything that, because of its flammable nature, its position or its quantity, exposes property to significant risk of damage or destruction by fire; or

(b) a thing that is declared to be a fire hazard under a subordinate local law for this paragraph.

Examples of fire hazards for paragraph (a)—

- Live cinders or hot ash that is not enclosed in a fireplace so constructed as to prevent the escape of cinders or ash.
- A substantial accumulation of grass clippings that is liable to spontaneous combustion.
- Dry vegetation that could be easily ignited or other flammable materials.

Part 5 Community safety hazards

17 What is a community safety hazard

A ***community safety hazard*** is—

(a) a fence or structure on land that, because of its nature or its position, poses a significant risk of causing injury to a person or damage to property; or

(b) objects or materials on land that are likely to become airborne in periods of high wind in a way that poses a significant risk of causing injury to a person or damage to property; or

(c) a thing that is declared to be a community safety hazard under a subordinate local law for this paragraph.

Examples of a fence or structure that may be a community safety hazard for paragraph (a)—

- Barbed wire fencing adjoining a public park or reserve or located in an urban area.
- Electric fences adjoining public land.
- An unfenced dam adjacent to a public park or reserve.

18 Power to enter property to inspect for community safety hazards

(1) This section applies if an authorised person wants to enter a property to inspect it to identify any community safety hazards.

(2) After giving reasonable written notice to the owner and the occupier of the property, the authorised person may—

(a) enter the property without the permission of the occupier; and

(b) take reasonable action to inspect the property for community safety hazards.

(3) However, the authorised person—

(a) must, as soon as the authorised person enters the property, inform any occupier of the property—

(i) of the reason for entering the property; and

(ii) that the authorised person is authorised under this local law to enter the property, excluding a home on the property, without the permission of the occupier; and

(b) may enter a home that is on the property only with the permission of the occupier of the relevant part of the property.

(4) If the occupier gives permission under subsection (3)(b), the authorised person may ask the occupier to sign a document that confirms that the occupier has given permission.

19 Removal or reduction of community safety hazards

(1) This section applies where an authorised person forms the opinion that a community safety hazard exists on an allotment.

(2) The authorised person may, by compliance notice[11] given to the responsible person for the allotment, require the responsible person to take specified action in relation to the community safety hazard to—

(a) remove the hazard; or

(b) reduce the level of risk to persons or property.

Example of specified action that might be required under paragraph (b) to reduce the risk to the community from a community safety hazard—

Securing objects or materials that may become airborne in periods of high wind.

20 Prescribed requirements

(1) The local government may, by subordinate local law, prescribe requirements that must be met by responsible persons relating to specified types of community safety hazards located on the owner's land.

Example of prescribed requirements—

- A requirement to place signs on electric fences or barbed wire fences adjoining public land to warn persons of the risk of injury.
- A requirement to install and maintain an electric fence in accordance with appropriate standards.

(2) A responsible person must comply with requirements prescribed under this section.

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

[11] See footnote 5.

Part 6 Noise standards

21 Prescribed noise standards

(1) This section applies if the local government is the administering authority for the *Environmental Protection Act 1994*, chapter 8, part 3B.[12]

(2) The local government may, by subordinate local law, prescribe a noise standard in the whole, or designated parts, of the local government's area by—

(a) prohibiting the making of a stated noise (for example, by reference to the activity making the noise and the time at which the noise is made);[13] and

(b) stating the section, in the *Environmental Protection Act 1994*, chapter 8, part 3B, division 3, for which the subordinate local law provision is prescribing a noise standard.[14]

Part 7 Miscellaneous

22 Subordinate local laws

The local government may make subordinate local laws about—

(a) declaring animals or plants of specified species to be local pests;[15] or

(b) lighting and maintaining of fires in the open;[16] or

(c) fire hazards;[17] or

(d) community safety hazards;[18] or

(e) prescribed requirements relating to community safety hazards;[19] or

(f) prescribed noise standards for the *Environmental Protection Act 1994*.[20]

[12] See the *Environmental Protection Act 1994*, section 514, for the making of a regulation to devolve the administration and enforcement of parts of the Act to local governments as the administering authority. The *Environmental Protection Regulation 2008*, section 99, devolves the administration and enforcement of noise standards to local governments. Section 109 of the Regulation declares local government authorised persons to be authorised persons under the *Environmental Protection Act 1994*, section 445(1)(c). Chapter 9 of that Act provides for the investigation and enforcement powers of authorised persons.

[13] See, however, *Local Law No.1 (Administration) 2018*, section 10(4)(a), regarding conditions of approvals that may authorise an act or omission that contravenes a noise standard.

[14] Section 440O(3) provides that a local law that prescribes a noise standard replaces the nominated default noise standard in the *Environmental Protection Act 1994*, chapter 8, part 3B, division 3.

[15] See section 6(1).

[16] See section 15(2).

[17] See section 16(3)(b).

[18] See section 17(c).

[19] See section 20(1).

[20] See section 21(2).

Schedule Dictionary

Section 3

allotment means an individual parcel or piece of land.

animal means an organism (other than a human being) that is not a plant and includes eggs and semen.

compliance notice means a compliance notice mentioned in *Local Law No.1 (Administration) 2018*, section 27.

declared local pest means a plant or animal declared to be a pest under section 6 or 7.

plant means vegetation of any type, including its flowers, roots, seeds and other parts.

reasonable written notice means a written notice given at least 7 days before a property is to be entered, that informs the owner and the occupier of the property of—

(a) the local government's intention to enter the property; and

(b) the reason for entering the property; and

(c) the days and times when the property is to be entered.

responsible person means the person who has control or management of the place and includes a person in charge of activities or structures in the place that may result in contravention of this local law.

the Act means the *Local Government Act 2009*.