

# Moreton Bay Regional Council Local Law No. 3 (Community and Environmental Management) 2011

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## **Part 1 Preliminary**

### **1 Short title**

This local law may be cited as *Moreton Bay Regional Council Local Law No. 3 (Community and Environmental Management) 2011*.

### **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 on an allotment in the local government area; and
  - (c) visual pollution resulting from accumulation of objects and materials; and
  - (d) fires not regulated by State law; and
  - (e) local annoyances and 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<sup>1</sup>**

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 *Moreton Bay Regional Council Local Law No. 1 (Administration) 2011*.

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<sup>1</sup> 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.

## Part 2 Declared local pests

### Division 1 Application

#### 5 Application of part

- (1) This part does not apply to—
  - (a) an animal or plant that is a declared pest under the *Land Protection (Pest and Stock Route Management) Act 2002*<sup>2</sup> or the *Plant Protection Act 1989*<sup>3</sup>; or
  - (b) noxious fisheries resources or diseased fisheries resources<sup>4</sup>.
- (2) In this section—

*declared pest* see the *Land Protection (Pest and Stock Route Management) Act 2002*, section 8 and the *Plant Protection Act 1989*, section 4.

*diseased fisheries resources* see the *Fisheries Act 1994*, section 94.

*noxious fisheries resources* see the *Fisheries Act 1994*, schedule.

### 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 *Land Protection (Pest and Stock Route Management) Act 2002* is administered.

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<sup>2</sup> See the *Land Protection (Pest and Stock Route Management) Act 2002*, sections 36 and 37, regarding the declaration of plants and animals as declared pests for the State or part of the State.

<sup>3</sup> See the *Plant Protection Act 1989*, section 4, regarding the declaration of pests that are harmful to the growth or quality of crop plants.

<sup>4</sup> See the *Fisheries Act 1994*, section 94, regarding the declaration of diseased fisheries resources.

## **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**

- (1) 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<sup>5</sup> given to the owner of land, require the owner<sup>6</sup> 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
  - (c) prevent or minimise seeding or reproduction by declared local pests; or
  - (d) contain infestation by declared local pests within a localised area; or
  - (e) reduce the density or extent of infestation by declared local pests; or
  - (f) 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.

## **Division 4 Prohibition of sale and propagation**

### **11 Prohibition on sale**

- (1) 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 exempted by the local government 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.*
- *Staff of an organisation using a particular pest as part of an education program.*

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<sup>5</sup> See *Moreton Bay Regional Council Local Law No.1 (Administration) 2011*, section 27, regarding the requirements for compliance notices and the offence for not complying with a compliance notice.

<sup>6</sup> 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.

- (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 adversely affected the visual amenity of the allotment; or
  - (b) is likely to attract or harbour designated pests; or
  - (c) is likely to present a risk to the health and safety of the public.
- (2) The authorised person may, by compliance notice<sup>7</sup> given to the responsible person for the allotment, require the responsible person to cut and remove the vegetation to an extent specified in the notice.
- (3) However, the notice cannot prevent a use of land authorised under the Planning Act<sup>8</sup> or the *Environmental Protection Act 1994*.
- (4) In this section—
- designated pest* has the same meaning as that in the *Public Health Act 2005*;
- vegetation* includes a tree, bush, shrub, plant or grass, but does not include vegetation that is protected under a law<sup>9</sup> of the State or Commonwealth or under the local government's planning scheme.
- (5) The local government may, by subordinate local law, prescribe requirements for the control of overgrown allotments.

### 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 adversely affected the visual amenity of the allotment; or
  - (b) are likely to attract or harbour designated pests; or
  - (c) is likely to present a risk to the health and safety of the public.

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<sup>7</sup> See footnote 5.

<sup>8</sup> See the definition of *Planning Act* in the Act, schedule 4

<sup>9</sup> 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)*.

*Examples for paragraph (a) of objects and materials that may seriously affect the visual amenity of the surrounding area —*

- *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<sup>10</sup> 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), (b) or (c); or
  - (b) take other specified action to remedy the circumstance mentioned in subsection (1)(a), (b) or (c).

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

## **Part 4                      Fires**

### **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*.<sup>11</sup>
- (2) The local government may, by subordinate local law, prohibit or restrict the lighting or maintaining of particular fires in the open in the whole, or a designated part, 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 the conditions stated in the subordinate local law are met.*
- (3) A person must comply with a prohibition or restriction imposed under this section.

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

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<sup>10</sup> See footnote 5.

<sup>11</sup> 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.



- (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.

## Part 5 Local annoyances and hazards

### 16 What are local annoyances and hazards

- (1) A *local annoyance or hazard* is—
- (a) a 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) a structure on land that has been allowed to deteriorate to such an extent that it adversely affects the amenity of the area; or
  - (c) 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
  - (d) objects or materials on land that are likely to be carried by the overland flow of water or stormwater, onto a public place, creating litter or causing a significant risk of injury to a person or damage to property, or adversely effect the amenity of the area; or
  - (e) an action or thing that is declared to be a local annoyance or hazard under a subordinate local law for this paragraph.

*Examples of a structure that may be a local annoyance or hazard for paragraph (a)—*

- *Barbed wire fencing which may give rise to a risk to public safety.*
- *Electric fences adjoining public land in an urban area.*
- *Wells.*

### 17 Power to enter property to inspect for local annoyances or hazards

- (1) This section applies if an authorised person wants to enter a property to inspect it to identify any local annoyances or 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 local annoyances or 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.

## **18 Removal or reduction of local annoyances and hazards**

- (1) This section applies where an authorised person forms the opinion that a local annoyance or hazard exists on an allotment, or public place.
- (2) The authorised person may, by compliance notice<sup>12</sup> given to the responsible person for the local annoyance or hazard, require the responsible person to take specified action in relation to the local annoyance or hazard to—
  - (a) remove the annoyance or hazard; or
  - (b) reduce the level of risk from the local annoyance or hazard to persons or property.

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

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

## **19 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 local annoyances or hazards.

*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.

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<sup>12</sup> See Footnote 5

## Part 6 Noise standards

### 20 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.<sup>13</sup>
- (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);<sup>14</sup> 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.<sup>15</sup>

## Part 7 Miscellaneous

### 21 Subordinate local laws

The local government may make subordinate local laws about—

- (a) declaring animals or plants of specified species to be local pests;<sup>16</sup> or
- (b) overgrown allotments;<sup>17</sup> or
- (c) lighting and maintaining fires in the open;<sup>18</sup> or
- (d) local annoyances and hazards;<sup>19</sup> or
- (e) prescribed requirements relating to local annoyances and hazards;<sup>20</sup> or
- (f) prescribed noise standards for the *Environmental Protection Act 1994*.<sup>21</sup>

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<sup>13</sup> 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.

<sup>14</sup> See, however, *Moreton Bay Regional Council Local Law No.1 (Administration) 2011*, section 10(4)(a), regarding conditions of approvals that may authorise an act or omission that contravenes a noise standard.

<sup>15</sup> 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.

<sup>16</sup> See section 6(1).

<sup>17</sup> See section 13(5).

<sup>18</sup> See section 15(2).

<sup>19</sup> See section 16(1)(e).

<sup>20</sup> See section 19(1).

<sup>21</sup> See section 20(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 *Moreton Bay Regional Council Local Law No.1 (Administration)2011*, section 27.

**declared local pest** means a plant or animal declared to be a pest under section 7 or 8.

**designated pest** – see section 13 (4).

**litter** has the same meaning as provided in the *Environment Protection Act 1994*.

**local annoyances and hazards** – see section 16 (1).

**local government area** means the Moreton Bay Regional Council area.

**maintain a fire** includes feed, control and supervise a fire.

**newspaper** has the same meaning as provided in the *Printing and Newspapers Act 1981*.

**occupier** has the same meaning as provided in the *Environment Protection Act 1994*.

**overgrown allotment** – see section 13 (1).

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

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

**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.

**refuse** includes garbage, rubbish, food scraps, manure, garden cuttings and decomposing material.

**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*.

**vegetation** – see section 13 (4).