

REDLAND SHIRE COUNCIL

(CONTROL OF NUISANCES) LOCAL LAW NO. 18

TABLE OF PROVISIONS

PART 1 - PRELIMINARY

1. Citation..... 1
2. Objects 1
3. Definitions..... 1
4. Application of this local law 2

PART 2 - NOISE POLLUTION

Division 1 - Regulation of noise emission

5. Local government's powers to regulate noise pollution 2
6. Prohibition of noise emission contrary to local law policy 2

Division 2 - Noise abatement notices

7. Application of Division..... 3
8. Excessive noise 3
9. Noise abatement notices..... 4

PART 3 - FIRE AND FLAMMABLE MATERIALS

Division 1 - Regulation of fires in the open

10. Regulation of lighting and maintaining fires in the open..... 4
11. Compliance with local law policies 4

Division 2 - Fire hazards

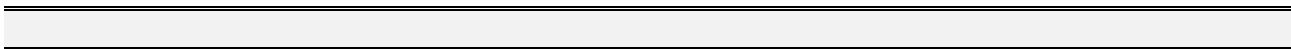
12. Fire hazards 5

Division 3 - Nuisances

13. Nuisances 5

Division 4 - Compliance notices

14. Compliance notices 5



PART 4 - MISCELLANEOUS NUISANCES

Division 1 - Visual pollution

15. Prohibition of visual pollution	6
---	---

Division 2 - Overgrown vegetation

16. Overgrown allotments.....	6
-------------------------------	---

Division 3 - Light spillage

17. Light spillage.....	7
-------------------------	---

Division 4 - Atmospheric pollutants

18. Atmospheric pollutants	7
----------------------------------	---

PART 5 - PERMITS

19. Permits allowing contravention of local law.....	8
20. Application for permit.....	8
21. Grant of permit.....	9
22. Term of permit	9
23. Conditions of permit	9
24. Compliance with conditions of permit.....	10
25. Suspension or cancellation of permit.....	10

PART 6 - MISCELLANEOUS

26. Local government's power to have work carried out	10
27. Powers of entry and cost recovery	10
28. Common law remedies	11
29. Local law policies	11

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PART 1 - PRELIMINARY

Citation

1. This local law may be cited as *Redland Shire Council (Control of Nuisances) Local Law No. 18*.

Objects

2. The objects of this local law are to protect the environment, and public health, safety and convenience, by eliminating or reducing nuisances resulting from:-
 - (a) excessive noise; and
 - (b) smoke and other atmospheric pollutants; and
 - (c) light spillage; and
 - (d) vegetation overgrowth; and
 - (e) visual pollution resulting from unsightly accumulations of objects and materials.

Definitions

3. In this local law:-

“allotment” means a separate parcel or piece of land.

“approved” means approved under a local law policy or by an authorised person.

“Australian Standard” means a standard issued or approved by the Standards Association of Australia.

“authorised person” means a person who is authorised by the local government to exercise the powers of an authorised person under this local law.

“excessive noise” see section 8.

“fire hazard” means anything that, because of its flammable nature, its position, or its quantity, exposes property to significant risk of damage or destruction by fire, and includes anything that is declared under a local law policy to be a fire hazard.

“occupier” of a place means the person who has the control or management of the place and includes a person in charge of activities in the place that may result in contravention of, or a nuisance under, this local law. For purposes where no person is in physical occupation of the property, the owner is taken to be the occupier.

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

“**vegetation**” includes a tree, bush, shrub, plant or grass.

Application of this local law

4.

- (1) The powers given by this local law must be exercised in a way that is consistent with environmental protection policies, environmental management programs and environmental protection orders under the *Environmental Protection Act 1994*.

Examples:-

- *A local law policy could not fix a standard to be applied under this local law that falls below a relevant minimum standard fixed by an environmental protection policy under section 25 of the Environmental Protection Act 1994.*
 - *In making a judgment about the existence or likely effect of a nuisance under this local law, an authorised person must have regard to relevant indicators, parameters, factors or criteria stated in an environmental protection policy under section 25 of the Environment Protection Act 1994.*
- (2) This local law does not apply to anything authorised by an environmental authority¹ under the *Environmental Protection Act 1994*.

PART 2 - NOISE POLLUTION

Division 1 - Regulation of noise emission

Local government’s powers to regulate noise pollution

5. The local government may, by local law policy, regulate the emission of noise.

Examples:-

The local government might make a local law policy providing that certain kinds of noise (for example, the noise of a lawnmower, outboard engine, chainsaw) must not be audible in neighbouring residential premises during specified hours of the day or night.

The local government might make a local law policy providing that noise above a specified level (as measured in accordance with a relevant Australian Standard) must not be emitted from premises or a particular class of premises.

¹ An environmental authority is an approval or licence under the *Environmental Protection Act 1994* (Chapter 3, Part 4).

Prohibition of noise emission contrary to local law policy

6.

- (1) If noise is emitted from a place in contravention of a local law policy under this division, the occupier of the place commits an offence.

Maximum penalty - 20 penalty units.

- (2) However, it is a defence to a charge of an offence against this section for the occupier to prove that the noise emission happened despite the occupier's reasonable precautions to prevent unlawful noise emission.

Division 2 - Noise abatement notices

Application of Division

7. This division does not apply to:-

- (a) noise generated by agricultural, horticultural or industrial activities;
- (b) noise made by an animal of any kind; or
- (c) noise which is regulated, or capable of being regulated, by the State or a government entity under another law.

Excessive noise

8.

- (1) Noise is excessive if:-

- (a) the noise is emitted in contravention of a local law policy; or
- (b) the noise is likely to cause irritation, annoyance or distress to the occupants of residential premises, or interference with lawful activities on residential premises, in the neighbourhood of the place from which the noise is emitted.

- (2) In deciding whether noise is likely to cause irritation, annoyance or distress to the occupants of residential premises or interference with lawful activities on residential premises, the following factors must be considered:-

- (a) the intensity of the noise;
- (b) the type and characteristics of the noise;
- (c) the frequency of occurrence of the noise;
- (d) the duration of the noise;
- (e) the background and ambient noise levels;
- (f) the extent the noise is likely to interfere with the use and enjoyment of the

residential premises at the time of its emission;

- (g) the character of the neighbourhood (including its topographical features), and the kinds of noises that would normally and reasonably be expected in the neighbourhood;
- (h) noise suppression measures that have been, or could reasonably be, taken in the circumstances.

Examples of matters to be considered under subsection (2)(b):-

- *the pitch components of the noise;*
- *whether the noise is at a steady level and pitch or of fluctuating intensity or pitch;*
- *whether the noise is continuous or intermittent.*

Noise abatement notices

9.

- (1) If noise emitted from a place is excessive, an authorised person may, by written notice given to the occupier of the place, require the occupier to take specified action, within a specified time, to stop the noise or reduce it to an acceptable level.
- (2) A person must comply with a notice under this section within the time allowed in the notice.

Maximum penalty - 20 penalty units.

PART 3 - FIRE AND FLAMMABLE MATERIALS

Division 1 - Regulation of fires in the open

Regulation of lighting and maintaining fires in the open

10.

- (1) The local government may, by local law policy, prohibit or restrict the lighting and maintaining of fires in the open in the whole, or designated parts, of the local government's area.
- (2) However, a local law policy cannot prohibit or restrict the lighting and maintaining of a fire if:-
 - (a) the fire is authorised by notification under section 63 or permit under section 65, or required by a notification or notice under section 69, of the *Fire Service Act 1990*; or
 - (b) a person is authorised or required to light the fire in the performance of duties under another Act.

Compliance with local law policies

11. A person must comply with a prohibition or restriction imposed under this division.

Maximum penalty - 50 penalty units.

Division 2 - Fire hazards

Fire hazards

12. The occupier of land must keep the land free from fire hazards.

Maximum penalty - 50 penalty units.

Division 3 - Nuisances

Nuisances

13. A person must not light or maintain a fire if:-

- (a) the smoke or other products of combustion are likely to cause irritation, annoyance or distress to others; or
- (b) the fire exposes property to the risk or damage or destruction by fire.

Maximum penalty - 50 penalty units.

Division 4 - Compliance notices

Compliance notices

- 14.

- (1) An authorised person may, by written notice given to the occupier of land, require the occupier to:-

- (a) extinguish a fire on the land that has been lit or maintained in contravention of this Part; or
- (b) take specified action, within a specified time, to remove a fire hazard on the land.

- (2) A person must comply with a notice under this section.

Maximum penalty - 50 penalty units.

- (3) However, it is a defence to a charge of an offence against subsection (2) to prove that there is a reasonable excuse for the non-compliance.

PART 4 - MISCELLANEOUS NUISANCES

Division 1 - Visual pollution

Prohibition of visual pollution

15.

- (1) An occupier on whose land objects or materials are brought, or allowed to accumulate, that seriously detract from the visual amenity of the land, commits a nuisance.

Examples of objects that may seriously detract from the visual amenity of land:-

- *discarded or disused machinery or machinery parts;*
- *broken-down or severely rusted vehicles;*
- *discarded bottles, containers or packaging;*
- *refuse or scrap material.*

- (2) If an occupier commits a nuisance under this section, an authorised person may, by written notice given to the occupier, require the occupier, within a time stated in the notice, to:-

- (a) remove unsightly objects or materials from the land; or
- (b) take other specified action to stop the nuisance.

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

The notice might require the occupier to erect an appropriate structure to screen unsightly objects or materials from public view.

- (3) An occupier must comply with a notice under this section.

Maximum penalty - 20 penalty units.

Division 2 - Overgrown vegetation

Overgrown allotments

16.

- (1) If land is overgrown with vegetation and the vegetation is:-

- (a) a harbourage or potential harbourage for vermin; and
- (b) located (wholly or in part):-

- (i) within the prescribed distance of the boundary of occupied land; or

- (ii) more than the prescribed distance from the boundary of occupied land but nevertheless located such that, in the opinion of an authorised person, it constitutes a risk to the health or safety of any person on occupied land,

the occupier of the first mentioned land commits a nuisance.

- (2) For subsection (1)(b), the “**a prescribed distance**” is the distance prescribed by local law policy.
- (3) If an occupier commits a nuisance under this section, an authorised person may, by written notice given to the occupier, require the occupier, within a time stated in the notice, to clear the vegetation to an extent specified in the notice.
- (4) A notice under subsection (3) may also require the repetition of the specified action at stated intervals or on the reappearance of the nuisance within a specified period.
- (5) An occupier must comply with a notice under this section.

Maximum penalty - 20 penalty units.

Division 3 - Light spillage

Light spillage

17.

- (1) Subject to subsection (4), an occupier of land who uses, or permits the use of, artificial illumination on the land commits a nuisance if the artificial illumination results in spillage of light that is likely to cause irritation, annoyance or distress to others.
- (2) If an occupier commits a nuisance under this section, an authorised person may, by written notice given to the occupier, require the occupier to take, within a time stated in the notice, specified action to stop the light spillage or to reduce it to an acceptable level.
- (3) An occupier must comply with a notice under this section.

Maximum penalty - 20 penalty units.

- (4) To avoid doubt, this section does not apply to artificial illumination from street lighting which illuminates a dedicated road.

Division 4 - Atmospheric pollutants

Atmospheric pollutants

18.

- (1) An occupier of land commits a nuisance if activities on the land result in the emission from the land of odours, dust or other atmospheric pollutants likely to cause irritation, annoyance or distress to others.
- (2) If an occupier commits a nuisance under this section, an authorised person may, by written notice given to the occupier, require the occupier to take, within a time stated in the notice, specified action to stop the emission of odours, dust or other atmospheric pollutants or to reduce the emission to an acceptable level.
- (3) An occupier must comply with a notice under this section.

Maximum penalty - 20 penalty units.

PART 5 - PERMITS

Permits allowing contravention of local law

19.

- (1) The local government may, for a reason it considers appropriate, grant a permit authorising an activity, or a state of affairs, that would, apart from the authorisation, be unlawful or a nuisance under this local law.

Examples:-

- *The local government might grant a permit authorising the organisers of a public concert to hold the concert at a time specified in the permit even though the concert is likely to result in the emission of excessive noise from the place where it is held.*
- *The local government might authorise a person to light and maintain a fire in circumstances specified in the permit even though the lighting of the fire would, apart from the permit, be contrary to a local law policy.*

- (2) However, the local government cannot grant a permit authorising an activity or state of affairs that would be unlawful under another law.

Examples:-

- *The local government could not grant a permit authorising the lighting of a fire contrary to a prohibition in force under Part 7 of the Fire Service Act 1990.*
- *The local government could not grant a permit authorising an activity or state of affairs in contravention of an environmental protection order under*

the Environmental Protection Act 1994.

Application for permit

20. An application for a permit must include or be accompanied by:-
- (a) details of the land or premises for which the permit is sought; and
 - (b) a detailed description of the activity or state of affairs for which the permit is sought; and
 - (c) measures that have been, or will be, taken to minimise adverse effects of the activity or state of affairs; and
 - (d) a statement of the likely effect of the grant of the permit, and the results of any consultations that have been held with occupiers of land or premises likely to be affected; and
 - (e) other information and materials required under a local law policy.

Grant of permit

- 21.
- (1) The local government may only grant a permit if satisfied that, in the circumstances of the particular case, there are good reasons for relaxing the requirements of this local law.
 - (2) In deciding whether to grant a permit, the local government must have regard to:-
 - (a) relevant planning and environmental protection policies; and
 - (b) the objects of this local law.

Term of permit

- 22.
- (1) A permit may be granted for a single occasion or for a term (not longer than 2 years) specified in the permit.
 - (2) If a permit is granted for a specified term, the local government may, from time to time, on application by the holder of the permit, renew the permit.
 - (3) A term for which a permit is granted or renewed must be fixed as required by a relevant local law policy, or as decided by the local government when it grants the permit or the renewal.

Conditions of permit

- 23.
- (1) A permit may be granted on conditions the local government considers appropriate.

- (2) The conditions of a permit may, for example:-
 - (a) require the holder of a permit to give specified notice of activities to which the permit relates to persons who may be affected by the activities;
 - (b) require the holder of the permit to take specified action to minimise adverse effects of the activities or state of affairs to which the permit relates.
- (3) The local government may, by local law policy, prescribe conditions that must be imposed in a permit or that will ordinarily be imposed in a permit.

Compliance with conditions of permit

24. The holder of a permit must ensure that the conditions of the permit are complied with.

Maximum penalty - 50 penalty units.

Suspension or cancellation of permit

25.

- (1) If the holder of a permit contravenes a condition of the permit, the local government may, by written notice given to the holder, suspend or cancel the permit.
- (2) Before suspending or cancelling a permit, the local government must:-
 - (a) give written notice to the holder of the proposed suspension or cancellation; and
 - (b) allow the holder a period stated in the notice (which must be at least 1 month from when the notice is given) to make written representations to the local government about the proposed suspension or cancellation; and
 - (c) consider representations made in response to the notice.
- (3) However, subsection (2) does not apply if, in the local government's opinion, there exists a serious and immediate threat:-
 - (a) to public health or safety; or
 - (b) of occurrence of serious environmental harm,

and the local government may in any such case give a notice under subsection (1) without complying with subsection (2).

PART 6 - MISCELLANEOUS

Local government's power to have work carried out

26. If a person fails to have work required by a notice under this local law carried out, the local government may itself have the work carried out.

Powers of entry and cost recovery

27.

- (1) The local government may enter land to perform the work under section 661 of the *Local Government Act 1993* (“**the Act**”)²
- (2) If the occupier is also the owner of the relevant land, the amount properly and reasonably incurred by the local government in performing the work is recoverable (together with interest) under sections 661, 662 and 663 of the Act.
- (3) If the occupier is not the owner of the relevant land, the amount properly and reasonably incurred by the local government is recoverable as a debt from the occupier together with interest on the same basis as applies to an owner of land under section 662 of the Act³.

Common law remedies

28. A common law remedy for a nuisance under this local law cannot be given unless the nuisance would, apart from this local law, be actionable at common law.

Local law policies

29. The local government may make local law policies about:-

- (a) fire hazards⁴; or
- (b) regulating the emission of noise⁵; or
- (c) lighting and maintaining of fires in the open⁶; or
- (d) other matters about which this local law specifically allows for the making of local law policies.

³ Section 662(2) of the *Local Government Act 1993* provides for the payment of interest on the same basis as for an overdue rate.

⁴ See definition of a fire hazard in section 3.

⁵ See section 5.

⁶ See section 10.