# AURUKUN SHIRE COUNCIL LOCAL LAW NO. 2 (CONTROL OF NUISANCES)

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PART 1 - PRELIMINARY

1. Citation

This local law may be cited as Local Law No. 2 (Control of Nuisances).

2. Objects

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, other atmospheric pollutants, and wind-borne materials; and
(c) light spillage; and
(d) vegetation overgrowth; and
(e) visual pollution resulting from unsightly accumulations of objects and materials.

3. Definitions

In this local law:

"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;

"excessive noise" see section 7;

"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;

"lot" has the meaning given to it under the Integrated Planning Act 1997;

"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;

"vegetation" includes a tree, bush, shrub, plant or grass.

4. Application of this local law

(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 policy under section 25 of the Environmental Protection Act 1994.

(2) This local law does not apply to anything authorised by an environmental authority under the Environmental Protection Act 1994.  

PART 2 - NOISE POLLUTION

Division 1 - Regulation of noise emission

5. Local government's powers to regulate noise pollution

The local government may, by a 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 dog barking, the noise of a lawn mower, 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.

6. Prohibition of noise emission contrary to local law policy

(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

7. Excessive noise

(1) Noise is excessive if:

(a) the noise is emitted in contravention of a local law policy; or

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1 An environmental authority is an permit or licence under the Environmental Protection Act 1994 (Chapter 3, Part 4)
(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; and

(b) the type and characteristics of the noise; and

(c) the extent the noise is likely to interfere with the use and enjoyment of the residential premises at the time of its emission; and

(d) the character of the neighbourhood (including its topographical features), and the kinds of noises that would normally and reasonably be expected in the neighbourhood; and

(e) 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.

8. Noise abatement notices

(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 - FIRES AND FLAMMABLE MATERIALS

Division 1 - Regulation of fires in the open

9. Regulation of lighting and maintaining fires in the open

(1) The local government may, by a 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.
Example

The local government might prohibit the lighting or maintaining 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.

(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 a permit under section 65, or required by a notification under section 69, of the Fire Service Act 1990; or

(b) a person is authorised or required to light fire in the performance of duties under another Act.

10. Compliance with local law policies

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

Maximum penalty - 50 penalty units.

Division 2 - Fire hazards

11. Fire hazards

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

Maximum penalty - 50 penalty units.

Examples of fire hazards:

• Live cinders or hot ash that is not contained in a permit receptacle.
• A substantial accumulation of grass clippings that is liable to spontaneous combustion.
• Dry vegetation that could be easily ignited or other flammable materials.

Division 3 - Nuisances

12. Nuisances

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

13. Compliance notices

(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

14. Prohibition of visual pollution

(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 metal.

(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 - Dangerous, intrusive and overgrown vegetation

15. Dangerous vegetation

(1) If, in the opinion of an authorised person, vegetation gives rise to a risk of personal injury or damage to property, the authorised person may, by written notice given to the occupier of the land on which the vegetation is situated, require the occupier, within a time stated in the notice, to remove the vegetation, or to cut it back to an extent specified in the notice.

(2) An occupier must comply with a notice under subsection (1).

Maximum penalty - 20 penalty units.

(3) However, if there is a serious and imminent danger of personal injury or damage to property, the authorised person may, instead of giving a notice under subsection (1), enter the land under section 1070 of the Act with assistants, vehicles and equipment the authorised person considers necessary and remove the vegetation or cut it back to the extent necessary to remove the danger.

(4) The cost of carrying out work under subsection (3) may be recovered from the occupier of the land as a debt.

16. Intrusive vegetation

(1) If vegetation growing on a lot overhangs another lot, or roots or other parts of vegetation growing on a lot intrude to a significant extent on another lot, an authorised person may, by written notice given to the occupier of the lot on which the vegetation is growing, require the occupier, within a time stated in the notice, to remove the vegetation or to cut it back to an extent specified in the notice.

(2) An occupier must comply with a notice under subsection (1).

Maximum Penalty - 20 penalty units.

17. Overgrown lots

(1) If land is overgrown with vegetation so that the vegetation becomes unsightly or likely to attract reptiles or vermin, the occupier of the land commits a nuisance.

(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 clear the vegetation to an extent specified in the notice.

(3) An occupier must comply with a notice under subsection (2).

Maximum penalty - 20 penalty units.
Division 3 - Light spillage

18. Light spillage

(1) An occupier of land who uses, or approves 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 subsection (2).

Maximum penalty - 20 penalty units.

Division 4 - Air-borne hazards

19. Air-borne hazards

(1) If there are objects or materials on land that are:

(a) unsecured or inadequately secured; and

(b) likely to be carried away in high winds with resulting risk of personal injury or property damage;

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 secure the objects or materials or to remove them to a safe place.

(2) An occupier must comply with a notice under subsection (1).

Maximum penalty - 20 penalty units.

Division 5 - Atmospheric pollutants

20. Atmospheric pollutants

(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 subsection (2).

Maximum penalty - 20 penalty units.
Division 6 - Dangerous substances/materials

21. Dangerous substances/materials

(1) An occupier of a residential lot commits a nuisance if objects or materials are brought, left or placed on that land so as to give rise to a risk of personal injury or damage to the health of a person or damage to property.

Examples of objects that may give rise to such a risk:

- barbed wire
- electric fence
- large receptacles

(2) If an occupier commits a nuisance under this section the local government may, by written notice given to the occupier and/or the owner of the land, require the occupier and/or the owner, within a time stated in the notice to:

(a) remove the dangerous objects or materials from the land; or

(b) take other specified action to stop the nuisance.

(3) The person to whom a notice is given under subsection (2) must comply with the notice within the specified time.

Maximum Penalty - 20 penalty units

PART 5 - PERMITS

22. Permits allowing contravention of local law

(1) A local government may under this part, 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.

23. Application for permit

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.

24. Grant of permit

(1) The local government may only grant a permit if it is 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.

25. Term of permit

(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:

(a) fixed as required by a local law policy; or

(b) as decided by the local government when it grants the permit or the renewal.
26. Conditions of permit

(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; or

(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 may be imposed in a permit.

27. Compliance with conditions of permit

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

Maximum penalty - 50 penalty units.

PART 6 - MISCELLANEOUS

28. Local government's power to have work carried out

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.

29. Powers of entry and cost recovery

(1) The local government may enter land to perform the work under section 1066 of 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 1066, 1067 and 1068 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 1067 of the Act.\(^3\)

30. Common law remedies

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.

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\(^2\) A magistrate may make an order for entry to the land under section 1063 (Order on occupier who refuses entry) if the occupier refuses to permit entry

\(^3\) Section 1067(2) of the Local Government Act 1993 provides for the payment of interest on the same basis as for an overdue rate
31. **Local law policies**

The local government may make local law policies in relation to those matters about which this local law specifically allows for the making of local law policies.